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Draft legislative guide on insolvency law

Report of the Secretary-General

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[The Introduction and Part One of the draft Guide appear in document A/CN.9/WG.V/WP.54, Part Two appears in A/CN.9/WG.V/WP.54/Add.1]

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General remarks

1. The model legislative provisions set forth in Part Three are provided to assist the Working Group in its consideration of possible alternative solutions to some of the substantive issues discussed in Part Two of the draft legislative guide on insolvency law and reflect and implement some of the approaches identified in section B in relation to each topic. As preliminary draft provisions they are not intended to reflect particular recommended approaches, but rather to indicate how such provisions might be drafted in legislative language. In many instances, the provisions deal with only some of the issues that may need to be covered in the legislative guide. The provisions have been collected together in Part Three for ease of reference at this stage of the Working Group's deliberations, but it is envisaged that they would ultimately appear in the body of the legislative guide at the end of the analytical discussion of the subject matter to which they relate.
2. When the Working Group has completed its consideration of Part Two of the draft guide at its current session, it may wish to request the Secretariat to redraft the provisions in Part Three to reflect the decisions taken by the Working Group.

Part Three

Draft legislative provisions

Provisions relating to liquidation

I. Relationship between liquidation and reorganization proceedings

(see Provisions relating to reorganization, V.2.)

II. Initiation and commencement requirements

A. Scope

- (1) Insolvency proceedings of all debtors engaged in a business enterprise are governed by this law.
- (2) Insolvency proceedings concerning [*designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in the enacting State or that the enacting State wishes to exclude from this Law*] are not governed by this Law.
- (3) Insolvency proceedings may be commenced against a debtor if it has its centre of main interests in this State.¹
- (4) In the absence of proof to the contrary, a legal person is presumed to have its centre of main interests in this State if its registered office is in this State.²

(5) In the absence of proof to the contrary, a natural person is presumed to have its centre of main interests in this State if its habitual residence is in this State.

Explanatory notes

¹ The provision may be extended to include reference to an establishment or assets of the debtor in this State.

² The language of paras. (4) and (5) is drawn directly from article 16(3) of the UNCITRAL Model Law on Cross-Border Insolvency.

B. Initiation and commencement criteria

(1) An application for liquidation may be made by:

- (a) the debtor itself;
- (b) [a creditor] [*specify number of creditors*] of the debtor;
- (c) a [prescribed] [government] agency;
- (d) [*other*].

(2) A debtor may make an application for liquidation proceedings when it is insolvent. A debtor is insolvent if it is [unable to pay] [not generally paying] its debts as they fall due [or is experiencing financial difficulties that will make it unable to pay its debts as they fall due].

(3) Creditors may make a liquidation application against an insolvent debtor, provided that:

- (a) [*specify minimum number of*]¹ creditors are owed a debt of not less than [*specify minimum amount*]² or, if the debtor has less than the specified minimum number of creditors, one or more creditors that hold liquidated, matured claims totalling at least [*specify minimum amount*];
- (b) [evidence that the debtor is insolvent is provided].

(4) [*Conditions for involuntary initiation by governmental authority*]

(5) Notice of an application by a debtor for liquidation proceedings shall be given to creditors [promptly] [within [...] days] and published in [*specify publication such as official government gazette or a widely circulated national newspaper*] within [...] days.

(6) Notice of an application by creditors for liquidation proceedings shall be given to the debtor [promptly] [within [...] days]. The debtor has a right to dispute the creditors' application within [...] days. The court shall decide any such dispute [promptly][within [...] days].

(7) [In the absence of proof to the contrary, the creditors' assertions of their claims and of the failure of the debtor to pay such claims are presumed to be correct.]

Explanatory notes

¹ Some countries specify that more than one creditor must make the application. This varies: 3 (Philippines); 2 (Netherlands); 1-3 depending upon additional criteria (USA); [others]

² Some countries require a minimum amount of debt to be specified. For example, under USA law an involuntary bankruptcy petition may be filed by three creditors owed a total of \$10,775; if the debtor has less than 12 creditors, an involuntary petition may also be filed by one or two creditors.

