

# Law of the Republic of Azerbaijan

## On insolvency and bankruptcy

### Chapter I. General

#### Article 1. Basic definitions

The following basic definitions used in this Law will mean:

- § **insolvency** — inability of debtor to pay debts;
- § **applicant** — person who applied to the law court with petition in his bankruptcy;
- § **enterprise-debtor** — legal entity-debtor, who operates or *whose activities were suspended* in the territory of the Republic of Azerbaijan;
- § **individual debtor** — individual-businessman, who is debtor and carries out activity without establishment of legal entity;
- § **amicable settlement** — agreement between the debtor and creditor about postponement of payment of payments to creditor, partial payment, assignment of some part of debt, reorganisation of the enterprise-debtor;
- § **assets of the enterprise** — property of the enterprise consisting of its fixed capital, other long-term investments, circulating assets and financial resources (including intangibles);
- § **liabilities of the enterprise** — liabilities including debts and borrowed funds of the enterprise, including creditor indebtedness (except subsidies, grants, etc.);
- § **sanation** — *a way to restore the solvency* of the enterprise-debtor by means of financial assistance rendered by its owner, creditors, other legal entities and individuals in order to prevent its liquidation;
- § **sanation (rehabilitation) plan** — *a document reflecting a set of measures implemented by mutual agreement between the debtor and the creditor (creditors) and aimed at improving the debtor during the application of the rehabilitation process, indicating the table of satisfaction of the claims of the creditor (creditors) in order to restore the solvency of the debtor and save workplaces, and also the results achieved, the resources used and the possible risks;*
- § **property of debtor** — total property belonging to debtor or given to him in possession at the moment of institution of proceedings on bankruptcy and total property purchased by the administrator of the property and (or) provisional administrator of the property, and also total property purchased by the debtor from the moment when proceedings on bankruptcy were initiated to its end (except, where in case of individual debtor, there is such property which cannot be enforced against in accordance with existing legislation);
- § **moment of institution of proceedings on bankruptcy** — moment specified in Article 2 of this Law;
- § **moment of bankruptcy** — moment specified in Article 18 of this Law;
- § **administrator of the property** — official appointed in case of insolvency of the debtor as specified in Chapter V of this Law;
- § **provisional administrator of the property** — official appointed in case of insolvency of the debtor as specified in Chapter VI of this Law;
- § **manager** — person authorised, in accordance with constituent documents of debtor, to make decisions (said decisions being obligatory) concerning economic activity of debtor, including, among others, president, director, their deputies, chief accountant, and also other persons who actually control activity of debtor issuing regular instructions, or in some other way;
- § **secured creditor** — creditor who is *holder of pledge (mortgagee)*;
- § **unsecured creditor** — creditor who is not secured and whose claims are settled in the fifth place in accordance with this Law;
- § **credit organisation** — legal entity which carries out, or carried out in the past banking activity in the Republic of Azerbaijan in compliance with legislation;
- § **residents** — individuals having permanent place of residence in the Republic of Azerbaijan, including those temporarily living outside the Republic of Azerbaijan; legal entities of the Republic of Azerbaijan and their subsidiaries and representations abroad; diplomatic and other official representations of the Republic of Azerbaijan abroad;
- § **non-residents** — individuals having permanent place of residence outside the Republic of Azerbaijan, including those temporarily living in the Republic of Azerbaijan; legal entities, enterprises and organisations which are not legal entities and are located abroad, their subsidiaries and representations in the Republic of Azerbaijan; foreign diplomatic and other official representations located in the Republic of Azerbaijan, and also international organisations including their subsidiaries and representations.

#### Article 2. General procedure of institution of proceedings on bankruptcy

1. Procedure of institution of proceedings on bankruptcy and examination of bankruptcy cases is controlled by existing legislation, accounting for specific requirements of this Law.

2. *This Law applies to all profit (excluding banks) and non-profit organizations.*

*This Law does not apply to the public legal entities of the Republic of Azerbaijan.*

*Relations in the sphere of insolvency and bankruptcy in the Alyat free economic zone are regulated in accordance with the requirements of the Law of the Republic of Azerbaijan "On the Alyat free economic zone".*

*The term "debtor" used in this Law refers to a debtor-enterprise and an individual debtor.*

*The Joint-Stock Investment Fund and the insurer are declared bankrupt, taking into account both the requirements of this Law and, respectively, the Law of the Republic of Azerbaijan "On Investment Funds" and "On insurance activity".*

3. In cases when total amount of the claims of creditors is less than 10 (ten) percent of partnership fund of the enterprise, proprietary claims of creditors against debtor on ownership are settled in accordance with general procedure of examination of proprietary claims in the law court.

~~4. This Law does not apply to state enterprises which are identified for privatisation under the «State program of privatisation of public property in the Republic of Azerbaijan in 1995-1998».~~

5. Application of the creditor (creditors) or debtor submitted to the law court will constitute basis for institution of the bankruptcy case. Moment of institution of proceedings on bankruptcy through the law court will be a date of application to the law court. Petition in bankruptcy may be submitted to the law court based on decision taken by management of the enterprise-debtor (decision taken by respective executive authority, if

debtor - is state enterprise).

Petition in bankruptcy might be submitted to the law court also by legal entities and individuals authorised by the state. If a debtor is individual debtor, application might be submitted by himself or by his representative.

6. In the only case of enterprises-debtors, proceedings on bankruptcy may be also initiated without participation of the law court, as specified in this Law.

7. *Bankruptcy (insolvency) cases are examined at a place of residence or place of location of the debtor.*

### **Article 3. Meaning of the term «insolvency»**

A debtor undergoes the process of bankruptcy if he has been recognised insolvent. The debtor shall be recognised insolvent if he himself recognises this fact, or if the law court or creditor have proved that:

*a) the debtor fails to fulfill in full the obligations to compensate for damage to life and health, recovery of alimony, obligations for labor and associated relations, obligations to creditors related to remuneration by copyright agreement within 2 (two) consecutive months from the start of the deadline for the fulfillment;*

*b) the debtor has not fully complied with tax (interest and financial sanctions applied) and other government payments for 10 (ten) consecutive months from the date of their accrual;*

*c) the debtor has not fulfilled obligations to other creditors within the prescribed period.*

## **Chapter II. Institution of proceedings on bankruptcy in the law court**

### **Article 4. Institution of proceedings by the debtor**

1. Petition in bankruptcy submitted by the debtor must be prepared as specified by legislation and signed. If application of the debtor is submitted by his representative, power of attorney must be enclosed or other document confirming authority or official position of representative.

2. Petition in bankruptcy submitted to law court, should contain:

a) name of the law court;

b) name (surname, first name, middle name of individual debtor or his representative) and address of debtor;

c) names (surnames, first names, middle names), postal addresses of all known creditors and total amount of the claims on the debtor;

d) information about liabilities of debtor which are due to be paid within one year after petition in bankruptcy has been submitted to law court;

e) confirmation of insolvency of debtor, or recognition of insolvency of debtor in accordance with this Law;

f) list of documents enclosed with the application of debtor;

g) any other information which, to the debtor's opinion, is required for law court for examination of the case, including, in a case of individual debtor - detailed information in support of the debtor's demand that certain assets should be excluded from his property, and also other data as envisaged by legislation.

### **Article 5. Documents enclosed with the debtor's petition in bankruptcy**

1. The following documents are enclosed with the debtor's petition in bankruptcy, besides those required by legislation:

a) document confirming payment of law court charges, except cases when debtor asks in his application about deferment with payment of law court costs;

b) list of creditors and debtors of debtor, with clear indication of sums to be paid and sums to be received;

c) document specifying amount of claims in accordance with provisions of this Law.

2. In case of the enterprise-debtor the following documents must be also enclosed:

a) copy of decision of competent body of debtor concerning application to the law court about institution of proceedings on bankruptcy;

b) if the debtor is state enterprise - copy of decision taken by respective executive authority about institution of proceedings on bankruptcy;

c) *financial statements* on the last report date.

### **Article 6. Institution of proceedings on bankruptcy by creditors**

1. Petition in bankruptcy submitted by the creditor must be prepared as specified by legislation and signed. If application of the creditor is submitted by his representative, power of attorney must be enclosed or other document confirming authority or official position of representative.

2. Petition in bankruptcy submitted to law court, should contain:

a) name of the law court where petition in bankruptcy is submitted;

- b) name (surname, first name, middle name) of debtor and his address;
- c) name (surname, first name, middle name) and address of the applicant (creditor);
- d) names (surnames, first names, middle names) of other creditors known to applicant and their addresses;
- e) justification and sum of the applicant' claim against debtor, including term of fulfilment of any liability which constitutes the debt of debtor;
- f) confirmation of insolvency of debtor in accordance with requirements of this Law;
- g) information about assets of debtor which is in possession of the applicant;
- h) list of documents enclosed with the petition in bankruptcy;
- i) any other information which, to the creditor's opinion, is required for law court for examination of the case, and any other data specified by legislation.

3. Total amount of claim against debtor, if debts were not paid on the date of submission of petition in bankruptcy despite that term of payment expired, shall be defined as specified by relevant executive power body.

### **Article 7. Documents enclosed with application on bankruptcy submitted by creditor**

Besides documents required by legislation, the following documents must be enclosed with application on bankruptcy submitted by creditor:

- a) document confirming payment of law court charges;
- b) submission of copies of application on bankruptcy and all enclosed documents to debtor;
- c) In case of state enterprise - document confirming that copy of application on bankruptcy was sent to relevant executive authority.

