The Italian Bankruptcy Law
The Italian Bankruptcy Law

edited by Studio Legale Ghia
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Italy
On the cover:

“Andante mosso” by Antonio Scordia (1968)
Studio Legale Ghia collection

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The Studio Legale Ghia would like to thank Joseph William Davids for his patience and professional effort without which this translation would not have been born.

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Preface to the Translation
By Justice Carlo Piccininni

This translation of the Italian bankruptcy law actually in force undertaken by Lucio Ghia, who naturally promoted and inspired the work, and his team is an important publication.

Translating the Italian bankruptcy law is an initiative in line with the sensibilities and the specific competencies acquired at the international level by its authors. It is in harmony with their manifest attention paid in other publications to analyzing laws and jurisprudence from Anglo-Saxon countries. Under this profile the work, in and of itself of great merit, can be seen as a natural extension of Mr. Ghia’s career.

Unlike the other publications by the author in the same field, the content of this latest work does not relate to the representation of a foreign law for the benefit of the Italian reader. Instead, this work is designed to benefit the foreign reader by providing them with an opportunity to familiarize themselves with the bankruptcy system enacted by the Italian legislator.

The points of convergence between the different subject matters that we have discussed so far, that in a first superficial analysis might seem contradictory, appear all the more clearly when one considers that the objective pursued by this publication is the familiarization abroad of the Italian bankruptcy legislation, a familiarity that is the indispensible presupposition for the beginning of a joint advancement between States designed to harmonize the discipline within the European Union and by bringing them closer together, favoring exchanges even outside those confines.

The indicated objective represents a view of particular relevance because many of the modifications made in the law by the national legislator were often inspired by procedures and institutions that have been created and applied abroad.

This is not the place to discuss in depth the relevance of innovations introduced into the law or to evaluate their effectiveness in relation to the provisions that they have replaced.

It is enough to think, in particular, of the substantive emptying of the principle “par condicio creditorum” (article 2740 of the civil code) and of the options effectuated in favor
of negotiated solutions to crisis, considered a priority in countries coming from an Anglo-Saxon tradition.

In the context of single bankruptcy cases the modifications brought about based on the examples seen in other systems include discharge, the division of creditors into classes, the freedom of form for negotiated agreements – such as the “agreement with reservations” – and importantly the different role given to the judicial bodies: judges are no longer a driving force in the procedure but understood more as a umpire to resolve disputes.

The great usefulness of providing readers unfamiliar with our language the opportunity to become familiar with our law should also be underlined.

The value of spreading information about and creating greater familiarity with the Italian legal culture cannot be overvalued. This value is all the more apparent when one considers things from point of view of the ability of argumentation and formal completeness of the Italian legislation in the sector and its having been designed to address the situation in an optimal way.

The limits that unfortunately must be noted in the development of our legal system relate in fact to the phase of applying principles coming from essentially structural and organizational sources.

In addition to the effects brought about by the reform of the bankruptcy law, other modifications coming from foreign sources have been introduced. Some of these were inspired by normative systems that are entirely different from our own and in some cases are comprised of concepts that are antithetical to already existing rules and views.

Possibly the insertion has not taken into account of other variables. For this reason, the modifications have not brought about all of the results that had been hoped for nor all the positive effects that could have resulted under other circumstances.

It is evident how just being able to read the entirety of the Italian bankruptcy legislation can allow foreign professions to understand the reasons why analogous provisions in Italian laws have not had analogous effects to those that they have had in other countries.

It is not in doubt that the results produced by the reform in question have not been
completely satisfactory and that this will mean the legislator must implement further modifications in the law.

Eventual suggestions on the part of those that have acquired specific competency in the field will be, therefore, the object of particular attention and will be extremely useful.

Any attempt to overcome instinctive clashes that occur when different legal systems meet and to facilitate the adoption of initiatives to identify and adopt common solutions, as is every initiative designed to “better understand” the law, is therefore valuable.

It seems conclusive to me that the publication under review meets the requirements now set for the originality and modernity of intuition that gave rise to the preparation of the present work.

Dr. Carlo Piccininni
Justice of the Court of Cassation
Rome, Italy
June 2013
Preface to the Translation
By Hon. Charles G. Case II

It is my distinct honor to contribute this preface to the English translation of the Italian Bankruptcy Law created under the direction of Lucio Ghia.

I have been privileged to know Lucio for many years and to bask in the glow of his accomplishments, his intellect, his humanity and his friendship. He is the founder of the Studio Legale Ghia with offices in Rome and Milan, which recently celebrated its fortieth anniversary. His practice has focused on many aspects of commercial law, with a particular emphasis on insolvency law, including representation of many of the most important commercial concerns in Italy.

But there is a greater institutional role that Lucio has played over the past several years that makes his creation of this translation particularly important. Insolvency professionals in Italy have traditionally been quite insular and uninvolved in international activities. Lucio set out to change that. Building on his position as a member of the official Italian UNCITRAL delegation, he has reached out through meetings, seminars, and other contacts, both in Italy and abroad, with governmental officials, banking groups, bar associations, accountant associations and others to familiarize those groups with the work of UNCITRAL specifically and, more importantly, cross border and international insolvency generally.

Through this work, he has brought an international perspective to the Italian insolvency world that did not previously exist. In short, he has been the most instrumental Italian actor in linking his country with the broader international insolvency world.

Lucio’s career is a shining example of the standard to which all lawyers should aspire - private service of the highest quality to his clients and unstinting public service to his profession, his country and the world. The latter service is highlighted by his time as president of the World Jurist Association, his active membership in the International Insolvency Institute, the American College of Bankruptcy and the Turnaround Management Association, his tireless work on official governmental commissions on bankruptcy law reform and his teaching at the university level in Italy.
The broad view of the world engendered by this extensive activity infuses this translation. It is not merely an effort to change the language of the text from Italian to English but rather to express the essence of the Italian law in a vocabulary clearly understandable to practitioners, judges and academics in the English-speaking world. Although many of the rules contained in the Italian law differ considerably from those of jurisdictions such as the United States, at least now those differences can be readily understood. As someone who has often struggled with inadequate translations of other countries’ laws, I can say without hesitation it is a pleasure to read a translation that actually makes sense to an American legal mind.

The journey of Italian bankruptcy law from 1942 to the present is one of enormous change and modernization. This translation provides the rest of the world with the opportunity to understand that transformation more clearly.

Charles G. Case II  
United States Bankruptcy Judge (ret.)  
Phoenix, Arizona USA  
June 2013
Introduction to the Translation of the Italian Bankruptcy Law

Before turning to the text of the Italian Bankruptcy Law, it seems appropriate to me to reflect briefly on the profound changes that have been progressively introduced by Parliament since 2005. The bankruptcy law’s very basis, and its philosophical point of view have been radically transformed in order to adapt to changing economic and historic circumstances. Traditionally, the law was directed at punishing those entering into bankruptcy for their bad faith behavior and breach of market rules; i.e. for failing to honor their obligations. The bankrupt was expelled from society and deprived of his civil capacity – a morte civile or civil disenfranchisement. The law as it historically stood did not envision those situations where the businessman was “honest, but unfortunate” or provide the leeway necessary for the exercise of business judgment in the running of an enterprise. Bankruptcy as a punishment, not as a tool for coping with economic factors often beyond our control, was the product of the unique economic and political circumstances that dominated Italy when the law was enacted on March 16, 1942.

Over time the circumstances underlying the law’s approach slowly disappeared as society became ever more industrialized. The growth in the number of registered businesses in the latter half of the twentieth century was a consequence of these changes. At the beginning of the 1970’s there were 500,000 registered businesses in the country. By the end of the 1980’s there were 1,000,000. Today there are more than 5,000,000. This growth, and the structural changes in the economy that accompanied it clashed with bankruptcy rules developed and intended for the predominately agricultural economy that existed during the first half of the last century. This scenario, from a subjective point of view, is then inserted in an objective context that has completely changed over the intervening 60 years. Globalization, and ever bigger and unstable markets, steeper competition, products that rapidly become obsolete and a society bombarded by advertisements have necessitated modification in the Italian bankruptcy law. The incompatibility of the law with the facts and developing international prac-
tice required a Copernican revolution of the very basis of bankruptcy in the Italian legal system.

On the basis of years of steady work by special committees, under the auspices of the Ministry of Justice in whose work I participated, the legislature to some extent preempted the crisis by issuing a series of innovative reforms to overcome – through procedures allowing for agreements between creditors and debtors – obstacles that the lack of liquidity introduces into the relationship between employees, suppliers, creditors and businesses.

The work of modernizing the law moved the process’ center of gravity from one focused on judicial proceedings and court control to one that involved all interested stakeholders, including the “piano attestato”, or in more complicated situations, restructuring plans and the “concordato preventivo”. In more recent times (October 2012), the automatic stay was introduced to protect the value of the whole business when timely action is taken to avert the crisis by filing for bankruptcy protection in order to obtain the time necessary to enter into a restricting plan or “concordato preventivo”. All these procedures involve the debtor reaching some form of an agreement with creditors. Under the old system, a judge would oversee the proceedings with the assistance of a trustee who operated much as the court’s right hand or executor. Following the reform, the proceedings are now entrusted to a team composed of a trustee and a creditors’ committee who work in tandem to protect the interests of the creditors and the procedure as a whole. In those cases where the sole goal of the proceedings is to liquidate the bankruptcy estate, the trustee and committee develop a liquidation plan designed to transition the estate’s assets back in to the market. The judge still has a role to play in this system, however he or she adopts a less visible role only intervening in those cases where disputes arise or the creditors’ committee is not timely formed or some extraordinary activities have to be authorized such as settlements, special agreements etc.

Moving from a “judge-centered” to a “stakeholder-centered” model was dictated by another related change: the move of the judicial system as a whole from a formal procedural model to one based on the will of the parties. This change was induced by a desire to remove formal barriers to resolving the economic crisis of the entity entering bankruptcy. The new
model took inspiration from other systems and implemented a process that includes that possibility of concluding settlements, debt restructuring agreements and other arrangements with creditors. A single philosophical line of thought runs between all these “therapeutic” mechanisms: they are designed to forward an economic purpose by sanitizing the enterprise in crisis and transition its assets back into the market as quickly as possible. The new law promotes agreement and supports it by employing a flexible and informal system. Accordingly, those actions taken in pursuance of any approved agreement will be protected from third party challenges.

In many ways the reforms have brought about a “futuristic” system where the interests of the creditors and the debtors can be merged in a “New Co.”, a new company, to which the task of overcoming the crisis is entrusted. This includes the conversion of debt into equity, or the application of “put and call” selling, or protecting a company while it weathers the crisis, or debt restructuring so as to allow more time for payment or alternative methods thereof.

The reform was also influenced by other public interest considerations. One such important factor was the cost associated with the judicial management and coordination of bankruptcies. Considerable public resources are required for the court system to oversee and manage multidisciplinary proceedings such as the liquidation of a company or its administration while agreements are made with creditors. Every judge who essentially becomes a company’s administrator is another not sitting in other cases where delegated administration is not possible.

The requirements for admission to the bankruptcy procedure have also worked to keep in check the number of cases that can be filed before the courts by permitting only those cases that are of sufficient economic weight. The new law looks to defend the economic value and production capabilities by finding an agreement between all the stakeholders to put the enterprise back in motion, to provide a “fresh start” and allow the entity to overcome the crisis. The philosophy animating the new bankruptcy law no longer revolves around an interest in the punishment of the bankrupt and the liquidation of his assets, but one that seeks to protect the public interest in a functioning economy saving and maximizing the value of the enterprise.
Today, bankruptcy finds its greatest value through the system’s ability to provide a discharge of debt. A bankrupt who understands early on that he is headed toward insolvency and that collaborates with the system, by placing all the company’s future revenues at the disposal of the bankruptcy proceedings, can under the terms thereof liberate himself from unsatisfied creditors at the end of the liquidation proceedings. Discharge, a new fresh start for the debtor, is made possible in light of the authoritative jurisprudence of the Court of Cassation. The actual criteria established by the Supreme Court require a case-by-case evaluation to be made by the court to ensure greater fairness and a more realistic result.

Bankruptcy is an unfortunate part of any healthy functioning economy. The role of the law in such circumstances is to provide a mechanism by which the public interest is best served, that is to say, that secures the timely recovery of the economic assets involved so that they may continue to contribute to the general welfare. The Italian Bankruptcy Law as modified in 2012 attempts to strike the right balance between favoring the continuing concern and not sheltering those economic actors who abuse the system to the detriment of society. The historical origins of the law are still apparent in its structure, however, no system will ever be completely divorced from its past. The reforms have attempted to keep the best of what came before while adapting to new challenges.

The systematic reforms discussed above are the reason I felt it opportune to offer an English translation of the Nuova legge fallimentare, the new Italian bankruptcy law. The reforms have brought about a modern, efficient and effective system that is attuned to the market and capable of coping with economic ebbs and flows. While it is not perfect, the new law is a fine tool for providing answers to the questions that any investor or creditor asks during bankruptcy: When and how much of my investment/claim will I recover? and how much will it cost me? The reformed Italian law ensures needed predictability to the response to these questions.

This translation presents an opportunity to directly compare and confront how the bankruptcy systems of the English and Italian speaking worlds attempt to achieve these same goals. There are notable differences that will be apparent to anyone familiar with the ban-
kruptcy practices of the Untied States of America or the United Kingdom. It is exactly in these differences that this work finds its greatest use; new ideas are born of the exchange of diversified experiences. For the first time a readily accessible translation is available that provides a common vocabulary of terms rendering comparison and exchange easier. This translation transposes not only the meaning of individual words, but concepts, making the reading more comprehensible to attorneys and academics that may wish to use this text professionally.

I cannot conclude this introduction without apologizing in advance to the reader for any linguistic imprecisions in the translation. Both English and Italian are difficult languages with specific concepts that do not always transpose exactly from one to the other.

Lastly, I would like to thank Joseph William Davids for his patience and the professionalism he demonstrated in contributing to this opera.

Avv. Prof. Lucio Ghia
Rome, Italy
May 2013
Note on the Translation

Italian, like any language, has an extremely precise vocabulary when it comes to describing substantive and procedural legal concepts. One might think that any translation would be a relatively straightforward affair since both languages possess such a developed vocabulary. Nothing could be further from the truth. Each language has adopted terms that are uniquely adapted to particular historical, cultural and linguistic contexts. The terms and things they describe are often not coextensive between the languages and cultures. For example, individuals who cover similar roles in the different legal systems, such as an assistant district attorney and a pubblico ministero may both prosecute crimes. However, in the first instance, the person is a licensed attorney who works in law enforcement while the second individual is a judicial officer.

The result of this apparent and yet incomplete overlap is that a direct or common translation of terms can often be misleading. This translation attempts to avoid these inadvertent obfuscations of meaning by using words and phrases that give a better sense of the content of the provision, if not the exact office or legal term used in the original. The example of the pubblico ministero is illustrative of this point. Throughout the bankruptcy law (which directly translated would be the "failure" law) reference is made to the involvement of this office in the bankruptcy proceedings. To say that the public prosecutor (as the term is usually translated) was participating in the proceedings would give a false sense that the procedure was somehow criminal in nature. While there are criminal provisions of the bankruptcy law (one being a crime called "simple bankruptcy"), not all appearances by the pubblico ministero involve criminal actions. Accordingly, the term has been translated as public authorities to give a better sense of what the office’s involvement actually means.

Similar issues can occur when describing the role of judicial officers. For example, the bankruptcy law makes reference to a giudice delegato. This role exists because the bench hearing a bankruptcy case is comprised of multiple judges. Whereas, by contrast, a single judge will oversee a bankruptcy case in the United States (and almost all cases for that matter) rendering obsolete any term to refer to the relationship between the different judges hearing a case. The giudice delegato is an individual judge who is designated to sit alone and decide...
motions made by the parties. Therefore, instead of indicating a designated judge (as the term would be literally translated) I have opted for the more familiar term presiding judge. The relationship of the presiding judge to rest of the court is then apparent from the context of the articles governing their interaction. In keeping with the above philosophy, other terms such as iscritto al ruolo (placed on the court calendar), processo verbale (affidavit or minute entry, depending on the context) and composizione collegiale (judicial panel) have been translated for their sense if not precise meaning.

There are also issues that arise because of pure grammatical/linguistic differences between the languages. In English, the terms his and her identify the gender of the possessor, while in Italian the gender associated with the word suo/sua is associated with the object being possessed. Choice of his or her in the text of the translation is therefore stylistic on my part so as to avoid continually writing “his/her”, and not a reflection of the original text. Another issue came with the term imprenditori, which in the context of the bankruptcy law could mean either a natural person or a legal person. Here the single Italian word necessarily had to be translated as two English words to maintain the full sense of the legal provisions.

At every turn I have tried to be as faithful as possible to the meaning of the Italian original when translating the provisions of the bankruptcy law. This is doubly important in a legal system, such as that in Italy, where the language of the statute is king and high court decisions do not benefit from the stare decisis rule.

It is my hope that English language practitioners will use this translation not only for educational purposes but also to better interface with Italian professionals and actively participate in cross border bankruptcy proceedings in Italy. Understanding breeds familiarity; which in turn can encourage greater international dialogue and cooperation going both ways across the Atlantic, English Channel or anywhere else the legal culture can readily access this work.

Joseph William Davids, Esq., LL.M.
Rome, Italy
May 2013
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(Royal Decree n. 267 of March 16, 1942 – in the Official Gazette April 6, 1942 n. 81)
Text as updated to include modifications made by law 221/2012 of 17 December 2012 converting into law Legislative Decree n. 179 of October 18, 2012

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Rules for Bankruptcy, Agreement with Creditors, Supervised Administration and Mandatory Administrative Liquidation
TITLE ONE

GENERAL PROVISIONS

Art. 1: Entities Eligible for Bankruptcy and Agreements with Creditors

Entities or individuals\(^1\) engaged in commercial activity, to the exclusion of public entities, are eligible to enter into bankruptcy proceedings and/or agreements with creditors.

The entities or individuals mentioned above are not eligible to enter bankruptcy proceedings or agreements with creditors when they cumulatively fulfill the following criteria:

a) when they have had, over the three years preceding the date of filing the bankruptcy petition or since the date of starting their activity if less than three years, annual liquid assets of no more than three hundred thousand Euro;

b) when they have had, in any way calculated, over the three years preceding the date of filing the bankruptcy petition or since the date of starting their activity if less than three years, gross revenues of no more than two hundred thousand Euro;

c) have a total debt including that which has not yet come due that is not more than five hundred thousand Euro.

The limits established in letters (a), (b) and (c) above can be updated every three years by decree from the Ministry of Justice on the basis of the average variation of the ISTAT\(^2\) index of consumer prices for working families during the reference period.

Art. 2: Mandatory Administrative Liquidation and Bankruptcy

The entities or individuals subject to mandatory administrative liquidation, the cases in which mandatory administrative liquidation will be used and the authorities competent to initiate it are established by law.

Entities or individuals subject to mandatory administrative liquidation are not eligible for bankruptcy unless otherwise provided by law.

The provisions of article 196 will apply in cases in which the law allows for both mandatory administrative liquidation and bankruptcy.

Art. 3: Mandatory Administrative Liquidation, Agreements with Creditors and Receivership

Unless otherwise provided by law, entities or individuals subject to mandatory administrative liquidation can be admitted to the procedure for agreement with creditors and receivership. The provisions of article 195, paragraph seven apply to those entities excluded form bankruptcy.

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\(^1\) The Italian original uses the term “imprenditori” which can refer either to corporate persons or natural persons. Both terms or only one of them have been used herein as appropriate given the context.

\(^2\) The Italian National Institute of Statistics is a public research organisation (sic). It has been present in Italy since 1926, and is the main producer of official statistics in the service of citizens and policy-makers. It operates in complete independence and continuous interaction with the academic and scientific communities. - http://www.istat.it/en/about-istat.
ART. 4: Renvoi to Lex Specialis

[Repealed]

TITLE TWO: ON BANKRUPTCY

CHAPTER I - DECLARATION OF BANKRUPTCY

ART. 5: Insolvency

Insolvent entities or individuals are declared bankrupt.

Insolvency occurs with the failure to fulfill obligations or by other external factors that demonstrate the debtor’s inability to regularly satisfy his obligations.

ART. 6: Standing to Request a Declaration of Bankruptcy

Bankruptcy may be declared on the request of the debtor, one or more creditors or by request of the public authorities.¹

The party filing the request referred to in the first paragraph of this article may include their fax number or email address at which they would like to receive communications and alerts as provided by the present law.

ART. 7: Requests by the Public Authorities

The public authorities may present a request for a bankruptcy decree as provided in the first paragraph of the preceding article when:

1. the insolvency occurs during ongoing criminal proceedings, in particular by the flight, unavailability or the hiding of the debtor, by the closing of an entity’s or individual’s business premises, due to theft or by the substitution or fraudulent diminution of liquid assets by the entity or individual;
2. when the insolvency is discovered during the course of civil proceedings and notified by the judge.

ART. 8: Insolvency Resulting in Civil Proceedings

[Repealed]

ART. 9: Jurisdiction

Bankruptcy is declared by the tribunal with jurisdiction over the location of the entity’s or individual’s principle place of business.

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¹ The original text uses the term *pubblico ministero*, which is often translated as “public prosecutor”. As the public prosecutor’s authority in many English speaking countries does not extend to this kind of proceeding, the more general term “public authorities” has been used here to maintain the sense of the provision, if not the exact office that may request the bankruptcy.
Any transfer of an entity’s or individual’s principal place of business during the year preceding the filing of a bankruptcy petition has no effect on the jurisdiction of the tribunal.

An entity or individual that has his principle place of business abroad may still be declared bankrupt in the Italian Republic even if a ruling on a bankruptcy petition has already been issued abroad.

The previous provision applies except in those cases where an international treaty or European Union regulation applies.

The transfer of an entity’s headquarters abroad does not deprive the Italian courts of jurisdiction if it occurs after the filing of a bankruptcy petition mentioned in Article 6 or the request mentioned in Article 7.

**Art. 9bis: Provisions Dealing With the Lack of Jurisdiction**

A copy of the decision declaring that a court lacks jurisdiction is transmitted to the same following which the court will immediately transmit all filings related to the case to the competent court. The same shall occur when a court declares itself to lack jurisdiction.

The court found to have jurisdiction, if it does not *sua sponte* consider its own competence as provided in article 45 of the civil procedure code, will begin the bankruptcy proceedings by nominating the presiding judge and the bankruptcy trustee within twenty days of receiving the filings related to the case.

All decisions previously made remain in effect.

Whenever a court is declared to lack jurisdiction on appeal after the issuance of a judgment as provided for in article 18, the appeal, based on grounds other than jurisdiction, is transferred, according to article 50 of the civil procedure code, to the competent appellate court.

In the case of decisions made pursuant to article 24 by a tribunal declared to lack jurisdiction, the judge assigned the case will set a time limit for the parties to re-file the case before the proper court as set out in article 50 of the civil procedure code and order that the case be removed from the court docket.