III. Consequences of commencement of liquidation proceedings**A. The insolvency estate**

- (1) The commencement of liquidation proceedings creates the insolvency estate.
- (2) The insolvency estate includes all tangible and intangible assets in which the debtor has an ownership interest or to which the debtor is otherwise entitled, including:
 - (a) all claims and contractual rights in which the debtor has an interest or to which the debtor is otherwise entitled;
 - (b) all statutory and public rights to which the debtor is entitled which have or are capable of having a monetary value;
- (3) The assets referred to in paragraph (2) are included in the estate if they exist at the commencement of the liquidation or come into existence after the commencement of the liquidation as a result of circumstances prevailing before the commencement of the liquidation [subject, in all such cases, to valid security interests and third party rights].
- (4) The insolvency estate also includes all assets that are recovered by the insolvency representative through avoidance actions.
- (5) If the debtor is a natural person, the insolvency estate does not include: [*specify assets to be excluded such as certain personal household property and property necessary for the debtor to earn a living*].

B. Stay of proceedings

- (1) Upon commencement of liquidation proceedings:
 - (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (b) execution against the debtor's assets is stayed; and
 - (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (2) Paragraph (1) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.¹

(3) The stay of proceedings applies to all creditors of the debtor, including secured creditors, preferential creditors, creditors holding statutory security interests and government claimants.

Variant A

[(4) The stay of proceedings applies to secured creditors for a period of [...] days. At the expiration of that period, the application of the stay may be extended by the court provided that *[set forth requirements, for example that the security is not essential to the sale of the business, extension of the stay is required to enable the insolvency representative to maximise the value of the estate [and] [or] the secured creditor will suffer no material prejudice to the value of its security or [...].]*²

Variant B

[(4) The stay of proceedings may be lifted as against a secured creditor in respect of the assets over which it has security, provided that *[set forth requirements, for example that the value of the assets over which the secured creditor has security is less than the amount of its secured claim or if the value of the security held by the secured creditor will be materially harmed by the continuation of the stay and protection for the secured creditor cannot be provided or [...].]*

Explanatory note

¹ Paragraphs (1) and (2) repeat the wording of paragraphs 1(a)-(c) and 3 of article 20 of the Model Law on Cross-Border Insolvency.

² The alternatives for paragraph (4) indicate two different approaches, the first limiting the application of the stay to secured creditors to a fixed period, with the possibility of extension, the second providing for the stay to apply for the duration of the proceedings with provision for lifting in certain circumstances.

C. Treatment of contracts

(1) The insolvency representative may continue or terminate all contractual obligations of the debtor other than *[specify exclusions]*.

(2) The insolvency representative shall take into account a minimum notice period of [...] days in order to terminate the following contracts: *[specify contracts e.g. labour contracts with the debtor's employees]*.

(3) The *[insolvency representative]* *[court]* may *[override]* *[treat as null and void]* any contract clause that terminates a contract upon commencement of liquidation proceedings. This provision does not apply to [...].

(4) Where the insolvency representative does not declare within a reasonable period that the debtor's contractual obligations will be duly performed, the creditor may determine to continue or terminate the contract.

(5) *[In the event of a termination of a contractual obligation of the debtor, a pre-commencement claim must be approved for any monetary damages resulting from the termination.]* *[Termination of a contract gives rise to an unsecured claim for the damages caused by the termination.]*

(6) The insolvency representative may reinstate a contract that, due to any monetary default on the part of the debtor, has been terminated by a creditor within [...] days prior to commencement of liquidation proceedings, provided the default is remedied by full payment of all amounts due. This provision does not apply to: [...].

(7) The insolvency representative may assign a contract [that has been continued] to a third party for value, subject to approval of the [counterparty][creditors][the court]. [Where a contract is assigned, the assignee should be able to perform the contract and may be required to provide security of performance.]

(8) All contractual obligations that the insolvency representative continues become obligations of the insolvency estate from the commencement of liquidation proceedings. [The creditor may require the insolvency representative to provide security].

D. Avoidance actions

(1) The insolvency representative has a right to avoid or otherwise render ineffective acts prejudicial to creditors, such as transfers of property or rights, encumbrances of property and obligations incurred. This provision does not apply to: [...].

