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## GEPLAC ACTIVITIES

### Draft-Law on Changes and Amendments to the Law of Georgia on Bankruptcy Proceedings

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#### I. Introduction

The working group set up on the basis of the Letter No. 21/304 of the Ministry of Economic Development of Georgia of 31 August 2004 has studied the problems concerning the application of the Law of Georgia on Bankruptcy Proceedings<sup>1</sup>, considered the results of the seminar held in Bakuriani during 25-27 August 2004 under the auspices of German Technical Assistance Corporation (GTZ) and, after additional consultation around the problems raised has elaborated the Draft-Law on Changes and Amendments to the Law of Georgia on Bankruptcy Proceedings (hereinafter Draft) reviewed below.

Besides the elimination of existing shortcomings of the law the following are the objectives of changes and amendments:

- a) to make the bankruptcy proceedings as short and transparent as possible;
- b) to cancel the option for rescheduling the opening of bankruptcy proceedings when there are preconditions for opening such proceedings, which means that they should be opened in all cases and, if parties fail to reach the agreement on the implementation of rehabilitation, the company should be wound up;
- c) to create incentive preconditions for submission of bankruptcy application by a debtor;
- d) to develop precise definition of bankruptcy assets;
- e) to regulate urgent measures to be taken before opening bankruptcy proceedings, including the status and functions of temporary bankruptcy administrator;
- f) to formulate clear requirements before the bankruptcy administrator as well as define the type of his/her responsibility;
- g) to specify the function of creditors' meetings;
- h) to establish an optimal system for the settlement of creditors.

#### II. Short Overview of Some Key Changes

##### 1. Preconditions for Opening Bankruptcy Proceedings

Article 2 of the draft contains the preconditions for opening bankruptcy proceedings specified in further articles:

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<sup>1</sup> Sakartvelos Parlamentis Utskebani, 1996, No. 9-20.

Bankruptcy proceedings shall be opened “on assets of any person or group of persons” except for a legal person of public law not subject to bankruptcy;

Formal grounds for opening of bankruptcy proceedings is the bankruptcy application the right to submission of which is granted to a debtor as well as a creditor “who has a legal interest in opening bankruptcy proceedings on a debtor’s assets and convincingly demonstrates the existence of the right of claim and of grounds for opening bankruptcy proceedings”;<sup>2</sup>

The general grounds for opening of bankruptcy proceedings is insolvency,<sup>3</sup> although debtor’s application may base on “anticipated insolvency”, whereas if a debtor is a legal person not having a personally liable partner – on over indebtedness.<sup>4</sup>

## 2. Obligation to Provide Information

A debtor is obliged to provide the court with full and accurate information needed for the court to adopt a decision to open bankruptcy proceedings. When bankruptcy proceedings are opened on the basis of a debtor’s application he/she should provide the court with such information together with the bankruptcy application and if the opening of proceedings is based on a creditor’s application – as soon as the court deems the application admissible. Article 2<sup>4</sup> of the Draft mentions the information which is considered necessary for the adoption of a decision on opening of bankruptcy proceedings. The list is not exhaustive and the court may at its own discretion require other additional information. Moreover a debtor shall submit “a statement on the possibility of continuation of operation of an enterprise or its separate unit”.<sup>5</sup>

## 3. Specificities of Bankruptcy Proceedings

Article 3 of the Draft is dedicated to the specificities that are typical for bankruptcy proceedings and distinguish it from other civil proceedings:

Namely, it underlines the reasonability of existence of a specialised bankruptcy court or establishment of a specialised bankruptcy chamber within the court;

Article 3 I 2 of the Draft modifies the generally applicable principle (the case shall be heard by the court according to debtor’s registered seat, place of residence or habitual residence) and stipulates that “if the main place of the debtor’s economic activity is elsewhere, then the case shall be heard by the bankruptcy court located closest to that territorial unit”;

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<sup>2</sup> See Article 2<sup>1</sup> of the Draft.

<sup>3</sup> With regard to insolvency see Article 2<sup>2</sup> I of the Draft.

<sup>4</sup> Over-indebtedness is regulated in Article 2<sup>2</sup> II of the Draft.

<sup>5</sup> See Article 2<sup>4</sup> II of the Draft.

A bankruptcy court is obliged to, "at its initiative, study the factual circumstances important for bankruptcy proceedings"<sup>6</sup>, unlike the adversarial principle applicable in other civil proceedings;

And finally, the bankruptcy court has the right to adopt the ruling even without oral hearing.<sup>7</sup>

Proceeding from the specificity of bankruptcy proceedings, all the rules of civil procedure law not modified by this special law shall generally apply to bankruptcy proceedings.