**Art. 9ter: Jurisdictional Conflicts**

Bankruptcy proceedings will continue before the court which first issues a bankruptcy decree when more than one competent court declares a bankruptcy.

Courts issuing subsequent bankruptcy decrees, if they do not *sua sponte* consider their jurisdiction as provided in article 45 of the code of civil procedure, are required to transmit all filings to the competent court which first issued a bankruptcy decree. Article 9bis applies *mutatis mutandis.*
Art. 10: Bankruptcy of Entities or Individuals that Have Ceased Activity

Individuals or business entities may be declared bankrupt within a year of being removed from the public list of businesses if their insolvency predates such removal or occurred within one year thereafter.

In the case of individuals or corporate entities that request their own removal from the public list of businesses, the creditor or the public authorities have the burden of showing when the business effectively ceased its activities, from which point the time limit contained in the previous paragraph begins to run.

Art. 11: Bankruptcy Decree of an Individual Already Deceased

A deceased individual may be declared bankrupt under the conditions established in the previous article.

The heirs may request the deceased’s bankruptcy provided that the inheritance has not already been com mingled with other assets; the heirs that request the deceased’s bankruptcy are not subject to the filing requirements of articles 14 and 16, second paragraph, point 3.

With the bankruptcy decree, the effects triggered by the separation of assets obtained by creditors cease as a matter of law in conformity with the rules set out in the civil code.

Art. 12: Death of a Bankrupt

If the businessman dies after the issuance of a bankruptcy decree, the proceedings will continue against the heirs, even in the case that they accepted the inheritance with the “inventory benefit”.

The procedure continues against the representative heir in cases where there are multiple heirs. The presiding judge will nominate a representative amongst the heirs where they cannot reach an agreement within 15 days of the bankrupt’s death.

In the cases provided for in article 528 of the civil code, the procedure will continue against the curator of an unclaimed estate and in the cases provided for by article 641 of the civil code the case will proceed against the administrator nominated pursuant to article 642 of the same.

Art. 13: Obligation to Transmit a List of Objections

[repealed]

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4 Under Italian law, the heirs who accept the inheritance are also personally liable for all the decedent’s debts unless they accept with the “inventory benefit” which allows them to administer the estate without accepting personal liability for the debts.
Art. 14: Obligation of the Entity or Individual to File for Bankruptcy

The entity or individual that files for bankruptcy must do so by depositing with the clerk of the court the accounting books for the three preceding years or for the entire time the business was active if it has been operating for less than three years. The entity or individual must also deposit an itemized and estimated account of all its activity, an itemized list of its creditors and the amount of their credits, an indication of its gross revenues for the last three years, an itemized list of those that possess interests in objects in possession of the business and a list of those same things with a description of the nature of the rights possessed therein.

Art. 15: Proceedings for the Issuance of a Bankruptcy Decree

Proceedings for the issuance of a bankruptcy decree are held before a panel of judges from the competent court in chambers. The court will summon, by an order in the margin of the relevant petition, the debtor and the creditors who are party to the proceeding. The public authorities will also take part in those cases where they initiated the bankruptcy proceedings.

The above-mentioned summons is issued by the president of the court or by the presiding judge if he has been assigned the task of overseeing the proceedings according to paragraph six. The bankruptcy hearing must take place at least fifteen days after the service of the summons and filing of the petition by the interested party.

The order will state that the hearing is being held to determine if all the prerequisites for bankruptcy have been met and will fix a deadline of no less than seven days before the hearing for the filing of any briefs, documents or technical reports. In any case, the court will order the person or entity in question to file its accountings for the last three years, an updated list of assets (including its economic and financial situation) and may require any other urgently needed information.

The deadlines established in paragraphs three and four can be shortened by the president of the court, through a reasoned decision, if there are particularly urgent grounds. In such cases, the president of the court may direct that the order and date of the hearing be brought to the attention of the parties in any way possible, without following procedural formalities that are not otherwise indispensable for the effectuating a legal service of process.

The court may delegate to the presiding judge the hearing of the parties. In such a case, the presiding judge shall oversee the admission and examination of evidence as requested by the parties or on motion of the court.

The parties may nominate technical advisors.

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5 The original sets out that the proceedings are before the court “in composizione collegiale”. This is essentially a panel and so has been translated as such throughout.
6 The original sets out that the proceedings are before the court “in camera di consiglio” meaning in private.
7 The original uses the term “giudice relatore”, a rapporteur, however for clarity we have used the term presiding judge.
The court, on request of a party, may order precautionary or protective measures to safeguard the assets or the business subject to the order. The orders are effective only for the duration of the proceedings and will be confirmed or revoked in the sentence issuing the bankruptcy decree, or revoked with a decision terminating the proceedings.

A bankruptcy decree will not issue if the total amount of matured debts that have not been paid as demonstrated in the briefs deposited during the pre-bankruptcy investigation is less than thirty thousand Euro. The total amount is to be periodically updated as indicated in article one, paragraph three.

**Art. 16: The Bankruptcy Decree**

The court issues a judgment containing the bankruptcy decree with which:

1. it nominates a presiding judge for the proceedings;
2. it nominates a bankruptcy trustee;
3. orders the bankrupt to deposit an accounting containing its balance sheets, records and financial obligations, including a list of creditors within three days if it has not already been done pursuant to article fourteen;
4. establishes the place, day and time of the hearing in order to examine the liabilities of the bankrupt, which shall be no later than one hundred twenty days from the issuance of the judgment, or one hundred eighty days in cases of particular complexity;
5. sets a deadline of thirty days prior to the hearing mentioned in point four for creditors and other third parties that benefit from an interest in property held by the bankruptcy to file their requests for inclusion on the list of creditors.

The judgment is effective from the date it is published as set out in the first paragraph of article 133 of the civil procedure code. The effects with respect to third parties begin with the registration of the judgment in the business registry as set out in article 17, second paragraph.

**Art. 17: Communication and Publication of the Bankruptcy Decree**

On the day following the issuance of the bankruptcy decree, the clerk of the court shall serve it pursuant to article 137 of the civil procedure code on the debtor at his elective domicile for the purposes of the proceeding as provided by article 15, and will communicate an abstract, as provided by article 136 of the civil procedure code, to the public authorities, the trustee and on the person or entity that requested the bankruptcy. The abstract must contain the name of the debtor, the name of the trustee and the date the judgment was filed.

The judgment is also served on the office of the business registry where the entity or individual has its legal seat and, if this is different from its effective place of business, it will be served on the registry where the proceedings were opened. To this end, the clerk, within the time established by the first paragraph of this article, will transmit, even through electronic means, an abstract of the judgment to the office of the business registry identified in the previous sentence.

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8 In Italy, the parties “elect” domicile, even at home, for the purposes of the proceedings in a place that must be within the court’s territorial jurisdiction.
Art. 18: Appeal

The debtor or any other interested party may appeal against a bankruptcy decree by depositing a notice of appeal with the competent court of appeal within the mandatory period of thirty days.

The notice must contain:
1. the name of the competent court of appeal;
2. contact details for the appellant and the election of domicile within the city where the court of appeal is located;
3. an explanation of the facts and law on which the appeal is based along with conclusions;
4. an list of the evidence the appellant intends to use and relevant documents produced.

The appeal does not suspend the effects of the impugned decree, except as otherwise provided by article 19, first paragraph.

The time limit for filing the notice of appeal for the debtor begins to run from the notification of the bankruptcy decree pursuant to article 17 and for all other interested parties from the date of listing on the business registry pursuant to the same article. In any case, the provisions of article 327, first paragraph of the code of civil procedure are to be applied.

The president, in the five days following the filing of the appeal, designates the presiding judge, and sets by order the initial appearance within 60 days of the filing of the appeal.

The appeal, together with the order setting the initial appearance, must be served by the appellant on the trustee and the other parties within 10 days from the issuance of the order.

Between the date of service and that of the hearing, there must pass no less than 30 days. Respondent parties must file an appearance at least 10 days prior to the hearing, electing domicile in the municipality in which the court of appeal is located.

The appearance is made through the filing of a brief in opposition with the clerk of the court containing an elaboration of the defenses in fact and law, as well as an indication of the evidence and documents to be produced.

Other interested parties cannot intervene in the proceedings after the time has run for the respondent parties to file their appearances. They must intervene by following the same modalities and procedures.

During the hearing, the panel, having heard the parties, will enter, even *sua sponte*, during the adversarial proceedings, all the evidence that it believes necessary, and may delegate the task to one of its members.

The court will decide the appeal by judgment.
A judgment that revokes the bankruptcy decree is served by the clerk on the trustee, the creditor that requested the bankruptcy and the debtor (if he is not the appellant), and must be published in accordance with article 17.

A judgment that rejects the appeal is served on the appellant by the clerk.

The time limit for filing a request for appeal in cassation is 30 days from service.

If the bankruptcy is revoked, all legally executed acts carried out during the procedure continue to be valid.

The cost of the proceedings and the salary of the trustee are liquidated by the court, based on a report made by the presiding judge, by order appealable under article 26.

Art. 19: Suspension of the Liquidation of Assets

An appeal having been filed, the appellate court may suspend the liquidation of an entity’s assets in whole or in part following a request by a party or the trustee in cases upon a showing of sufficient hardship.9

The application for suspension is made by motion. The president, by order in the margin of the motion, summons the parties to appear before the panel in chambers. A copy of the motion and the order are served on the parties and the trustee.

Art. 20: Death of the Bankrupt pending a Ruling

[Repealed]

Art. 21: Overturning of the Bankruptcy Decree

[Repealed]

Art. 22: Appeals Against Orders Denying the Declaration of Bankruptcy

The court that rejects an application for a bankruptcy decree will do so by a reasoned decision, served on the parties by the clerk.

Within 30 days of service, the creditor or public authority wishing to do so may appeal against the decision to the court of appeal, that will after hearing the parties in chambers, issue a reasoned decision. The debtor cannot request a separate decision ordering the creditor to pay his legal costs or to compensation for punitive damages as provided in article 96 of the civil procedure code.

The court of appeal’s order is served by the clerk on the parties to the proceeding as provided in article 15.

9 The original refers to “gravi motivi”.

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If the court of appeals allows the appeal of a creditor/appellant or public authority/appellant, it will remand the case file to the trial court for the issuance of a bankruptcy decree, even on the motion of a party, certifying the existence of the requirements for such a decree.

The time limits of articles 10 and 11 are calculated with reference to the decree made by the court of appeals.

**Chapter II – The Bankruptcy Court and its Participants**

**Section One – The Bankruptcy Court**

**Art. 23: Powers of the Bankruptcy Court**

The court that issues the bankruptcy decree has jurisdiction over the entirety of the bankruptcy proceedings. It is competent to nominate, revoke and substitute, for justified reasons, the organs of the procedure, even when the presiding judge is not authorized to do so. The court can at any time meet with the trustee, the bankrupt and the creditors’ committee in chambers, decide controversies related to the proceedings that are not within the competence of the presiding judge, as well as appeals against orders of the presiding judge.

The orders of the court pursuant to this article are issued by decree, except as otherwise provided.

**Art. 24: Competence of the Bankruptcy Court**

The court that issued the bankruptcy decree is competent to hear all actions that are derived therefrom, whatever their value.

**Section Two – The Presiding Judge**

**Art. 25: Powers of the Presiding Judge**

The presiding judge oversees and controls the regularity of the procedure and:

1. refers to the court every motion for which the parties request a hearing by the panel;
2. issues or causes to be issued by the competent authorities all orders that are necessary to preserve the assets of the entity in question, except those that negatively effect the rights of third parties who exercise a right that is incompatible with such an order;
3. summons the trustee and the committee of creditors in those cases established by law and in such other cases as he believes opportune for the correct and prompt execution of the procedure;
4. on the request of the trustee, authorizes the payment of fees and provides for the revocation of any appointment authorized by the trustee in the interests of the bankruptcy proceedings;
5. issues an order, within fifteen days, on any appeal from the trustee’s actions and those of the creditors’ committee;
6. authorizes in writing the standing of the trustee to sue and be sued. Such authorization
must always be given for specific acts and for all levels of court proceedings. On the request of the trustee, the presiding judge orders the payment of fees and provides for the revocation of any attorneys or representatives nominated by the trustee;

7 on request of the trustee, nominates arbitrators, verifies the existence of the requirements provided by law;
8 ascertains the existence of credits and real and personal rights of third parties, as set out in title five.

The presiding judge may not reconsider his decisions and may not participate as part of the panel that hears appeals therefrom.

Orders of the presiding judge must contain the reasons therefor.

**Art. 26: Appeal Against the Orders of the Presiding Judge and the Court**

Except as otherwise provided by law, appeals against the orders of the presiding judge or the court may be made to the court or the court of appeal, that will hear the appeal in chambers.

An appeal may be made by the trustee, the bankrupt, the creditors’ committee or any other interested party.

**SECTION THREE – THE TRUSTEE**

**Art. 27: Nomination of the Trustee**

The trustee is nominated in the bankruptcy decree, or in the case of substitution or removal, by order of the court.

**Art. 28: Requirements for Nominating a Trustee**

Any of the following may be nominated trustee:

a) lawyers, accountants, bookkeepers and accountant bookkeepers;

b) professional partnerships or other groups of professionals as long as the members satisfy the requirement set out in subsection a). In such a case, the acceptance of the position must indicate the person responsible for participating in the proceedings;

c) anyone who has been an administrator, director or controller of a corporation, on sufficient proof of their business acumen and proof that they have not been subject to a prior bankruptcy.

The spouse, family member (within four grades of relation) of the bankrupt, the creditors of the same and those who contributed to the collapse of the company within the last two years prior to the bankruptcy decree or anyone else with a conflict of interest with the bankruptcy cannot serve as trustee.

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10 "Dottori commercialisti". All the professions listed in this subsection, except for attorneys, are types of accountants.
Art. 29: Acceptance of the Trustee

The trustee, within two days after receiving his nomination, will inform the presiding judge of his acceptance.

If the trustee does not do so within the time provided, the court, in chambers, will provide for the nomination of another trustee.

Art. 30: Public Official

The trustee, in as much as he exercises his functions, is a public official.

Art. 31: Management of the Procedure

The trustee, in the scope of his delegated functions, administers the assets of the bankruptcy estate and takes all procedural actions under the supervision of the presiding judge and the creditor’s committee.

The trustee cannot sue or be sued on behalf of the bankrupt without the authorization of the presiding judge except in those cases dealing with disputes and delayed claims of credit and third party rights in assets acquired by the bankrupt, and those proceedings directed at challenging the decisions of the presiding judge or the court and in any other case where it is not necessary to name an attorney.

The trustee cannot assume the role of attorney in actions involving the bankrupt.

Art. 31bis: Communications by the Trustee

In those cases provided by law, the trustee will communicate by certified electronic mail with those possessing an interest in those assets placed in his care by operation of law or by an order of the presiding judge at the address those parties have supplied.

When the interested party has not indicated a certified email address, including those cases of failed delivery not attributable to the addressee, all communications are to be carried out exclusively through filings with the clerk.

While the case is still pending, and for two years following it closure, the trustee is required to maintain a copy of all messages sent and received via certified electronic mail.

Art. 32: Personal Exercise of the Trustee

The trustee personally holds his post but may delegate specific functions to others, with authorization from the creditor’s committee, except those contained in articles 89, 92, 95, 97 and 104ter. The salary of the delegate, paid by the judge, is subtracted from the salary of the trustee.
The trustee may be authorized by the creditor’s committee to hire technical advisors or other paid personnel, including the bankrupt, under his responsibility. The payment of these additional individuals is taken into account along with the final settlement of the trustee’s account.

**Art. 33: Relationship with the Judge and Summary Reports**

The trustee, within 60 days of the bankruptcy decree, must present the presiding judge with a particularized report of all the causes and elements of the bankruptcy, containing the bankrupt’s explanation on how he was diligent in running his affairs, the responsibility of the bankrupt and of others and to what extent these facts may be of interest in a criminal investigation.

The trustee must also indicate the bankrupt’s acts that have been contested by creditors, in addition to those that he intends to contest.

The presiding judge may ask the trustee to prepare a summary of the report before the final version is ready.

If the proceedings relate to a company, the report must explain the facts determined and the information gathered on the responsibility of administrators and the supervisory bodies of the company, of the shareholders and, eventually, those outside the company.

The presiding judge orders the filing of the report with the clerk, with the different part of the report being separated between the part regarding criminal responsibility (of the bankrupt and third parties) and the part relating to those actions the trustee intends to bring as soon as possible relating to protective measures in addition to other facts unrelated to the proceedings and that related to the personal status of the bankrupt. A copy of the full report is sent to the relevant public authorities.

The trustee, every six months after the presentation of the report referenced in the first paragraph, will draft another report detailing his activity accompanied by a management account. A copy of the report along with bank or postal account statements for the period in question is sent to the creditor’s committee. The creditor’s committee or any of its members may make written comments. Another copy of the report, along with any observations, is sent electronically to the chamber of commerce, in 15 days following the passing of the deadline for the filing of observations with the clerk of the court. Within the same time limits, a copy of the report and any observations are sent via certified electronic mail to creditors and those possessing an interest in bankruptcy assets.

**Art. 34: Depositing Collected Funds**

Any funds collected by the trustee, under whatever title, are deposited in the account belonging to the bankruptcy proceeding opened with the post office or bank chosen by the trustee.

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11 This is the “ufficio del registro delle imprese”, the translation was chosen as the closest corollary in this sense as the body that maintains a list of active companies.
within 10 days of their collection. The trustee may with the approval of the creditors’ committee invest the whole or part of the funds collected in financial devices other than a bank account so as to guarantee the integrity of the estate.

The failure to deposit the funds within the allotted time is a factor to be considered by the court when revoking a trustee’s mandate.

Funds can only be withdrawn after demonstrating two authentic copies of such an order by the presiding judge.

**Art. 35: Integration of the Trustee’s Authority**

The trustee, on approval of the creditor’s committee, can reduce credits, settle disputes, consolidate actions, recognize third party rights, cancel security interests,12 release deposits, accept inheritance and donations and other acts required in extraordinary administration.

The trustee will include his conclusions on the suitability of the proposal when requesting authorization from the creditors’ committee.

If the requests have a value of more than fifty thousand euro, and in any case when dealing with settlements, the trustee must inform the presiding judge prior to entering into the transaction unless the transactions have been authorized in advance by the judge pursuant to article 104ter, eighth paragraph.

The value limit set in the second paragraph can be modified by decree from the ministry of justice.

**Art. 36: Appeal Against Actions Taken by the Trustee and Creditors’ Committee**

Against the administrative acts of the trustee, against the authorizations or refusals of the creditors’ committee and related omissions, the bankrupt and every interested party may appeal to the presiding judge claiming a violation of law, within eight days from their learning of the act or, in case of omission, from the running of the time limit indicated in the final notice. The presiding judge, after hearing the parties, will decide by reasoned order, omitting any formality not indispensable for the adversarial hearing.

Against an order of the presiding judge an appeal may be made to the court within eight days of its communication to the parties. The court decides on the appeal within thirty days, after hearing the trustee and the appellant, omitting any formality not essential for the hearing, by a reasoned order not subject to appeal.

If an appeal is granted against an omission by the trustee, he or she is required to carry out the measure as ordered by the judicial authority. If the appeal is granted against an omission by the creditors’ committee, the providing judge provides for the acceptance of the appeal in their place.

12 This translation refers both to the canceling of “ipoteche” or mortgages – a security right in real property - and “pegni” or a security interest in movables.
Art. 36bis: Time Limitations

The time limits set in articles 26 and 36 continue to run during court recesses.

Art. 37: Removal of the Trustee

The court may at any time, on the proposal of the presiding judge or that of the creditors’ committee or *sua sponte*, remove the trustee.

The court does so by a reasoned order, hearing the trustee and the creditors’ committee.

An appeal may be made to the court of appeal against an order to remove a trustee or against an order denying his removal pursuant to article 26. The appeal does not suspend the effect of the order in question.

Art. 37bis: Substitution of the Trustee and of the Members of the Creditors’ Committee

On completion of the meeting to consider the amount of liabilities and before the declaration of the enforcement of the same, the creditors present, personally or by proxy, representing the majority of the claims allowed, may add more members to the creditors’ committee following the criteria set out in article 40; they can ask for the substitution of the trustee indicating to the court the reasons for the request and the name of a new trustee. The court, evaluating the reasons for the request to substitute the trustee, will nominate the individual indicated by the creditors except in those cases where the criteria of articles 28 and 40 were not followed.

From the computation of liabilities, on request of one or more of the creditors, those who have a conflict of interest are excluded.

During the same hearing, the creditors that represent the majority of those admitted to the proceedings, independently of the amount owed them, may establish that the members of the creditors’ committee may be assigned, in addition to repayment of expenses to which they are entitled pursuant to article 41, a salary for their activities, not to be ore than ten percent of that paid to the trustee.

Art. 38: Trustee’s Liability

The trustee will carry out his work with the diligence required by the nature of his position as required by law or outlined in the approved liquidation plan. He must keep records approved by at least one member of the creditors’ committee, and update it daily with the actions taken during his administration.

An action against a trustee removed from his position is filed by the new trustee during the bankruptcy proceedings on authorization of the presiding judge or creditors’ committee.

The trustee that leaves his office, even during the bankruptcy, must make an account of his administration pursuant to article 116.
Art. 39: Payment of the Trustee

The trustee’s salary, even if the bankruptcy closes by agreement, is paid on request of the trustee by an order from the court not subject to appeal, after a report by the presiding judge, according to the rules established by the minister of justice.

The payment of the salary is done after the approval of the trustee’s accounting and, in such a case, after the execution of the agreement. The court may also grant advances to the trustee for justified reasons.

If there have been more than one trustee during the proceedings, the payment is established according to the proportion of work carried out by each and is paid, in any case, at the end of the proceedings, minus advances.

No payment is made, other than that paid by the court, not even for expenses. The promising of monies and their payment in violation of this article are void, such payments always being forfeit, independently of any criminal action.

SECTION FOUR - ON THE CREDITORS’ COMMITTEE

Art. 40: Nomination of the Committee

The creditors’ committee is nominated by the presiding judge within thirty days from the issuance of the bankruptcy decree based on the documents submitted, after hearing the trustee and creditors that have filed a request to be put on the list of creditors or previously communicated their availability to assume the position or have communicated other persons satisfying the requirements. Except as provided by article 37bis, the composition of the committee can be modified by the presiding judge in relation to changes in the list of creditors or for other justified reasons.

The committee is composed of three or five members chosen among the creditors, in such a way as to represent in a balanced manner the amount and quality of credits with regard to the possibility of satisfying these credits.

The committee, within ten days from their nomination, will meet with the trustee and nominate a president.

The substitution of committee members is done as set out in the second paragraph.

Any member of the committee that has a conflict of interest will abstain from voting.

Any member of the committee may delegate in whole or in part the performance of its duties to another who satisfies the requirements of article 28 after communicating with the presiding judge.
Art. 41: Functions of the Committee

The creditors’ committee monitors the trustee’s performance, authorizes his actions and expresses its view in those cases established by law and on request of the presiding judge, by a succinct and reasoned opinion.

