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ROYAL GOVERNMENT OF CAMBODIA

Ministry of Commerce

# INSOLVENCY LAW

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## CHAPTER 1 GENERAL PROVISIONS

### Article 1. Scope and Purpose

(a) This law establishes the conditions and procedures governing the insolvency of debtors. [Ukraine]

(b) Insolvency proceedings shall provide collective, orderly and fair satisfaction of creditors' claims out of a debtor's estate and, where parties in interest agree it is appropriate, the rehabilitation of the business of the debtor. [Modeled after Germany's S.1]

### Article 2. Definition of Terms

(a) "Creditor" means any natural or legal person who owns an admissible claim against the debtor which arose before the opening of the insolvency proceedings, regardless of whether such claim is conditional, unliquidated or contingent.

(b) "Company" means a limited company formed under the Law of Commercial Enterprises.

(c) "Costs of the proceedings" and "costs of the resumed proceedings" mean all costs related to the administration of the insolvency proceedings, including the [court's costs and the] remuneration, fees and expenses of the administrator.

(d) "Court" means a court which, under the laws of the Kingdom of Cambodia, has jurisdiction over insolvency proceedings opened under this law.

(e) "Debtor" means any natural or legal person who is engaged in a business enterprise and who may be made a subject of insolvency proceedings under this law. [UNCITRAL legislative guide, page 3.]

(f)

- (iii) any ascendant or descendant of the debtor or of any person described in paragraphs (i) and (ii);
- (iv)

#### Article 4. Subjects of Insolvency Proceedings

(a) Subject to paragraph (b), insolvency proceedings may be opened under this law against a debtor who is:

- (i) a partnership or company;
- (ii) a natural person who is domiciled in the Kingdom of Cambodia with respect to debt which arises from a business or trade engaged in by such person;
- (iii) a legal person or partnership formed under the law of Cambodia.



for orderly partnership insolvencies through one “central” insolvency proceeding against the

- (iii) the ground or grounds under Article 5 on which the petition is based;
- (iv) a description of the circumstances showing the existence of the ground or grounds for the petition;
- (v) evidence on which the petition is based, including an attachment of any documents which could substantiate the petition; and
- (vi) in the case of a petition by the debtor, a list of all known creditors of the debtor, indicating the names of the creditors, their addresses and the amounts of their respective claims.

[Note: In the context of Cambodia, it is probably useful to give public authorities a right to petition for the opening of insolvency proceedings, to serve as a “check” on improper business behavior.]

#### Article 7. Duty to Petition for the Opening of Insolvency Proceedings

(a) A debtor that has ceased to meet any of its mature obligations to pay shall, within [thirty] days of such cessation, petition for the opening of insolvency proceedings against itself, if the aggregate of such mature obligations exceeds the amount stipulated under Article 5(a).

(b) In the case of a debtor who is a natural person, it shall be his duty to ensure that a petition is filed pursuant to paragraph (a). In the case of a debtor which is a partnership or a company, it shall be the duty of every individual director, partner or manager, as the case may be, to ensure that a petition is filed pursuant to paragraph (a).

(c) Any person who fails to observe the duty under paragraph (b) shall be personally liable to the debtor’s creditor or creditors for damages that result directly from such failure. If the duty under paragraph (b) falls on more than one person, all such persons shall be jointly and severally liable for damages that result from the failure to observe the duty. Should insolvency proceedings be commenced against the debtor, such damages shall be included in the estate and the administrator shall act on behalf of all creditors in their recovery.

[Note: This article is modeled after Bulgaria’s A.626 and 627]

#### Article 8. [Service of Petition]

(a) A creditor’s petition, [or a petition by the Minister of Commerce/Director of Companies/public prosecutor], shall be served by the petitioner on the debtor no later than seven days after the petition has been filed with the court. The court may, upon the

application of the petitioner, extend the period of the service of the petition, but for not more than seven days.