### **Article 8. Result of failure to observe requirements**

Non-conformity of petition (application) on bankruptcy submitted to the law court with provisions of this Law, including submission of application without enclosed required documents may end in respective results as envisaged by legislation (refusal of the law court to accept application/petition, abandonment of the application without examination, without movement or return of the application by the law court).

### **Article 9. Announcement about examination of the bankruptcy case in the law court**

*1. In case if legal proceedings on bankruptcy has been appointed, to inform creditors, the applicant is obliged to publish an announcement about such legal proceedings twice in the official periodical not later than seven days before the date of legal proceedings. The announcement of legal proceedings on bankruptcy shall contain the following information:*

- a) name (surname, first name, middle name) of debtor and his address;
- b) name (surname, first name, middle name) and address of the applicant (in case when applicant is not debtor);
- c) name of the law court where disposal of legal proceeding will be carried out;
- d) date appointed for consideration of the case in the law court;

2. In case if announcement about disposal of legal proceeding on bankruptcy was not published as specified in clause 1 of this article *and article 10-1 of this Law*, this may entail respective results as envisaged by legislation (deferment, stay of proceedings, abandonment of the application without examination by the law court).

~~3. Law court may envisage other ways of informing of creditors, including annulment of requirement of publication.~~

4. Copy of application/petition on bankruptcy and accompanying documents must be delivered to debtor *before the announcement is published in the manner prescribed by clause 1 of this article and article 10-1 of this Law*. The documents may be delivered by courier or by registered post.

### **Article 10. Payment of debts by debtor after submission of petition in bankruptcy**

1. After the law court has accepted petition in bankruptcy for examination *and before a decision is made in the manner provided for in Article 10-1 of this Law*, the debtor may apply to law court requesting that he intends to make settlement with his creditors (to meet their claims). An issue of fulfilment of said application will be solved by the law court, in accordance with procedure of consideration of applications at respective stages of legal proceeding, as envisaged by legislation and results of proceedings.

2. According to legislation, law court may, with consent or by initiative of the plaintiff (or defendant) , and also by his own initiative, to allow replacement of the parties participating in legal proceedings on a case of bankruptcy by real plaintiff or defendant, their successors, to involve another plaintiff or defendant.

3. Recall of petition in bankruptcy by the applicant may entail respective results of proceedings as envisaged by legislation.

### **Article 10-1. Bankruptcy Proceedings**

*The court considers the application in the bankruptcy case within 1 (one) month from the date of receipt and makes an appropriate decision in this case. In the case of a complaint about the decision, this complaint is considered in the next court instance within 1 (one month) from the day of receipt and a corresponding decision is made regarding the settlement of this case. Persons participating in the case shall be notified of the court session at least 5 (five) business days before this meeting. At the same time, the applicant, at least 5 (five) business days*

*before the date of the judicial investigation must publish the announcement on the official website and in the official periodical of the relevant executive authority.*

## **Article 11. Results of examination of bankruptcy case in the law court**

1. After bankruptcy case has been examined at the session of the court, law court, in accordance with legislation, makes the following decision:
  - a) on announcement about bankruptcy of the debtor and appointment of the administrator of the property;
  - b) about appointment or extension of appointment of provisional administrator of the property;
  - c) about refusal to announce bankruptcy of a debtor.
2. In case if case of bankruptcy cannot be solved at the session of the law court in essence, law court, in accordance with legislation, makes the following decision:
  - a) about deferment of examination of the case;
  - b) about stay of proceedings;
  - c) about abandonment of the case;
  - d) about leaving an application without consideration.

In its decisions law court might envisage abandonment of measures concerning coverage of debts, including confiscation of assets forming the debtor' property (if this does not infringe on rights of secured creditor).

3. Besides situations envisaged by legislation, the law court may refuse to announce about the bankruptcy of the debtor in the following cases:
  - a) if the debtor was not insolvent in accordance with provisions of this Law;
  - b) if the applicant was not one of the parties described in article 2 of this Law.

In such cases the law court might demand in its decision payment of compensation for damage incurred to the debtor or creditor (creditors) as a result of petition in bankruptcy submitted without due reasons.

## **Article 12. Appeal against decisions of law court**

*Filing a complaint about a court decision on bankruptcy in the manner prescribed by Article 10-1 of this Law shall entail the suspension of the sale of the property of the debtor and its payment to creditors.*

## **Article 13. Initial meeting of creditors after the debtor has been announced bankrupt judicially**

1. After the debtor has been announced bankrupt judicially, administrator of the property summons initial meeting of creditors, by way of sending notification to all known creditors and relevant executive authority (if the debtor is state enterprise). Whereas, the meeting should be held not later than *15 days* from the date when decision of the law court about the bankruptcy of debtor enters into force.
2. Notification will contain time, date and place of the initial meeting. It should be:
  - a) sent by post to all known creditors, not later than 7 days before the date of the meeting;
  - b) published twice in official *periodical*, whereas the second announcement must appear in the newspaper not later than 3 days before the date of the meeting.
3. Initial meeting of creditors shall be held as specified in this Law.

## **Chapter III. Institution of proceedings on bankruptcy by the enterprise-debtor without involvement of law court**

### **Article 14. Institution of proceedings on bankruptcy without involvement of law court**

Proceedings on bankruptcy without involvement of law court may be initiated only based on relevant decision taken by the enterprise-debtor (and relevant executive power body if the debtor is state enterprise). When such decision is taken, provisional administrator of the property is appointed. *The date of taking* of this decision is the moment of institution of proceedings on bankruptcy without involvement of the law court.

All above said does not exclude legal proceedings on bankruptcy initiated by the enterprise-debtor.

### **Article 15. Notification of creditors about expected bankruptcy**

1. Enterprise-debtor notifies creditors (and also relevant executive authority — if the debtor is state enterprise) about meeting of creditors which should be held not later than 21 days from the date when the enterprise-debtor makes decision about institution of proceedings on bankruptcy.
2. Notification should be:
  - a) sent by registered post to all known creditors, not later than 14 days before the date of the adjourned meeting;
  - b) published twice in official *periodicals*, whereas the second announcement must appear in the newspaper not later than 7 days before the date adjourned for the meeting.

3. Notification should include:

- a) name (surname, name, middle name) and address of proposed administrator of property;
- b) statement saying that proposed administrator of property will be supplying creditors with free information concerning economic activity of debtor, which they may require.

### ***Article 16. Initial meeting of creditors on initiation of proceedings on bankruptcy by the enterprise-debtor***

1. At the initial meeting of creditors manager (director) of debtor must supply the following information to creditors:
  - a) names (surnames, names, middle names) and addresses of all known creditors and information about any security - assets belonging to them;
  - b) information about the property and liabilities of debtor;
  - c) additional information which creditors may require for better understanding of financial position of debtor.
2. At the initial meeting of creditors, the latter must:
  - a) confirm decision of debtor about institution of the bankruptcy case and carry on voting concerning announcement of bankruptcy of the debtor;
  - b) approve appointment of proposed administrator of the property or elect new administrator of the property;
  - c) at creditors' wish, to elect committee of creditors in accordance with this Law.
3. If the debtor is state enterprise, then, when approving or electing administrator of the property opinion of relevant executive power body is taken into account.
4. Requirements to the administrator of the property elected at the first meeting of creditors where the process on bankruptcy has been initiated without involvement of law court, and authority of the administrator should comply with provisions of this Law.
5. Subsequent meetings of creditors will be summoned and held in accordance with this Law.
6. Administrator of the property and persons interested in the process of bankruptcy may apply at relevant law court for settlement of any question arising from provisions of this chapter.

## ***Chapter IV. Consequences of initiation of the case of bankruptcy and announcement of bankruptcy***

### ***Article 17. Consequences of initiation of the case of bankruptcy***

1. According to requirements of this Law, from the moment of institution of proceedings on bankruptcy the debtor cannot dispose of any part of his property with the purpose of implementation of economic activity or his obligations, or with any other purpose. Such decisions might be made by the debtor only with permission from the law court, administrator of the property or provisional administrator of the property.
2. In cases when provisional administrator of the property has not been appointed, the debtor may, without permission indicated in clause 1 of this article:
  - a) continue payment of wages at rates existing at the moment of initiation of the process of bankruptcy;
  - b) continue payment of his current expenses required for uninterrupted supplies of commodities and services, except payment for earlier supplies of commodities and services;
  - c) dispose of perishable assets and take other measures required for conservation of value of debtor' property.

### ***Article 18. Consequences of announcement of debtor' bankruptcy***

1. Moment of bankruptcy of debtor is:
  - a) moment when decision of the law court about announcement about the debtor' bankruptcy comes into force; or
  - b) moment when decision about announcement about the bankruptcy of the enterprise-debtor has been taken at the first meeting of creditors in compliance with provisions of this Law.
2. From the moment when the debtor has been announced bankrupt:
  - a) all court examinations (proceedings) and other actions directed to withdrawal of sums due from debtors are stopped;
  - b) claims against debtor may be presented only within the limits of the process of bankruptcy envisaged by this Law;
  - c) in cases non-contradicting to legislation implementation of decisions concerning the debtor's property which have been taken earlier by any law court is suspended;
  - d) authority of manager (director) of the enterprise-debtor, except authority assigned by the administrator of the property, terminates;
  - e) authority of the enterprise-debtor with regards to any instructions and actions towards its property ceases.