(2) Prejudicial acts are subject to avoidance where the insolvency representative proves that:

- (a) the debtor intended to defraud creditors, or defeated or delayed efforts to collect claims (“fraudulent acts”);
- (b) the debtor received unfair value as a result of the act and the debtor was insolvent at the time the act took place, or was rendered insolvent as a result of the act (“undervalued acts”); or
- (c) the act took place within [...] days [months]] before [initiation] [commencement] of the liquidation proceeding to a creditor on account of a debt [and, as a result of that act, the creditor will receive more than its lawful pro rata share of the debtor's assets] (“preferential acts”).

(3) Prejudicial acts which take place after the initiation of proceedings but before the commencement of proceeding are considered prejudicial, and subject to avoidance, unless authorized by an interim insolvency representative.¹

(4) A setoff occurring within [...] [days] [months] before [initiation] [commencement] of the liquidation proceeding is [is not] considered prejudicial and subject to avoidance.

(5) The following time periods apply to prejudicial acts occurring before the [initiation] [commencement] of the liquidation proceeding:

- (a) in case of fraudulent acts, [...] [months] [years] before [initiation] [commencement];
- (b) in case of undervalued or preferential acts which involve creditors that have a close corporate or family relationship to the debtor of the debtor [...] [days] [months] before [initiation] [commencement];
- (c) in the case of preferential acts which involve creditors that do not have a close corporate or family relationship to the debtor. [...] [days] [months] before [initiation] [commencement].

(6) The following rules apply to transfers to creditors that have a close corporate or family relationship to the debtor: [*specify suspect periods and burdens of proof*].

(7) A creditor or other person participating in a fraudulent act with the debtor is not subject to liability, nor is the act annulled, to the extent that the creditor or other person paid adequate value, and [did not know] [neither knew nor should have known] of the debtor's intent to defraud creditors.

(8) A creditor or other person participating in an undervalued act with the debtor is not subject to liability, nor is the act annulled, where the creditor or other person was not a creditor or person that has a close corporate or family relationship to the debtor and [did not know] [neither knew nor should have known] that the debtor was insolvent at the time of the act or was rendered insolvent as a result of the act.

Variant A

(9) A creditor participating in an preferential act with the debtor is not subject to liability, nor should the act be annulled, where the act by the debtor:

- (a) was made substantially contemporaneously with the creation of the creditor's claim;
- (b) was followed by provision of fresh value from the creditor to the debtor, or
- (c) occurred in the ordinary course of business.

Variant B

(9) A creditor participating in an preferential act with the debtor is not subject to liability, nor is the act annulled, where the creditor [did not know] [neither knew nor should have known] that the debtor was insolvent at the time of the act or was rendered insolvent as a result of the act.

(10) Where a transaction falls within paragraphs (2) to (4) above, the insolvency representative may claim the return of the transferred assets, or recover the value of the assets [from the transferee] [from the person participating in the act].

Explanatory notes

¹ Some insolvency systems make provision for an interim insolvency representative to be appointed after initiation but before commencement of proceedings. The interim insolvency representative may have powers which include authorizing various transactions which would then not be subject to avoidance after commencement.

IV. Administration of proceeding

A. Debtor's rights and obligations

(1) In both liquidation and reorganization proceedings, the debtor has a right be heard on any issue concerning the proceedings.

(2) The debtor shall provide to the court, the insolvency representative [and, when required, the creditors' committee] all information relevant to the proceedings [*such as the debtor's books and records, which are in the debtor's possession to which it has access, or*

about which it has knowledge, concerning all of the debtor's creditors to which it is or may be indebted, assets, liabilities, business operations, current income and current expenditures and transfers of its assets made by or on behalf of the debtor, as at, and within [...] days prior to, the commencement of the proceedings].

(3) [The debtor shall submit to examination in respect of its assets and affairs when and as required by the [insolvency representative] [court] [or as otherwise specified by this Law].

(4) The debtor shall cooperate with the insolvency representative in all additional respects which might be necessary to enable the insolvency representative to perform its duties including the prosecution of or defence against actions relating to the debtor and the insolvency estate.¹

(5) Management of the debtor shall be conducted by, or under the control of, the insolvency representative.

Explanatory Notes

¹ The Working Group may wish to consider the related issue of a debtor's duty of disclosure. Since this might relate to facts that could result in the prosecution of a crime or administrative offence, it potentially raises issues which may be beyond the scope of this legislative guide and more in the area of criminal law. Information provided by the debtor in accordance with its obligation to disclose such facts may or may not be used in criminal proceedings against the debtor.