(b) The court shall be notified of the service of the petition immediately after such service has been effected.]

[Note:

- In many civil law systems, it is not for the plaintiff/petitioner to serve process but for the court to do so. This article may therefore not be needed.
- In any event, if retained, the article will be harmonized with the rules on civil procedure in Cambodia. We will require the input of the Ministry of Justice and other related officials in Cambodia on this issue.]

(ii) with the permission of the court.

(b) In the case of a petition filed against a debtor which is a general partnership or a limited partnership, the stay of action in paragraph (a) shall also apply to any action, proceedings or execution process against a partner or general partner of the debtor, respectively, and to the partner's assets. Only the administrator~~or~~ provisional administrator may claim a partner's personal liability for the debtor's debts during such insolvency proceedings. [Modeled after Germany, S. 93]

(c)

(c)

- (iii) announcing a date for the opening creditors' meeting, which shall be on a day no earlier than [thirty] but no later than [sixty] days after the opening of the insolvency proceedings; and
- (iv) the deadline for the filing of proofs of claims, which shall be seven days before the date of the opening creditors' meeting.

[Note: (a)(i) and (a)(ii) are modeled after Bulgaria's A. 630.]

(b) In determining the date of the opening creditors' meeting under paragraph (a)(iii), the court shall take into account whether the debtor has submitted a proposed plan of compromise which the debtor represents has the support of creditors required for the approval of a plan of compromise under Article 39.

(c) If the court is satisfied, after the hearing oji.4(3.8( )-1p5.3( o)3.1(ar )8.3(n)4.3(g)-6( )10.3d-1.9-6

Article 15. [No Opening of Insolvency Proceedings for Lack of Assets]

(a) Insolvency proceedings shall not be opened and the petition shall be dismissed if the debtor's assets will likely be insufficient to cover the costs of the proceedings, unless a sufficient amount of money is advanced to cover such costs. [Germany, S. 26(1)]

(b) Anyone advancing an amount of money under paragraph (a) may, within [five years] from the time the amount is advanced, claim reimbursement of the advanced amount from any person who, in contravention of this or other law, failed to discharge his duty to petition for the opening of insolvency proceedings against the debtor at the time the petition was filed. In the event of a dispute as to whether such person failed to discharge his duty, such person shall bear the burden of proving that he did not fail to discharge his duty. [Germany, S. 26(3)]

Article 16. Costs for a Dismissed Petition

When dismissing a petition for lack of grounds under Article 12, the court shall also order the petitioner to reimburse the debtor, or creditors, as the case may be, for all reasonable legal costs incurred by such party or parties in attending to the petition. If the court finds that the petition was filed frivolously, maliciously or with intent to do wrongful harm to the debtor or creditors, the court may further order that the petitioner be held liable to such party or parties for all damages incurred by the party

CHAPTER 4  
EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS

PART A – GENERAL EFFECTS

Article 18. The Estate

(a) The opening of the insolvency proceedings shall create the estate.

(b) The estate shall comprise all property, rights and claims of any kind in which the debtor has an ownership interest or to which the debtor is otherwise entitled on the date of opening of the insolvency proceedings or after that date, with the exception of, in the case of a debtor who is a natural person:

- (i) the primary place of residence of the debtor, the market value of which shall not exceed [Riels 20,000,000 – approx. US\$5,200]; and
- (ii) personal clothing of the debtor, the aggregate market value of which shall not

management and power over the debtor's business and all assets in the estate be vested in the administrator, to the exclusion of the debtor, its management or partners.

(c) The administrator or any creditor may at any time make a written application to the court for an order under paragraph (b).

#### Article 20. [Treatment of Joint Marital Property]

[Note: Given Cambodia's civil law tradition and the possible applicability of earlier French-based laws/codes, this could be an issue. Provision under the Civil Code will also need to be considered.]