## **Chapter V. Administrator of property**

### **Article 19. Terms of appointment of the administrator of property**

1. Administrator of the property may be appointed by the law court or creditors and may be individual or legal entity, including institution authorised by the relevant executive authority, and also resident or non-resident.
2. If the debtor is state enterprise, then, when appointing administrator of the property by the law court, opinion of relevant executive authority shall be taken into account.
3. To be appointed as administrator of the property, individuals must be educated in law, management, economic or accounting, or equivalent practical experience.

Neither persons convicted earlier for committed crime, who are forbidden to occupy certain positions and carry out certain activities (if the term of said penalty has not expired in an established order), nor those who are defendants under the bankruptcy case may not be appointed administrators of the property.

4. Before being appointed administrator of the property, appointed person shall have to make statement about absence of private interest. The following persons may not be appointed administrator of property:

- a) manager or former manager, owners, debtors of creditors of debtor;
- b) *affiliated persons of debtor* in accordance with article 54 of this Law.

### **Article 20. Rights of administrator of the property**

1. On appointment of the administrator of the property, the latter becomes a sole legal representative of debtor, and authority of debtor's administrator ceases to exist, except those assigned to him by the administrator of property in accordance with article 17 of this Law.
2. Authority of the administrator of property does not change, no matter whether the administrator of property has been appointed by law court or by creditors, in accordance with provisions of this Law.
3. Disputes concerning authority of the administrator of property and their meaning, are settled on application of the administrator of property or other party involved in dispute, in the law court, in compliance with legislation. After examination of the case, law court may give permit or forbid administrator of property to take any specific measures regarding the debtor or property of debtor.
4. Administrator of property has the right:

- a) to carry out *current* economic activity of debtor and with this purpose to conclude deals on behalf of debtor, including contracts, agreements and compositions, *as well as loan (credit) agreements* or to continue implementation of concluded deals;
- b) to annul, as specified by legislation, any deals of debtor, including non-implemented agreements which are not economically viable, may result in formation or increase of liabilities;
- c) to come into possession of any assets making the property of debtor, on behalf of debtor, and in this respect to take any measures which could require in an order specified by legislation;
- d) to sell the property of debtor, all or part, in accordance with legislation, and this Law, *and sales plan*, and also to implement all actions which are envisaged for sale of such assets;
- ~~e) to make interim payments under the claims against debtor, in an order of priority specified in Chapter XII of this Law;~~
- f) to take relevant measures for insurance of debtor's property in an order specified by legislation;
- g) to take necessary measures for uninterrupted supplies of water, electric power, fuel and other services required for economic activity;
- h) to hire (to appoint), dismiss and release employees of debtor in an order specified by legislation;
- i) whenever necessary, to use services of other specialists on contractual basis, to implement some specific functions;
- j) whenever required, to assign part of his authorities to the administrator of debtor, having authorised him in writing;
- k) to request and to be provided with any books of accounts, and any other reports and documents concerning the debtor's activity;
- l) to receive information from persons who have information about economic activity of debtor;
- m) to summon meetings of creditors or committee of creditors;
- n) to apply to law courts for settlement of disputes with creditors, and in other cases envisaged by this Law;
- o) to take part in any legal proceedings regarding debtor and his property in an order specified by legislation;
- p) to stop his assignment and to submit respective application to those who appointed him;
- r) to carry on any other actions in support of the above authorities which do not contradict legislation.

### **Article 21. Responsibilities of the administrator of property**

Administrator of the property must:

- a) immediately after his appointment - notify debtor as such, publish two announcements about the debtor's bankruptcy and his appointment in *official periodical*, with an interval at least 7 days;
- b) within the shortest possible term take measures necessary for protection of debtor's property and carrying out control over the debtor's activity;
- c) carry out analysis of financial position of debtor, submit his conclusions to respective law court about signs of fraudulent or deliberate bankruptcy revealed in the course of said analysis;
- d) *carry out an inventory and estimation of assets* of debtor with engagement of any experts who seem appropriate to him;
- e) accounting for provisions of this Law act in such a way as to protect commercial interests of creditors and achieve best price which is realistic in said circumstances when selling the property (part of property) of debtor, including sale of security belonging to secured creditor in accordance with requirements of this Law;
- f) provide that the debtor includes into all documents issued by him (letters, invoices and financial documents) information which clearly demonstrates that the debtor is in the process of bankruptcy, including the words «in the process of bankruptcy» in brackets with any mentioning of the debtor's name;
- g) to consider feasibility and to inform creditors and law court whether agreement with creditors to be concluded based on provisions of Chapter VII of this Law would correspond to the interests of creditors in a best way;
- h) *to prepare a sales plan, convene a meeting of creditors for its approval and, in accordance with the approved sales plan* to take measures for sale of the debtor's property and distribution of sales proceeds in accordance with provisions of Chapter XII of this Law, should administrator of the property at any moment during the process of bankruptcy reasonably decide that these measures in the best way correspond to creditors' interests, and if at said moment no agreement with creditors exists in accordance with provisions of Chapter VII of this Law and no justified assumptions that such agreement will be achieved;
- i) prepare list of creditors of this debtor with indication of total amount of their claims and register of creditors' claims in accordance with Chapter IX of this Law;
- j) protest against legal force or amount of claims which are not fully justified;
- k) take measures on recovery of debts due to debtor;
- l) submit any agreement concluded with creditors for approval by relevant law court;
- m) check deals concluded by debtor in accordance with provisions of Chapters XIII-XV of this Law, activities (actions) of directors and managers of debtor, apply regarding results of these checks to law court and other competent state bodies;
- n) whenever necessary, dismiss employees in an order and according to requirements of legislation;
- o) submit to creditors and to law court reports about his activity in accordance with requirements of this Law;
- p) for the sake of benefit of creditors, keep confidential all information on the state of the debtor's activities which becomes known to the administrator of the property during the course of his appointment;
- r) implement any other actions which do not contradict legislation and are specified in this Law.

## **Article 22. Assets of third persons being in possession of the debtor**

If the debtor is in possession of assets which do not constitute part of his property, administrator of the property duly notifies the owner of these assets. Owner of assets should take over these assets from the administrator of the property not later than one month from the day when notification was received. If this condition is not fulfilled, all expenses on keeping and preservation of said assets from this moment will be borne by their owner. In case when the debtor bears said expenses, they will be compensated by way of withdrawal with regards the assets in favour of the debtor. Administrator of the property will have the right to sell said assets at any moment if he finds that costs of keeping and preservation of such assets are approximately same as their sale value.

## **Article 23. Assets which represent danger**

Should the administrator of property find that any assets forming part of the debtor's property are dangerous for people, administrator of the property shall have to give approximate estimate sum of money required for protection of people from such danger. In such case all such sums will be regarded as part of payment and costs borne by the administrators of the property and paid in same order of priority, whereas the administrator of the property shall take all relevant measures necessary for safety of these assets or for elimination of danger.

## **Article 24. Limited rights of the administrator of property regarding the debtor's assets which are in possession of third persons under agreement**

1. Administrator of the property has no right to demand that property which forms part of debtor's property and is in possession of third person in accordance with provisions of any agreement should be returned to the debtor before the term specified in said agreement expires. Whereas, administrator of the property has the right to be acquainted with *accounting documents* related to debtor, his property, to take copies of said documents if not specified otherwise in the above agreement.

2. If the property is in possession of other person under the leasing agreement, administrator of the property may:

- a) sell the property to said person;
- b) sell to any third person right for return of the property at the end of leasing term, together with the right for receipt of rent payments

during the term of leasing;

c) to apply to law court requesting for termination of leasing agreement ahead of time in an order specified by legislation.

### **Article 24-1. Sale of assets of the debtor**

*Sale of assets with value 5 or more percent of the debtor's assets shall be carried out by means of a public auction in accordance with the sales plan prepared by the property administrator and approved by the creditors' meeting in the manner prescribed by paragraph 5 of Article 48 of this Law or by other means in the presence of circumstances specified in article 26 of this Law. It is not allowed to sell assets that make up 5 percent or more of the debtor's assets without their inclusion in the sales plan. The property administrator may sell assets with value less than 5 percent of the debtor's assets or offer to include them in the sales plan, subject to the requirements of this Law, without the consent of the creditors' meeting.*

### **Article 25. Sale of the debtor's assets by public auction**

1. Except as specified on Chapter V of this Law, if the law court does not issue different instructions in any specific case, sale of any assets forming part of the debtor's property shall be done through the public auction. *Sale of the debtor's assets by public auction shall be held not later than 30 days after the debtor is declared bankrupt under part 1 of Article 18 of this Law.*
2. Administrator of the property may organise the auction himself or conclude agreement with the third party possessing relevant qualification.
3. Initial cost of property included into the property of debtor is estimated by administrator of the property in accordance with estimate of such property carried out in accordance with this Law. The property must be sold to the buyer whose proposed price best satisfied commercial interests of creditors.
4. Except cases when administrator of the property and the buyer agree otherwise, any buyer of the debtor's property - whole or any its part, should pay selling price of property within a term not exceeding 7 days from the date of the auction. Should the buyer fail to make payments within such term, administrator of the property will have the right to sell such part of property to any third party and withdraw sum of compensation of loss from the buyer who failed to fulfil his obligations, namely:
  - a) cost of re-sale; and
  - b) difference between the price offered at the auction and price got with subsequent sale.
5. In case if the whole amount or any part of the debtor's property were not sold at the auction, administrator of the property will have the right to sell such property in any way, at the highest and acceptable price, and with any such sale all component parts of the property should be clearly specified in the administrator's report submitted to the law court.
6. Relevant executive power body of the Republic of Azerbaijan might envisage other procedure for sale of assets of state enterprises.