The president convenes the committee for required meetings and when he is requested to do so by a third of its members.

Decisions of the committee are taken by majority vote within fifteen days from when the request is received by the president. The vote may be expressed during a meeting or by fax or other electronic means so long as it creates some proof of the vote in question.

The presiding judge will decide in cases of committee inactivity, the impossibility of reaching a quorum, or for the committee to function or in cases of urgency.

The committee and all of its members may inspect at any time the accounting books and the documents relating to the bankruptcy proceedings. They have the right to ask for news and clarifications from the trustee and the bankrupt.

The members of the committee are entitled to repayment of costs, in addition to any additional payment awarded as provided for in article 37bis, third paragraph.

Article 2407, third paragraph of the civil code applies mutatis mutandis to the members of the creditors’ committee.

An action against the members of the creditors’ committee may be proposed by the trustee during the bankruptcy procedure. The presiding judge will substitute the members of the committee against which an action is brought in the same order in which he authorizes the action.

Chapter III– The Effects of Bankruptcy
Section One – Effects on the Bankrupt

Art. 42: Bankrupt Assets

The bankruptcy decree from the time it is issued deprives the bankrupt of the right to administer and dispose of the assets in his possession at the date of the decree.

Assets acquired by the bankrupt during the procedure become part of the bankruptcy estate minus any interests involved in their acquisition and resources needed to conserve the assets themselves.

The trustee, on authorization of the creditors’ committee, may renounce any interest in the assets acquired by the bankrupt when the cost of their acquisition and their conservation would be greater than their presumed value.
Art. 43: Standing

Civil actions, even those already in course, that relate to rights in the bankruptcy estate are carried on by the trustee.

The bankrupt may intervene in the action only if the question would require the finding of a crime on his part or in those other cases established by law.

The opening of bankruptcy proceedings stays all pending actions.

Art. 44: Acts Taken by the Bankrupt after the Issuance of the Bankruptcy Decree

All acts taken by the bankrupt and the payments made by him after the issuance of the bankruptcy decree are invalid vis-à-vis creditors.

The same is true of any payments received by the bankrupt after the issuance of the bankruptcy decree.

Except as set out in article 42, second paragraph, the bankruptcy estate acquires all payments made to the bankrupt during the course of the proceedings in consequence of the actions referred to in the first and second paragraphs.

Art. 45: Formalities to be Followed after the Issuance of the Bankruptcy Decree

The formalities necessary to oppose the acts of third parties, if taken after the issuance of the bankruptcy decree, are without effect as regards creditors.

Art. 46: Assets not belonging to the Bankruptcy Estate

The following are not part of the bankruptcy estate:

assets and rights of a strictly personal nature;

1. food stamps, salary, pensions or that which the bankrupt earns with his activity within the limits necessary to maintain himself and his family;

2. sums derived from the legal use of his children’s assets, assets belonging to a family trust and the sums derived therefrom, except as provided for in article 170 of the civil code;

3. [repealed]

4. those things that by law cannot have a lien placed on them.

The limits provided for in number 2 above are fixed by a reasoned order from the presiding judge that must take into consideration the personal conditions of the bankrupt and that of his family.

\[1\] The original refers to “bancarotta”, however, in the context of the law this refers to a particular set of crime
Art. 47: Hardship on the Bankrupt

If the bankrupt does not have sufficient assets to provide for his family, the presiding judge, after hearing the trustee and the creditors’ committee, may order a subsidy for foodstuffs for him and his family.

The bankrupt and his family cannot be evicted from the family home until the liquidation of assets is completed.

Art. 48: Direct Communication with the Bankrupt

A bankrupt that is a natural person is required to deliver to the trustee all his correspondence, including electronic correspondence, that relates to the bankruptcy.

Correspondence directed to a bankrupt that is not a natural person is to be delivered to the trustee.

Art. 49: Obligations of the Bankrupt

The entity subject to a bankruptcy decree, in addition to the administrators and the liquidators of the company and other entities subject to the procedure, are required to communicate to the trustee any change in their residence or their domicile.

The individuals referred to in the first paragraph must personally appear before the presiding judge, the trustee or the creditors’ committee if there is need of any information or clarification.

In the case of a legitimate impediment or other justified reason, the judge may authorize the business or its legal representative to appear by proxy.

Art. 50: Public Registry of Bankrupts

[Repealed]

Section Two – The Effect of Bankruptcy on Creditors

Art. 51: Prohibition on Enforcement Actions and Individual Protective Measures

Except as otherwise provided by law, from the day the bankruptcy decree is issued, no individual, enforcement or protective action, even for credits matured during the bankruptcy, may be started or pursued on the assets of the bankruptcy estate.

Art. 52: Priority among Creditors

The bankruptcy opens the procedure for assigning priority among creditors.

14 “casa di proprietà”, in other words, a house owned by the bankrupt.
Every credit, even if provided with the right of pre-emption or treated in accordance with Article 111, first paragraph, no. 1), as well as every personal right or right in real property or movables, must be determined according to the norms set out in Chapter Five, except as otherwise provided by law.

The provisions of the second paragraph apply even if the credits excluded from the proceedings as set out in article 51.

**Art. 53: Creditors With a Lien or Privilege on Movables**

Credits guaranteed by a lien or a privilege according to articles 2756 and 2761 of the civil code may be realized during the bankruptcy, after they have been put on the list of credits with pre-emption.

The creditor must file a motion with the presiding judge to authorize a sale. The judge, having heard the trustee and the creditors’ committee, establishes by order the time of the sale and determining the method as set out in article 107.

The presiding judge, after hearing the creditors’ committee, if it has been nominated, may authorize the trustee to reclaim assets subject to liens or privileged, by paying the creditor and to carry out the sale as established in the previous paragraph.

**Art. 54: Right of Privileged Creditors to the Allocation of Assets**

Creditors guaranteed by mortgage, liens or privilege may satisfy their privilege on the property bound for the sum owed, the interest and related costs; if the creditor is not satisfied in whole, they will be placed along with unsecured creditors for the repayment of the balance.

Such creditors have the right to participate in the distribution of sale sums before the sale and partition of the asset on which they have a secured interest. In such a case, if the creditor is satisfied in full, including interest, the amount received from these sales will be subtracted from the sum allocated to the unsecured creditors. If the distribution to the secured creditor is for more than the guaranteed credit, the creditor only has the right to retain the percentage to be distributed to the unsecured creditors.

The extension of the preferential right to the interest is regulated by articles 2749, 2788 and 2855, second and third paragraphs of the civil code, understood so that the bankruptcy decree is to be equated to the act creating the lien. For credits with a general privilege, the calculation of interest stops on the date in which the filling of the distribution project that will satisfy the credit, even if only partially.

**Art. 55: Effects of the Bankruptcy on Monetary Debts**

The bankrupt’s monetary debts are considered to come due with the issuance of the bankruptcy decree.
Conditional credits participate in the distribution of assets set out in articles 96, 113 and 113bis. They include those conditional credits that cannot be satisfied against the bankrupt, without prior enforcement against the principal.

**Art. 56: Compensation During the Bankruptcy**

Creditors have the right to offset the debts they owe the bankrupt with the monies owed them by the same, even in cases where they have not come due before the bankruptcy decree.

For credits not yet come due, no set off will take place if the creditor acquired the credit by an *inter vivos* transfer after the bankruptcy decree or the year before.

**Art. 57: Non-Interest Bearing Loans**

Non-interest bearing credits net yet due at the issuance of the bankruptcy decree are put on the list of credits for their entirety. However, compound interest at a rate of five percent per year is deducted from each distribution for the remaining period between the date of the payment order and the date the claim comes due.

**Art. 58: Bonds and Debt Securities**

Credits derived from bonds and other debt securities are put on the list of credits with their nominal value subtracted from any eventual payments; if a bonus is provided for by the drawing of lots, its actualized value is distributed to all those who have a right to participate in the drawing.

**Art. 59: Non-Pecuniary Credits**

Credits not yet come due, having as their object the loaning of money determined by reference to other values or having as their object the loaning of something other than money, will be put on the list of credits according to their value at the time of the bankruptcy decree.

**Art. 60: Perpetuity and Annuity**

If on the list of credits there are those that are to be paid in perpetuity, these are redeemed according to article 1866 of the civil code.

The creditor owed money on an annuity is put on the list of creditors for a sum equal to the present value of the annuity at the time of the bankruptcy decree.

**Art. 61: Creditor of more than one co-debtor**

The creditor of more than one jointly liable debtor proceeds against those debtors that are bankrupt, for the whole of the debt owed, until they have been satisfied.

The action for payment between jointly liable bankrupts can only be exercised after the creditor has been satisfied for the whole amount owed.
Art. 62: Creditor of More than One Co-obliged Debtor Who has been Partially Satisfied

The creditor that, before the issuance of the bankruptcy decree, has received partial payment from one jointly liable with the bankrupt or from a guarantor has the right to be put on the list of creditors for the part not yet acquired.

The jointly liable party has the right to contribution from the bankrupt for the part already paid.

Whenever the creditor has a right to collect the part of the payment owed to the jointly liable party until he has the right to participate until he has received the full sum owed. The rights of the co-liable party are not prejudiced if the creditor remains partially unsatisfied.

Art. 63: Jointly Liable Party or Guarantor of the Bankrupt with a Warranty Claim

The jointly liable party or guarantor of the bankrupt who has a security interest, such as a lien or mortgage on the assets of the bankrupt, participates in the bankruptcy for the amount of that interest.

The amount from the sale of the goods for which there is a security interest are to be paid to the creditor with a deduction for the amount due.

SECTION THREE – THE EFFECTS OF THE BANKRUPTCY ON ACTS PREJUDICIAL TO CREDITORS

Art. 64: Donations

Donations made by the bankrupt in the two years leading up to the bankruptcy are without effect as to creditors except those customary acts and those taken in fulfillment of a moral duty or for public benefit, in as much as the donation is proportionate to the amount of assets possessed by the bankrupt.

Art. 65: Payments

Those payments made on debts that come due on the day bankruptcy is declared or thereafter are without effect to creditors if they are made within the two years prior to the declaration of bankruptcy.

Art. 66: Ordinary Action to Set Aside

The trustee may request that those acts taken by the debtor that prejudice creditors be declared ineffective according to the rules set out in the civil code. The action is filed before the bankruptcy court against the payee and his eventual assignees where that is possible.

15 “atti di titolo gratuito”, acts without payments.
Art. 67: Fraudulent Transfers

The following acts are void vis-à-vis creditors if it not be shown that the third party was unaware of the insolvent status of the debtor:

1. Any consideration given in the year proceeding the bankruptcy decree in which the services rendered or the obligations assumed by the bankrupt are more than one quarter of what was promised to the debtor in return;
2. Those acts extinguishing debts that have come due and are executable that have not been paid in cash or normal methods of payment which have been taken in the year prior to the declaration of bankruptcy;
3. The voluntary granting of security interests in the year preceding the bankruptcy decree in relation to already existing non-due debts;
4. The granting of security interests (voluntarily or judicially) within the six months after the declaration of bankruptcy for those debts come due. Those payments made on liquid and executable debts, consideration, those acts creating a right of first refusal on debt, even if made to benefit third parties if taken within six months after the bankruptcy decree and the trustee proves that the contracting parties knew the debtor was insolvent.

The following actions are not subject to avoidance actions:

a) payments for goods and services taken in the normal course of business;
b) transactions taken on a bank account in as much that they did not materially reduce the debtor's exposure vis-à-vis the bank;
c) sales and pre-sales agreements written pursuant to article 2654bis of the civil code, whose effects are not halted pursuant to paragraph three of the same, that were concluded for a fair price and have as their object residential property, destined for the construction of a principle residence or for such use by relatives within the third grade of relation or those properties not for residential use for the construction of the principal seat of business of the acquiring business, as long as at the time of the bankruptcy decree the business activity is being effectively carried out or the necessary investments have been made to start the activity;
d) those acts, payments and guaranties given on the assets of the debtor as part of a plan designed to restructure the debt of the business and to assure a rebalancing of the economic state of the same; an independent professional designated by the debtor, listed in the registry of legal revisers and having the requirements set out in article 28(a) and (b) will attest to the veracity of the acts taken in conformity therewith and to the possibility of the plan; the professional is independent when he is not tied to the business or those who have an interest in the restructuring of the business, whether they be personal or professional ties such as would compromise the independence of the proceedings; in any case, the professional must be in possession of the requirements provided for in article 2399 of the civil code and must not, even through connection with professional groups which he works, have provided services to the debtor in the last five years or participated in the administration thereof; the plan may be published in the business registry on the request of the debtor;

\(^{16}\) Atti a tiolo oneroso, pagamenti, garanzie
\(^{17}\) i pegni, le anticresi e le ipoteche volontarie
e) those acts, payments or guarantees made as part of an agreement with creditors, part of a receivership or other agreements assimilated thereto pursuant to article 182bis, as well as acts, payments and guarantees legally created after the filing of an appeal pursuant to article 161;

f) Those payments made for services carried out by employees and other collaborators, also unsubordinated, of the bankrupt;

g) Those payments made on liquid debts and executed and payable at maturity to obtain the performance of services necessary for access to the agreement with creditors as part of the bankruptcy proceedings.

The provisions of this article are not applicable to insurance, credit liens and mortgage credits, except as provided in special laws.

**Art. 67bis: Assets Dedicated for a Specific Use**

Those acts that reach assets that are dedicated to a specific use as provided in article 2447bis, first paragraph, letter a of the civil code, are revocable when they prejudice the assets of the company. The action will only be successful if the beneficiary knew that the business was insolvent.

**Art. 68: Payments on Promissory Notes**

Notwithstanding the provisions of article 67, second paragraph, payments made on a promissory note cannot be revoked if the possessor of the note is required to accept payment to avoid waiving an action on the note. In such a case, the last purchaser of the note (counting backward) that the trustee can prove knew the debtor was insolvent when he purchased the note, must repay the sum acquired to the trustee.

**Art. 69: Acts Taken Between Spouses**

Those acts provided for in article 67, taken between spouses at a time in which the bankrupt carried out a commercial business and which without payment were taken between the spouses more than two years before the bankruptcy decree, but during the time the bankruptcy carried out a commercial business activity are revocable if the spouse does not prove their ignorance of their spouse’s insolvency.

**Art. 69bis: Statute of Limitations of the Action and Calculation of Time**

A revocation action governed by the present section cannot be started more than three years from the bankruptcy decree and in any case five years from the act in question.

In the case in which a bankruptcy decree follows an agreement with creditors, the time limits set out in articles 64, 65, 67, first and second paragraphs, and article 69 start from the date the request for an agreement is filed in the business registry.
Art. 70: Effects of Revocation

The revocation of payments made through specialized intermediaries, multilateral compensation procedures or by the companies set out in article 1 of the law of 23 November 1939, n. 1966 produce effects in regards to the payee.

Whoever, due to the revocation provided in the preceding provisions, has returned the sums received is put on the list of creditors during the bankruptcy proceedings for that credit.

Whenever the revocation has as its object acts relating to the use of a bank account or continuing relationships, the third party must return a sum equal to the difference between the maximum of its claims in the period for which it is proven that they knew the debtor was insolvent, and the maximum residual of the same, at the date in which the proceedings were opened. This is without prejudice to the party’s right to be put on the list of creditors for a credit corresponding to that residual amount.

Art. 71

[Repealed]

SECTION FOUR – EFFECTS OF THE BANKRUPTCY ON PREEXISTING LEGAL RELATIONSHIPS

Art. 72: Pending Actions

If a contract has not yet been carried out or not been completed by both parties when one of the parties is declared bankrupt, the execution of the contract, except in those cases set out in the present section, remains suspended until the trustee, with authorization from the creditors’ committee, decides to take the place of the bankrupt, assuming all the obligations arising therefrom, or to terminate the contract, except that, in contracts dealing with real property, the transfer of rights has already occurred.

The contracting party may file a case against the trustee, requesting from the presiding judge a time limit not to exceed sixty days, after which point the contract is considered terminated.

The provisions of the first paragraph also apply to preliminary contracts except as provided in article 72bis.

In case of termination, the contracting party has the right to be put on the list of creditors for the credit resulting from the lack of performance of the contract, there being no liability to pay damages.

An action to terminate the contract started by the bankrupt against a defaulting party is not effective against the trustee, except, in those cases provided for, the effectiveness of the writing of the motion; if the contracting party intends to obtain an order to terminate the contract and restitution of a sum or asset, or compensation for damages, he must file the motion pursuant to the provisions of Chapter Five.
The provisions conditioning the effectiveness of the negotiations clauses on the termination of the contract by the bankrupt do not apply.

In case of termination of a preliminary contract for the sale of real property according to article 2645bis of the civil code, the purchaser has the right to be placed on the list of creditors without the right to recover damages and the privileges set out in article 2775bis of the civil code on condition that the effects of the writing of the preliminary contract are not terminated before the date of the bankruptcy decree.

The provisions referred to in the first paragraph are not applicable to preliminary sales contracts written according to article 2645bis of the civil code having as their object an immovable to be used for the construction of the primary residence of the purchaser or his relatives (within the third degree) or an immovable for non residential use destined for the construction of the principle place of business of the acquiring entity.

**Art. 72bis: Construction Contracts**

Contracts referred to in article 5 of the legislative decree of 20 June 2005, number 122 are terminated if, before the trustee communicates his choice of either execution or termination, the purchaser has reclaimed the sums paid to the builder as a guarantee, and having so communicated to the trustee. In any case, the guarantee cannot be returned after the trustee communicates his desire to execute the contract.

**Art. 72ter: Effects on Financing Designated for a Specific Use**

The bankruptcy of an entity determines the resolution of financing contracts as defined in article 2447bis, first paragraph, letter b of the civil code when they prevent the realization or the continuation of the operation.

When this does not occur, the trustee, having heard the opinion of the creditors’ committee, may decide to substitute the entity in the contract thereby assuming all the obligations therein contained to continue the operation.

When the trustee does not substitute into the contract, the financer may ask the presiding judge, having heard the creditors’ committee, to realize or to continue the operation themselves or by assigning the work to a third party; in this case, the financer is entitled to the profits of the operation and may have an unsecured claim for any remaining credit.

In the case provided for in the second and third paragraphs, the procedures provided for in article 2447decies, third fourth and fifth paragraphs of the civil code apply.

Whenever, in cases provided for in the first paragraph, the situations provided for in the second and third paragraphs do not occur, the regime set out in article 2447decies, sixth paragraph of the civil code are to be applied.
Art. 72querter: Finance Leases

Article 72 is applied to a finance lease contract in case of the bankruptcy of the lessee. If provisional exercise of the activity is provided for, the contract will continue to have execution except where the trustee declares its termination.

In the case of termination, the lessor has the right to the restitution of the assets and is obliged to return a sum equal to the difference between the monies earned through the sale or other use of the asset, the current market value and the remaining capital credit; article 67, third paragraph letter a applies for sums already collected.

The lessor has the right to be placed on the list of creditors for the difference between the his credit at that date of the bankruptcy and the amounts earned from any new use of the assets.

In the case of the bankruptcy of an entity authorized for to grant financing in the form of finance leases, the lessor retains the right to purchase, at the end of the contract, the asset by making all required payments including the price as agreed.

Art. 73: Sale with Reservation of Ownership

In cases of the sale of property with reservation of ownership where the purchaser goes bankrupt and the purchase price is to be paid in installments, the trustee may substitute in the contract with the authorization of the creditors’ committee; the seller may ask for security unless the trustee immediately pays the full price with the statutory discount. Whenever the trustee terminates the contract, the seller must return the payments already made, except for the value in compensation for the use thereof.

The bankruptcy of the seller is not a reason to terminate the contract.

Art. 74: Contracts for Continual or Periodic Execution

If the trustee substitutes in a contract for continual or periodic execution he must fully pay the price, even for those services and consignments already provided.

Art. 75: Restitution of Unpaid for Goods

If a sold movable object has already been sent to the purchaser before the bankruptcy decree is issued, but the goods have not yet been delivered to their destination, and no one else has acquired rights to the same, the seller, in case he does not want to give effect to the contract and enter into the list of creditors for the purchase price or the trustee does not intend to give effect by paying the purchase price, may reclaim them assuming the cost for their return and returning any sums received.
Art. 76: Futures Contract

A futures contract, if its end date is after the issuance of a bankruptcy decree for one of the contracting parties, is resolved on that date. The difference between the contractual price and the value of the things or bonds at the date of the bankruptcy decree is wired to the bankrupt estate if the bankrupt has a credit, or is otherwise put on the list of creditors of the bankruptcy estate.

Art. 77: Joint Venture

A joint venture is dissolved with the bankruptcy of a member.

The other members have the right to be put on the list of creditors for any loss in addition to that which was their responsibility in the venture.

The member is required to pay any sums due to the extent they are his responsibility.

Article 150 is applied to the bankrupt member.

Art. 78: Accounts, Agents and Commissions

Contracts for accounts, even bank accounts, and for commissions are resolved due to the bankruptcy of one of the parties.

Agency contracts are resolved due to the bankruptcy of the agent.

If the trustee of the principal’s bankruptcy estate substitutes into the contract, the credit of the principal is addressed according to the rules set out in article 111, first paragraph, number 1 for the activity carried out post-bankruptcy.

Art. 79: Business Lease Contracts

The bankruptcy does not terminate a business lease contract, but both the parties may withdraw within sixty days, providing the other party with fair compensation, that, if the parties are not in agreement, is determined by the presiding judge after hearing the interested parties. The compensation due to the trustee is regulated by article 111, number 1.

Art. 80: Rental Contracts

The bankruptcy of the landlord does not terminate a rental contract and the trustee substitutes for the bankrupt.

When the duration of the contract is longer than four years from the issuance of the bankruptcy decree, the trustee has, within a year from the issuance of the bankruptcy decree, the ability to withdraw from the contract by paying the lessee a fair compensation for the early termination, that in cases of disagreement between the parties, is determined by the presiding judge after hearing the interested parties. The withdrawal takes effect four years from the issuance of the bankruptcy decree.
Art. 80bis: Business Lease Contracts

[Repealed]

Art. 81: Bid Contract

Bid contracts are resolved with the bankruptcy of one of the parties if the trustee, with authorization of the creditors’ committee, does not substitute one of the parties by communicating as much to the other party within sixty days of the issuance of the bankruptcy decree and offering equal guarantees.

In the case of the bidder’s bankruptcy, the contractual relationship is terminated if the identity of the bidder was a determining factor in awarding the contract, except in those cases where the customer consents to the continuation of the relationship. Provisions relating to the public bid contracts and contracts for public works apply.

Art. 82: Insurance Contracts

The bankruptcy of the insured does not resolve the insurance contract against damages unless agreed otherwise, and except as provide for in article 1898 of the civil code if there is an increase of risk.

Art. 83: Publishing Contracts

The effect of a publisher’s bankruptcy on a publishing contract is regulated by a special law.

Art. 83bis: Arbitration Clauses

Arbitration may not be initiated or carried out if a contract with an arbitration clause is resolved pursuant to this section.