#### Article 21. Valuation of Encumbered Asset

(a) No later than [thirty days] after the opening of insolvency proceedings, the administrator shall determine in good faith the value of any asset which is the subject of security held by a creditor for a claim. The administrator's determination shall be valid unless challenged by the debtor or any creditor.

(b) A valuation under paragraph (a) shall not be necessary if the administrator decides, before the expiration of the stated [thirty days] permit a creditor to sell the asset which is the subject of security held by the creditor for a claim, and to apply the proceeds of the sale in satisfaction of the creditor's claim. The portion of the creditor's claim which remains unsatisfied after the application of the proceeds from the sale of the asset shall be eligible for satisfaction in the insolvency proceedings as an unsecured claim.

#### Article 22. Protection for Secured Creditors

(a) With regard to an asset which is the subject of security held by a creditor for a claim, the provisional administrator or administrator shall pay the creditor all interest accrued at the contractual rate on that portion of the creditor's claim that does not exceed the value of the asset as determined under Article 21. In the absence of a contractual rate of interest, interest shall be calculated at the rate [prevailing in the market][of [xx] percent per annum].

(b) Interest pursuant to paragraph (a), which shall be paid at least once every month, shall be applicable only upon the expiration of [30 days] after the opening of insolvency proceedings and for so long as the asset is not sold and the proceeds of the sale applied in satisfaction of the creditor's claim.

[Modeled after Germany's S.169]



## Article 23. Maintenance Payments from the Estate

[Note: We will require a rule on a minimum income and minimum maintenance and alimony payments in the case of natural person debtors. The court could be given the right to determine these minimum amounts (they may be lower than in case of individual debt collection). An alternative would be to accept existing judgments for alimony and maintenance, and establish an administrative priority for future payments. See, for example, Germany's S. 100]

## Article 24. Duty of Debtor to Provide Information

(a) No later than fourteen days after the opening of insolvency proceedings, the debtor shall file with the court and provide to the administrator a written statement setting out:

- (i) full details of the estate; and
- (ii) all creditors known to the debtor, including the creditors' names, addresses and a brief description of the debt owed to each creditor.

(b) The debtor shall submit to examination regarding its assets and business affairs as and when required by the provisional administrator, the administrator or the court.

## PART B – SAFEGUARDING AND ENHANCEMENT OF THE ESTATE

## Article 25. Treatment of Contracts

(a) If, at the time of the opening of insolvency proceedings, a contract between the debtor and one or more counter parties has not been fully performed by all parties to the contract, the administrator may elect to continue the contract in accordance with the terms of this article.

(b) An administrator who has decided to continue a contract must declare this decision in writing to all counter parties to the contract within [thirty days] of the opening of insolvency proceedings. In the absence of such a written declaration from the administrator, the contract shall be deemed terminated and all counter parties to the contract may file claims for damages as creditors in the insolvency proceedings. The court may, upon a written application of the administrator, extend the period within which the administrator must declare his decision whether to continue the contract. Each extension shall be for no more than fourteen days.

(c) Any counter party to a contract may, at any time, also make a written request to the administrator that the administrator declare himself bound by the contract. In the absence of a written declaration from the administrator to be bound by the contract within [seven days] of the counter party's request, the contract is deemed terminated and all counter parties to the contract may file claims for damages as creditors in the insolvency proceedings. The court may, upon a written application of the administrator, extend the period within which the administrator must declare his decision whether to be bound by the contract. Each extension shall be for no more than fourteen days.

(d) Paragraphs (b) and (c) shall not apply to any contract which by law may only be terminated by giving a specific period of notice to the counter party. Such contracts shall be terminated in accordance with the provisions of the relevant law.

(e) [If the terms of a contract provide for a right to terminate the contract upon the opening of insolvency proceedings against the debtor, the contract may only be continued with the agreement of all the counter parties to the contract.]