### **Article 26. Sale of the debtor's assets using other methods**

Administrator of the property may sell assets from the debtor's property by ways other than open auction, if:

- a) there is serious risk of degradation of the assets quality if they are not sold immediately;
- b) according to personal opinion of the *meeting of creditors*, market cost of assets might significantly reduce if they are not sold immediately;
- c) costs of sale through the auction will be incomparable with the creditors' claims;
- d) terms of agreement with creditors approved by the law court in compliance with provisions of Chapter VII of this Law allow such sale;
- e) according to reasonable opinion of the administrator of property, this decision will be most favourable for creditors;
- f) there exists decision of the law court establishing method of sale.

### **Article 27. Report of the administrator of property presented to creditors**

1. Not later than 14 days from the date of his appointment the administrator of property prepares and submits to creditors report which will contain the following information:

- a) for the enterprise-debtor:
  - § *financial statements* of the debtor on the last reporting date;
  - § ~~profit and loss account~~;
  - § information about cash flow available for compensation of creditors' claims;
  - § breakdown of the amounts due and information about intangible assets of debtor;

- b) both for the enterprise-debtor and individual debtor:

§ information about settlements made with creditors before the process of bankruptcy was initiated.

2. *The creditor (creditors) is entitled to send to the property administrator a request in connection with any matter regarding the report or the property of the debtor not specified in the report, as well as regarding the activities of the property administrator. The property administrator must provide a reply to the request not later than within 3 business days from its receipt.*

### **Article 28. Report of the administrator of property at the law court**



1. Not later than 14 days from the date of his appointment the administrator of property prepares and submits to creditors report which will contain the following information:

- a) report about his activity;
- b) *financial statements*, including assets inventory at their balance cost;
- c) preliminary schedule of creditors' claims and monetary cost assigned to such claims by the administrator of property, and also sums of claims which were paid;
- d) information about payment and expenditures reimbursed to the administrator of property;
- e) report about use of resources remaining after all creditors' claims have been satisfied;
- f) detailed information about any illegal action or incompetent deals of director of the enterprise-debtor;
- g) for individual debtor - recommendations with respect to terms which should be established for debtor, and also time period which should expire before the process of bankruptcy terminates;
- h) other information which, by opinion of the administrator of property, could be required by the law court.

2. Recommendations of the administrator of property as specified by sub-clause (g), clause 1 of this article may include the following:

- a) that the debtor must transfer to the administrator of property part of his gain;
- b) that the debtor must transfer payment under certain obligations (alimony, etc.) in full amount.

3. Administrator of the property submits subsequent reports to the law court *with 2-month interval or in a shorter period established by the court*.

4. By application of the administrator of the property 14-day term specified in articles 27 and 28 of this Law may be extended by the law court to one month maximum.

### **Article 29. Payment and costs of the administrator of property**

- 1. Payment and costs of the administrator of property shall be paid in accordance with the list of priorities specified in Chapter XII of this Law.
- 2. Costs of keeping of the administrator of property shall be agreed between the creditors and administrator of property, and where such agreement is absent - by the law court.

### **Article 30. Resignation, dismissal from position and replacement of the administrator of property**

- 1. Should any of persons mentioned in article 2 of this Law apply to the law court, and with substantial grounds, law court may, by its special decision, discharge from position administrator of property who fails to fulfil his obligations under this Law and replace him with other person who meets requirements specified in article 19 of this Law.
- 2. Administrator of the property may be also dismissed from his position and replaced by the creditors at the meeting of creditors summoned in accordance with Chapter XII of this Law.
- 3. Administrator of the property may also apply to the law court with petition about resignation. When satisfying this petition, law court will have to appoint another candidate as a replacement for administrator of the property.
- 4. On appointment of the administrator of property - substitute, the latter will have to notify *immediately* all creditors about his appointment.

### **Article 31. Inadmissibility of creating obstacles to the administrator' activity and his responsibility**

- 1. It is forbidden to create obstacles and to interfere with the activity of administrator of property implementing his obligations in line with this Law. Persons guilty in such actions may be sued as envisaged by legislation and provisions of this Law.
- 2. Should law court satisfy application submitted by the administrator of property with respect to persons creating obstacles to the administrator' activities, said persons or state bodies may be duly authorised.
- 3. In line with existing legislation, the administrator of property is responsible for losses suffered by the owner or debtor, or by any creditor as a result of activity of the administrator of property

## **Chapter VI. Provisional administrator of property**

### **Article 32. Appointment of provisional administrator of property**

- 1. Accounting for provisions of this article, when any party mentioned in article 2 of this Law applies to the law court, the latter may, at any time before the moment of bankruptcy of debtor, appoint provisional administrator of property.
- 2. Provisional administrator of property may be appointed only in those cases when the process of bankruptcy is initiated with involvement of the law court.
- 3. Appointment of provisional administrator of property is an temporary measure and has the following objectives:
  - a) provide that assets being the property of debtor are not alienated illegally before the moment when bankruptcy of this debtor is announced;

b) carry out preliminary financial analysis of debtor's status.

4. Criteria of adequacy for appointment as provisional administrator of property are identical to criteria of adequacy for appointment as administrator of property.

5. If law court has any doubts regarding safety of assets which constitute the property of debtor, this law court shall have to appoint provisional administrator of property.

6. Petition about appointment of provisional administrator of property is considered by the law court in an order and in term established by legislation, however not later than within 3 days.

7. If, after provisional administrator of property has been appointed the debtor is not announced bankrupt, then the party which applied to the law court asking about appointment of provisional administrator of property will have to pay fee to provisional administrator of the property and to cover all his expenses, and also to compensate all losses suffered by debtor as a result of appointment of provisional administrator of the property. If, however, the debtor has been announced bankrupt, fee and expenses of provisional administrator of property shall be covered in the same way as expenses of the administrator of property and will be paid in the first place, as specified in Chapter XII of this Law.

8. If there is information that assets constituting the debtor's property are at serious risk, law court may appoint temporary administrator of property by default, without hearing explanations of the debtor. In such cases the debtor may apply to law court with an objection, within 7 days after receipt of notification about such appointment. Whereas, application of debtor is considered in an order envisaged by clause 6 of this article.

### ***Article 33. Authority of provisional administrator of property***

1. On appointment of the administrator of property authority of debtor's director terminates. Provisional administrator of property has the same authority as the administrator of property, if respective decree about his appointment does not state otherwise.

2. Director of debtor must co-operate with provisional administrator of property and provide him free access to the premises, assets, bank accounts and documents of debtor. All persons (including auditors and credit organisations) having any obligations to debtor shall bear same obligations regarding provisional administrator of property.

3. Provisional administrator of property may give order to carry out complete or partial audit of debtor.

4. Provisional administrator of property must keep confidential commercial information which became known to him, and use such information solely for implementation of his functions.

5. Provisional administrator of property may forbid director of debtor access to the debtor's premises, if he regards this measure proper.

6. Persons creating obstacles to actions of provisional administrator of property when the latter implements his obligations, may be called to account in line with provisions of this Law.

7. During the term of authority of provisional administrator of property, suits against debtor or his property may be considered by the law court in an order specified by legislation.

8. On appointment of provisional administrator of property, he undertakes initial analysis of financial status of debtor. With this purpose, and in order to protect the property of debtor, provisional administrator of property may engage any person who is director/manager (former director) of debtor, or who may possess information and documents concerning economic activity of debtor.

9. Provisional administrator of property may apply to law court whenever necessary, to get instructions as per procedure of implementation of his authorities.

### ***Article 34. Term for appointment of provisional administrator of property***

1. Provisional administrator of property shall have to submit to the law court report on financial status of debtor within 14 days after his appointment. When issuing any decision, the law court takes into consideration report of provisional administrator of property.

2. Term of authority of provisional administrator of property terminates with any of the following events:

a) appointment of the administrator of property;

b) satisfaction of respective application of any person of those mentioned in article 2 of this Law by the law court;

c) on resignation, dismissal from position or replacement of provisional administrator of property in line with article 30 of this Law.

3. Provisions of article 31 of this Law apply to provisional administrator of property.

## ***Chapter VII. Amicable settlement with creditors***

### ***Article 35. General procedure of amicable settlement with creditors***

1. In order to complete proceedings on bankruptcy the debtor may suggest to creditors to make amicable settlement which would allow to postpone payments, to split them into parts and to assign debts.

2. Agreements with creditors might be concluded within the limits of the process on bankruptcy, irrespective of the manner of its initiation.

3. In case if proceedings on bankruptcy have been initiated with involvement of the law court, administrator of the property is obliged, in compliance with article 21 of this Law, to consider possibility of amicable settlement with creditors and to report to creditors and to the law court whether agreement with creditors will be beneficial for the interests of creditors.

4. If proceedings on bankruptcy have been initiated without involvement of the law court, director acting together with proposed administrator of property may propose amicable settlement with creditors at the first or at any subsequent meeting of creditors. Whereas, settlement might be concluded only with consent of all creditors. If even one creditor is against conclusion of said agreement, proceedings on bankruptcy of debtor continue in general way.

5. When concluding amicable agreement, deferment of payment of underpaid tax sums to the budget and extra-tax payments, payment in portions, summing, as well as payments of *compulsory state social insurance contributions, unemployment insurance contributions and compulsory state health insurance contributions* and return of overpaid sums are allowed only in cases and in an order specified in legislation.