#### 4. Bankruptcy Assets

The existing definition of bankruptcy assets<sup>8</sup> is specified in Article 5 of the draft and it is underlined that bankruptcy assets covers a debtor's assets not only existing upon opening of proceedings but acquired in the course of the proceedings as well.

#### 5. Urgent Measures

Article 6 of the Draft concerns urgent measures to be taken by the court before adopting the decision on opening of bankruptcy proceedings. If a bankruptcy application is admissible, the court adopts the ruling on admission of an application to proceedings and on taking urgent measures within five days. The court "shall take all measures it deems necessary in order to prevent the change of a debtor's assets to the detriment of creditors before adopting the decision on opening of bankruptcy proceedings".<sup>9</sup>

One such measure is the appointment of a temporary bankruptcy administrator who besides other duties<sup>10</sup> may be assigned to carry out expert inspection of the grounds for bankruptcy and reasonability of continuation of enterprise's operation. By doing so the bankruptcy administrator performs the function of an expert for the court.

It should be mentioned that the draft provides for both options: to transfer the right to manage and dispose a debtor's assets to the temporary bankruptcy administrator and to appoint a temporary bankruptcy administrator without depriving the debtor of the right to dispose.<sup>11</sup> In addition, information about any restriction of the debtor's right to dispose and about the appointment of a temporary bankruptcy administrator should be published and registered in public and entrepreneurial registers.<sup>12</sup>

Article 7 IV of the Draft regulates the issue of remuneration of a temporary bankruptcy administrator.

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<sup>6</sup> Article 3 II of the Draft.

<sup>7</sup> Article 3 III of the Draft.

<sup>8</sup> See Article 5 of the current law.

<sup>9</sup> Some measures for protection of debtor's assets are provided for in Article 6 II 2 of the Draft.

<sup>10</sup> Duties of temporary bankruptcy administrator are listed in Article 7 I of the Draft.

<sup>11</sup> Article 7 II of the Draft.

<sup>12</sup> See Article 8 of the Draft.

## 6. Opening of Bankruptcy Proceedings

Bankruptcy proceedings are regulated in Chapter II of the draft. Article 9 I of the Draft stipulates for a general rule according to which “the ruling on opening of bankruptcy proceedings shall be adopted by the court immediately, under accelerated proceedings”. Moreover, the court may deviate from this general rule if the opinion of a temporary bankruptcy administrator or expert is needed for adoption of the decision on opening of proceedings. In such case the court should adopt the ruling on opening bankruptcy proceedings within 30 days from the admission of the application. This term may be extended by 20 days on the basis of temporary bankruptcy administrator’s or expert’s application.<sup>13</sup>

The draft provides for compulsory content of the ruling on opening of bankruptcy proceedings as well as for the measures taken that should be required by the court through the ruling. Namely:

To set a time period for submission of claims to the bankruptcy administrator by all creditors, this shall not be less than two weeks and longer than six weeks;

To oblige creditors to immediately notify the bankruptcy administrator which secured rights they are going to realize against debtor’s movables or rights;

To inform the persons having obligations to fulfil before the debtor about fulfilling them before the bankruptcy administrator;

To set the date of informational meeting of creditors that shall not be appointed earlier than six weeks and later than nine weeks after opening of bankruptcy proceedings;

To identify the date of the meeting for examination of creditors’ claims that shall not be appointed earlier than one week and later than six weeks upon expiration of time term for submission of claims. Actually, the court has the right to determine holding of informatory meeting and meeting for examination of creditors’ claims together.<sup>14</sup>

It is noteworthy that, in order to encourage submission of a bankruptcy application by a debtor, Article 9 V of the Draft entitles the court to consider preferentially the possibility of managing the assets by a debtor himself/herself.

The ruling on the refusal on opening of bankruptcy proceedings may be adopted if “there are no grounds for bankruptcy or debtor natural person’s assets cannot cover the expenses provided for under Article 18”<sup>15</sup> i.e. claims of creditors of bankruptcy assets. In case of a legal person, the court will open the proceedings even if it is impossible or less

<sup>13</sup> See Article 9 II of the Draft.

<sup>14</sup> See Article 9 III and IV of the Draft.