[Note on (e):

- This provision preserves the application of ipso facto clauses in contracts when insolvency proceedings are opened against a party to the contract. The preservation of such clauses means that such contracts cannot be continued against the wishes of all parties to the contract. This could undermine the ability to formulate rehabilitation plans.
- There is therefore a policy choice to be made as to whether it should be possible to continue a contract against the express wishes of all parties as expressed in an ipso facto clause. Further, if the decision is to make it possible to "override" an ipso facto clause, then a carve-out will be necessary to enable close netting in the case of framework contracts for certain financial transactions.]

(f) In the case of individual contracts for the sale or purchase of securities, rights or other similar goods in a market or stock exchange which are part of a larger framework agreement for the consolidated settlement of the individual contracts, the administrator's election to continue with contracts shall be made with respect to all the individual contracts under the framework agreement as a whole. The administrator may not elect to continue with only some of the individual contracts under the framework agreement.

(g) The administrator's election to continue a contract which requires regular payments to the counter party shall not bind the administrator to effect payments that were not made prior to the opening of insolvency proceedings. [Bulgaria, A. 644s -.006 T( A.A. ) 0 -1.1517 TD 0 Tc 0 Tw (

## Article 26. Avoidance of Certain Prejudicial Transactions

(a) A transaction voluntarily performed by the debtor before the opening of the insolvency proceedings which the debtor knew or should have known, at the time of the transaction, would prejudice the creditors shall be voidable by the court for the benefit of the estate.

(b) A transaction, other than one for no consideration, which is either multilateral or unilateral, and to which one or more persons are party, may only be avoided on the ground of prejudice to the creditors if the parties with or in favor of whom the debtor performed the transaction also knew or should have known that it would prejudice the creditors.

(c) If a transaction for no consideration is avoided on the ground of prejudice to the creditors, such nullification shall have no effect in respect of a beneficiary unless the beneficiary knew or should have known that the transaction would prejudice the creditors, provided that he proves that he had not benefited from the transaction at the time of the opening of the insolvency proceedings.

[Note: Modeled after the Netherlands's A. 42]

## Article 27. Presumption of Required Knowledge

(a) If the transaction prejudicing the creditors was performed within the period of one year before the opening of the insolvency proceedings and if the debtor was not already legally committed to the transaction before the beginning of this period, the knowledge referred to in Article 26, paragraphs (a) or (b) shall be presumed to exist in the absence of proof to the contrary:

- (i) in the case of a contract in which the value of the debtor's obligation considerably exceeds the value of the other party's obligation;
- (ii) in the case of a transaction constituting payment for a claim which is not due or security for an unsecured claim; and
- (iii) in the case of a transaction performed by a debtor with or as against a related person.

(b)

[Note: Modeled after the Netherlands's A. 43 and A. 45.]

#### Article 28. Avoidance of Payment for a Due Claim

Payment by the debtor of a claim which has accrued due may only be avoided under Article 26 if it is proved either that the person who received the payment knew that a petition for the opening of the insolvency proceedings had already been applied for or that the payment was the result of negotiations between the debtor and the creditor with the intention of preferring that creditor over other creditors.

[Note: Modeled after the Netherlands's A. 47]

#### Article 29. Application to Avoid Transactions

An application to court to avoid a transaction under Article 26 may only be filed by the administrator. However, it shall be open to any creditor to contest the admission of a claim on the grounds derived from that article.

[Note: Modeled after the Netherlands's A. 49]

#### Article 30. Effects of an Avoided Transaction

(a) Where a transaction or transfer is avoided under Article 26, any money paid or property transferred shall be recovered and included in the estate.

(b) A person from whom money or property was recovered as a result of an avoided transaction shall be entitled to restitution for a consideration given by such person for the transaction. Restitution shall be effected from the assets of the estate to the extent that the consideration given continues to exist in a distinct form among the assets of the estate. Such person shall also be eligible to file a claim as a creditor in the insolvency proceedings.