### **Article 36. Proposals concerning amicable settlement with creditors**

1. The form of agreement with creditors is not restricted by provisions of this Law, and such agreement may include the following:

- a) provisions based on which re-organisation of the structure of the enterprise-debtor, or activity of debtor takes place;
- b) provisions concerning sale or transfer of the whole or part of the debtor's property, including shares;
- c) provisions on establishment of a new enterprise with any organisation-legal form;
- d) provisions envisaging payment of all or part of claims of unsecured creditors, made as a lump sum or as instalments.

2. In case if the debtor and (or) administrator of property (proposed administrator of property) are desirous of settlement with creditors, then:

- a) meeting of creditors is summoned for acceptance of the draft agreement;
- b) the following documents shall be sent to all creditors:

§ draft agreement with creditors;

§ ~~preliminary~~ financial report with balance and list of all creditors with indication of all sums due to them;

§ notification about the time, date and place of the meeting of creditors.

3. Meeting of creditors in connection with agreement must be held within a term not exceeding 28 days from the date when administrator of property sends to creditors materials listed in clause 2 of this article, however not earlier than 14 days from this date.

4. At the meeting of creditors the debtor must fully disclose financial information for creditors.

5. At the meeting of creditors summoned in connection with agreement with creditors, the latter may, by way of voting:

- a) accept proposed agreement; or
- b) propose acceptance of another agreement, or amended agreement; or
- c) reject proposed agreement.

6. If, by opinion of the administrator of property (proposed administrator of property), amended agreement practically does not differ from agreement which was originally proposed by him, then the creditors may vote with respect to amended agreement at the same meeting. If, by opinion of the administrator of property (proposed administrator of property), amended agreement differs significantly from proposed agreement, then the creditors may not vote with respect to amended agreement until the next meeting of creditors is summoned in compliance with this Law.

7. Decisions of the meeting of creditors summoned in connection with agreement should be taken in line with provisions of Chapter XII of this Law.

### **Article 37. Approval of amicable settlement with creditors by the law court**

1. Any amicable settlement with creditors which has been approved by creditors in accordance with this Chapter is also subject to approval by the law court.

2. Administrator of the property must apply to the law court for approval of any such settlement (agreement) with creditors within the term not exceeding 7 days from the date of the meeting of creditors where said agreement was approved. The law court considers such application *within 10 (ten) days*.

3. The party whose interests are affected by such agreement may, during or before consideration of application for approval of such agreement by the law court, apply to the law court for amendment or rejection of such agreement using an argument that terms of such agreement are unfair for this party. Law court, at its session must listen to every creditor objecting against approval of agreement.

4. Law court cannot approve agreement with creditors if there is no evidence that all requirements of this chapter have been fulfilled.

5. If the law court does not approve this agreement, it may, in its decision, instruct that said (amended) agreement should be submitted for consideration by additional meeting of creditors.

6. After it has been accepted by the meeting of creditors and approved by the law court, agreement with creditors shall be binding for all creditors who received notification about the meeting, irrespective of the fact if they approved this agreement, and also if they were or were not present at the meeting of creditors.

7. Administrator of property controls implementation of agreement. Nevertheless, accounting for terms of agreement, administrator of property may assign power of control to other persons, including director (manager) of debtor.

8. In accordance with agreement with creditors, fee to the administrator of property in an amount specified in agreement, will be paid by debtor.

### **Article 38. Relationship between secured creditors, equally ranking creditors and creditors who voted against conclusion of agreement**

1. Agreement with creditors should not violate rights of secured creditors, and also creditors of the first, second or third rank, according to procedure specified in Chapter XII of this Law, if there is no consent of such creditors.
2. Agreement with creditors should not interfere with ranking of creditors of one and the same rank, if there is no mutual agreement about that.
3. Rights of creditors who voted against proposed agreement, or those who did not participate in voting are guaranteed within the limits of ranking, equally with rights of creditors who voted for proposed agreement (*but no less than what they would receive if the debtor's bankruptcy was completed*).

### **Article 39. Recognition as illegal, or termination of amicable settlement (agreement)**

1. *Any creditor may dispute an amicable agreement* if the debtor misreported his property in balance, violation of legislation took place or rights of other persons were violated.

If said amicable settlement has been recognised illegal, all financial liabilities of the enterprise-debtor which existed before the settlement will be resumed.

2. If administrator of the property or other person presented evidence to law court showing that agreement with creditors is not implemented in accordance with its terms, the law court may, in an order specified by legislation, annul agreement with creditors and instruct the administrator of property to take measures indicated by the law court. Such measures may consist in the following:

- a) immediate sale of property of the debtor and distribution of net sale returns in compliance with provisions of Chapter XII of this Law;
- b) attempt to achieve another agreement with creditors.

3. As a result of non-fulfilment of terms of agreement by the debtor, or losses suffered by creditors as a result of agreement concluded with them on behalf of actually solvent debtor, director (manager) of debtor might be called to account as specified by existing legislation and this Law.

4. In case of termination of amicable settlement, announcement about re-opening of proceedings on bankruptcy of the enterprise will be published in official newspaper.

## **Chapter VIII. Sanation**

### **Article 40. The process of sanation**

1. Sanation is the process in the course of which all liabilities of debtor are fulfilled.
2. Any planned sanation should be approved by the law court.
3. The debtor *or creditor (creditors)* may apply to the law court with petition about stay of the process on bankruptcy in order to examine an option of sanation. Law court will consider this petition within two weeks term and takes decision about its complete satisfaction or rejection.

### **Article 41. Terms of reorganization (sanation) process**

1. *In the application for reorganization submitted to court by the debtor or creditor (creditors), the following should be indicated:*

- a) *the name of the court to which the application is submitted;*
- b) *if the applicant is an individual - his surname, name, patronymic and address; if the application is submitted on behalf of a legal entity - its name and legal address;*
- c) *the names of all known creditors (if the creditor is an individual - his surname, first name, patronymic, if the creditor is a legal entity - the name of the legal entity), their postal addresses and the amounts of claims raised by them against the debtor;*
- d) *information on the consent of creditors to compensate for additional losses that they incur in connection with the court's consideration of the possibility of rehabilitation during the period of such review;*
- e) *substantiation of the possibility of restoration of the debtor's solvency on the basis of sanation;*
- e) *information on the adoption of the rehabilitation plan by the meeting of creditors;*
- g) *information on the amount of the debt obligation;*
- h) *substantiation of the impossibility of timely payment of future payments, including the satisfaction of creditors' claims;*
- i) *property belonging to the debtor, including property in pledge, mortgage, hiring, leasing, cash in banks or other credit institutions, as well as in storage, bank account numbers;*
- j) *other information that the debtor deems necessary for the consideration of the case in court;*
- k) *a list of documents attached to the application.*

- 1-1. *The following documents must be attached to the application specified in subsection (1) of this section:*

- a) *document on payment of state fee;*

- b) documents confirming the consent provided for in clause 1 d) of this article;*
- c) documents confirming debts, obligations with the expired term of execution, as well as insolvency of the debtor;*
- d) the list of persons who participated in the meeting of creditors;*
- e) rehabilitation plan adopted by the meeting of creditors;*
- f) documents confirming the adoption by the creditors' meeting of the rehabilitation plan;*
- g) document whereby the temporary administrator of the property confirms the effectiveness of the rehabilitation plan.*

2. The ability to restore the debtor's solvency can be proved in any way that does not contradict the law.

3. To identify possibility or feasibility of the *plan* of sanation, the law court may involve independent experts. Expenses related to the activities of experts shall be reimbursed by *the person (the debtor or the creditor (creditors), filed an application for reorganization in court.*

4. Having considered measures on sanation of the enterprise-debtor, law court may announce open tender for participation of interested legal entities and individuals in the process of sanation. If, within a month, there will be no legal entities and individuals willing to participate in tender, or if the debtor disagrees with their terms of sanation, case of bankruptcy of said debtor will be considered as usual.

5. For a period of consideration of possibility of sanation by the law court, provisional administrator of property is appointed for management of business of insolvent debtor. Expenses of provisional administrator of property will be paid by persons who applied for participation in the process of sanation.

6. Resolution of the law court about beginning of sanation process should include the following:

- a) term of sanation must not exceed 24 months;
- b) not less than one third of total amount of claims of all creditors should be paid within 12 months from the date of acceptance of said resolution;
- c) clause specifying that *temporary* administrator of the property shall be carrying out control over implementation of sanation as specified in resolution.

7. During the process of sanation, any of the persons listed in article 2 of this Law will have the right to apply to law court with any question concerning sanation. Whereas, the law court make issue resolution *in the manner prescribed by Article 10-1 of this Law.*

8. With successful completion of sanation process, the law court terminates proceedings on bankruptcy with respect to this debtor in an order specified by legislation.

During sanation claims of creditors should be fulfilled in an order envisaged for liquidation of enterprises.

9. During the term of sanation, provisions of sub-clauses «a» - «c», clause 2, article 18 of this Law will apply. Calculation of interest and imposition of penalties may continue during the period of sanation, however demand of their payment may be submitted only at the end of this period.

10. *Subject to the requirements of Article 41-2 of this Law,* beginning of the *plan* of sanation shall not prevent secured creditor to recourse to the backing (securing) account in accordance with provisions of this Law.

11. Legal entities and individuals who participated in the process of sanation of the enterprise acquire the ownership right for part of property contributed to the enterprise.

12. Relevant executive power body of the Republic of Azerbaijan may establish different procedure of sanation of state enterprises of special kind.