Chapter IV – Custody and Administration of the Bankruptcy Estate

Art. 84: Seals

The trustee proceeds according to the norms of the civil code to affix seals on those assets found at the principle place of business as well as other assets once the bankruptcy is declared.

The trustee may request the assistance of the public authorities.

The placement of the seals may be delegated to co-auditors by the presiding judge if the bankruptcy assets are not to be found in the same place and it is not immediately possible to affix the seals.

The proceedings follow article 758 of the civil procedure code for those goods and things on which it is not possible to affix a seal.

Art. 85: Affixing of Seals by the Justice of the Peace

[Repealed]
Art. 86: Delivery of Monies, Titles, Accounting Records and Other Documents

The following must be delivered to the trustee:

a) cash money so that it may be deposited according to article 34;

b) bills and other accounts payable even those that are expired;

c) accounting records and every other documentation containing the same type of information regarding sales and purchases if they have not yet been filed with the clerk.

The presiding judge may authorize the filing to take place in a similar place or with a third party. In any case, the trustee must produce the accounting records on request of the bankrupt or any other party that has a right to so request. The interested party may file a motion to compel with the presiding judge who will issue a reasoned decision if the trustee believes he does not need to produce the records.

The presiding judge may authorize the copying of the documents, to be paid for by the requestor.

Art. 87: Inventory

The trustee, having removed the seals and advised the bankrupt and the creditors’ committee (if appointed), creates an inventory in the shortest amount of time possible following the norms set out in the civil procedure code and with the assistance of the clerk creates an affidavit setting out all the actions taken. The creditors may participate.

The trustee, as needed, nominates someone to appraise the assets.

Before concluding the inventory, the trustee invites the bankrupt or, if the entity is a corporation, the directors to ask that they declare whether they are aware of the existence of any other assets to list in the inventory, notifying them of the sanctions contained in article 220 in the case of a false declaration.

The inventory is done in duplicate original copies and signed by all those that participated. One of the originals must be filed with the clerk of the court.

Art. 87bis: Inventory of Other Assets

In derogation of what is contained in articles 52 and 103, the movable assets on which third parties have real or personal rights that are clearly recognizable can be returned, by order of the presiding judge, on motion of the interested party and by consensus of the trustee, creditors’ committee, even if the later is only provisionally nominated.

The assets referred to in the first paragraph cannot be included in the inventory.

Those bankruptcy assets for which third parties retain a right to use in virtue of a negotiable instrument attributable to the trustee are included in the inventory. Such goods are not subject to consignment as set out in article 88.

18 “processo verbale”
Art. 88: Consignment of Bankruptcy Assets to the Trustee

The trustee takes possession of assets that are contained in the inventory together with accounting records and documents of the bankrupt.

If the bankrupt has real property or other assets contained in a public register, the trustee notifies an abstract of the bankruptcy decree to the competent office so that it may be placed in the public register.

Art. 89: List of Creditors and Holders of Rights in rem and Accounting

The trustee, based on the accounting records of the bankrupt and other information that he can gather, must compile a list of creditors indicating their respective credits and pre-emptive rights on bankruptcy assets (whether on real or movable property) thereby indicating the type of rights in their possession. The list is to be filed with the clerk of the court.

The trustee must also compile an accounting of the last business cycle if one has not already been presented by the bankrupt within the established time limits and make any necessary corrections or additions to the list presented by the bankrupt pursuant to article 14.

Art. 90: Case File

Immediately after the publication of the bankruptcy decree, the clerk creates a file (physical or digital) containing an index in which all motions, orders and appeals pertaining to the procedure are listed. They should be organized in sections excluding those that, for reasons of privacy, must be stored separately.

The creditors’ committee and any of its individual members have the right to review any motion or document in the case file. The bankrupt has the same right except as to the trustee’s report and those other documents classified as confidential by the presiding judge.

The other creditors and third parties have the right to review and make copies of the motions and documents that related to their specific and actual interests with the authorization of the presiding judge, after hearing the trustee.

Art. 91: Anticipating Payments of the Treasury

[Repealed]

Chapter V – Verification of Credit and Third Party Rights in Real Property

Art. 92: Notification of Creditors and other Interested Parties

The trustee, having examined the entity’s books and other sources of information, communicates without delay the following by certified electronic mail if an address for the recipient is on file with the business registry or the national index of certified electronic mail addresses
of businesses and professionals, and in every other case, by registered mail or fax at the business headquarters or residence of the creditor:
1. that they may participate in the assignment of priority by filing a motion pursuant to the methods set out in the following article;
2. the date set for the examination of the assets of the enterprise and the date within which a motion must be filed;
3. every other useful piece of information that will assist in the filing of the motion, along with a warning setting out the consequences contained in article 31bis, second paragraph along with the requirements provided for in article 93, third paragraph number 5;
4. The trustee’s certified electronic mail address.

If the creditor is located abroad, the communication may be made to his representative present in Italy, if said person exists.

Art. 93: Motion to be Placed on the List of Creditors

The motion to be placed on the list of creditors, for the restitution or claim on movables or immovable, is filed in accordance with the following paragraph at least 30 days prior to the hearing date set for the examination of the list of creditors.

The motion may be signed personally by the party and is formatted according to the rules set out in article 21, second paragraph, or article 22, third paragraph of legislative decree number 82 of March 7, 2005 and successive modifications. The same must be filed within the term set by the first paragraph of this article and sent to the trustee’s certified electronic mail address as indicated in the notice required by article 92 together with the documents mentioned in this article. The original of the document demonstrating the credit that is filed with the motion is to be filed with the clerk of the court.

The motion must contain:
1. the name of the case in which the claimant intends to participate and the identification of the creditors;
2. the amount for which the creditors intends to be placed on the list or a description of the asset which he intends to request restitution or the validation of claim;
3. a succinct recitation of the facts and law that justify the motion;
4. any eventual indication of a pre-emptive right including a description of the asset on which this right is to be exercised if it is of a special character;
5. the certified electronic mail address at which the party wishes to receive all communications related to the case, any change in which must be communicated to the trustee;
6. a fax, email or election of domicile in the municipality where the court has jurisdiction for future communications. It is the responsibility of the creditor to indicate which method of communication he prefers, email or fax, and it is also his responsibility to communicate any change to the trustee.

The motion is inadmissible if it is missing one of the elements mentioned in numbers 1, 2 or 3 of the previous paragraph, or if it is unintelligible. If the information referred to in number is absent or unintelligible, the credit will be considered unsecured.
If the information requested in number five is missing, all the communications regarding the list of creditors will be made to the clerk.

With the motion must be attached the documents demonstrating the creditor’s right or the right of a third party that asks the restitution or to make a claim on an asset.

With the motion for restitution or to assert a claim, the third party may ask for the suspension of the sale of the asset in question.

The motion may be filed by the common representative of the bondholders pursuant to article 2418, second paragraph of the civil code, even for single groups of creditors.

The judge on motion of the party may order that the clerk make a copy of the title or order and return it with an annotation reporting the holders admission to the list of creditors.

**Art. 94: Effect of the Motion**

The motion described in article 93 produces its effects for the entire duration of the bankruptcy proceedings.

**Art. 95: The List of Creditors and the Hearing Thereon**

The trustee examines the motion mentioned in article 93 and creates separate lists of creditors and those who possess rights on movables and immovable property belonging to or in the possession of the bankrupt, including with each entry his reasons for its inclusion. The trustee may plead the facts Causing Termination, modifying or preventative law relied upon, as well as the ineffectiveness of the facts on which the claim or pre-emption is based, even if the statute of limitations has run on the action.

The trustee deposits the list of creditors together with the associated requests with the clerk of the court at least fifteen days before the hearing set for its discussion. Within the same time limit, the trustee transmits the same to the creditors and those holding rights in assets, to the addresses indicated on the motions requesting admission to the list of creditors. The creditors, holders of rights in assets and the bankrupt may examine the proposed list of creditors and present the trustee, as provided in article 93 second paragraph, with written observations and documents to include until five days before the scheduled hearing.

During hearing set for the examination of the list of creditors, the presiding judge, even absent the parties, decides on each motion, at least with regard to the conclusions formulated by the trustee (including his reservations), to those issues addressable *sua sponte* and those issues raised by other interested parties. The presiding judge may proceed to conduct a factual investigation on request of the parties, in a way compatible with the needs of the proceedings.

The bankrupt may ask to be heard.

The proceedings are to be recorded in a minute entry.
Art. 96 Formation and Execution of the List of Creditors

The presiding judge, by a succinctly reasoned order, grants, denies or declares inadmissible all or part of the motions made pursuant to article 93. The declaration of inadmissibility of the motion does not preclude its refilling.

Other than the cases set out by law, the following are provisionally placed on the list of creditors:

1. those credits conditioned and those indicated in the last paragraph of article 55;
2. credits for which the failure to produce the title depends on a fact not attributable to the creditor except that the production is made within a time limit set by the judge;
3. credits ascertained by order of an ordinary or special judge that have not become final that were pronounced before the bankruptcy decree. The trustee may file or prosecute an appeal against the order.

If proceedings cannot be concluded during a single hearing, the judge may adjourn the presentation for no more than eight days without needing to notify those intervening and those who are absent.

Finished the examination of the motions, the presiding judge formulates the list of creditors and executes it by filing an order with the clerk.

The order that renders the list of creditors effective and the decisions made by the court at the end of the proceedings pursuant to article 99, are effective only at the end of the proceeding.

Art. 97: Communicating the Results of the Hearing on Fixing the List of Creditors

The trustee, immediately after the declaration of effectiveness of the list of creditors, serves a copy on all interested parties and informs them of their right to appeal in case their request for inclusion was not granted.

Art. 98: Appeal

One may oppose or impugn the credits admitted or excluded from the list of creditors by appealing against the order making the list of creditors effective.

By opposition the creditor or owner of a right in movables or immovable contests that his request was only partially granted or denied; opposition is filed against the trustee.

By impugnation the trustee, creditor or holder of a right in movables or immovable contests that the request of a creditor or other applicant has been granted; impugnation is filed against the creditor concerned, that is whose request was granted. The trustee also participates in the proceedings.

With revocation, the trustee, the creditor or the holder of a right in movables or immovable, within the limits set for the opposition of an impugnation, can ask that the order granting or
rejecting a request are revoked if it is discovered that they were based on falsities, fraud, an 
error as to an essential fact or the absence of decisive documents that were not timely produ-
ced with no fault to the movant. Revocation is brought against the creditor concerned, that is 
whose request was granted, or against the trustee when the request was denied. In the first 
case, the trustee also participates in the proceeding.

Material errors contained in the list of creditors are corrected by an order of the presiding 
judge on motion of the creditor or trustee having first heard the interested parties.

**Art. 99: Proceedings**

Impugnation as set out in the preceding article is made by filing an appeal with the clerk of 
the court within thirty days of the notification set out in article 97 or in case of revocation, 
from the discovery of the fact or document.

The appeal must contain:
1. names of the court, the presiding judge and the bankruptcy;
2. the reasons for the impugnation and election of domicile in the municipality where the 
court that declared the bankruptcy is located;
3. a recitation of the facts and law on which the impugnation is based along with relative 
conclusions;
4. under penalty of forfeiture, the procedural and other objections not addressable *sua 
sponte* by the court as well as a list of evidence that appellant intends to rely on and 
produced documents;

The president, within five days following the filing of the appeal, designated a presiding 
judge, who may delegate the overseeing of the proceeding and set a hearing by order within 
sixty days from the filing thereof.

The appeal, together with the order fixing the hearing, must be served, by the appellant, on 
the trustee and all other interested parties within ten days of the issuance of the order.

Between the date of service and the hearing there must be no less than thirty days.

The parties responding to the appeal must file appearances at least ten days before the hearing, 
electing domicile in the municipality where the court is located.

Appearances are made by filing with the clerk a responsive motion containing, on penalty of 
forfeiture, procedural and other objections not addressable *sua sponte* as well as a list of evi-
dence that are to be relied upon and documents to be produced.

The participation of any interested party cannot be allowed outside of the time limits set for 
the filing of an appearance as set out in this article.

The judge provides, also pursuant to the third paragraph, the admission and carrying out of 
investigative steps.
The presiding judge of the bankruptcy may not be part of the panel.

The panel definitively decides the opposition, impugnation or revocation by a reasoned decision within sixty days of the hearing or from the running of the time limits eventually set for the filing of the responsive pleadings.

The order is communicated by the clerk to the parties that, in the following thirty days, can file an appeal for cassation.

**Art. 100: Impugnation of Credits Admitted**

[Repealed]

**Art. 101: Late Credit Applications**

The request to be placed on the list of creditors, for restitution or claim to movable or immovable assets served on the trustee outside the thirty day time limit before the hearing on the subject and those not more than twelve months from the filing of the order on the execution of the list of creditors are considered to be late; in the case of particular complexity of the proceedings, the court, with the bankruptcy decree, may extend the later time limit to eighteen months.

The proceedings on late requests are conducted in the same way as those provided for in article 95. The presiding judge sets a date for the examination of the late request every four months, except where there are urgent reasons. The trustee notifies the date of the hearing to any party that has filed a request. Articles 93 and 99 apply.

The creditor has the right to participate in the distribution of sums that have already been distributed within the limits established in article 112. The holder of rights in movable and immovable assets, if he proves that the delay was not due to his fault, may ask that the sale of those assets be delayed until his request has been decided.

With the expiry of the period mentioned in the previous paragraph, and until such time as all the assets have not been sold, late requests are admissible if the applicant can show that the delay is not imputable to them.

**Art. 102: In Case of Insufficient Assets**

The court, by a reasoned decision to be issued before the hearing on the composition of the list of creditors, on motion of the trustee filed at least twenty days before the initial hearing, together with a report on the prospective results of the liquidation and the views of the creditors’ committee, having heard the bankrupt, can cancel the hearing for the composition of the list of creditors relative to bankruptcy credits if it appears that it will not be possible to acquire sufficient monies for distribution to the creditors that have requested to be put on the list of creditors, after the payment of pre-deductible credits and the costs of the proceedings.
The provisions of the first paragraph apply, *mutatis mutandis*, where the condition of insufficient assets emerges after the composition of the list of creditors.

The trustee serves the decision referred to in the first paragraph on the creditors that have filed requests to be placed on the list of creditors pursuant to articles 93 and 101, who, within fifteen days following, may file an appeal with the court of appeal, which will hear the appellant, the trustee, the creditors’ committee and the bankrupt before issuing a decision in chambers.

**Art. 103: Proceedings on a Request the Recognition of a Claim or for Restitution**

For proceedings on a request for restitution or the recognition of a claim, the evidentiary regime contained in article 621 of the civil procedure code is applied. If the asset was not included in the bankruptcy estate, the holder of the right, even during the hearing referred to in article 95, may modify his request and ask to be placed on the list of creditors for the value of the asset at the date requests could begin to be filed. If the trustee loses possession of the thing after having acquired it, the holder of the right may ask that the value of the asset be paid in pre-deduction.

These provisions are subject to article 1706 of the civil code.

**Chapter VI – Provisional Authority and the Liquidation of Assets**

**Section One – General Provisions**

**Art. 104: Provisional Exercise of the Bankrupt Entity**

The court may order the provisional exercise of an entity with the bankruptcy decree, even limiting such exercise to specific aspects of the entity’s activity, if the interruption in activity would cause serious harm so as to avoid prejudice to creditors.

Thereafter, on request of the creditors, the presiding judge after receiving a positive review by the creditors’ committee, may authorize by a reasoned decision the temporary continuation of the entity’s business (or a specific aspect thereof) fixing an end date.

During the period of the provisional exercise, the creditors’ committee is called by the trustee at least once every three months to be informed about the state of affairs and to offer its view on the continued exercise of the business activity.

The presiding judge will order an end to the administration if the creditors’ committee does not agree to the continued exercise of the entity’s business activity.

Every six months, or at least at the conclusion of the designed period of the provisional exercise, the trustee presents an accounting of the entity’s activity by depositing it with the clerk. The trustee must inform the presiding judge and the creditors’ committee without delay of new circumstances that could influence the continued activity of the entity.
The court may order the termination of the provisional exercise at any time where it becomes necessary by issuing an order in chambers that is not subject to appeal after hearing the trustee and the creditors’ committee.

During the period of provisional exercise, pending contracts are carried out except where the trustee intends to suspend or terminate them.

The credits created in the course of the provisional exercise are satisfied in pre-deduction as set out in article 111, first paragraph of title II.

**Art. 104bis: Lease of the Business or of Sections of the Business**

Even before the filing of a proposed liquidation plan according to article 104ter, the presiding judge, on request of the trustee and a favorable expression by the creditors’ committee, authorizes the leasing of the bankrupt business to a third party with the possibility of limiting that lease to specific part of the business when doing so would be useful to selling the business or parts thereof.

The choice to lease is made by the trustee pursuant to article 107 on the basis of an estimate, assuring with adequate public notice the greatest information and participation of interested parties. The decision to lease must take into consideration, in addition to the amounts to be paid by the lessee, the guarantees given and the practicability of the business plan having regard to the conservation of employment levels.

The lease contract agreed to by the trustee in the ways provided for in article 2556 of the civil code must protect the right of the trustee to proceed to inspect the business, the giving of suitable guarantees for all the obligations of the lessee deriving from the contract and from law, the trustee’s right to withdraw from the contract that can be exercised, having heard the creditors’ committee, by correspondence with the lessee with a just indemnity as provided in article 111, first paragraph number 1.

The duration of the lease must be compatible with the needs of the liquidation procedure.

The right of pre-emption in favor of the lessee can be given by contract with the express authorization of the presiding judge and with the favorable views of the creditors’ committee. In such a case, having come to the end of the proceeding for determining the price of the sale of the business or a part thereof, the trustee within ten days communicates as much to the lessee who will have the right to exercise his right to pre-emption within five days from receiving the notice.

The return of the business or part thereof to the bankruptcy estate does not include the responsibility of the later to satisfy debts come due before the return, in derogation from what is provided for in articles 2112 and 2560 of the civil code, section IV of chapter III of title II apply to relationships pending at the moment of the return.
Art. 104ter: Liquidation Program

Within sixty days from the compiling of the inventory, the trustee issues a liquidation program to submit to the creditors’ committee for approval.

The program constitutes the plan and indicates the methods and the times for the sale of assets, and must specify:
   a) an opportunity for the provisional exercise of the business or of specific parts thereof pursuant to article 104 or the opportunity to authorize the lease of the business or parts thereof to their parties pursuant to article 104bis;
   b) the existence of the elements necessary for an agreement and its content;
   c) compensation, revocation and recovery actions to be carried out and their possible outcomes;
   d) the possibility to transfer the business, individual parts thereof, assets and relationships either individually or in blocks;
   e) the sale conditions of individual assets.

The trustee must be authorized by the presiding judge to delegate these evaluations to other professionals.

The creditors’ committee may suggest modifications of the program to the trustee.

For supervening causes, the trustee may present, following the provisions of the first, second and third paragraphs, a supplement to the liquidation program.

Before the program is approved and only when doing so is necessary to prevent prejudice to the creditors, the trustee may proceed to the sale of assets with the authorization of the presiding judge having heard the creditors’ committee if one has already been nominated.

The trustee, with authorization of the creditors’ committee, can decline to acquire assets or proceed with the sale of one or more assets if the liquidation activity appears manifestly inconvenient. In this case, the trustee so communicates to the creditors who, in derogation of what is provided for in article 51, may initiate executor or protective actions on assets returned to the debtor.

The approved program is communicated to the presiding judge who authorizes the execution of acts conforming thereto.

Section II - On the Sale of Assets

Art. 105: Block Sale of the Business, parts thereof, of Assets and Relationships

The sale of single assets pursuant to the following articles of the present chapter is possible when the sale of the entire business, its individual parts or individual legal relationships in block sales does not allow for a greater satisfaction of creditors.

[19] meaning lacking economic sense, not difficult or irritating.
The sale of the whole business or parts thereof is carried out by the methods contained in article 107 and in conformity with article 2556 of the civil code.

As part of union consultations on the sale of a business, the trustee, the buyer and labor representatives may provide for the transfer of only a portion of the buyer’s employees and other modifications of the labor relationship that are permitted by law.

Unless otherwise provided, it is exclusively the responsibility of the purchaser to cover debts of the business acquired before the sale. The trustee may proceed to the transfer of business assets or of its parts, including assets and individual legal relationships in block excluding those responsibilities of the seller contained in article 2560 of the civil code.

The transfer of credits related to the business being sold, even in the absence of notification to the debtor or of his acceptance, has effect against third parties from the moment the transfer is recorded in the business registry. In any case, the transferred debtor is free of his debt if he in good faith pays the creditor transferor.

The privileges and the guarantees of any kind, from whomever granted or otherwise existing in favor of the seller, conserve their validity and their grade in favor of the purchaser.

The trustee may proceed to the sale by conferring one or more entities, even new ones, the business or parts thereof or it assets or credits including their associated contractual obligations, excluding the seller’s responsibility pursuant to article 2560 of the civil code and observing the provisions that cannot be waived contained in the present sections. Provisions of special laws still apply.

The payment of the purchase price may be made by grouping debts owed the purchaser only if this does not alter the priority of the credits.

**Art. 106: Transfer of Credits, Rights and Quotas, Shares, Mandates to Collect**

The trustee may transfer credits, including tax and future credits, even those subject that may be challenged; he may also transfer revocation actions that are part of the bankruptcy proceedings if the judgments are already pending.

Article 2471 of the civil code applies to the sale of a quota in a limited liability company.

As an alternative to the provisions of the first paragraph, the trustee may stipulate mandate contracts for the recovery of credits.

**Art. 107: Methods of Sale**

Sales and other liquidation acts that are part of the sales plan are done by the trustee through a competitive procedure (even through the use of specialized subjects) on the basis of estimates assuring adequate forms of notice and the highest level of participation of interested parties.
The trustee may provide in the sale plan that the sale of movables, immovable and registered assets are carried out by the presiding judge pursuant to the provisions of the civil code of procedure in as far as they are compatible.

For real property and other assets listed in public registries, before the sale can be completed, notice is given by the trustee to all creditors with a mortgage or other kind of privilege.

The trustee may suspend the sale where an irrevocable offer is made for an amount no less than ten percent of the offer price.

The trustee informs the presiding judge and the creditors’ committee of the results of the procedure by filing the related paperwork with the clerk.

If on the date the bankruptcy decree is issued there are pending execution actions, the trustee may take over the action, in which case the provisions of the civil procedure code are applied; otherwise, on motion of the trustee the judge presiding over the action declares the inability to proceed except in those cases covered by the derogation in article 51.

By regulation of the Ministry of Justice, to be adopted pursuant to article 17, third paragraph of the law of 23 August 1988, n. 400 there are established requirements of honor and professionalism of the specialized subjects and expert operators to which the trustee may turn pursuant to the first paragraph, as well as the methods of providing notice and transparency for the sales.

**Art. 108: Powers of the Presiding Judge**

The presiding judge, on motion of the bankrupt, the creditors’ committee or of other interested parties, with the views of the committee, may suspend the sale by reasoned decision whenever there are sufficient reasons or, on motion presented by the same within ten days of the filing mention in the fourth paragraph of article 107, prevent the perfection of the sale when the offering price is significantly less than the fair market price.