[Modeled after Germany's S. 143 and S. 144]

#### Article 31. Set-Off

##### Option 1

(a) If, by force of law or on the basis of a contract, a creditor has a right, on the date of the opening of the insolvency proceedings, to set-off its claim in the proceedings against an

obligation owed to the debtor, such right of set-off shall not be affected by the proceedings.  
[Germany, S. 94]

[Note on (a):

- This rule would merely preserve set-off position under the civil law.
- This rule would not be workable if Cambodian civil law were to adopt the French notion of automatic set-off (*ipso iure compensatio*).

(b) [If, on the date of the opening of the insolvency proceedings, one or more of the claims or obligations giving rise to set-off are subject to a condition precedent, or are not due and payable, or do not cover similar types of performance, set-off may only be effected if the

(ii)

- (i) the amount of the claim;
- (ii) the details of any asset against which the claim is secured;
- (iii)

(b) A plan of compromise may not be proposed or filed with the court after the commencement of the liquidation of the debtor.

#### Article 37. Contents of a Plan of Compromise

A plan of compromise shall state the period for the implementation of the plan, and may contain any method for the resolution of the debtor's insolvency, including, without limitation:

- (a) the cancellation, or reduction in the amount, of any claim, including in exchange for shares or equity in the debtor's business;
- (b) the re-scheduling of the payment of any claim;
- (c) the continuation of the business of the debtor, or a part thereof, by the debtor or another person; and
- (d) the sale or disposition of any asset of ~~the~~ estate, either subject to or free of any encumbrances or liens, or the distribution of all or any asset of the estate among those having an interest in such asset. [(d) is modeled after the US Code, S. 1123]

#### Article 38. Costs for the Preparation and Proposal of a Plan of Compromise

The costs incurred in the preparation and proposal of a plan of compromise by the debtor or the administrator shall be considered an administrative expense to be satisfied from the estate. Costs incurred in the case of other plan proposals shall be at the expense of the party making the proposal.

[Bulgaria, A. 699]

### PART B – APPROVAL OF A PLAN OF COMPROMISE



(c) In approving a plan of compromise, creditors shall cast their votes separately in the following classes and in accordance with the value of their respective claims in each of these classes:

- (i) creditors holding secured claims;
- (ii) creditors holding claims which fall under Article 52 paragraph (a)(iii);
- (iii) creditors holding claims which fall under Article 52, paragraph (a)(vi);
- (iv) creditors holding claims which fall under Article 52, paragraph (a)(vii);
- (v) claims by partners or shareholders with respect to loans or credits extended to the debtor; and
- (vi) all other unsecured creditors.

- (ii) under the plan of compromise, all creditors in any given class will be treated on an equal footing, unless the affected creditors consent in writing to being treated less favorably;
- (iii) under the plan of compromise, each dissenting creditor will receive satisfaction for its claim on terms not less favorable than what that creditor would have received under a distribution made in a liquidation in accordance with Article 52;
- (iv) under the plan of compromise, no creditor will receive more than the full amount of its claim as stated in the claims list;
- (v) under the plan of compromise, no payments related to income, dividends or equity will be made to any shareholder or part of the debtor until the final payment of the claims of the classes of creditors whose interests will be affected by the plan of compromise; and
- (vi) under the plan of compromise, no maintenance greater than the amount of maintenance ordered by a court will be paid to a debtor who is a natural person, or to a general partner of a debtor which is a partnership, until the final payment of the claims of the classes of creditors whose interests will be affected by the plan of compromise.

[Note: Modeled after Bulgaria's A. 705.]

(c) If the plan of compromise does not satisfy any of the conditions set out in paragraph (b), the court shall make an order to commence the liquidation of the estate.

(d) The court's order under this article shall be made no later than [seven days] after the administrator's application for court approval of the plan of compromise.

#### Article 41. Effect of Court Approval of a Plan of Compromise

(a) The court's approval of a plan of compromise shall have the effect of terminating the insolvency proceedings and beginning the period for the implementation of the plan of compromise.

(b) A plan of compromise that has been approved by the court shall be binding on all creditors in the insolvency proceedings.