### **Article 41-1. The rehabilitation plan and the procedure for its approval**

1. *The reorganization of the debtor is carried out in accordance with the rehabilitation plan. The debtor must draw up a rehabilitation plan within 2 (two) months from the date of the decision on reorganization between the debtor and the creditors. The content of the rehabilitation plan is established by the relevant executive authority.*

2. *The debtor must submit the prepared plan of reorganization to the meeting of creditors.*

3. *The plan of reorganization and changes made to it shall be adopted by the decision of the creditors' meeting in the manner established by part 9 of this article and approved by the court.*

4. *At the meeting of creditors, in connection with the adoption of the rehabilitation plan, in accordance with part 9 of this article, a group of creditors must participate that have identical claims to the debtor and do not have the advantage of meeting each other's requirements. The group of creditors is formed taking into account the following classification of creditors:*

- a) creditors for obligations secured by a mortgage or a mortgage;*
- b) creditors for claims for compensation for harm caused to life or health, as well as on claims for recovery of alimony;*
- c) creditors for claims for payment of severance pay and wages to persons working under an employment contract and on payments under an author's contract;*
- d) creditors on payments to the state budget, an extrabudgetary state fund on compulsory state social insurance contributions*

and unemployment insurance contributions, fund of compulsory health insurance for contributions to compulsory health insurance and budgets of municipalities, on unsecured debts of credit institutions and their interest;

e) other unsecured creditors for claims arising from a law or contract (including unsecured creditors under contracts for the provision of goods, works and services);

f) the founders (participants) of the debtor being a legal entity.

5. The rehabilitation plan is adopted within each group of creditors by voting. When adopting a rehabilitation plan within a group of creditors, more than two-thirds of the creditors of this group should participate by voting. When voting within a creditor group, creditors have the same rights. Within each group of creditors, only creditors participate in the voting, whose rights are affected as a result of the adoption of the rehabilitation plan. ~~Within the group of creditors, the rights of creditors who voted against the rehabilitation plan or did not participate in the voting shall be guaranteed along with the rights of creditors who voted for the rehabilitation plan, in order of priority.~~

6. The rehabilitation plan is accepted by creditors with more than two thirds of the claims in each group of secured creditors. The claims of secured creditors who are the debtor's affiliated persons are not taken into account for the purpose of voting in connection with the adoption of the rehabilitation plan. Within each group of secured creditors, only secured creditors whose rights are affected as a result of the adoption of the rehabilitation plan participate in the voting.

7. The rehabilitation plan is accepted by creditors with more than 50 percent of the amount of claims within the group of unsecured creditors of the same classification. The claims of unsecured creditors who are the debtor's affiliated persons are not taken into account for the purpose of voting in connection with the adoption of the rehabilitation plan.

8. On the basis of the demand of the secured creditor, the rehabilitation plan shall include a condition on the refusal of this secured creditor from the right to pledge or mortgage. This creditor is recognized as an unsecured creditor in respect of claims for which he has waived the right to pledge or mortgage.

9. Each group of creditors must participate in voting of the meeting of creditors through a member selected from among them. If a group of creditors consists of one creditor, this creditor must personally participate in the voting. Groups of creditors (members) participating in voting have equal rights. The decision of the creditors' meeting is made by a simple majority of votes. One member of each group is considered as one vote. If the votes are equal, the vote of the chairman of the meeting is considered decisive. The chairman is elected by the meeting of creditors.

10. The debtor must submit a rehabilitation plan drawn up by him and adopted by the meeting of creditors, to the temporary administrator of the property no later than the day following the day of the meeting of the creditors' meeting. The temporary administrator of the property must approve the effectiveness of the rehabilitation plan.

11. The debtor must submit the rehabilitation plan for approval to the court within 3 days of its adoption by the creditors' meeting.

12. The case on approval of the rehabilitation plan is considered by the court in the manner prescribed in Article 10-1 of this Law.

13. The following is indicated in the court decision regarding the approval of the rehabilitation plan:

a) name, location, bank account information, taxpayer identification number, full name, as well as the contact number of the chief of the debtor;

b) approval of the rehabilitation plan;

c) the term of the rehabilitation plan;

d) list of creditors participating in the recovery process;

e) the amount of requirements of the group (s) of creditors of the same type included in the rehabilitation plan;

f) the results of the approval of the rehabilitation plan provided for in Section 41-2 of this Law;

g) the deadline for submitting a report related to the implementation of the rehabilitation plan.

## **Article 41-2. Legal consequences of the beginning of the process of reorganization**

1. From the moment of making a court decision on the beginning of the process of reorganization, the following legal consequences occur:

a) taking into account the rights of the property administrator mentioned in part 4 of Article 20 of this Law, the founders (participants) of the debtor, its other management and control bodies are prohibited to use and dispose of the property belonging to the debtor;

b) the execution of decisions made against the debtor by courts on the actions of all creditors of the debtor, the founders (participants) of the debtor, as well as members of other management and control bodies, is suspended;

c) it is not allowed to initiate bankruptcy proceedings against the debtor on the basis of the application of all the creditors of the debtor, the founders (participants) of the debtor, as well as members of other management and control bodies;

d) it is not allowed to write off money from the bank accounts of the debtor according to the requirements of all creditors of the debtor, including the claims that must be satisfied in an uncontested (without acceptance) procedure, and also send claims on the property of the debtor.

2. If there are circumstances that may lead to the destruction of the collateral (mortgage) of the secured creditor (creditors) or if this collateral (mortgage) is not included in the rehabilitation plan in accordance with Part 9 of Article 41-1 of this Law, then on the basis of the debtor's application or the creditor (creditors), the court may decide to eliminate in connection with these requirements the relevant legal consequences

*provided for by part 1 of this article.*

*3. The court shall consider the application provided for in subsection (2) of this section within ten working days from the date of its receipt by the court and issue a decision on the satisfaction or rejection of the application.*

*4. The legal consequences specified in subsection (1) of this section have effect during the period of reorganization, provided that these legal consequences have not been eliminated by a court decision.*

*5. In the rehabilitation plan, the rights of all creditors within the same group of creditors shall be provided equally in the order of priority.*

## **Chapter IX. Presentation of claims**

### **Article 42. General principles of presentation of claims**

Claims of unsecured creditors, including those which arose as a result of legal proceedings on bankruptcy (claims regarding unfulfilled agreements, etc.) and claims of secured creditors (if they do not apply to sums exceeding sum of their coverage) will be recognised by the administrator of property only if they have been submitted in accordance with provisions of this chapter.

### **Article 43. Announcement about bankruptcy and procedure of presentation of claims**

1. Notification about the first meeting of creditors forwarded by the administrator of property or by debtor includes information about certain rules, which creditors willing to present their claims on the bankruptcy of debtor should follow.
2. Creditors may present claims to the debtor in writing, within a term not later than 60 days from the date of publication of notification about the bankruptcy of debtor, in accordance with provisions of this Law. Such claims will be considered by the administrator of property only if they include the following information:
  - a) name (surname, name and middle name) and address of creditor;
  - b) total amount of claims at the moment of institution of proceedings on bankruptcy;
  - c) whether sum of claim includes outstanding interest;
  - d) whether sum of claim includes any penalties or taxes;
  - e) information about how and when the debtor became indebted;
  - f) information about any existing guarantee, date of presentation of such guarantee and sum which the creditor expects to receive;
  - g) surname, address and authority of the person who signed the claim (if said person is not the creditor himself);
  - h) documents (if there are any) confirming that said claim is legal.
3. Any claim of creditors presented in accordance with clause 2 of this article will be examined by the administrator of property in term not exceeding *10 business days* after its presentation. Administrator of the property prepares schedule of claims of creditors in accordance with provisions of this Law.

### **Article 44. Principles applied by the administrator of property when estimating claims**

1. If interest has been charged on a sum of debt presented on bankruptcy, or if such debt entails penalty sanctions, said interest or sanctions may be demanded as a part of debt, except how such sums are subject or become subject to payment with regards to any period beginning from the moment of bankruptcy of debtor.
2. Claim of creditor at any time, on agreement between the creditor and the administrator of property, may be recalled or changed in terms of required sum.
3. In cases not contradicting legislation sums which are payable to creditor on presentation of claim by the latter, or liabilities under some agreement, including compensation under non-monetary liabilities will be estimated by the administrator of property rather than by law court.
4. If administrator of property annuls obligations of debtor in cases not contradicting legislation, then person suffered as a result of such annulment will have the right to demand compensation of losses from the debtor, whereas compensation of such losses shall be done as unsecured debt on bankruptcy, in the fifth order, according to ranking, as specified in this Law.
5. In all cases when debts (or liabilities) of debtor are to be paid later, term of their fulfilment is regarded as transferred to the moment of bankruptcy of debtor, so that agreement could be considered terminated and creditors should have the right for presentation of claims. If administrator of property estimates sum of compensation to be paid against such transferred (ahead of time) claim, he will have to make discount from the sum of claim, to reflect the fact of presentation of claim ahead of time. Within the context of this Law, sum of claim with discount shall mean net current value of claim.
6. If the debtor has liabilities to his employees concerning illness allowance, these liabilities also shall have to be fulfilled sooner, as all other debts and they are paid in such order of priority as specified in Chapter XII of this Law.
7. Shareholders or owners have the right for compensation of their contributions to the capital of insolvent debtor after claims of all other creditors have been fulfilled in compliance with Chapter XII of this Law. However, in the context of this right, shareholder or owner is not the creditor of insolvent debtor and has no right to vote at the meeting of creditors, or take part in proceedings on bankruptcy in some other way, except cases when such shareholder or owner has separate debt under some other deal, where he is a creditor. Shareholder or owner has no right for clearing of any liability due to him from insolvent debtor with respect to his contribution to the capital on account of any debt which he could have to insolvent debtor. When establishing order of payments to the shareholders, administrator of the property must take into account category

of shares belonging to shareholder.