B. Insolvency representative's rights and obligations

(1) An insolvency representative shall be appointed by the court [upon commencement of the proceeding] [if such an appointment is in the best interests of the various constituencies in the case]. The insolvency representative may be a natural [or a legal] person.

(2) The insolvency representative shall [meet the following requirements] [possess the following qualifications]: [*specify qualifications including for example, independence, requisite knowledge of the law, experience in commercial matters [..]*].

(3) Upon application by [*specify by whom*], the court may remove the insolvency representative for breach of its duties.

(4) Upon death, resignation or removal of the insolvency representative, a successor insolvency representative shall be appointed by the court. A vacancy in the office of the insolvency representative does not abate any proceeding in which the insolvency representative has appeared as the representative of the insolvency estate and the successor insolvency representative shall be substituted as the proper party in any such proceeding.

(5) The court may remove the insolvency representative if it is determined that the insolvency representative has acted with gross [incompetence] [negligence]. Evidence of such [incompetence] [negligence] may include failing to perform the duties assigned to the insolvency representative, engaging in fraudulent or illegal activities, or causing excessive monetary loss. [The creditors, by a majority vote of [*specify quantum such as three-fourths*] may apply for removal of the insolvency representative to the court. Upon removal, the court shall appoint a successor insolvency representative.

(6) In liquidation proceedings, the insolvency representative is accountable for the insolvency estate and its [functions] [rights and duties] include:

- (a) acting as representative of the insolvency estate;
- (b) having the exclusive capacity to sue and be sued on behalf of the insolvency estate;
- (c) taking all steps necessary for preserving and keeping in reasonable condition any asset comprised in the insolvency estate;
- (d) registering rights of the estate (where registration is necessary to perfect the rights of the estate against bona fide purchasers);
- (e) requesting court authorization for the retention of accountants, attorneys, appraisers and other professionals as may be necessary to assist the insolvency representative in carrying out its duties;
- (f) examining the debtor and any person having had dealings with the debtor in order to investigate the financial affairs of the debtor and to establish the existence, whereabouts, extent and condition of any that the insolvency representative believes should be included in the insolvency estate;
- (g) applying to the court for an order requiring the delivery from any person of any asset included in the insolvency estate or restraining any person from disposing of any asset included in the insolvency estate;
- (h) examining and admitting claims and preparing a statement as to admitted and contested claims;
- (i) responding to reasonable requests for information concerning the insolvency estate or its administration, except as restricted by the court;
- (j) submitting to the court periodic reports of the insolvency estate's operation. The report shall contain: [*specify details to be included such as details of the assets sold during the period in question, the prices realized, the expenses of sale and such information as the court may require or the creditors' committee may reasonably require*];
- (k) attending meetings of creditors and the creditor committee and reporting on the insolvency estate's operation. The report shall contain: [*specify details*];
- (l) selling the assets comprised in the insolvency estate at the best price reasonably obtainable in the [open] market;
- (m) closing the estate promptly, efficiently and in accordance with the best interests of [the creditors] [various constituencies in the case];
- (n) submitting a final report and accounting of the insolvency estate's administration to the court.

(7) The insolvency representative shall apply to the court for authorization to recover the reasonable expenses incurred in the performance of its duties [*specify means of calculating remuneration*].

C. Creditors and claims

- (1) Each [pre-commencement] creditor is entitled to make claims against the estate within [...] days after [commencement of liquidation proceedings] [notice of commencement has been given by the [court] [insolvency representative]].
- (2) To make a claim, a creditor shall provide to the [court] [insolvency representative] the following information:
 - (a) the amount of the claim;
 - (b) the grounds upon which the claim is based;
 - (c) [whether the claim is secured and the type or object of the security].
- (3) The amount of the claim is estimated at the commencement of liquidation proceedings [in the currency of this State]. No interest is awarded on unsecured claims after commencement of liquidation proceedings.
- (4) The insolvency representative shall admit or reject any claim. Claims of an undetermined value, secured claims and contested claims may be provisionally admitted pending valuation of the claim or of the security or resolution of the dispute concerning the claim.
- (5) A creditor may request the court to make a determination that a claim is provisionally admitted or rejected for voting purposes only.
- (6) The insolvency representative shall file lists (schedules) of all admitted, provisionally admitted and rejected claims with the court. The list of claims shall be available for inspection and the insolvency representative shall notify all creditors of the availability of the list of claims.
- (7) Each creditor may contest each claim as to amount, the way the claim is recorded or to the fact that the claim is omitted from the list of claims within [...] days [of notice] of publication of the list.
- (8) The court shall deal with each contested claim [promptly] [within *specify time period*].
- (9) Upon final determination of a provisionally admitted, rejected or contested claim, [a creditor may request the insolvency representative to] [the insolvency representative shall] amend the list of claims accordingly.