#### Article 42. Implementation of the Plan of Compromise

(a) During the period for the implementation of the plan of compromise, or for a period of

business document issued by or on behalf of the debtor, being a document on which the

(a) At the opening creditors' meeting:

(i)

debtor's business in whole or in part, what chances exist for the approval and implementation of a plan of compromise and what effects would arise for the satisfaction of the creditors.

[Germany, S. 156(1)]

Article 48. Decision Regarding Continuation of the Proceedings

Article 51. Sale of Assets

(a) The administrator shall convert all non-cash assets of the estate into cash as soon as

(viii)

[Bulgaria, A. 733]

#### Article 55. Final Creditors' Meeting

(a) The court shall convene a final creditors' meeting within [fourteen days] of its receipt of the administrator's report under Article 54. The creditors' meeting shall adopt the final account of the distributions made and remaining unsatisfied claims, and shall decide on the use of the parts of the estate that cannot be sold. [Bulgaria, A. 734]

(b) Article 72 shall not apply to the final creditors' meeting.

#### Article 56. Court Order to Terminate Insolvency Proceedings following Liquidation

(a) The court shall issue an order terminating the insolvency proceedings immediately after the final creditors' meeting.

(b) The court's order terminating the insolvency proceedings shall be published, including in [the Official Gazette of the Kingdom of Cambodia].

#### Article 57. [Termination of Insolvency Proceedings – Cancellation of Outstanding Claims

[Note: The question of whether to discharge natural person debtors from all claims upon the termination of insolvency proceedings will need to be discussed at length.]

#### Article 58. Other Effects of the Termination of the Insolvency Proceedings

Upon termination of the insolvency proceedings following liquidation, the offices of the administrator and of the members of the creditors' committee shall cease to exist. The debtor shall recover the right to dispose freely of



CHAPTER 9  
RESUMPTION OF INSOLVENCY PROCEEDINGS WHICH WERE  
TERMINATED AFTER LIQUIDATION

Article 60. Application for Resumption

Any creditor whose claim was included in the claims list may, within the period of [one year] from the termination of the insolvency proceedings, make a written application to the court to resume the insolvency proceedings.

[Modeled after Bulgaria's A. 745]

Article 61. Conditions for Resumption

(a) Insolvency proceedings shall be resumed by order of the court when:

- (i) amounts allocated for contested claims are released;
- (ii) assets which may be used to satisfy ~~it~~ and the existence of which were not taken into account during the insolvency proceedings are discovered; and
- (iii) the debtor acquires new assets which ~~may~~ be used to satisfy creditors.

(b) Insolvency proceedings shall not be resumed where the amounts or value of assets set out in paragraph (a) are insufficient to cover the costs of the resumed proceedings.

[Modeled after Bulgaria's A. 744]

Article 62. Effect of Resumption

(a) The order to resume proceedings shall re-~~estab~~lish the rights of the administrator and the creditors' committee.

(b) Resumed proceedings shall be conducted in the same manner as a liquidation and the relevant provisions of this law shall apply ~~mutatis mutandis~~. The final account of distributions shall be considered as a partial account.

CHAPTER 10  
PROVISIONS DEALING WITH THE ADMINISTRATOR AND CREDITORS

## PART A – THE ADMINISTRATOR

### Article 63. Qualifications

- (a) Only a natural person may be appointed as an administrator.
- (b) An administrator shall not:
  - (i) have been convicted by a court of law of an offence involving fraud or dishonesty;
  - (ii) be the debtor, any creditor or a related person; or
  - (iii) be the spouse of any creditor, or be related to the debtor or any creditor in a way which could give rise to reasonable doubts as to his ability to discharge his duties as administrator impartially.
- (c)



(xii) employ the services of agents and professionals to assist in the performance of his duties; and

(xiii) [do any and all other things necessary to the performance of his duties and which are consistent with the objectives of the insolvency proceedings.]