For immovable assets and other assets contained in public registries, once the sale is concluded and the full price has been paid, the presiding judge orders the cancellation of any entry regarding pre-emptive rights, including liens and attachments and any other kind of interest.

**Art. 108bis: Methods of Sale of Ships, Boats and Airplanes**

[Repealed]

**Art. 108ter: Method of Sale of Intellectual Property Rights in Industrial Inventions and Copyrights**

The transfer of rights to commercially use intellectual property, the transfer of rights derived from industrial inventions, the transfer of copyrights and the transfer of databases are governed by special laws.
Art. 109: Proceedings on the Distribution of Sales Revenues

The presiding judge provides for the distribution of sales revenues pursuant to the following chapter.

The court sets by decree the amount to be attributed, if it is the case, to the trustee in full compensation to be paid pursuant to article 39. This amount is taken from the price together with all procedural and administrative costs.

Chapter Seven – Distribution of Assets

Art. 110: Proceedings for Distribution

The trustee, every four months starting from the date of the decree mentioned in article 97 or from another time as set by the presiding judge, presents a prospectus of the sums available and a distribution plan for the same excluding those needed to pay the costs of the procedure. In the project are contained the credits for which the prohibition on executive and protective measures of article 51 do not apply.

Creditors may appeal to the presiding judge against the distribution plan in conformity with article 36 within the peremptory time limit of fifteen days from receipt of the notice referred to in the second paragraph.

The time limit having run, the presiding judge, on the motion of the trustee, will declare the plan to be executable. If appeals are filed, the distribution plan is declared to be executable with provision for a sum equal to that subject to the appeal. The order that decides the appeal sets the distribution of the sum.

Art. 111: Distribution Order

The monies received from the sale of assets are distributed in the following order:

1. to pay pre-deductible\(^{20}\) credits;
2. payment of credits admitted with pre-emption on sold items according to the order determined by law;
3. payment of unsecured credits, in proportion to the total credit for each admitted creditor, including those indicated in number 2, whenever the guarantee has not yet be perfected or for the part that remains after the secured credit is satisfied.

Credits are considered to have priority when they are qualified by a specific provision of law or are those that have occurred in occasion or in function of the bankruptcy procedure governed by the present law; these credits are satisfied with preference according to number 1 of the first paragraph.

\(^{20}\) These are costs associated with the proceedings themselves and are paid for as part of the proceedings.
Art. 111bis: Pre-Deductible Credits

Pre-deductible credits must be ascertained by the methods contained in chapter five, except those whose inclusion is uncontested, even if they arise during the provisional exercise of the business or are those that arise following an order to pay fees of those nominated pursuant to article 25; in this last case, if they are contested, they must be ascertained pursuant to article 26.

Pre-deductible credits are satisfied for capital, costs and interest with the sums acquired by the sale of assets, keeping in mind the reasons for their priority with the exclusion of the amount acquired from the sale of assets subject to security interests that are directed to payment of secured creditors. The priority of the interests ceases at the moment of payment.

Priority credits arising in the course of the bankruptcy proceeding that are liquid, due and are not contested for inclusion can be satisfied outside the procedure for distribution if the assets are presumably sufficient to satisfy those credits. The payment must be authorized by the creditors’ committee or the presiding judge.

If the assets are insufficient, the distribution must happen according to the criteria of gradation and proportionality in conformity with the order assigned by law.

Art. 111ter: Special Accounts

The liquid real property asset is comprised of the sums acquired from the sale of immovable property as defined in article 812 of the civil code and their products and fixtures and the interest earned on the deposits of those sums.

The liquid movable property asset is comprised of all other payments.

The trustee must keep an autonomous record of the sale of single immovable assets that are subject to special privileges and mortgages and of individual movable assets or groups thereof subject to liens and special privileges, with the analytic indication of the entrances and exits of specific types and of the quota of those having a general character imputable to any asset or group of assets using a proportional criterion.

Art. 111quater: Priority Credits

Credits with a general privilege have the right of pre-emption for capital, costs and interest within the limits set forth in articles 54 and 55, on the sums acquired by sale of the immovable property, on which there is a single class of credits guarantee by movable special privilege according to the grade established by law.

Art. 112: Participation of Late Creditors

Creditors admitted pursuant to article 101 participate in proportion to their respective credits only with regard to distributions made after their admission except where they have a right
to withdraw the quota that would be theirs in the preceding distributions in cases of priority or if the delay was not caused by facts attributable to them.

**Art. 113: Partial Distribution**

Partial distributions, which cannot individually be more than 80% of the sums to distribute, must be held and deposited in the ways established by the presiding judge, the assigned quotas are:

1. creditors admitted with reserve;
2. creditors who have obtained protective measures;
3. creditors who have successfully obtained relief but the order to that effect has not yet become final;
4. creditors who have filed motions to impugn or revoke.

The sums necessary for future costs, to satisfy the trustee and every other pre-deductible debt must be withheld; in this case, the total of the quota to distribute indicated in the first paragraph of the preceding article must be reduced if the proportion of eighty percent seems to be insufficient.

The sums received by the procedure from actions taken in pursuance of provisionally executable actions that have not yet become final must be held and deposited in the manner established by the presiding judge.

**Art. 113bis: Admission of Conditional Creditors to the List of Creditors**

On motion of trustee or the interested party, the presiding judge modifies the list of creditors by ordering the definitive granting of a motion when the conditional event occurs as established in the order provisionally granting a request.

**Art. 114: Restitution of Collected Sums**

Payments made in the execution of the distribution plan cannot be undone, except in the case that a revocation motion has been granted.

Creditors that have received unjustified payments must return those sums including legal interest from the moment the payment was made.

**Art. 115: Payments to Creditors**

The trustee provides for payment of sums assigned to creditors in the distribution plan following the methods set by the presiding judge in order to preserve evidence that the payments were made.

If before the distribution some of the credits are transferred, the trustee attributes the quota of the credits to the transferee whenever the waiver was timely communicated. That communication includes the documentation demonstrating the transfer and a motion signed by
the transferor and the transferee. In this case, the trustee provides for the correction of the list of creditors. The same provisions apply in the case of subrogation of the creditor.

**Art. 116: Accounting of the Trustee**

When the distribution of liquid assets is complete and before the final distribution, or in those cases where the trustee leaves his position, he must present the presiding judge with a detailed accounting of all fiscal operations and his management activity.

The judge orders the filing of the accounting with the clerk and sets a hearing for a date not before 15 days after the accounting has been communicated to the creditors.

From the filing of the accounting and the setting of the court date, the trustee immediately serves, via certified electronic mail, the creditors admitted to the list of creditors, those who objected to the list and those creditors with a pre-emptive interest that have not been satisfied, a copy of the accounting with a notice that they may make any observations or challenges up until five days before the hearing using the methods set out in article 93, second paragraph.

If there are no objections or there is an agreement regarding any objections, the judge approves the accounting by an order, otherwise a hearing is set before the panel that shall be held in chambers.

**Art. 117: Final Distribution**

Having approved the accounting and paid the trustee’s fee, the presiding judge on hearing the trustee orders the final distribution according to the rules established above.

During the final distribution, sums previously ordered to be distributed are distributed. However, if the condition has not yet occurred or if the order has not yet become final, the sum is deposited in a manner determined by the presiding judge so as to be able to verify the occurrence of the required event following which the sums can be transferred to the creditors or where it is made the subject of additional allotment among other creditors. Such pending orders do not prevent the closure of the proceedings.

The presiding judge, in respect of priority, may order that a single creditor so consenting be assigned, in place of the sum he is entitled to, tax credits not yet collected by the bankrupt.

For creditors that are not present or are not reachable, the monies owed are deposited with the post office or bank indicated according to article 34. Having passed five years from the deposit, the sums not collected and their interest, if not requested by other creditors who have not been satisfied, are transferred by the holder to the account of the State to be for reallocation, by decree of the Minister of Economy and Finance, to a special unit of the basic budget estimates of the Ministry of Justice.

The judge, even if the debts of the bankrupt have been discharged, forgoing any unnecessary formalities for the hearing, orders the distribution of the sums not collected according to article 111 between the requestors on motion of unsatisfied creditors that have filed a requests according to the fourth paragraph.
CHAPTER EIGHT – TERMINATION OF BANKRUPTCY PROCEEDING

SECTION I – CLOSURE OF THE BANKRUPTCY PROCEEDING

Art. 118: Cases of Closure

Except as provided in the following section in case of an agreement, the bankruptcy proceedings are closed:

1. if within the timeframe set in the bankruptcy decree no one request to be placed on the list of creditors;
2. when, even before the final distribution of assets, the distribution to creditors satisfies the whole sum of credits contained on the list of creditors or when they have otherwise expired or all the debts and costs to be satisfied in pre-deduction have been paid;
3. when the final distribution of assets is complete;
4. when in the course of the proceedings it becomes clear that the proceedings will not allow the satisfaction even in part of the bankruptcy creditors or the pre-deductible credits and costs of the procedure. Such circumstances can be identified on the basis of the report or follow up reports required by article 33.

In the cases of closure due to numbers 3 and 4, where dealing with the bankruptcy of a company, the trustee asks for its cancellation from the business registry. The closure of the bankruptcy proceedings of the company in the cases identified in number 1 and 2 result in the closure of the proceedings extended to the partners in the sense of article 147 except that against the partner who has not had a bankruptcy proceeding started as an individual businessman.

Art. 119: Closing Order

The closure of the bankruptcy proceeding is made by a reasoned decision by the court on motion of the trustee or the debtor or *sua sponte* and is published in the manner set out in article 17.

The court will make a decision after hearing the creditors’ committee and the bankrupt when the closure of the bankruptcy is ordered before the approval of the distribution plan pursuant to article 118, first paragraph, n. 4.

An appeal is allowed pursuant to article 26 against a closing order (or a denial for the closure of the proceedings). Appeal for cassation must be deposited within the pre-emptory time limit of thirty days running from the notification or communication of the order by the trustee, the bankrupt, the creditors’ committee, the moving party or any other participant against an order by the court of appeals or from the completion of the notice pursuant to article 17 for any other interested party.

The closing order becomes effective after the time limit to file an appeal has run without the filing of an appeal or when the appeal has been definitively rejected.
With the orders issued pursuant to the first and third paragraph of the present article, the orders for execution are also issued so as to give effect to the decision. The same occurs when an order for the revocation of the bankruptcy or a decree approving the agreement with creditors becomes final.

Art. 120: Effects of the Closure

The effects of the bankruptcy on the assets of the bankrupt and the consequent personal incapacity cease with the closure of the proceedings and the bankruptcy offices.21

Legal actions taken by the trustee in the exercise of rights deriving from the bankruptcy cannot be continued.

Creditors reacquire the ability to freely file actions against the debtor for the part of their credit not satisfied by capital or interest except a provided in article 142 et. seq.

The order or judgment with which the credit was placed on the list of creditors is evidence of the effects referred to in article 634 of the civil code of procedure.

Art. 121: Reopening of the Bankruptcy

In the cases referred to in number 3 and 4 of article 118, within five years of the closing order the court on motion of the debtor or of any creditor may order that the bankruptcy be reopened when it appears that there are actions against the bankruptcy estate that render such an order opportune or when the bankrupt offers guarantees to pay at least ten percent of the old and new credits.

The court issuing a judgment in chambers, if it decides to grant the motion:

1. recalls the presiding judge and trustee or nominate new ones;
2. establishes the terms provided for in number 4 and 5 of the second paragraph of article 16, eventually shortening them no more than by half; the creditors already place on the list of creditors of the closed proceedings may request a confirmation of their inclusion except when they intend to list additional credits.

The judgment may be appealed against pursuant to article 18.

The judgment is public pursuant to article 17.

The presiding judge nominates the creditors’ committee, keeping in mind the nomination of new creditors.

The norms contained in the previous chapters govern for all other decisions.

21 This refers to the dismissal of the trustee and the closing of the proceedings.
**Art. 122: Relationship Between Old and New Creditors**

The creditors compete for priority for the new distribution of sums owed at the time the proceedings are reopened, deducting any amount they have previously received, exception cases of pre-emption.

The provisions of chapter five apply.

**Art. 123: Effects of the Reopening on Acts Prejudicial to Creditors**

In cases where the bankruptcy is reopened, regarding revocation actions related to acts of the bankrupt made after the closure of the bankruptcy, the time limits set in articles 65, 67 and 67bis run from the date of the reopening order.

Those acts taken without payment and those referred to in article 69 that are taken after the closure and before the reopening of the bankruptcy proceedings are without effect as regards creditors.

**SECTION TWO – ON AGREEMENT**

**Art. 124: Proposal for Agreement**

The proposal for an agreement may be made by one or more creditors or a third party, even before the order rendering effective the list of creditors, as the accounting and the resulting data therein contained along with other information available allow the trustee to determine a provisional list of creditors of the bankrupt which he can submit to the presiding judge. This cannot be presented by the bankrupt, a company in which he has an interest or by an entity subject to common control before one year after the bankruptcy decree and two years after the order rending effective the list of creditors.

The request must include:

a) the subdivision of creditors into classes, according to their similar legal position and economic interest;

b) differentiated treatment between creditors of different classes indicating the reason for the differential treatment;

c) restructuring of the debt and the satisfaction of credits in any way, even by the transfer of assets, assumption and other extraordinary actions, including attribution to creditors, and to entities therein participating of shares, quota or bonds even those convertible in shares or other financial instruments or debt securities;

The proposal may provide that privileged creditors (e.g., liens or mortgages) are not wholly satisfied as the plan provides for the satisfaction in proportion to that which is possible based on the preferential grouping, on the amounts acquired through sale, keeping in mind the market value attributable to the assets or rights on which the pre-emptive right is attached as identified by a sworn report by a professional in possession of the experience identified in article 67, third paragraph, letter d and designated by the court. The treatment established for any class cannot have the effect of altering the priority of pre-emptive claims.
The proposal presented by one or more creditors or by a third party may provide for the transfer, in addition to the bankruptcy assets, of shares in the entity if so authorized by the presiding judge by specific indication of the object and of the basis of the claim. The proponent may limit their obligations to the creditors admitted to the list of creditors, even those provisionally admitted, and to those that have proposed modifications of the list of creditors or made late requests to be admitted to the list. In such a case, the bankrupt continues to be responsible to the other creditors except as provided in article 142 et. seq. in the case of discharge.

Art. 125: Exam of the Proposal and its Communication to Creditors

The proposed agreement is made by motion to the presiding judge who will ask the opinion of the trustee with specific reference to the presumable results of a liquidation and other guarantees offered. When an appeal is filed by a third party, this must contain a certified electronic mail address at which they will receive communications. Article 31bis, second paragraph applies.

Once the preliminary review has been completed, the presiding judge after having received a positive evaluation by the creditors’ committee will confirm the proper procedures were followed and order that the trustee serve it by certified electronic mail, together with the views of the creditors’ committee and the trustee, on the creditors, specifying where information can be found to evaluate it and informing them that the lack of a response will be considered as a favorable vote. In the same order the presiding judge will fix a time limit not less than twenty days or more than thirty within which the creditors must file with the clerk of the court and objections. In case of more than one proposal or if additional proposal are filed, before the presiding judge orders their communication, the creditors’ committee chooses which proposal to submit to the creditors; on the motion of the trustee, the presiding judge may order the communication of one or more proposals to the creditors that were not selected by the committee if he believes they are equally as valid. Article 41, fourth paragraph applies.

If the bankrupt entity has issued bonds or financial instruments subject to the proposed agreement, the communication is sent to the components thereof that have the authority to call a meeting of the relevant persons so as to allow said members to express their discord. The time limit of the third paragraph is extended to allow the calling and holding of these meetings.

Art. 126: Agreement in the Case of Numerous Creditors

Where the communications are directed to a significant number of recipients, the presiding judge may authorize the trustee to notify the proposed agreement, not just through individual communications but also by publication of the whole text through one or more dailies distributed at the national or local level.

Art. 127: Vote on the Agreement

If the proposal is made before the finalization of the list of creditors, the creditors that are on the provisional list proposed by the trustee and approved by the presiding judge have the right to vote; otherwise, those indicated in the list of creditors made effective pursuant to ar-
article 97 have the right to vote. In this last case, the creditors that have been provisionally ad-
mitted or with exception also have the right to vote.

Privileged creditors (e.g. lien or mortgage), even if the guarantee is contested, for whom the
proposed agreement provides for payment in full ho not have the right to vote if they do not
renounce their pre-emptive right except as provided in the third paragraph. The renunciation
may be partial, as long as it is not less than a third of the entire credit as made between capital
and property.

Whenever the privileged creditors (e.g. lien or mortgage) renounce in whole or in part their
privilege, they are assimilated to the unsecured creditors for the part of the credit not covered
by the guarantee; the renunciation only has effect within the ambit of the agreement.

The creditors with a privilege covered by the proposed agreement, within in sense article
124, third paragraph, who are not entitled to complete satisfaction therein are considered un-
secured for the residual part of their claim.

The spouse, relatives up to the fourth grade of relation of the debtor and those that are tran-
sferees or judicial creditors of these individuals for less than one year from the bankruptcy
decree are excluded from the right to vote and the computation of the majority.

The same rules apply to credits of an entity controlling or controlled or under common con-
trrol.

The transfer of credits that take place after the bankruptcy decree are not attributed the right
to vote except when they are made in favor of banks or other financial intermediaries.

Art. 128: Approval of the Agreement

The agreement is approved by the creditors that represent a majority of the credits allowed
to vote. Where different classes of creditors are provided for, the agreement is approved if
the majority also includes the majority of classes.

The creditors that do not communicate their objections within the time limit set by the pre-
siding judge are considered to agree.

The variation of the number of creditors admitted or the amount of single credits that occurs
because of the issuance of an order after the time limit set by the presiding judge for voting
has expired does not influence the calculation of the majority.

When the presiding judge orders the vote on the proposed agreement pursuant to article 125,
second paragraph, third sentence, last part, the agreement that receives the most votes pur-
suant to the preceding paragraph is considered approved, in case of a tie the one that was
submitted first in time.
Art. 129: Findings of Approval

The time set for voting having expired, the trustee presents the presiding judge with a report on the results.

If the proposal is approved, the presiding judge orders that the trustee immediately notify the dissenting creditors and the proponent via certified electronic mail so that he can request the approval of the agreement. The bankrupt, in cases where it is not possible to serve him by electronic means, is to be served with the approval notice by certified mail with a notice of receipt. An order is issued pursuant to article 17 setting a time limit not less than fifteen days and no more than thirty for the filing of objections, including those of any interested party, and for the filing by the creditors’ committee of a reasoned report with its final view. If the committee does not file within the time limit set, the report is drafted and filed by the trustee within the following seven days.

Objections to the approved request are made by appeal pursuant to article 26.

If no objections are made within the time limit fixed, the court verifies the conformity of the procedure and the result of the vote, approves the agreement by a reasoned decision that is not subject to appeal.

If objections are filed, the court will take such investigatory measures as requested by the parties or sua sponte, with the ability to delegate such tasks to a member of the panel. In the case set out in the second sentence of the first paragraph of article 128, if the creditor belongs to a dissenting class objects to the proposal, the court may approve the agreement whenever it holds that the credit may be satisfied by the agreement in proportion to that reasonably predictable absent the agreement.

The court issues its decision by a reasoned order in accordance with article 17.

Art. 130: Effect of the Decree

The proposal for an agreement becomes effective the moment in which the time limit to file objections to the approval has run or from the moment in which the impugnation provided for in article 129 is completed.

When the approval order becomes final, the trustee provides an accounting of his administration as provided in article 116 and the court declares the bankruptcy closed.

Art. 131: Appeal

The approval order is appealable before the court of appeal, which will issue a decision in chambers.

The appeal is filed with the registry of the court of appeal within thirty days of the order’s notification by the clerk of court.
The appeal must include the elements set out in article 18, second paragraph, points 1, 2, 3, and 4.

The president of the court, in the five days following the filing of the appeal, designates the rapporteur, and fixes an initial court appearance by decree within sixty days after the filing of the appeal.

The appellant shall serve a copy of the appeal, together with the order setting the hearing, on the trustee, other identified non-appealing parties, the bankrupt, and those supporting and opposing the agreement with creditors within ten days of notification of the order. Between the date of service and the hearing there must be no less than thirty days.

Parties wishing to appose the appeal must file a notice of appearance at least ten days before the hearing, electing domicile in the municipality in which the court of appeal is located.

The appearance is made through the filing of a brief in opposition with the clerk of the court containing an elaboration of the defenses in fact and law, as well as an indication of the evidence and documents to be produced.

During the hearing, the panel, after hearing the parties, admits the evidence *sua sponte*, and may delegate one of its members to take on the task.

The court issues its decision by a reasoned judgment.

The order is published in accordance with Article 17 and served on the parties by the clerk, and may be challenged by appeal within thirty days of the date of service.

**Art. 132: Interpleading of the Public Authorities**

[Repealed]

**Art. 133: Approval Costs**

[Repealed]

**Art. 134: Trustee’s Accounting**

[Repealed]

**Art. 135: Effects of the Agreement**

The agreement is binding on all creditors prior to the commencement of bankruptcy proceedings, including those who have applied for admission to the list of creditors. These creditors do not benefit from guarantees given by third parties.

Creditors retain their claim in full against the co-debtors, guarantors of the bankrupt and those who are joint and severally liable with the debtor.
Art. 136: Execution of the Agreement

After the approval of the agreement, the presiding judge, the trustee and the creditors’ committee supervise its implementation in the manner specified in the order approving the agreement.

The amounts due to contested and conditional or to untraceable creditors are deposited in the manner prescribed by the presiding judge.

Having determined the full implementation of the agreement, the presiding judge orders the cancellation of security interests in any collateral and takes all appropriate measures to achieve the objectives of the agreement.

The order is published and posted pursuant to art. 17. The costs are borne by the debtor.

Art. 137: Termination of the Agreement

If guarantees are not made or if the applicant fails to regularly fulfill the obligations arising from the agreement, any creditor may request its termination.

Article 15 applies, mutatis mutandis.

Any guarantors are required to participate in the hearings.

The decision that terminates the agreement also reopens the bankruptcy proceedings and is provisionally enforceable.

The judgment is appealable pursuant to article 18.

The action for the termination of the agreement must be filed within one year after the expiry of the deadline for the last act in performance as provided for in the agreement.

The provisions of this article shall not apply where the obligations under the agreement have been made by the applicant or one or more creditors with immediate release of the debtor.

Creditors against whom third parties have not assumed responsibility for the performance of the agreement (pursuant to article 124) may not file motions to terminate the agreement.

Art. 138: Annulment of the Agreement

The court may annul the approved agreement on motion of the trustee or any creditor, after an adversarial hearing with the debtor, when it is determined that the amount of debt was fraudulently exaggerated or when a substantial part of the bankruptcy assets have been transferred or disguised. No other grounds for annulment are permitted. The norms contained in article 137 apply.
The order annulling the agreement also reopens the bankruptcy proceedings and is provisionally enforceable. It is appealable pursuant to Article 18.