D. Creditor committee

- (1) A creditor committee may be appointed in liquidation proceedings [unless creditors elect not to participate].
- (2) The creditor committee has a duty to monitor the liquidation proceeding and to consult with the insolvency representative regarding the disposition of significant assets, the conduct of significant litigation, the operation of the debtor's business and [...]. The committee may object to actions by the insolvency representative, and bring such objections to the court.
- (3) The committee shall be [appointed by the [court] [insolvency representative]] [selected by the majority vote of those creditors in attendance at the initial meeting of creditors on the basis of *specify criteria*], subject to confirmation by the court].
- (4) The committee shall consist of no more than [*specify an odd number*] of [secured and] unsecured creditors determined by [*specify means including, for example, consulting a listing of creditors prepared by the debtor*].
- (5) An initial meeting of creditors shall be held to review the debtors' affairs, to consider the insolvency representative's plan of action, and to conduct such other business as falls within the duties of the committee.
- (6) In order to provide accountability, the creditor committee may examine the financial affairs of the debtor and the insolvency estate, including its books, records and financial transactions.
- (7) Members of the committee are not be liable for any actions taken by them in their capacity as members of the committee, unless the court finds that [the committee has breached its fiduciary obligation to the creditors] [the committee or any member of the committee has acted in an improper manner]. An individual member of the committee may be removed by the court if it is shown that the member has acted fraudulently or illegally or has otherwise abused its position on the committee.
- (8) To assist it in its work and with the approval of the [court] [insolvency representative], the creditor committee may retain a secretary, consultants and professionals to be paid out of the assets of the insolvency estate.
- (9) Each member of the committee has one vote and decisions are to be taken on a majority basis. [Members shall abstain from voting in the event of a conflict of interest].
- (10) All creditors are entitled to [participate in] [be consulted on] the following actions:
 - (a) decisions to terminate the proceedings, with terms to be agreed upon with creditors as to the basis for consent to the dismissal;
 - (b) decisions to convert the proceedings from a liquidation proceeding to a reorganization proceeding;
 - (c) decisions to sell substantially all the assets of the enterprise as a going concern.

V. Liquidation and distribution

Distribution priorities

(1) In a distribution to creditors of a debtor in liquidation, the insolvency representative shall apply the amount available for distribution in the following order of payment:

- (a) first, all expenses and remuneration in connection with the appointment, duties and functions of the insolvency representative;
- (b) second, [administrative expenses];
- (c) third, [all other admitted claims].

(2) The debts in each of the above classes rank equally and are to be paid in full before creditors in the next class. If there is insufficient funds to pay all creditors in a particular class in full they shall be paid in proportion.

(3) If all of the above claims are paid in full, the insolvency representative shall distribute the surplus first, in payment of any interest calculated after the relevant date on approved debt claims and then to the shareholders or the debtor according to their proper entitlements.

Provisions relating to reorganization

II. Initiation and commencement requirements

A. Scope

[same as paras. (1)-(5) for liquidation].

B. Initiation and commencement criteria

[same as paras. (1)-(7) for liquidation]

Possible alternative provisions for reorganization proposals

[same as paras. (1) and (4)-(7) for liquidation, with paragraphs (2) and (3) modified as follows:

(2) A debtor may make a proposal for reorganization when it is [insolvent] [in financial difficulty].

(3) Creditors may make a proposal for reorganization against a debtor, provided that:

- (a) [*specify minimum number of*]¹ creditors are owed a debt of not less than [*specify minimum amount*]² or, if the debtor has less than the specified minimum number of creditors, one or more creditors that hold liquidated, matured claims totalling at least [*specify minimum amount*];
- (b) [the debtor is [insolvent] [in financial difficulty]] [the rights of creditors have been impaired].