(b) The Minister of Commerce may issue regulations to supplement the provisions in paragraph (a) regarding the administrator's powers.

[Note:

- This provision is a combination of the existing Article 117 of Cambodia's draft

(a) The administrator shall be considered an officer of the court and shall owe a duty of allegiance only to the court.

(b) Any creditor or creditors may make a written request to the administrator for information regarding the administration of the estate or the status of the insolvency proceedings. The administrator shall provide such information as soon as possible after the receipt of such written request.

#### Article 69. Liability

(a) The administrator shall act with the care and diligence of a reasonable business person in similar circumstances.

(b) The administrator shall be liable to the parties to the proceedings for any damage caused by his failure to exercise the required care and diligence.

[Note: How does the Civil Code address the issue of tort liability?]

#### Article 70. Remuneration

(a) An administrator shall be paid reasonable remuneration and be reimbursed for all reasonable expenses incurred in the performance of his duties. In calculating the rate of such remuneration, the factors to be taken into account shall include the time spent in the performance of his duties.

(c) A creditors' meeting shall be convened by ~~the~~ administrator within [fourteen] days of the receipt of a written request from a creditor for such a meeting to be convened.

(d) All creditors' meetings shall be chaired ~~by the administrator~~ [a judge/official of the court].

(e) This article shall not apply to the opening creditors' meeting.

#### Article 72. Notice of Creditors' Meetings

(a) The administrator shall notify all creditors of the convening of a creditors' meeting by sending written notifications to all known creditors and placing advertisements in at least two major newspapers in the Kingdom of Cambodia announcing the following:

(i)

[Note: If a magistrate of the court (or the clerk) were to be always present at creditors' meetings, we will not need a postponement if agreement is not reached on the right to vote. Not all court functions in insolvency require action by the judge proper; a magistrate or clerk can be entrusted with case administration other than final dispute resolution.]

#### Article 74. Activities of Creditors' Meetings

The creditors' meeting may consider and take decisions on any matter pertaining to the insolvency proceedings, including:

- (a) obtaining and considering a report from the administrator on the status of the insolvency proceedings;
- (b) the preparation, including by the administrator, of a plan of compromise;
- (c) the approval of a plan of compromise;
- (d) a decision to apply to the court to terminate the operating of the business of the debtor and to proceed with a liquidation of the estate;
- (e) the discharge and replacement of the administrator;
- (f) the making of a proposal to the court regarding the amount of the administrator's remuneration;
- (g) the appointment of a creditors' committee; and
- (h) any recommendations from the creditors' committee.

[Note: This provision is modeled after Bulgaria's S.677]

#### Article 75.

(a) At any creditors' meeting, the creditors may appoint a creditors' committee consisting of not less than three and not more than nine members, drawn from representatives of both secured and unsecured creditors.

(b) [All costs incurred by creditors' in the establishment and operation of the creditors' committee shall be treated as claims incurred by the administrator in course of the insolvency proceedings and satisfied accordingly under Article 52.]

#### Article 77. Powers of the Creditors' Committee

(a) The creditors' committee shall represent the interests of the creditors as a whole.

(b) The creditors' committee shall perform such duties as are entrusted to it by decisions taken by creditors holding a majority of the total value of all claims against the debtor. If requested by the administrator, the creditors' committee may also assist the administrator in the management of the estate.

(c) Upon the request of the creditors' committee, the administrator shall permit the creditors' committee to inspect the books and accounts of the debtor.

### CHAPTER 11 MISCELLANEOUS PROVISIONS

Article 78. [Service of Documents Under this Law] [c dn Tmp6-1210e28eL5u T\* (m3.9(d' 8eL51.14n-4



(a) to (c), if the court is of the view that such other method would be more appropriate in the specific circumstances of the case.]

#### Article 79. Penalties

Any person who falsifies any document filed in any insolvency proceedings, or who gives false testimony in any insolvency proceedings, shall be punished upon conviction by