## **Article 45. Rejection of claims and complaints submitted by creditors**

1. Administrator of property may accept or reject a claim, in full or in part.
2. If administrator of property accepts or rejects a claim, in full or in part, he must explain his reasons in writing and forward such written explanation to creditor by post.
3. If the creditor does not agree with decision of the administrator of property regarding his claims, he may apply to the law court for annulment or change of this decision. Such application must be submitted within 21 days from the day when explanation prepared in accordance with clause 2 of this article has been received.
4. Law court *within 10 (ten) days considers* application under clause 3 of this article and sends a notice to the administrator of the property *in connection with the date of the meeting*.

## **Article 46. Schedule of claims**

1. Within a term not more than 7 days after expiration of 60-day period allocated for submission of creditors' claims, administrator of property prepares schedule of claims. Such schedule should give information about each claim submitted within specified term, with indication of the following:
    - a) if such claim has been accepted in full or rejected;
    - b) sum of accepted claim;
    - c) position of claim within the rank.
  2. Administrator of property submits prepared schedule of creditors' claims to the law court within 3 days after its preparation. *The court, having considered the case within 5 (five) business days*, may:
    - a) approve the schedule; or
    - b) introduce such changes and amendments into the schedule which to his opinion are relevant, and approve such amended schedule; or
    - c) instruct administrator of property to take other measures which the law court considers proper and submit amended schedule of claims again, later.
- 2-1. When the court makes the decision provided for in paragraph "c" of part 2 of this article, the property administrator must submit an updated register of debt claims to the court within 7 (seven) days.*
3. Within a term not more than 3 days after approval of schedule of creditors' claims, administrator of property must notify each creditor, who has submitted a claim, about results of consideration of said claims, in writing, in due form and in due term, as specified in article 43 of this Law.
  4. Any creditor has the right to be acquainted with the schedule of claims (or its copy).
  5. *The creditor may dispute in court its claims scope recorded in the register, as well as the scope and legal basis of claims of other creditors.*

## **Chapter X. Secured creditors and claims of ownership**

### **Article 47. Secured creditors**

1. *Subject to the requirements of Article 41-2 of this Law, the secured creditor has the right for fulfilment of his rights, irrespective of the fact whether proceedings on bankruptcy have been initiated.*
2. *Within 3 days after the assignment, the administrator of the property shall send a notice to secured creditors on declaration of the debtor bankrupt.* If secured creditor fails to implement his rights with regards to security within 14 days from the day when notification has been received, administrator of property will have the right to sell security (separately, or together with all assets or part of assets of debtor) and to report to secured creditor about returns from sale, minus sale costs, within the limits of total agreed amount of claims of secured creditor. Any surplus of sale returns will remain part of debtor's property.
3. In case if secured creditor initiates proceedings on bankruptcy, he will not lose his right of applying claims at the expense of security.
4. During the period of bankruptcy administrator of property must convince himself in legal value of security belonging to creditors. Validity of security is defined in accordance with existing legislation and Chapter XIII of this Law.
5. Administrator of property satisfies claims of secured creditor by the following ways, as secured creditor may desire:
  - a) sale of the object of security through the auction (or otherwise) and payment of liability thus secured;
  - b) assignment of the ownership right for the object of security to secured creditor;
  - c) sale of the object of security to a third person indicated by secured creditor.
6. With the purpose of satisfaction of claims of secured creditor, in line with sub-clause «b», clause 5 of this article administrator of property concludes agreement with secured creditor, terms of said agreement being the following:
  - a) description of assets which are subject to assignment;



b) approximate market and balance cost of assets;

c) sum to be paid to secured creditor by the debtor under secured liability and contract of pledge *or mortgage*;

d) list of all former and future pledges (*mortgages*) with respect to assets which the parties know about at the moment of conclusion of agreement, and also any ownership rights and rights of use with respect to these assets.

7. Agreement mentioned in clause 6 of this article, comes into force after its certification with notary. Whereas, state duty shall not be paid if such duty was paid at the moment of conclusion of contract of pledge.

8. If returns from sale of security are not adequate for payment of compensation to secured creditor in full, the latter might submit claim on bankruptcy as unsecured creditor.

9. Secured creditor has the right to refuse benefits under his security and to submit claim on bankruptcy as unsecured creditor.

10. Owner of any property being in possession of the debtor has the right to come into possession again, except cases when the owner is lessor, or preserves right of ownership according to agreement. In such case this owner has the right for return of this property only with consent of the administrator of property or by resolution of the law court.

## **Chapter XI. Meeting of creditors**

### **Article 48. Meeting of creditors**

1. Creditor may, by power of attorney, authorise his representative to attend and to vote at any meeting of creditors on behalf of this creditor. *When forming a group of creditors under similar claims, one member from each group participates in the meeting of creditors, in accordance with Part 9 of Article 41-1 of this Law.*

2. Meeting of creditors is considered legally summoned when written notification is sent to all known creditors at least 14 days before, as follows:

a) by the administrator of property or provisional administrator of property;

b) by creditors representing at least one third of the cost of debt;

c) by law court;

d) otherwise, by request of the law court.

3. Any meeting of creditors summoned in accordance with this Law is considered powerful on condition that creditors are present at this meeting whose claims altogether represent not less than 50 % of total amount of creditors' claims.

4. Meeting of creditors has the right to take any decision related to proceedings on bankruptcy with respect to the debtor which does not contradict this Law or resolution of the law court taken in accordance with this Law and does not prevent administrator of property to fulfil his obligations.

5. Decisions taken at the meeting of creditors on any issue, except when passing vote of no confidence in the administrator of property are powerful only when they have been supported by:

a) majority of creditors attending the meeting or represented at the meeting;

b) majority representing larger part of sum of all known unsecured debts which are due to creditors attending the meeting or represented at the meeting;

*c) by a simple majority of votes in the procedure established by part 9 of Article 41-1 of this Law, in the event of adoption of a rehabilitation plan.*

6. *Except for the circumstances provided for in subsection 41-1 of this Law, if one or several creditors attending the meeting vote for taking certain measures (except when passing vote of no confidence in the administrator of property) their decision is powerful irrespective whether it has been supported by majority of creditors, if creditors voting for acceptance of such measures have the right for 75 % or more of a sum of debt of insolvent debtor against attendees.*

7. All decisions of the meeting of creditors which need approval of the law court become valid only after they have been approved by law court.

### **Article 49. Voting right of secured creditors**

1. Secured creditor (creditors) have the right of voting at the meeting of creditors if he (they) refused from their right for security in accordance with clause 9 of article 47 of this Law. Such act of secured creditor must be made public at the initial meeting of creditors.

2. In case if cost of the object of security estimated in accordance with legislation does not fully cover sum of debt due to secured creditor (creditors), the latter has the right to vote at the meeting of creditors within the limits of obtained difference.

### **Article 50. Committee of creditors**

1. In order to assist to the administrator of property in implementation of his obligations and for control over his activity, meeting of creditors may elect committee of creditors at any time, consisting of minimum 3 and maximum 5 members, on condition that creditors representing major part of total amount of debt attend such meeting in person or by proxy.

2. Meeting of the committee of creditors is regarded powerful, if;

a) notification about the time, date and place of the meeting was sent to members of the committee not later than 14 days before the date of the adjourned meeting;

b) not less than two members of this committee are present.

3. Decision of the committee of creditors is considered valid if it has been supported by majority of members of the committee attending the meeting, or in case of even number of creditors at the meeting - by creditors representing the larger part of cost of debt.

4. Committee of creditors has the right to give recommendations to the administrator of property. Administrator of property takes such recommendations into account on condition that they satisfy the interests of all creditors.

However, administrator of property is not obliged to follow recommendations of the committee of creditors (or meeting of creditors).

5. In case if actions of the administrator of property are considered as unsatisfactory, committee of creditors will have the right to summon meeting of creditors independently and to suggest to pass a vote of no confidence in the administrator of property. Such meeting may be summoned by the committee of creditors by way of notification of all known creditors by letter sent 14 days the latest before the date of adjourned meeting.

6. In case of bankruptcy of state enterprise relevant executive authority has the right to joint the committee of creditors as its member.

### ***Article 51. Passing a vote of no confidence in the administrator of property and his dismissal***

1. Decision of the meeting of creditors about passing a vote of no confidence in the administrator of property and appointment of new administrator of property will be powerful, if:

a) most creditors attending the meeting or represented at the meeting voted for adoption of such decision;

b) such decision was supported by creditors attending the meeting or represented at the meeting, who represent 75 % or more of total sum of debt.

2. Decision about dismissal and replacement of the administrator of property must be approved by the law court after consideration of application submitted by any creditor. Expenditures in connection with such application are paid as expenditures on the bankruptcy proceedings, in the first place, according to requirements of this Law.

When considering application, law court may adopt or reject decision of the meeting of creditors, or, accounting for interests of creditors in general, law court may dismiss administrator of property from his position, and appoint new administrator of property, irrespective of the fact whether his candidature was suggested by the meeting of creditors or not.