III. Consequences of commencement

A. The insolvency estate

[same as paras. (1)-(5) for liquidation]

B. Stay of proceedings

Same as paras. (1)–(3) for liquidation, with the following additional provisions:

(4) The stay of proceedings may be lifted as against a secured creditor in respect of the assets over which it has security if:

- (a) the value of the security held by the secured creditor will be materially harmed by the continuation of the stay and protection for the secured creditor cannot be provided;
- (b) the debtor is unable to propose a plan to its creditors within [...] days of commencement; or
- (c) the [court] [insolvency representative] determines that the continuation of reorganization proceedings is not in the best interests of creditors.

(5) No application for liquidation proceedings relating to the debtor may be presented or commenced until the reorganization proceedings are completed, or terminated or converted to liquidation proceedings by the court.

C. Treatment of contracts

[same as paras. (1)-(8) for liquidation]

D. Avoidance actions

[same as paras. (1)-(10) for liquidation]

IV. Administration of proceeding

A. Debtor's rights and obligations

[same as paras. (1)-(5) for liquidation]

B. Insolvency representative's rights and obligations

Same as paras. (1)-(7) for liquidation, except the deletion of paragraphs (6)(l) and (m) and addition of the following:

(..) implementing the plan, as approved by creditors and confirmed by the court.

C. Creditors and claims

[same as paras. (1)-(9) for liquidation]

D. Creditor committee

[same as paras. (1)-(10) for liquidation]

V. Additional issues specific to reorganization

A. Post-commencement financing

(1) If the insolvency representative determines that further finance is necessary for the continued operation of the debtor or its business, it may approve the debtor entering into financing agreements and giving security over its property.

(2) Post-commencement financing approved under paragraph (1) is an expense incurred during the reorganization period and has priority for payment.

(3) A security created over the property of the debtor for post-commencement financing approved under paragraph (1) does not have priority ahead of any existing security over the same property unless the insolvency representative obtains a written agreement to that effect from the holder of the existing security.

B. Reorganization plan

Contents of the reorganization proposal

- (1) A proposal for reorganization shall include:
 - (a) the terms of the proposed reorganization (the “plan”);
 - (b) a statement of the debtor’s affairs containing details of its creditors [and claims], assets, debts and other liabilities;
 - (c) [such other information as prescribed in a regulation issued pursuant to this Law].

Appointment of a preliminary insolvency representative

- (1) Upon the making of a proposal for reorganization the court shall appoint a preliminary insolvency representative.
- (2) The preliminary insolvency representative shall estimate of the prospects of the plan being approved, confirmed and implemented.
- (3) The preliminary insolvency representative shall submit its report to the court within [...] days of the making of the proposal for reorganization.
- (4) If the court deems it appropriate it may convene a meeting of the debtor and its creditors for approval of the proposal for reorganization.
- (5) Every creditor of the debtor has a right to attend the meeting and to vote on the proposal and to propose amendments to the proposal.

Contents of the plan

- (1) A reorganization plan shall:
 - (a) list and classify all claims outstanding against the debtor;

- (b) specify any class of claims that is impaired under the plan;
 - (c) specify the treatment of any class of claims that is impaired under the plan;
 - (d) specify means for implementation of the plan [such as:
 - (i) retention by the debtor of any part of the property of the insolvency estate;
 - (ii) restructuring of the debtor including merger or consolidation;
 - (iii) sale of any part of the property of the estate, either subject to or free of any encumbrances or security interests, or the distribution of any part of the property of the estate among those having an interest in the property of the estate;
 - (iv) satisfaction of any security interest;
 - (v) modification of the rights of secured creditors [, other than ...] or of unsecured creditors;
 - (vi) taking of avoidance actions;
 - (vii) provision for the continuance, assignment or termination of any pending contract [, including any unexpired lease];
 - (viii) provision for the settlement, adjustment, retention or enforcement of any claim of the debtor;
 - (ix) inclusion of any other provision as might be appropriate to facilitate successful reorganization of the debtor.]
- (3) For the purposes of this law, a class of claims is not impaired under a plan where the plan does not alter the rights to which the creditors of that class are entitled under their claims.