The action for annulment must be filed within six months of the discovery of the fraud, and in any event no later than two years after the deadline set for the last act of performance provided in the agreement.

**Art. 139: Decisions Following Reopening**

The decision to reopen proceedings under articles 137 and 138 shall conform to the rules set out in article 121.

**Art. 140: The Effects of Reopening**

The effects of the reopening are governed by articles 122 and 123.

Revocation actions filed before and stayed due to the agreement may be refilled.

Those creditors admitted to the list of creditors retain their right to payment for the amounts still owed to them under the terminated agreement and are not required to return any sums already received.

Such creditors re-enter the bankruptcy proceedings for the amount of their original credit minus the part already collected in partial fulfillment of the agreement.

**Art. 141: New Proposed Agreement**

Having compiled a new list of creditors, the applicant is allowed to submit a new proposed agreement. The new agreement may not be approved unless the sums necessary for its full implementation are deposited or equivalent guarantees are issued (in the manner prescribed in the presiding judge) before the hearing set for its discussion.

**CHAPTER NINE – DISCHARGE OF DEBT**

**Art. 142: Discharge**

A bankrupt natural person is eligible for the discharge of their remaining debts to bankruptcy creditors who are not satisfied, provided that he:

1. has cooperated with the organs of the procedure, providing all information and documentation relevant for identifying creditors and striving for success in their operations;
2. has in no way delayed or contributed to the delay of the proceedings;
3. has not violated the provisions of article 48;
4. has not benefitted from discharge in the ten years preceding the application;
5. has not transferred assets or claimed non-existent liabilities, caused or aggravated serious instability thereby making it difficult to identify assets and bu-
business activity or made improper use of the credit;
6 has not been convicted by a final judgment for fraudulent bankruptcy or for crimes against the public economy, industry and trade, and other crimes committed in connection with the operation of the business, except if he has been rehabilitated for such offenses. The court shall stay the discharge proceedings if a criminal case is in course for these offenses until the outcome of the trial.

Discharge cannot be granted if creditors have not been satisfied even in part.

Excluded from discharge:

a) the obligations of maintenance and food and all other obligations arising from the relationships completely unrelated to the commercial activity in question;
b) liability in tort, criminal penalties and administrative provisions of a financial nature which are not ancillary to the debt extinguished.

Creditors retain their claim in full against the co-debtors, guarantors of the bankrupt and those who are joint and severally liable with the debtor.

**Art. 143: Discharge Procedure**

The court, by order closing the bankruptcy proceedings or on motion of the debtor made within the following year, verifies the conditions set out in article 142. In doing so the court takes into consideration the conduct of the bankrupt, hears the trustee and the creditors’ committee. After which the court orders that bankruptcy debts that have not been completely satisfied are no longer actionable against the debtor.

The debtor, non-satisfied creditors, the public authorities and any interested party may appeal the discharge order in accordance with article 26.

**Art. 144: Discharge of Bankruptcy Debts in Regards to Non-Participating Creditors**

The discharge order is also effective against pre-bankruptcy creditors that did not submit an application for admission to the list of creditors. In such a case, the discharge is only for the debt in excess of the percentage included for similarly situated creditors that participated in the proceedings.

**Art. 145: Criminal Conviction that Prevents Rehabilitation**

[Repealed]
CHAPTER TEN - COMMERCIAL BANKRUPTCY

Art. 146. Directors, CEO’s, Board Members, Liquidators and Partners of a Limited Liability Company

Administrators and liquidators of a company are subject to the obligations imposed by article 49 of the bankrupt law. They must be heard in all cases where the law requires that the bankrupt be heard.

The trustee, with the approval of a presiding judge and after consulting the creditors’ committee, may file:

a) actions for damages against the directors and members of the supervisory bodies, CEO’s and liquidators;
b) liability actions against the members of a limited liability company, in the cases provided for in article 2476, paragraph seven of the Civil Code.

Art. 147: General Partner of a Limited Liability Company

A bankruptcy decree regarding a company belonging to one of the business types set out in chapters III, IV and VI of Title V of the fifth book of the civil code, also results in the bankruptcy of general partners with unlimited liability. This does not apply to natural persons.

The bankruptcy of the partners referred to in paragraph one cannot be declared more than one year after the termination of the business relationship or the cessation of that partner’s unlimited liability in the event of a conversion, merger or spin-off if the required formalities have been observed to notify third parties of the change.

Bankruptcy of the partner is possible only if the company’s insolvency is in whole or in part due to debts existing at the date of cessation of unlimited liability.

The court, before declaring the bankruptcy of general partners with unlimited liability, must summon them to appear in accordance with article 15.

If, after the declaration of a company’s bankruptcy, other unlimited liability partners are discovered, the court, on application of the trustee, a creditor or a bankrupt partner, declares the bankruptcy of the same.

The same procedures are followed after an individual’s declaration of bankruptcy in relation to a company for which the individual bankrupt is an unlimited liability partner.

An appeal against the bankruptcy decree may be filed pursuant to article 18.

In case of rejection of the application, the applicant may file an appeal with the court of appeals pursuant to article 22.
Art. 148: Bankruptcy of a Company and its Shareholders

In cases governed by article 147, the court appoints a single presiding judge and a single trustee for the bankruptcy of the company and for any bankruptcy proceedings of the partners. Notwithstanding there being a single presiding judge and a single trustee, the different proceedings remain separate. Multiple creditors' committees may be appointed.

The assets of the company and the assets of individual members are to be kept separate.

The credit claimed by creditors in the bankruptcy of the company are understood to also be claimed in the bankruptcy of the individual members with the same privileges. The creditor has the right to participate in all distributions until payment has been made in full, with the exception of actions for indemnification by the partners for amounts paid in excess of their share of liability.

Creditors with claims against an individual partner only participate in those proceedings.

Any creditor may challenge the claims of other creditors participating in the same proceeding.

Art. 149: Bankruptcy of Partners

The bankruptcy of one or more partners with unlimited liability does not produce the bankruptcy of the company.

Art. 150: Payments by Limited Partners

In the bankruptcy of companies with limited partners, the presiding judge may, on motion of the trustee, order the limited partners and previous owners of shares\textsuperscript{22} to make any required payments, as long as the deadline for payment has not expired.

The order referred to in the previous paragraph may be appealed against pursuant to article 645 of the code of civil procedure.


In the bankruptcy of a limited liability company, when the necessary conditions are met, the judge may authorize the trustee to enforce the insurance policy or bank guarantee issued pursuant to article 2464, fourth and sixth paragraphs, of the civil code.

Art. 152: Proposed Agreement

Proposed agreements\textsuperscript{23} for the bankrupt company are signed by its legal representative.

\textsuperscript{22} A literal translation would be a former owner of a quota of the business.

\textsuperscript{23} This refers to “agreements” per art. 124, not “agreements with creditors” as detailed further on.
The proposal and the terms of the agreement, unless otherwise provided by the articles of association or by-laws:

a) in a partnership, is approved by those members representing a majority ownership;
b) in the joint-stock company, limited by shares and limited liability companies, as well as in co-operatives, is approved by the directors.

In any case, the decision referred to in point b of the second paragraph should be in the minutes drawn up by a notary and is deposited and registered in the commercial register in accordance with article 2436 of the civil code.

**Article 153: Effects of the Agreement by the Company**

Unless otherwise provided, an agreement made by a company that has unlimited liability partners is also valid for those partners thereby ending their bankruptcies.

The order closing a partner’s bankruptcy is appealable pursuant to article 26.

**Art. 154: Agreement with a Partner**

In bankruptcy of a company with unlimited liability partners, each of the partners declared bankrupt may propose an agreement with creditors of the company and those participating in the individual bankruptcy.

**CHAPTER NINE - PROPERTY DESIGNATED FOR A PARTICULAR PURPOSE**

**Art. 155: Property Designated for a Particular Purpose**

If the bankruptcy of the company is declared, the administration of the assets allocated pursuant to article 2447bis, first paragraph, letter a, of the civil code, the trustee shall take possession and provide separate management.

The trustee, pursuant to article 107, shall transfer the assets to third parties in order to preserve their productive function. If transfer is not possible, the trustee provides for liquidation of assets following the same rules for the liquidation of the other assets of the company mutatis mutandis.

The net amount remaining after the sale of the assets or the remaining assets are acquired by the trustee and incorporated into the bankruptcy estate, less amounts payable to third parties having made contributions, pursuant to article 2447ter, first paragraph, letter d of the civil code.

**Art. 156: Insufficient Assets; Violation of the Rules of Separation**

If as a result of the bankruptcy of the company or in the course of managing the bankruptcy estate, the trustee notes that the assets designated for a particular purpose are insufficient, he
shall, with the approval of the presiding judge, liquidate the assets in accordance with the rules of the liquidation for company, *mutatis mutandis*.

Creditors of the particular assets may apply to be admitted to the company’s list of creditors in the case of subsidiary liability or unlimited liability as provided for in article 2447, third and fourth paragraph, of the civil code.

If the rules of separation are violated regarding one or more assets and used by the company and/or the shareholders of that company, the trustee may file an action against the directors and members of boards of control of the company in accordance with article 146.

**Art. 157: Creating the List of Creditors**

[Repealed]

**Art. 158: Claims, Surrender and Separation of Assets**

[Repealed]

**Art. 159: Agreements**

[Repealed]

**TITLE THREE – AGREEMENT WITH CREDITORS AND RESTRUCTURING AGREEMENTS**

**CHAPTER ONE - ADMISSION TO THE AGREEMENT WITH CREDITORS PROCEDURE**

**Art. 160: Requirements for Admission to the Procedure**

An entity is in a state of crisis may propose an agreement with creditors on the basis of a plan that may include:

a) the restructuring of debts and satisfaction of claims by any means including disposal of assets, assumption, or other extraordinary transactions, including the award to creditors, as well as companies from these investments, from shares, bonds or, also convertible into shares or other financial instruments and debt securities;

b) the allocation of the assets of the companies affected by the proposed settlement to an underwriter; creditors or companies in which they participate or to be established in the course of the procedure may be appointed as underwriters, the shares of which are intended to be allocated to creditors for effect of the agreement;

c) the division of creditors into uniform classes according to legal status and economic interests;

d) differential treatment between creditors belonging to different classes.

The proposal may provide that secured creditors are not satisfied in full, on condition that the plan provides for the satisfaction of not less than that achievable, due to their preferential interests. This projection should be made on the basis of the reasonable proceeds in the event
of liquidation considering the market value attributable to the assets or rights on which there are security interest as stated in the sworn report of a professional meeting the requirements of article 67, third subparagraph, point d).

The established treatment for each class cannot have the effect of altering the order of the legitimate causes of priority.

For the purposes of the first paragraph, a state of crisis can also mean a state of insolvency.

**Art. 161: Application for Agreement With Creditors**

The application for admission to the agreement with creditors procedure is proposed to the court of the place where the company has its principal office in an application, signed by the debtor. The transfer of the principal office within the year prior to the filing of the proposal does not effect the competence of the court.

The debtor must submit with the application:

a) an updated report on the equity, economic and financial situation;

b) an estimate and analysis of activities and the list of names of creditors, with an indication of their claims and causes of pre-emption;

c) a list of holders of the rights of real or personal property owned by or in the possession of the debtor;

d) the value of assets and creditors of any partner with unlimited liability;

e) a plan containing a description of the analytical methods and the time of performance of the proposal.

The plan and the documents referred to in the preceding subparagraphs shall be accompanied by the report of a professional, designated by the debtor satisfying the requirements of article 67, third paragraph, letter d, attesting to the veracity of the business data and feasibility of the plan itself.

A similar report must be filed in the case of substantial changes to the proposal or plan.

For a company, the application shall be approved and signed in accordance with Article 152.

The request for an agreement is communicated to the public authority and is published by the clerk in the commercial register no later than the day following its filing with the court.

The entity may submit an application containing the request for agreement together with the balance sheets for the past three years, reserving the right to submit the proposal, the plan and the documents referred to paragraphs two and three before a deadline set by the court, between sixty and one hundred twenty days and can be extended, for justified reasons, not later than sixty days.
At the same time, as an alternative and keeping up with the approval of the effects of the application, the debtor may file an application pursuant to article 182bis, first paragraph. If not, article 162, second and third paragraphs apply.

After the application is filed and until the order referred to in article 163 is issued, the debtor may perform any act of extraordinary administration upon approval of the court, which may do so ex parte. During the same period, with effect from that date, the debtor may also carry out acts of ordinary administration. The claims of third parties, which may arise as a result of the acts lawfully done by a debtor, are pre-deductible pursuant to article 111.

With the decree referred to in the sixth paragraph, first sentence, the court requires the periodic disclosure requirements, including those relating to the financial management of the company. The debtor must provide these statements until the expiry of the time period. In case of breach of these obligations, article 162, second and third paragraphs apply.

The application referred to in paragraph six is inadmissible when the applicant files another application under that subsection within the two previous years, which was not followed by admission to the agreement procedure or the approval of the restructuring agreement.

Without prejudice to article 22, first paragraph, when proceedings are pending for a declaration of bankruptcy, the period referred to in the sixth paragraph of this article is to be sixty days, subject to extension for justified reasons, not later than an additional sixty days.

**Art. 162: Inadmissible Requests**

The court may grant the debtor a period not exceeding fifteen days to make additions to the plan and produce new documents.

If the court determines that none of the grounds referred to in article 160, first and second paragraphs, and 161, are present, it may, after hearing the debtor in chambers, by an order not subject to appeal, rule that the proposed agreement is unacceptable. In such cases, the court, on application by the creditor or at the request of the public authority, satisfied as to the existence of the conditions referred to articles 1 and 5, declare the bankruptcy of the debtor.

An appeal under article 18 is allowed against the bankruptcy decree. Along with the appeal an applicant may arguments as to the admissibility of the proposed agreement.

**Art. 163: Admission to the Procedure**

The court opens the agreement with creditors procedure if it does not proceed pursuant to article 162 first and second paragraphs by issuing an order not subject to appeal. Where there are different classes of creditors, the court shall order such a composition after verifying the fairness of the formation of different classes.
With the order referred to in the first paragraph, the court shall:

1. nominate a presiding judge for the proceedings;
2. order the convening of the creditors not later than thirty days from the date of the decision and set a time limit for the communication of this to the creditors;
3. appoint a judicial commissioner pursuant to articles 28 and 29;
4. set a period not exceeding fifteen days within which the applicant must deposit with the clerk of the court a sum equal to 50 percent of the costs that are presumed to be necessary for the entire process, or such other lesser sum, not less than 20 percent of such expenses, which is determined by the court.

On a proposal from the commissioner, the presiding judge may order that the amounts collected are invested in accordance with the provisions of article 34, first paragraph.

If the deposit is not made as required, the commissioner shall act in accordance with article 173, first paragraph.

**Art. 164: Decrees of the Presiding Judge**

The decrees of the presiding judge shall be subject to appeal pursuant to article 26.

**Art. 165: Judicial Commissioner**

The commissioner is, as regard to the exercise of his functions, a public official.

Articles 36, 37, 38 and 39 apply to the acts of the commissioner.

**Art. 166: Notification of the Decree**

The decree shall be published by the clerk pursuant to article. 17.

The court may also order the publication in one or more newspapers, as it may designate.

Article 88, second paragraph applies if the debtor owns real estate or other property subject to public registration.

**Chapter Two - Effects of the Agreement With Creditors Procedure**

**Art. 167: Administration of Assets During the Procedure**

During the agreement procedure, the debtor maintains possession of his property and the administration of the company under the supervision of the commissioner.

The loans (even in the form bill of exchange), settlements, compromises, alienation of immovable property, the granting of mortgages or liens, guarantees, waivers of claims, recognition of third party rights, cancellation of mortgages, refunds of liens, acceptances of
inheritance and donations, and generally acts in excess of the usual business made without
the written permission of the presiding judge are ineffective with respect to claims existing
before the agreement.

With the order provided for in article 163, or in a subsequent decree, the court may set a limit
value below which the authorization referred to in the second paragraph is not necessary.

Art 168: Effects of an Appeal

From the date of publication of the request in the commercial register, and until such time as
an order of approval of the agreement becomes final, creditors may not, under penalty of
nullity, initiate or continue enforcement actions and precautionary measures.

The limitations periods that would continue to run are tolled and do not expire.

Creditors cannot acquire rights of first refusal with respect to the effectiveness of competing
creditors, unless there is permission from a judge in the cases provided for in the preceding
article. Judicial mortgages recorded in the ninety days preceding the date of publication of
the application in the commercial register are ineffective with respect to claims existing before
the agreement.

Art. 169: Applicable Standards

Articles 45, 55, 56, 57, 58, 59, 60, 61, 62 and 63 apply as of the date of submission of the ap-
plication for an agreement with creditors.

Art. 169bis: Contracts in Progress

The debtor, in the application referred to in article 161, may request that the court or, after
the order approving the agreement, the presiding judge, to authorize him to dissolve the con-
tracts in progress at the time of submission of the application. On request of the debtor, the
court may authorize the suspension of the contract for not more than sixty days, renewable
once.

In such cases, the contractor is entitled to compensation equal to the damages resulting from
the contract's non-fulfillment. This credit is satisfied as if it pre-dated the agreement.

The termination of the contract does not extend to any arbitration clause contained in it.

The provisions of this article shall not apply to employment relationships and contracts re-
ferred to in articles 72, paragraph eight, 72ter and 80, first paragraph.
CHAPTER THREE - IMMEDIATE ACTION

Art. 170: Accounting Records
The presiding judge, immediately after the decree of admission to the agreement, shall note as much after the last writing in the accounting books presented.

The books are returned to the debtor, who must make them available to the presiding judge and the judicial commissioner.

Art. 171: Notice of Meeting of Creditors
The commissioner shall proceed to the verification of the list of creditors and debtors on the basis of accounting entries submitted in accordance with article 161, making any necessary adjustments.

The commissioner shall serve creditors by registered mail or telegram with a notice containing the date of the meeting of creditors and the debtor’s proposals.

When the notification referred to in the preceding paragraph is extremely difficult, due to the significant number of creditors, or difficulty in identifying them all, the court, after hearing the commissioner, may provide authorization as indicated in article 126.

If there are bondholders, the term, described in article 163, first paragraph, no. 2, should be doubled.

In any case, the notice to the bondholders shall be communicated to their common representative.

The provisions of Royal Decree February 8, 1924, n. 136 still apply to credit institutions.

Art. 172: Operations and Reports of the Commissioner
The commissioner shall establish an inventory of the debtor’s assets and a detailed report on the causes of the collapse, on the conduct of the debtor, on the proposed agreement and on the guarantees offered to creditors, and file it with the court at least three days before the meeting of creditors.

At the request of the commissioner, the court may appoint an assessor to assist in the evaluation of the assets.

Art. 173: Revocation of the Agreement and Declaration of Bankruptcy During the Procedure
The commissioner, if he finds that the debtor has concealed or hidden assets, intentionally failed to report one or more claims, asserted the existence of non-existent assets or committed other acts of fraud, must so report immediately to the court, which sua sponte opens proceedings for the revocation of the agreement, notifying the public prosecutor and creditors.

24 This is always in the original the pubblico ministero, except that here the penal connotation is correct.
Upon completion of the procedure, which takes place as set out in article 15, the court shall order by decree and, at the request of the creditor or at the request of the public authorities, make sure the conditions referred to in articles 1 and 5, declare the bankruptcy of the debtor while at the same time issuing a judgment to that effect which is appealable pursuant to article 18.

The provisions of the preceding paragraph shall also apply if the debtor, during the agreement procedure, takes unauthorized acts pursuant to article 167 or otherwise intends to defraud creditors, or if at any time it appears that he lacks the conditions for the eligibility of the agreement.

CHAPTER FOUR - THE FORMATION OF THE AGREEMENT WITH CREDITORS

Art. 174: Meeting of Creditors

The meeting of creditors is chaired by the presiding judge.

Any creditor may be represented by an agent with power of attorney. The power of attorney may be written without following any particular formalities on notice of the meeting.

The debtor, or his legal representative, must personally be present. Only in such a case where that presence is not possible may a special proxy represent the debtor. The presiding judge verifies the facts preventing appearance.

Co-debtors, guarantors and the co-debtors who are joint and severally liable may also intervene.

Art. 175: Discussion of the Proposed Agreement

At the meeting of creditors, the commissioner introduces the report and the final proposals of the debtor.

The proposed agreement cannot be changed after the start of the voting process.

Any creditor can explain the reasons for which it considers the proposal to be acceptable or unacceptable and raise objections to credits on the list of creditors.

The debtor has the right to respond and challenge credits, in turn, and has a duty to provide the court with any appropriate clarifications.

Art. 176: Provisional Admission of Disputed Claims

The judge may provisionally admit all or part of the disputed claims for the sole purpose of voting and calculation of majorities, without prejudice to the final determination on the existence of the credits.

Creditors may object to their exclusion from the agreement at the time it is being approved in the event that their admission would influence on the formation of the majority.
Art. 177: Majority for the Approval of the Agreement

Creditors representing the majority of the credits allowed to vote approve the agreement. Where there are different classes of creditors, the agreement is approved if the majority of classes approve the agreement.

Secured creditors, even if the warranty is contested, of which the proposed settlement provides for the payment in full, are not entitled to vote if they do not waive in whole or in part their pre-emptive right. If the secured creditors renounce in whole or in part to right to pre-emption, the portion of the claim not covered by the warranty shall be treated as an unsecured credit, the withdrawal shall take effect for the sole purpose of the agreement.

The creditors with right of first refusal, to which the proposed settlement provides, under article 160, an incomplete satisfaction, shall be treated as unsecured for the remainder of their credit.

The debtor’s spouse, family and relatives to the fourth degree, transferees of their interests within a year before the proposed agreement are excluded from the computation of the majority vote.

Art. 178: Additions to the Proposed Agreement

Yea and nays of the creditors with the names of the voters and the amount of their claims are inserted in the minutes of the meeting of creditors. The names of the creditors who did not exercise their right to vote and the amount of their claims are also included.

The presiding judge, the commissioner and the clerk shall sign the minutes.

If it is not possible to complete all the days business during the hearing, the presiding judge shall order an adjournment with the hearing to continue no later than eight days. Those not in attendance during the first hearing are notified of the second one.

Creditors, who have not exercised their vote, may submit their disagreement by telegram, letter, fax or email within twenty days after the end of the hearing. Those who fail to raise any objection are deemed to consent and as such are considered in the calculation of the majority of credits. The clerk shall record any expressions of dissent and assent, as covered by this paragraph, at the bottom of the minutes of the meeting.

Chapter Five - Approval and Implementation of the Agreement With Creditors; Debt Restructuring Agreements

Art. 179: Failure to Approve the Agreement

If within the prescribed period a majority is not reached as required by the first paragraph of article 177, the presiding judge shall report immediately to the court, which must act in accordance with article 162, second paragraph.
When the commissioner finds a change in the situation that alters feasibility of the plan after its approval by the creditors, he shall give notice to creditors, which can file a motion to be heard during the hearing referred to in article 180 in order to change their vote.