## ***Chapter XIII. Ranking and payment against the claims of creditors***

### ***Article 52. General procedure of ranking in debt payment***

1. Administrator of property may satisfy claims of creditors:

a) either by way of withdrawal of debt sums due to debtor and sale of assets constituting property of debtor in accordance with Chapter V of this Law, and distribution of returns from such sale of debts among the creditors;

b) or by way of direct transfer of assets constituting property of debtor to creditors as coverage of their claims.

2. Claims of creditors of each rank should be satisfied only after claims of higher priority have been fulfilled.

3. In case if distribution has to be done for one category of creditors, all creditors of this category must be regarded as equal and receive compensation in proportion with sums of liabilities due to them.

4. In case if secured creditors were guaranteed security with respect to same assets, then security which was registered first will be of the first priority.

5. In case if in the course of bankruptcy it is revealed that the debtor has unpaid liabilities or will have liabilities later as a result of deals concluded before the moment of bankruptcy, or he may have contingent liability to other person, while such other person has existing, current or contingent liability, or debt to insolvent debtor, then:

a) if said debts and liabilities existed before the moment of initiation of the bankruptcy case and are expressed in sums of money, or have money equivalent, then these two debts are cleared, thus debts or their part are considered paid;

b) if money equivalent of debt or liabilities cannot be estimated with certainty, said equivalent is defined approximately by the administrator of property;

c) any debts and liabilities which appeared after the moment of initiation of the bankruptcy case, cannot be accounted for with the purpose of this clause.

6. Clause 5 of this article cannot be applied to relationship between the enterprise-debtor and its owners (shareholders), as the owner is not regarded as creditor with regards to his claims for compensation of his contribution to the partnership capital.

7. Claims of creditors submitted after expiration of the term for submission of claims, as specified in Chapter IX of this Law, will be satisfied from the assets remaining after the claims of creditors submitted within the specified term have been paid.

8. Claims of creditors which remain unpaid due to lack of assets constituting the property of insolvent debtor are regarded annulled, except cases when the cause of such shortage is either illegal attitude, or illegally concluded (by the debtor) deal.

9. Claims of creditors rejected by the administrator of property (which have not been settled positively on appeal) and also claims rejected by the law court are considered annulled.

## **Article 53. Priority of payments**

1. Distribution of assets which constitute the property of debtor should be done in accordance with provisions of Chapter IX of this Law, in the following order:

- a) all costs and expenditures on the process of bankruptcy (including cost of announcement about bankruptcy published in mass media, legal expenses, fee and expenses of the administrator of property and provisional administrator of property, and also claims resulting from liabilities accepted or continued by the administrator of property after the moment of bankruptcy) are paid in the first place;
- b) *claims for compensation of harm caused to life or health, as well as withholding of alimony* shall be paid in the second place;
- c) *claims for the payment of dismissal and salary benefits to persons who worked under an employment contract and payment of contributions under an author's contract* which is limited by a term of up to 6 months, expired to the moment of bankruptcy of debtor, shall be paid in the third place;
- d) the following shall be paid in the fourth place:
  - § *payments to the state budget, an extrabudgetary state fund on compulsory state social insurance contributions and unemployment insurance contributions, fund of compulsory health insurance for contributions to compulsory health insurance and municipal budgets.* These claims cover liabilities which arose during one year to the moment of announcement of the debtor's bankruptcy;
  - § claims of credit organisation, including non-residents, with regards to unsecured loans which have not been paid before the date of enactment of this Law and interest on such loans before said date;
- e) claims of unsecured creditors are paid in the fifth place;
- f) claims of owners of the enterprise-debtor are paid in the sixth place;

2. Any assets remaining after distribution of returns carried out in accordance with clause 1 of this article, are the debtor's property.

## **Chapter XII. Illegal deals**

### **Article 54. Affiliated persons of the debtor**

*The persons specified in Article 49-1.1 of the Civil Code of the Republic of Azerbaijan, including persons who were dismissed from the management bodies of the debtor enterprise within one year prior to the moment of beginning of the bankruptcy process, are considered as the affiliated persons of the debtor.*

### **Article 55. Constraints on rights of transfer of the ownership rights by the debtor**

*The administrator of the property may apply to the court to dispute the transactions concluded by the debtor in the following cases:*

- a) if the transfer of rights to property or the emergence of the right of pledge or mortgage occurred at the time when the debtor was insolvent;
- b) *upon conclusion during 6 months, which preceded the moment of commencement of bankruptcy proceedings of the debtor, of transactions that may lead to the preferential position of one creditor before other creditors in the priority of payments;*
- c) during 1 year before the commencement of the bankruptcy process, if to the moment of said transfer the creditor or the pledge or mortgage rights arose, the guarantor was an affiliate of the debtor in accordance with section 54 of this Law;
- d) *in case of the conclusion of underestimated deals, that resulted in debtor's insolvency (at a price that is less than the lower limit of prices that would have formed under similar conditions between other persons).*

### **Article 56. Contest in the law court undertaken by the administrator of property**

1. Except cases, when the law court decides otherwise, administrator of property notifies the creditor or guarantor, who presumably benefited from illegal deal, about application earlier sent by him to the law court, contesting said deal.

2. When examining any application submitted in compliance with this article, the law court may:

- a) request that any property or ownership rights transferred as a part of this deal should be returned to debtor;
- b) cancel or annul, completely or in part, any security provided by debtor;
- c) in compliance with legislation, request from any person, regarding any benefit received from the debtor, payment of such sums which law court could require;
- d) envisage that any guarant whose obligations have been cancelled or annulled, completely or in part, in accordance with this deal, becomes bound by such new or renewed obligations;
- e) request that losses incurred as a result of such assignment should be paid at the expense of director (manager) of debtor;
- f) issue other resolutions and instructions, depending of specific circumstances.

## **Chapter XIV. Obligations and responsibility of director of the enterprise-debtor**

## **Article 57. Obligations of director**

1. Director should have all relevant information concerning economic activity of debtor, and should act based on such facts in order to guard creditors from extra losses.
2. When estimating actual responsibility of heads of enterprises, in line with provisions of this chapter, the law court may, at its discretion, take into account their actual experience and qualifications, and also experience and qualifications which would be normally expected from persons occupying such positions.
3. Director of the enterprise shall be obliged to initiate the process of bankruptcy from the moment when he finds out about insolvency of debtor.
4. Administrator of property may apply to the law court with request to issue resolution that director of the enterprise must personally transfer (pay) to the property of debtor such property which corresponds to additional losses suffered by creditors as a result of violation of obligations of debtor's director.

The law court may issue any resolution in accordance with circumstances.

## **Article 58. Limited responsibility of director**

1. Director does not violate his obligations concerning institution of the process of bankruptcy if he took all relevant measures for acquaintance with financial status of debtor, and also:
  - a) he did not know about activity or deals which resulted in extra losses for the debtor;
  - b) he did not know about activity or deals which resulted in such losses, as management of the enterprise gave him false information;
  - c) he directly informed management of the enterprise that he was against activity or deals under consideration, and asked for resignation from the post of director immediately after he had received information that said activity or deals were carried on, or continued despite his objections.

## **Article 59. Responsibility of director for fraudulent or deliberate bankruptcy**

If the debtor begins the process on bankruptcy being solvent (except cases envisaged in Chapter XII of this Law), or makes himself bankrupt deliberately, creditors might request compensation of losses from director of debtor.

# **Chapter XV. Conclusions**

## **Article 60. Grounds for termination of the process of bankruptcy**

1. Law court terminates the process of bankruptcy regarding debtor in the following cases:
  - a) when final report of administrator of property is submitted to the law court, and law court, having listened to the administrator of property will be convinced that no outstanding actions remain;
  - b) if claims of all creditors are paid in full;
  - c) when administrator of property advises the law court that composition with creditors has been accomplished, or sanation has been completed;
  - d) in all other circumstances, when law court so decides.
2. On termination of bankruptcy of the debtor the following could occur:
  - a) in case when bankruptcy has been terminated in accordance with sub-clauses «b» and «c», clause 1 of this article, authority of administrator of property cease and the debtor resumes his managerial functions;
  - b) in case if bankruptcy has been terminated due to other reasons, liquidation (dissolution, recall of license, etc.) of debtor takes place in an order specified by legislation.
3. All outstanding issues regarding bankruptcy should be settled in final resolution of the law court.
4. After termination of bankruptcy of individual debtor, all debts which existed before the bankruptcy are regarded as fully paid, except alimony and money paid for keeping children under age.
5. On liquidation of the enterprise-debtor, respective resolution is forwarded to the body which has registered said enterprise, and in case of individual debtor - to the body which has registered it or issued license.
6. Entry about dissolution of debtor in accordance with sub-clause «b», clause 2 of this article should be made in the relevant state register.

## **Article 61. Responsibility for violation of this Law**

As a result of actions listed below guilty persons might be called to account in accordance with legislation:

- a) institution of the process of bankruptcy by solvent debtor or deliberate bankruptcy;
- b) illegal concealment or transfer of property of insolvent debtor;
- c) illegal concealment, destruction, change or forgery of documents of insolvent debtor;

- d) presentation of false claims by creditors;
- e) illegal sale or presentation as security of any property of insolvent debtor, which was taken as credit or which was not paid for;
- f) creation of illegal obstacles for activity of the administrator of property, or provisional administrator of property;
- g) illegal purchase, direct or indirect, of any assets of debtor by the administrator of property, or provisional administrator of property.

*President of the Republic of Azerbaijan*

*Heydar ALIYEV.*

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