Restrictions on the content of a plan

- (1) A plan may place a claim in a particular class only if that claim is substantially similar to the other claims of that class.
- (2) A plan shall provide the same treatment for each claim of a particular class, unless a creditor agrees to a less favourable treatment of its particular claim.
- (3) No plan can affect the rights of a secured creditor without the agreement of that creditor.
- (4) Where the debtor is a natural person, a plan proposed by an entity other than the debtor may not provide for the use, sale or lease of property [not included in the insolvency estate] [specifically excluded from the insolvency estate], unless the debtor consents to such use, sale or lease.
- (5) A proposal shall not be confirmed by the court if:
 - (a) non-preferential debts are given priority over preferential debts; or
 - (b) preferential creditors are to be paid otherwise than proportionately. This provision does not apply where the preferential creditors receiving a lesser proportion have agreed in writing.

Acceptance of the plan

- (1) Each creditor may accept or reject the plan.
- (2) A plan is accepted by a class of claims if it has been accepted by creditors that hold at least [*two-thirds in amount*] and [*more than one half in number*] of the claims included in that class.
- (3) A plan is accepted if it has been accepted by the majority in number of the classes of claims included in the plan.
- (4) Where a class is not impaired under a plan, each creditor of that class is conclusively presumed to have accepted the plan. Solicitation of acceptances from creditors of that class is not required.

Confirmation of the plan

- (1) Following acceptance of the plan, the court shall invite all creditors to attend a hearing to confirm the plan.
- (2) The court shall deny confirmation of a plan if:
 - (a) the assets of the debtor [*considerably*] exceed the liabilities of the debtor under the plan;
 - (b) the performance of the plan is insufficiently secured;
 - (c) the plan was concluded as a result of fraudulent transactions or the undue preference of one or more creditors or other unfair means.

Effects of confirmation of the plan

- (1) A plan approved in accordance with the rules set forth in article [...] and confirmed by the court is binding upon the debtor and all creditors, [*whether secured or unsecured*].

Avoidance of the plan

- (1) The court may avoid a plan after confirmation if it finds that:
 - (a) the plan as approved at the meeting of creditors unfairly prejudices the interests of one or more creditors;
 - (b) there has been some material irregularity at or in relation to the meeting of creditors.
- (2) An application for avoidance of a plan after confirmation may be made by:
 - (a) a person excluded from participating in the meeting or from voting on the plan;
 - (b) the insolvency representative;
 - (c) [...].

Limitations to amendment of the plan

- (1) The proponent of a plan may modify the plan at any time before confirmation [, provided that the plan as modified meets the requirements set forth by this Law].
- (2) The proponent of a plan [or the debtor] may modify the plan at any time after confirmation of the plan and before substantial consummation of such plan, provided that the plan as modified meets the requirements set forth by this law.
- (3) Any creditor that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, the plan as modified. This provision does not apply where the creditor, within [[...] days]] [the time fixed by the court], notifies the court of its objection to the modification.
- (4) No proposed amendment affecting the right of a secured creditor to enforce its security shall be effective unless the creditor has agreed to that amendment.

Conversion of proceedings

- (1) The court shall convert liquidation proceedings to reorganization proceedings if it is likely that reorganization can be successfully achieved within [[...] days]] [a reasonable time].
- (2) Liquidation proceedings which have already been converted from reorganization proceedings may not be reconverted to reorganization proceedings.
- (3) The court may take the decision to convert liquidation proceedings to reorganization proceedings upon request of the [debtor] [insolvency representative] [creditors] or on its own motion at any time prior to distribution.
- (4) The court shall convert reorganization proceedings to liquidation proceedings if:
 - (a) the debtor fails to submit the reorganization plan or amendments to the reorganization plan within the time specified by the court;
 - (b) the plan is not accepted by creditors;
 - (c) the plan is not confirmed and a request for additional time to amend the plan or to file a further plan is not granted;
 - (d) the provisions of a confirmed plan are not or cannot be satisfied;
 - (e) the estate continues to suffer loss or a diminution of value and there is no reasonable likelihood of reorganization;
 - (f) a condition of the plan which would lead to termination of the plan occurs;
 - (g) the debtor acts fraudulently or dishonestly; or
 - (h) fees or charges [required by this law to be paid] [prescribed in a regulation issued pursuant to this law] have not been paid.
- (4) The court may take the decision to convert reorganization proceedings to liquidation proceedings upon the request of the [debtor] [insolvency representative] [creditors] at any time prior to the completion of implementation of the plan.