**Art. 180: Approval**

If the agreement has been approved pursuant to the first paragraph of article 177, the presiding judge reports to the court, which will fix a hearing in chambers to summon the parties and the judicial commissioner, providing that the order is published in accordance with article 17 and served, by the debtor, on the commissioner and on any dissenting creditors.

The debtor, the commissioner, any dissenting creditors and any interested party must file a notice of appearance at least ten days before the date of the hearing. In the same period, the commissioner must deposit his reasoned opinion.

If there are no proposals in opposition, the court, after verifying the correctness of the procedure and the outcome of the vote, shall approve the agreement by a reasoned decision not subject to appeal.

In the case of opposition, the court admits the evidence requested by the parties or that selected *sua sponte*, which may be done by delegating the procedure to one of the members of the panel. In the case referred to in the second sentence of the first paragraph of article 177, if a creditor belonging to a dissenting class or, in the event of failure to form a class, dissenting creditors representing 20 percent of the credits allowed to vote, contest the convenience of the proposal, the court may approve the agreement if it considers that the debt may be satisfied by the agreed amount is not less than any workable alternatives.

The court shall decide by a reasoned order, communicating to the debtor and to the commissioner, who shall give notice to the creditors. The decision is published in accordance with article 17 and is provisionally enforceable.

The amounts due on contested and conditional claims or to untraceable creditors are deposited in the manner prescribed by the court, which also sets out the terms and conditions for the release of the funds.

If the tribunal rejects the agreement, on motion of the creditor or of the public authorities, having determined the conditions referred to in articles 1 and 5, declare the bankruptcy of the debtor by separate judgment issued at the same time.

**Art. 181: Closure of Proceedings**

The agreement with creditors procedure ends with the decision approving the agreement in accordance with article 180. The approval must take place within six months of the submission of the application pursuant to article 161, the period may be extended only once by the court of sixty days.
Art. 182: Measures for the Transfer of Assets

If the agreement is based on the transfer of assets, and does not otherwise provide, the court appoints one or more liquidators in the approval decision and a committee of three or five creditors to assist in the liquidation and determine the methods of the liquidation.

Articles 28, 29, 37, 38, 39 and 116, apply mutatis mutandis to liquidators.

Articles 40 and 41 apply to the creditors’ committee mutatis mutandis. The court shall see to the replacement of members of the committee.

Sales of companies and branches of companies, real estate and other assets recorded in public records, transfer of activities and liabilities of the company, of assets or legal relations in blocks must be authorized by the creditors committee.

Articles 105 to 108ter apply mutatis mutandis.

Art. 182bis: Debt Restructuring Agreements

An entity in a state of crisis may request, by filing the documentation referred in article 161, the approval of an agreement on debt restructuring with creditors representing at least sixty percent of claims, together with a report by a debtor appointed professional in possession of the requirements of art. 67, third paragraph, letter d) on the accuracy of corporate data and on the viability of the agreement, with particular reference to its suitability to ensure full payment of creditors matter in accordance with the following terms:

a) within one hundred twenty days from the authorization, in the case of loans past due at that date;
   b) within one hundred twenty days after the deadline in the case of loans outstanding at the date of approval.

The agreement is published in the commercial register and shall take effect from the day of its publication.

From the date of publication and for sixty days thereafter, creditors with a title prior to that date cannot begin or continue precautionary or executive actions against the debtor’s assets, or acquire pre-emptive rights if not already agreed. Article 168, second paragraph applies.

Within thirty days after publication, creditors and any other interested party may file an opposition to the agreement. The court, in deciding on the opposition, approves the agreement in chambers by motivated decree.

The court order is appealable to the court of appeal pursuant to article 183, as applicable, within fifteen days after its publication in the commercial register.

The prohibition on beginning or continuing an execution measure or action as referred to in
the third subparagraph may also be required by the entity during the negotiations and before
the formalization of the agreement referred to in this article, by filing with the competent
court under article 9 the documentation referred to article 161, first and second subparagraphs
a, b, c and d, and a proposed agreement including a declaration of the entity, being self-cer-
tified and stating that the proposal is being negotiated with creditors representing at least
sixty percent of credits and a statement of the professional with the requirements of article
67, third paragraph, letter d, about the suitability of the proposal, if approved, to ensure full
payment of creditors with whom negotiations are in progress or which have expressed their
unwillingness to negotiate. The request for suspension referred to in this paragraph shall be
published in the commercial register and the effect of the prohibition of initiating or con tin-
uing execution measures or actions, as well as the prohibition on acquiring titles of first re-
fusal, if not agreed, from publication.

The court, satisfied as to the completeness of the documentation filed, sets a hearing within
thirty days from the filing of the motion referred to in the sixth paragraph and at the same
time orders notice to be given to creditors of the documentation. At the hearing, satisfied that
the conditions for reaching a debt restructuring agreement with the majority in the first para-
graph and the conditions for total payment of creditors with whom negotiations are in progress
or which have denied its willingness to negotiate are met, the court issues a reasoned decision
prohibiting the bringing or continuation of precautionary or executive actions and the acquisi-
tion of securities of pre-emption unless agreed, in assigning the term of sixty days for the
filing of the restructuring agreement and the relationship prepared by a professional in ac-
cordance with the first paragraph. The order referred to in the previous sentence is appealable
pursuant to the fifth paragraph as applicable.

The provisions of the second, third, fourth and fifth paragraphs apply following the filing of
an agreement on debt restructuring within the time limits prescribed by the court. If in the
same time period an application for an agreement with creditors is filed with the court, the
sixth and seventh subparagraphs are applied.

Art. 182ter: Transaction Tax

With the plan referred to in article 160, the debtor may propose payment, even partial, of the
taxes administered by the tax agencies and accessories, as well as assistance administered by
the managing bodies of forms of compulsory social security contributions and related acces-
sories, limited the share of debt with unsecured nature but not recognized on the court docket,
with the exception of unpaid taxes constituting resources of the European Union with regard
to value added tax and the withholding tax for which the proposal may only include an ex-
tension of the time for payment. If the tax credit or contribution benefits from privilege, per-
centage, time of payment and any assurances cannot be lower than those offered to the
creditors who have a lower level of privilege or those who have a legal position and economic
interests consistent with those agencies and management bodies of compulsory social security
contributions, and if the tax credit unsecured or contributory in nature, the treatment can not
be differentiated from that of the other unsecured creditors or, in the case of division into
classes of creditors with respect to which there is a more favorable treatment.
For the purposes of the proposed agreement on tax receivables, a copy of the application and accompanying documentation, together with the filings with the court, must be filed with the competent national collection service licensee and the relevant department on the basis of the debtor’s last fiscal domicile, together with copies of tax returns which have not resulted in automatic controls as well as the supplementary declarations for the period up to the date of application in order to allow the consolidation of tax debt. The licensee, not later than thirty days from the date of filing, must submit to the debtor a certification stating the amount of debt registered whose time for payment has expired or been suspended. The office, at the same time, must settle the taxes resulting from the statements and the reporting of notices of irregularities, together with a certificate showing the amount of debt resulting from acts of investigation, although not definitive, that has not been placed on the court calendar, as well as those authenticated but not delivered to the dealer. After the issuance of the decree referred to in article 163, copies of the irregularities and certification shall be submitted to the commissioner for judicial obligations provided for in article 171, first subparagraph, and article 172. In particular, the taxes administered by the customs agency, the competent office to receive a copy of the application and related documents referred to in the first sentence and to issue the certificate referred to in the third sentence, are identified by the office that has served the debtor with acts of assessment.

The office, at the same time, must settle the taxes resulting from the statements and the reporting of notices of irregularities, together with a certificate showing the amount of debt resulting from acts of investigation, although not definitive, for the not been placed on the court calendar, as well as those authenticated but not delivered to the dealer. After the issuance of the decree referred to in article 163, copies of the irregularities and certification shall be submitted to the commissioner for judicial obligations provided for in article 171, first subparagraph, and article 172. In particular, for the taxes administered by the customs agency, the competent office to receive a copy of the application and related documents referred to the first sentence and to issue the certificate referred to in the third sentence, are identified by the office that has served the debtor with acts of assessment.

With regard to taxes not placed on the court calendar, which is not yet delivered to the dealer with the national collection at the date of submission of the application, membership or denial to the proposed settlement is approved by an act of the director, with the assent of the competent regional directorate, and is expressed by affirmative or negative vote in the meeting of creditors, or in the manner prescribed in article 178, first paragraph.

With regard to taxes placed on the court calendar and already delivered to the dealer with the national collection at the date of submission of the application, the office shall arrange to deliver the vote in the meeting of creditors, as indicated by the director, in accordance with the prior opinion of the competent regional directorate.

The closing of the agreement procedure pursuant to article 181 causes the cessation of litigation in disputes relating to the taxes referred to in the first subparagraph.

The debtor may make a proposal referred to in the first subparagraph during negotiations leading up to the stipulation of the restructuring agreement referred to in article 182bis.
The proposed transaction tax, together with the documents referred to in article 161 shall be deposited at the offices indicated in the second paragraph, which carry out the transmission and settlement therein. The proposed settlement must also be accompanied by the declaration replacement by the debtor or his legal representative in accordance with article 47 of the Decree of the President of the Republic December 28, 2000, n. 445, that the documentation referred to in the preceding sentence sets out exactly and completely the situation of the company, with particular regard to assets. Within thirty days of the consent to the proposed settlement consent is expressed in relation to taxes that have not been placed on the court calendar, or not yet delivered to the dealer with the national collection at the date of submission of the application, by an application from the director, subject to agreement the competent regional directorate, and in relation to taxes recognized for collection and already delivered to the dealer with the national collection at the date of submission of the application, by application of the dealer on the recommendation from the director, in accordance with the prior opinion of the competent directorate-general. The consent so expressed is equivalent to signing of the restructuring agreement.

The tax settlement concluded under the restructuring agreement referred to article 182bis of law shall be revoked if the debtor does not perform in full within 90 days from the due date, the payments due to tax agencies and managing bodies of forms security and assistance are obligatory.

Art. 182quarter: Provisions Regarding the Admissibility of Credits in the Agreement, in Debt Restructuring Agreements

Receivables arising from loans in all forms in performance of an agreement referred to in article 160 and following, a debt restructuring agreement approved pursuant to article 182bis, are pre-deductibles for the purposes of article 111.

Claims arising from loans in relation to the submission of the application for admission to the agreement procedure or application for approval of the restructuring of debts are considered as being equivalent to the claims referred to in the first paragraph if funding is provided by the plan referred to in article 160 or restructuring agreement and provided that the pre-destruction is expressly stipulated in the order in which the court shall grant the application for admission to the agreement or the agreement is approved.

Notwithstanding articles 2467 and 2497-d of the civil code, the first and second paragraphs of this article shall also apply to loans made by shareholders up to 80 percent of their total amount. The first and second paragraphs apply when the lender has acquired the status of partner in execution of debt restructuring or agreement.

With reference to loans referred to in the second paragraph of the creditors, even if members are excluded from voting and the counting of majorities to approve the agreement pursuant to article 177 and the calculation of the percentage of the credits provided in article 182 - a first and sixth paragraph.
Art. 182quinquies: Provisions on Financing and Business Continuity in the Agreement and debt Restructuring Agreements

A debtor who has, pursuant to article 161, sixth paragraph, an application for admission to an agreement with creditors or an application for approval of an agreement on debt restructuring pursuant to article 182bis, first paragraph, or a proposal agreement pursuant to article 182bis, sixth paragraph, requested the court for authorization, even ex parte, to obtain financing, pre-deducible pursuant to article 111, if a debtor designated professional in possession of the requirements of article 67, third paragraph, letter d, verified the total financial needs of the company in the time leading up to the approval certifies that these loans are functional to the best satisfaction of creditors.

The authorization referred to in the first subparagraph may also cover funding identified only by type and size, and not yet subject to negotiation.

The court may allow the debtor to grant a lien or mortgage as security for the same funding.

A debtor who applies for admission to the agreement with business continuity, even under art. 161, sixth paragraph, request the court to be authorized, taken where appropriate summary information, to pay claims prior to performance of goods or services if a professional meeting the requirements referred to art. 67, third paragraph, letter d), states that these services are essential for the continuation of business activities and functional to ensure the best satisfaction of creditors. The attestation of the professional is not required for payments made up to the amount of new funds that are made to the debtor without obligation to return or repayment obligation subordinated to the satisfaction of the creditors.

The debtor who submits an application for approval of a debt restructuring agreement pursuant to article 182bis, first paragraph, or a proposed agreement pursuant to article 182bis, sixth paragraph, may request the court for authorization, if the conditions referred to in the fourth paragraph are satisfied, to pay prior claims for the provision of goods or services. In this case, the payments are not subject to revocation pursuant to article 67.

Art. 182sexies: Reduction or Loss of the Company’s Capital in Crisis

From the date the application for admission to the courts is filed in accordance with article 161, sixth paragraph, the application for approval of the restructuring agreement referred to article 182bis of the proposed agreement or pursuant to the sixth paragraph of that article and until its approval, articles 2446, second and third paragraphs, 2447, 2482bis, paragraphs fourth, fifth and sixth, and 2482ter of the civil code do not apply.

For the same period the provisions on the dissolution of a company for loss or reduction of capital referred to in articles 2484, n. 4, and 2545-k of the civil code do not apply. Nonetheless, for the period prior to the filing of applications and the proposal referred to in the first subparagraph, article 2486 of the civil code applies.
Art. 183: Appeal Against Approval Decisions

The approval decision can be appealed to the court of appeal, which decides in chambers.

With the same appeal the party can impugn the bankruptcy decree, simultaneously issued in accordance with article 180, paragraph seven.

Art. 184: Effects of the Agreement on Creditors

The approved agreement shall be binding on all creditors prior to its publication in the commercial register as referred to in article 161.

However, creditors retain without prejudice their rights against co-debtors, guarantors of the debtor and other joint and severally liable debtors.

Unless otherwise agreed, the agreement is effective also for unlimited liability partners.

Chapter Six - Performance, Resolution and Cancellation of the Agreement

Art. 185: Execution of the Agreement

Following approval of the agreement, the commissioner shall supervise its execution in the manner determined by the approval order. The commissioner must report to the court any fact which may cause injury to creditors.

The second paragraph of article 136 applies.

Art. 186: Resolution and Termination of the Agreement

Individual creditors may request the termination of the agreement for non-performance.

The agreement cannot be terminated if the breach is of minor importance.

The action for the termination must be filed within one year after the expiry of the deadline for the final fulfillment of the agreement.

The foregoing provisions shall not apply where the obligations under the agreement have been transferred to a third party with immediate release of the debtor.

The provisions of articles 137 and 138 apply, mutatis mutandis, the judicial commissioner taking the place of the trustee.

Art. 186bis: Agreement with Continuation of Activity

When the plan agreed to, as referenced in article 161, second paragraph, letter e, provides for the continuation of the business by the debtor, the sale of the company or the division of
the company into one or more entities, including new entities, the provisions of this article apply. The plan may also provide for the liquidation of non-functional assets of the company.

In the cases provided for in this article:

a) the plan referred to in article 161, second paragraph, letter e, shall also contain an analytical indication of the costs and revenues expected from the continuation of the business provided in the plan, the necessary financial resources and the manner of covering those costs;

b) the relationship of the professional referred to in article 161, third paragraph, should state that the continuation of the business provided in the agreement is functional to the best satisfaction of creditors;

c) the plan may provide, subject to the provisions of article 160, second paragraph, a moratorium of up to one year from the approval for the payment of creditors with privilege, pledge or mortgage, unless the expected liquidation of assets or rights on which there is a case of first refusal.

In this case, the creditors with grounds for refusal referred to in their previous sentence are not entitled to vote.

Subject to the provisions of article 169bis, contracts in progress at the date of filing of the application, also signed with governments, cannot be terminated due to the opening of the procedure. Contrary agreements are ineffective. Admission to the agreement does not prevent the continuation of public contracts if the professional designated by the debtor referred to in article 67 has certified compliance with the plan and the reasonable ability to fulfill them. The assignee or transferee also the business or businesses whose contracts are transferred may benefit from this continuation provided that the conditions of the law are present. The judge appointed at the time of sale or transfer orders for the deletion of entries and transcripts.

Admission to the agreement does not preclude participation in procedures for the award of public contracts, when the company makes a bid:

a) when a report of a professional meeting the requirements of article 67, third paragraph, letter d, which certifies compliance with the plan and the reasonable ability to perform the contract;

b) the statement of another operator in possession of the general financial capacity, technical, economic and certification required for the award of the contract, which it has committed against the competitor and the awarding body to put available, for the duration of the contract, the resources necessary for performance of the contract and take over the helped company this fails during the race or after conclusion of the contract, or for any reason is not able to give regular performance contract. The provisions of Article 49 of Legislative Decree 12 April 2006, n. 163.

Subject to the provisions of the preceding paragraph, the company in an agreement procedure may also participate in temporary groups of companies, provided they are not acting in the capacity as an agent and if the other member companies of the group are not subject to a bankruptcy proceeding. In this case, the declaration referred to in the fourth paragraph, letter b,
can also come from an operator belonging to the group.

If in the course of a procedure initiated pursuant to this article the exercise of the business ceases or is clearly detrimental to the creditors, the court shall act in accordance with article 173. It does not affect the right of the debtor to modify the proposed settlement.

**TITLE FOUR – ON CONTROLLED ADMINISTRATION**

[Repealed]

**TITLE FIVE – MANDATORY ADMINISTRATIVE LIQUIDATION**

**Art. 194: Standards**

The mandatory administrative liquidation is governed by the provisions of this title, unless the special laws provide otherwise.

The provisions of special laws, which are incompatible with articles 195, 196, 200, 201, 202, 203, 209, 211 and 213 are hereby repealed.

**Art. 195: Judicial Assessment of the State of Insolvency Prior to the Mandatory Administrative Liquidation**

If a company subject to mandatory administrative liquidation with the exception of a bankrupt in default, the court of the place where the company has its headquarters at the request of one or more creditors, or of the authority supervising the company or the company itself, declaring bankruptcy. The transfer of the headquarters of the company occurring in the year prior to the opening of the proceedings is not relevant for the purpose of deciding on competence.

The same decision or decree shall take the following protective measures when it seems appropriate in the interest of the creditors until the beginning of the liquidation.

Before issuing its order the court must hear the debtor, in the manner set out in article 15, and the governmental authority exercising supervision over the company.

The order shall be served within three days, in accordance with article 136 of the code of civil procedure, on the public authority for the liquidation. It shall, moreover, be displayed and published in the manner and within the time limits established for the adjudication of bankruptcy. Any interested party may appeal the order in accordance with articles 18 and 19.

The court may dismiss the action for declaration of bankruptcy by a reasoned decision. An appeal may be filed against the decree pursuant to article 22.

The court issues an insolvency decree on application by the commissioner in accordance with this article when in the course of the agreement a company subject to mandatory administrative liquidation, but not bankruptcy, the procedure ends and results in insolvency. The procedure provided for in the third paragraph applies.

The provisions of this article do not apply to public bodies.
Art. 196: Conflicts Between Bankruptcy and Mandatory Administrative Liquidation

For companies subject to mandatory administrative liquidation, for which the law does not preclude the bankruptcy proceedings, the bankruptcy decree precludes mandatory administrative liquidation and the order for mandatory administrative liquidation precludes a declaration of bankruptcy.

Art. 197: Winding-up Order

The liquidation order is published within ten days from its issuance by the relevant authority in the Official Gazette of the Italian Republic and is communicated to the office of the registrar of companies, without exclusion of other forms of notice placed in the measure.

Art. 198: Organs of Mandatory Administrative Liquidation

A liquidator is appointed in the liquidation order or by a subsequent order. A monitoring committee of three or five members composed of persons who are particularly skilled in the type of activity exercised by the company, possibly among the creditors, is also appointed.

When the conditions of the company so require, three commissioner liquidators may be appointed. In this case they act by a majority, and the representation is carried out jointly by two of them. In the liquidation of cooperatives the appointment of the Monitoring Committee is optional.

Art. 199: Responsibility of the Appointed Liquidator

The liquidator is, as regards the exercise of its functions, a public official.

Actions against a former liquidator for damages are proposed by the new liquidator with the consent of the authority supervising the liquidation.

The provisions of articles 32, 37 and 38, first paragraph, apply with the substitution of the authority overseeing the liquidation for the presiding judge and the court.

Art. 200: Effects of the Winding-up Order for the Company

Articles 42, 44, 45, 46 and 47 apply from the date of the decision ordering the liquidation and if the company is a company or a legal person ceases the functions of the assemblies and of the administrative and control, except in cases provided for by article 214.

Art. 201: Effects of Liquidation for Creditors and Pre-Existing Legal Relations

The provisions of Title II, Chapter III, Section II and Section IV and the provisions of art. 66 apply from the date of the decision ordering the liquidation.

The powers of the court and the presiding judge are replaced by the administrative authority which oversees the liquidation, the powers of the curator are given to the liquidator and those of the creditors’ committee are assumed by the monitoring committee.
Art. 202: Judicial Assessment of the State of Insolvency

If the business was insolvent at the time liquidation was ordered and this has not previously been declared in accordance with article 195, the court of the place where the company has its headquarters, on the application of the liquidator or at the request of the public authority, finds the state of bankruptcy by an order issued in chambers, even if the payment has been ceased for insufficiency of assets.

Article 195, second, third, fourth, fifth and sixth apply.

Art. 203: Ascertaining the Legal State of Insolvency

The provisions of Title II, Chapter III, Section III, with regard to partners with unlimited liability, are applicable with effect from the date of the decision ordering the liquidation in accordance with articles 195 or 202.

The exercise of rights of revocation of acts in fraud of creditors rests with the liquidator.

The liquidator shall submit a report to the lead prosecutor of the Italian Republic in accordance with the provisions of article 33, first paragraph.

Art. 204: Appointed Liquidator

The liquidator carries out all his operations under direction of the supervising authority, and under the supervision of the monitoring committee.

He takes delivery of the goods included in the liquidation, the accounting records and other documents, and requiring, where appropriate, the services of a notary.

The liquidator then compiles an inventory, appointing if necessary, one or more assessor for the valuation of assets.

Art. 205: Report of the Commissioner

The individual or, if the firm is a company or a legal person, the directors must give the liquidator an accounting for the last business cycle.

The commissioner shall be exempted from the annual budget form, but must submit at the end of each semester to authority which oversees the liquidation a report on the financial position of the company and on operations accompanied by a report of the monitoring committee.

Art. 206: Powers of the Commissioner

Liability actions against the directors and members of boards of control of the company in liquidation, pursuant to articles 2393 and 2394 of the civil code, shall be exercised by the liquidator, with the approval of the supervising authority.

For the adoption of measures foreseen by article 35, insofar as they are of indeterminate value or worth more than € 1,032.91 and for the continued operation of the commission, must be authorized by the above-mentioned body, which shall hear the monitoring committee.
Art. 207: Notice to Creditors and Third Parties

Within one month of the appointment, the commissioner shall notify each creditor by registered letter with acknowledgment of receipt of the sums shall be credited to each according to records and documents of the company. The communication is made subject to any objections.

A similar notification will be made to those who have paid application claims, surrendered and separated movable property owned by the company.

Within fifteen days of receipt of the notice, creditors and other persons mentioned in the preceding paragraph may submit to the commissioner by registered mail their observations or motions.

Art. 208: Motions of Creditors and Third Parties

Creditors and other persons mentioned in the previous article that did not receive the notice provided for in that article by registered mail, within sixty days after publication in the Official Journal of the order of liquidation, are entitled to the recognition of their claims and restitution of their property.

Art. 209: Formation of the List of Creditors

Unless the special laws establish a longer term, within ninety days from the date of the winding-up order, the commissioner will compile a list of claims allowed or rejected and the questions mentioned in the second paragraph of article 207 accepted or rejected, and deposited at the clerk of the court for the place where the company has its headquarters, giving notice by registered letter with acknowledgment of receipt to those whose claim is not allowed in whole or in part. Once filed with the registry, the list can be enforced.

The appeals, late applications for claims and requests for the return of property are governed by articles 98, 99, 101 and 103, the investigating judge being replaced by the presiding judge and the curator being replaced by the appointed liquidator.

This is without prejudice to provisions of special laws relating to the establishment of unsecured claims in the liquidation of a company carrying on credit.

Art. 210: Liquidation of Assets

The commissioner has all the powers necessary for the liquidation of assets, subject to the restrictions laid down by the authority monitoring the settlement.

In any case, the sale of the property and the sale of movables in blocks, needs a permit from the body overseeing the liquidation and the opinion of the monitoring committee.

In the case of a company with limited partners the president of the court may, on the proposal
of the liquidator, order a decree to the limited partners and the previous owners of the units or shares perform unpaid, although it is not expired deadline for payment.

Art. 211: Company with Limited or Unlimited Liability Subsidiary of the Members

[Repealed]

Art. 212: Asset Allocation

The amounts derived from the liquidation of the assets are distributed according to the order laid down in article 111.

Subject to the opinion of the monitoring committee, and with the authorization of the authority which oversees the liquidation, the commissioner may distribute assets on an interim or partial basis to all the creditors and to certain categories of them even before they are carried out all the activities and assessed all liabilities.

Late applications for the admission of credits or for the recognition of property rights does not affect the breakdowns that have already occurred, and can be relied on amounts not yet distributed, the prescriptions of article 112.

To partial allocations apply the provisions of article 113.

Art. 213: Close of Liquidation

Before the last distribution to creditors, the final budget settlement with regard to the management and distribution plan among creditors, accompanied by a report of the monitoring committee, must be submitted to the authority which oversees the liquidation, which then authorizes the filing with the clerk of court and the compensation to the commissioner.

The filing by the liquidator shall be communicated to the creditors admitted to the proceedings as liabilities and privileged creditors in the manner provided in article 26, third paragraph, and is reported via insertion in the Official Gazette and in newspapers designated by the authority which oversees the liquidation.

Interested parties may submit their objections to the court within a period of twenty days following the communication made by the commissioner under the first paragraph for the creditors and the insertion in the Official Gazette for every other interested party. The objections are communicated by the clerk to the authority that oversees the liquidation, the liquidator and the monitoring committee, who within twenty days may file the responses with the court clerk. The court shall issue an order on the objections chambers. Article 26 applies, mutatis mutandis.

Once the deadline for objections has passed without objection, the budget, the revenue and expenditure account and the distribution plan are approved, and the commissioner shall distribute the final allocations among creditors. Articles 117, and articles 2495 and 2496 of the civil code apply.
Art. 214: Agreement

The authority which oversees the liquidation, on the opinion of the commissioner, after hearing the monitoring committee, can authorize the company in liquidation to propose to one or more creditors or third party an agreement in accordance with article 124, or article 152 if the debtor is company.

The proposed agreement once filed with the court, on the opinion of the liquidator and the monitoring committee, served by the commissioner to all creditors accepted on the list of creditors in the manner prescribed by article 26, third paragraph, and published in the Official Gazette by the insertion and filing with the registrar of companies.

Creditors and other interested parties may submit their objections to the court within a period of thirty days following the communication made by the commissioner for creditors and execution of formalities advertising referred to in the second paragraph to any other person concerned.

The court, after hearing the opinion of the authority which oversees the liquidation, shall rule on objections and the proposal for a decree agreed in closed session. The provisions of articles 129, 130 and 131 shall apply mutatis mutandis.

The effects of the agreement are governed by article 135.

The liquidator with the assistance of the monitoring committee shall monitor the implementation of the agreement.

Art. 215: Resolution and Cancellation of the Agreement

If the agreement is not executed, the court, on the application of the liquidator or of one or more creditors, issues a decision in chambers providing for the resolution of the agreement. The provisions of the second to sixth paragraphs of article 137 apply.

At the request of the commissioner or creditors, the agreement can be canceled in accordance with article 138.

Terminated or cancelled agreements reopen the administrative liquidation and authority that monitors settlement take the measures it seems necessary.

Title Six – Penal Provisions

Chapter One - Crimes committed by the Bankrupt

Article 216: Fraudulent Bankruptcy

A person who commits any of the following shall be punished with imprisonment from three to ten years:

1. removed, hidden, concealed, destroyed or dissipated in all or part of its assets or, for
the purpose of harm to creditors, exhibited or liabilities recognized non-existent;
2 has stolen, destroyed or falsified, in whole or in part, in order to obtain for himself or
others an unjust profit or to cause prejudice to the creditors, the books or other records
or kept them in such a way as not to make possible the reconstruction of the assets or
business of the movement.

The same penalty applies to an individual who has been declared bankrupt, which, during
the bankruptcy proceedings, commits one of the offenses punishable by n. 1 of the preceding
paragraph or removes, destroys or falsifies the books or other records.

Those who, before or during the bankruptcy proceedings, in order benefit themselves, to the
detriment of creditors, who executes payments or simulates titles granting the right of pre-
emption shall be punished by imprisonment for one to five years.

Prejudice to any other accessory penalties, referred to in chapter III of title II of book I of the
penal code, the conviction of any of the events referred to in this article includes the ten-year
disqualification exercise of a commercial enterprise and the inability for the same duration
for performing executive at any company.

Article 217: Simple Bankruptcy

An individual who is declared bankrupt shall be punished with imprisonment from six months
to two years, if, apart from the cases provided for in the preceding article they have:

1 made family or personal expenses that were excessive in relation to his economic con-
dition;
2 consumed a considerable portion of its assets in operations of pure chance or manifestly
unreasonable;
3 delayed the bankruptcy declaration by grave incompetence;
4 aggravated their distress by refraining from requesting the bankruptcy decree or by
other serious fault;
5 failed to fulfill the obligations assumed in a previous agreement with creditors or ban-
kruptcy.

The same penalty applies to the bankrupt that during the three years prior to the declaration
of bankruptcy or the start of business, if it has had a shorter duration, has not kept the books
and other records required by law or them kept in an irregular or incomplete.

Prejudice to any other accessory penalties provided for in chapter III of title II of book I of
the penal code, the condemnation matter disqualification exercise of a commercial enterprise
and the inability to exercise managerial positions at any company with up to two years.

Article 217bis: Exemptions from the Bankruptcy Offenses

The provisions of article 216, third paragraph, and 217 shall not apply to payments and tran-
sactions made pursuant to agreements referred to in article 160 or a debt restructuring agree-
ment approved pursuant to article 182 or a plan referred to in article 67, third subparagraph, point d, as well as payments and financing operations authorized by the court in accordance with article 182d.

**Article 218: Misuse of Credit**

Directors, general managers, liquidators and entrepreneurs and business operators who use or continue to use the credit, even outside the cases referred to in previous articles, hiding the failure or insolvency shall be punished with imprisonment from six months to three years.

The penalty is increased in the case of companies subject to the provisions of chapter II, title III, part IV, of the consolidated provisions on financial intermediation, pursuant to Legislative Decree 24 February 1998, n. 58, as amended.

Prejudice to any other accessory penalties provided for in book I, title II, chapter III of the penal code, the condemnation matter disqualification exercise of a commercial enterprise and the inability to exercise managerial positions at any company with up to three years.

**Article 219: Aggravating and Mitigating Circumstances**

The penalties are increased by up to half in the event that the facts set out in articles 216, 217 and 218 have caused a loss of considerable gravity, they shall determine.

The penalties laid down in these Articles are increased:

1. if the offender has committed multiple of those acts listed above;
2. if the guilty person could not exercise a commercial enterprise because of a statutory prohibition.

In the event that the facts stated in the first paragraph have caused a loss of less gravity, the penalties are reduced by up to one third.

**Article 220: Complaint of Non-existent Creditors and Other Insolvencies by the Bankrupt**

Any bankrupt who, apart from the cases provided for in article 216, on the list of creditors provides names of nonexistent creditors or fails to disclose the existence of other assets to include in the inventory, or fails to comply with the obligations imposed by article 16, nn. 3-49 shall be punished with imprisonment from six to eighteen months.

If this was done intentionally, imprisonment may be extended up to one year.

**Article 221: Summary Bankruptcy Proceedings**

If a bankrupt applies for the summary proceedings the penalties provided in this chapter shall be reduced by up to one third.
Article 222: Bankruptcy of Partnerships and Limited Partnerships

In the case of bankruptcy of partnerships and limited partnerships, the provisions of this chapter shall apply to acts committed by members with unlimited liability.

Chapter Two - Offenses Committed by Persons Other Than the Bankrupt

Article 223: Fraudulent Bankruptcy

The sanctions provided for in article 216 apply to directors, general managers, auditors and liquidators of companies declared bankrupt, who have committed any of the offenses punishable in that article.

The first paragraph of article 216 apply to persons named above, if:

1. have caused, or contributed to cause the collapse of society, by committing any of the offenses referred to in articles 2621, 2622, 2626, 2627, 2628, 2629, 2632, 2633 and 2634 of the civil code;
2. have caused intentionally or as a result of the fraudulent bankruptcy of the company operations.

The provision of the last paragraph of article 216 shall also apply in every case.

Article 224: Simple Bankruptcy

The sanctions provided in article 217 apply to directors, general managers, auditors and liquidators of companies declared bankrupt, such as:

1. have committed any of the offenses punishable in that article;
2. have combined to cause or exacerbate the instability of the company with breach of the obligations imposed upon them by law.

Article 225: Misuse of Credit

The sanctions provided in article 218 apply to directors and general managers of companies declared bankrupt, who committed the act provided for therein.

Article 226: Complaint of Non-Existent Creditors

The sanctions provided in article 220 apply to directors, general managers and liquidators of companies declared bankrupt, who committed the facts described therein.

Article 227: Crimes Committed by Agents

The agent of an entity declared bankrupt which was entrusted with management is guilty of the offenses punishable by articles 216, 217, 218 and 220 is subject to the penalties set out in these.
Article 228: Private Interest of the Trustee in the Bankruptcy Proceedings

Except when articles 315, 317, 318, 319, 321, 322 and 323 of the penal code are not applicable, the trustee who takes interest in any act of a bankrupt, directly or through an intermediary or simulated acts shall be punished with imprisonment from two to six years and a fine of not less than € 206.

The sentence disqualifies him from holding public office.

Article 229: Acceptance of Remuneration

The bankruptcy trustee who receives or agrees to a payment, in cash or otherwise, in addition to the wound in his favor by the court or presiding judge, shall be punished with imprisonment from three months to two years and a fine of € 103 to € 516.

In most severe cases, the sentence can add temporary incapacitation to hold administrative office for a period of not less than two years.

Article 230: Delivery or Failure to Store Bankruptcy Assets

The trustee who does not comply with the order of the judge to deliver or deposit money or other bankruptcy asset, he holds because of his office, shall be punished with imprisonment up to two years and a fine of up to € 1,032.

If the offense is to intentional, the penalty is increased to imprisonment up to six months or a fine of up to € 309.

Article 231: Accomplices of the Trustee

The provisions of articles 228, 229 and 230 shall also apply to persons who assist the trustee in the administration of bankruptcy.

Article 232: Applications for Admission of False Credits

Anyone outside the cases of aiding and abetting bankruptcy or anyone who submits an application for admission to the insolvency of a credit fraudulently simulated shall be punished by imprisonment for one to five years and a fine ranging from € 51 to € 516.

If the application is withdrawn prior to the verification of the liabilities, the penalty is reduced by half.

The following are punished by imprisonment for one to five years who:

1. anyone who after the declaration of bankruptcy, except in cases of competition in bankruptcy or aiding, substracts, distracted, recipe or in public or private statements concealing the assets of the bankrupt;
2 anyone, who while aware of the state of collapse of the business, receives merchandise or other goods of the same or purchases them at the price considerably lower than the current value, if the bankruptcy occurs.

The penalty, in the cases provided for in paragraphs. 1 and 2, is increased if the purchaser is an entrepreneur who pursues a commercial.

**Article 233: Vote Selling**

The lender who makes a deal with the bankrupt or other interested parties in the bankruptcy for their vote in the composition or in the deliberations of the creditors’ committee, shall be punished with imprisonment from six months to three years and a fine of not less to € 103.

The amount received by the creditor or things are confiscated.

The same penalty applies to the bankrupt and those who have contracted with the interests of the creditor failed.

**Article 234: Abusive Exercise of Business**

Anyone carrying out a commercial enterprise, although he is unable to do so due to a state of incapacitation to exercise resulting from a criminal conviction, shall be punished with imprisonment up to two years and a fine of not less than € 103.

**Article 235: Failure to Forward the List of Protest Notes**

The public officer with the ability to raise protests notes that, without justification, fails to submit within the prescribed period to the president of the court lists of protest bills for non-payment, or send incomplete lists, shall be punished with fine from € 258 to € 1,549.

The same penalty applies to the public authority of the clerk within the prescribed period does not transmit a list of declarations of refusal to pay in accordance with Article 13, second paragraph, or send an incomplete list.

**CHAPTER THREE - PROVISIONS APPLICABLE IN THE CASE OF AGREEMENT WITH CREDITORS, DEBT RESTRUCTURING AGREEMENTS, CERTIFIED PLANS AND MANDATORY ADMINISTRATIVE LIQUIDATION**

**Article 236: Agreement with Creditors**

A person, who, for the sole purpose of admission to the composition procedure falsifies any non-existent activity to influence the formation of the majority, or faked credits, shall be punished by imprisonment for one to five years.

In the case of the courts shall apply:

1 the provisions of articles 223 and 224 to administrators, directors, auditors and liquida-
tors of companies;
2 the provision of article 227 regarding farmers;
3 the provisions of articles 228 and 229 to the commissioner of the agreement;
4 the provisions of articles 232 and 233 apply to creditors.

Article 236bis: False Statements and Reports

The professional that in reports or certificates referred to articles 67, third paragraph, letter d, 161, third paragraph, 182-a, 182-d and 186-bis exposes false information or omits to report relevant information, shall be punished with imprisonment from two to five years and a fine of 50,000 to 100,000 euro.

If the offense is committed in order to achieve an unfair advantage for himself or for others, the penalty is increased.

If the act results in a damage to creditors the penalty is increased by up to half.

Art. 237: Mandatory Administrative Liquidation

The judicial determination of insolvency in accordance with articles 195 and 202 is equivalent to the declaration of bankruptcy for the purposes of applying the provisions of this title.

In the case of mandatory administrative liquidation, the procedure and the provisions of articles 228, 229 and 230 apply to the liquidator and the people who assist him in the administration of the estate.

CHAPTER FOUR - PROCEDURAL PROVISIONS

Article 238: Prosecution for Bankruptcy Related Offenses

For the offenses referred to in articles 216, 217, 223 and 224 of the criminal prosecution is exercised after the notification of the judgment declaring bankruptcy in article 17.

Actions may be brought even earlier in the cases provided for by article 7 and in every other case where serious reasons exist to believe that there already exists or is simultaneously submitted a bankruptcy petition.

Article 239: Arrest Warrant

[Repealed]

Article 240: Civil Parties

The trustee, the court appointed liquidator and the commissioner may bring a civil action in the criminal proceedings for offenses provided in this title, including those against the bankrupt.
Creditors may bring a civil action in the criminal proceedings for bankruptcy when there is no constitution of the trustee, the court appointed administrator or liquidator or where they intend to claim a title of their own personal action.

**Article 241: Rehabilitation**

The rehabilitation of the bankrupt extinguishes the offense of simple bankruptcy. If there is no condemnation, it puts an end to the execution and effects.

**Title Seven – Transitional Provisions**

**Article 242: General provision**

The effects of the bankruptcy decree issued before the entry into force of this decree shall be governed by the laws in force at the time.

However, the forms of the procedure laid down in this decree shall also apply to bankruptcy proceedings in progress, subject to the following articles.

Acts made before this law was issued retain their effectiveness if they were valid according to the rules at the time.

**Article 243: Representative of the Heirs**

In bankruptcy procedures already in course, the representative of the heirs pursuant to article 12, the second paragraph shall be appointed within fifteen days after the entry into force of this decree.

**Article 244: Bankruptcy Decree**

The opposition to the bankruptcy decree delivered before the entry into force of this decree shall be governed by the laws in force at the time.

The appeal against the decision rejecting the petition in bankruptcy is governed by the new provisions, provided that the case involving not already been assigned to judgment.

**Article 245: Deposit of the Sums Collected**

The trustee, within thirty days from the date of entry into force of this decree, shall ensure, in accordance with article 34 for deposits of amounts made before that date.

**Article 246: Orders of the Presiding Judge**

Complaints against the decisions of the presiding judge shall be governed by the new provisions, provided that the judgment on appeal has not already been scheduled for release.
Article 247: Delegation of Creditors

In a bankruptcy already in course, the current delegations of creditors already established remain in office. However, if it’s necessary to replace one or more members thereof, the provisions of article 40 shall apply.

Article 248: Provisional Operation

The provisions of article 90 also apply on a provisional exercise of a bankrupt’s business on the date of entry into force of this decree.

Article 249: Retroactive Decisions

For bankruptcies declared before the entry into force of this decree, the judgment for the determination of the date of cessation of payments and the opposition against the judgment determining that date shall be governed by the laws front, subject to compliance with article 265.

Article 250: Establishing Liabilities

The procedure for establishing liabilities, when the verbal verification of credits has been closed before the entry into force of this decree, continues according to previous norms.

For bankruptcies declared before the date of entry into force of this decree, the questions of claim, separation or restitution of movable property the preceding provisions shall apply.

Article 251: Late Applications and Requests for Revision

If proceedings on late applications for the admission to the list of creditors or motions for revision against claims allowed and related causes are in course and not already assigned to judgment, the court by order puts the parties before the court supervising the continuation judgment in accordance with the provisions of articles. 101 and 102.

Article 252: Liquidation of Assets

Orders for the sale of bankruptcy property made before this law enters into force shall continue according to the previous provisions.

Article 253: Asset Allocation

The new rules apply to the allocation of assets among the creditors unless the allocation has not yet been made enforceable by order of a presiding judge issued before the date of entry into force of this decree.

Article 254: Statement by the Trustee

If the trustee has presented the bill of operations, but this has not yet been approved under
the previous laws before the entry into force of this decree, the procedure for the approval of
the account continues under the new provisions.

Article 255: Agreement

The proposed agreement made before the entry into force of this decree remains effective if it was valid under the laws at the time it was made.

The approval of the proposed agreement in relation to which the presiding judge has ordered the convening of creditors before the entry into force of this decree shall take place in accordance with the previous provisions, but the decision of approval shall be governed by the new provisions.

If a decision of an approved agreement is in progress but not yet assigned for judgment at the date of entry into force of this decree, the court shall transmit the documents to the presiding judge by order thereby delegating to the continuation of proceedings under the new provisions.

The effects and mode of execution of the agreement are governed by the new provisions, unless the approval decision became final before the entry into force of this decree.

However, the terms set out in articles 137 and 138 for the exercise of voting for a resolution and cancellation shall also apply to approved before the agreed date of entry into force of this decree from the date thereof, unless the time still useful for taking action, according to the previous provisions, is shorter.

Article 256: Civil Rehabilitation

Even for bankruptcies declared before the date of entry into force of this decree, a bankrupt that has not been removed from the register of bankrupts already under the previous laws, may apply for civil rehabilitation according to the provisions of this decree.

Removal from the register of bankrupts obtained under the previous laws shall have the same civil effects of rehabilitation.

Article 257: Liability Action Against the Directors

The court may authorize precautionary measures provided for by article 146 even if the liability action against the directors was placed before the entry into force of this decree.

Article 258: Payments of Partners

In proceedings brought against partners for payments due, on the date of entry into force of this decree, if the case has not yet been assigned to judgment, the court orders the parties to appear before the presiding judge who shall proceed pursuant to article 150.
Article 259: Small Bankruptcies

For small bankruptcies during the entry into force of this decree shall apply the law applicable at the time they were filed.

Article 260: Agreement with Creditors

The procedure of the agreement with creditors, for which before the entry into force of this decree and the decree intervened art. 4 of L. May 24, 1903, n. 197, the agreement and procedure of the small bankruptcies, continues according to prior agreements. But the approval decision shall be governed by the new provisions.

For approval decision in the course and for the purposes and modalities of implementation of the agreement are subject to the provisions of article 255, second, third and fourth paragraph.

Article 261: Mandatory Administrative Liquidation

The mandatory administrative liquidations in course on the date of entry into force of this decree continue according to prior arrangements.

If a company is subject to mandatory liquidation in the process of bankruptcy or agreed this continues until completion.

Article 262: Entry in the Commercial Register

Until the implementation of the commercial register, the inscriptions in the registry according to this law need not be carried out.

However, measures relating to companies, which is in accordance with the entry in the commercial register are entered in the records of the clerk in the courts which are to be temporarily maintained.

Article 263: Role of Judicial Administrators

By the royal decree expected in article 27, third paragraph, or other separate decree will be combined and coordinated with the provisions in force relating to the special fund expected in L. July 10, 1930, n. 995.

Until the aforementioned decree is issued the provisions of the RD November 20, 1930, n. 1595, and other standards now in place for the training of roles and the appointment and discipline of judicial administrators will continue to be observed.

Until it will be done in accordance with article 39, the rules contained in the Ministerial Decree 30 November 1930 on the determination of the extent of remuneration paid to the editors of failures will continue to be observed.
Article 264: Bank

Whenever this decree refers to banks, that expression means, besides the central bank, companies authorized and supervised in accordance with the laws of the Inspectorate for the protection of savings and for the exercise of credit.

Article 265: Instructions for Reference

The transitional provisions for the code of civil procedure approved by RD December 18, 1941, n. 1368, shall also apply to pending proceedings related to bankruptcy or for an agreement.

Article 266: Repealed Provisions

With the entry into force of this decree are hereby repealed the provisions of the commercial code approved by Law April 2, 1882, n. 681, relating to bankruptcy, the provisions of Law May 24, 1903, n. 197, the arrangement and procedure of the small failures of Law July 10, 1930, n. 995, on failure, the arrangement and small failures, except as provided by art. 263, and any other provision to the contrary or incompatible with those of the same decree.