<sup>15</sup> See Article 10 of the Draft.

probable to cover the costs of bankruptcy proceedings and thus the relevant costs will be covered from the state budget.<sup>16</sup>

Article 11 of the Draft concerns admissibility of a private appeal against the ruling on refusal on opening of bankruptcy proceedings within 12 days after the ruling comes into force. Article 12 of the Draft exhaustively regulates the obligations to publish and notify.

## 7. Bankruptcy Administrator

Unlike the current law, the Draft delegates many functions from the court to the bankruptcy administrator. For example, creditors are obliged to submit their claims to the bankruptcy administrator and not the court.<sup>17</sup> Thus the role and the liability of the bankruptcy administrator in bankruptcy proceedings both grow. Consequently, according to the draft, the requirements on the bankruptcy administrator have increased: "bankruptcy administrator shall be a natural person, who has necessary experience, is independent from parties, is impartial and has adequate bank guarantee and/or compulsory professional liability insurance".<sup>18</sup>

The draft does not require that a bankruptcy administrator should be a lawyer or economist by profession. It focuses on the circumstance that he/she should have an adequate bank guarantee or compulsory professional liability insurance. Moreover it is envisaged to establish a common list of bankruptcy administrators at the Ministry of Justice.

It must be mentioned that the draft entitles the creditors to elect a bankruptcy administrator at the creditors' meeting and set a higher amount of bank guarantee and/or compulsory professional liability insurance. In such a case, consideration for bank guarantee and/or insurance premium shall be paid from bankruptcy assets.<sup>19</sup>

One of the ways of calculation of a bankruptcy administrator's remuneration is given in Article 15 VII-IX of the Draft, on the basis of German experience.

## 8. Order of Settlement of Claims

The provisions of Articles 18 and 19 of the current law on settlement of claims towards a debtor are deficient and unjustified in terms of contents as well as sequence of settlement. The draft preferentially treats the "claims of creditors of bankruptcy assets", in other words the obligations raised after opening of bankruptcy proceedings. Accordingly, priority of reimbursement of costs incurred during bankruptcy proceedings and while managing the bankruptcy assets is given in Article 18 I of the Draft. "Subsistence needed for a

<sup>16</sup> See Article 18 II of the Draft.

<sup>17</sup> Comp. Article 11 I c of the current law with Article 9 IV a of the Draft.

<sup>18</sup> Article 15 I of the Draft.

<sup>19</sup> See Article 15 I' of the Draft.

debtor natural person or personally liable partner of a debtor legal person and his/her dependants” may be also paid with the court’s permission.

Unlike the long list of Article 18 of the current law under which for instance “taxes and fees payable before opening of proceedings and claims of international organisations” are considered as priority debts, Article 19 of the Draft provides for the priority of settlement of debtor’s employees’ salaries claims and claims for damages caused to their health. All other claims fall in one category and subject to the principle of equal distribution.

Provision of Article 20 is also modified and settlement of a secured claim is not the subject of some special condition or restriction. Such claims will be covered fully (and not just 3/4<sup>20</sup>) in accordance with the general rule of the Civil Code.

The draft also modifies the Article 21 I of the current law on late claims. According to the new wording, claims submitted after expiration of the period for submission of claims will be considered if there is good reason for being late and if submitted before approval of a final schedule and examined at the last meeting of creditors.

In addition, a late claim should be subject to settlement under the general rule and the restriction of the current law under which late claims are covered from the sum remained in bankruptcy assets after distributing the bankruptcy assets to creditors will not apply to it any more.<sup>21</sup>

## 9. Creditors’ Meetings

The draft offers detailed regulation of the function and order of creditors’ meetings. Articles 22<sup>1</sup> and 22<sup>2</sup> are added to the general wording of Article 22 of the current law. These articles regulate creditors’ informatory meeting and meeting for examination of claims. At the third and last meeting the final schedule of settlement of claims is worked out.<sup>22</sup>

## 10. Rehabilitation

Changes are also envisaged in Chapter III 1 of the current law. This Chapter aims at adaptation of the existing rehabilitation scheme to new system. Rehabilitation depends on the will of parties i.e. debtor and creditor(s). Accordingly, bankruptcy proceedings will stop if parties agree on implementation of rehabilitation.<sup>23</sup> However, if rehabilitation terminates for not reaching the aim of rehabilitation, the bankruptcy proceedings continue.<sup>24</sup>

<sup>20</sup> Comp. Article 20 II of the current law.

<sup>21</sup> See Article 21 I 3 of the current law.

<sup>22</sup> See Article 27 I of the current law.

<sup>23</sup> Comp. Article 25<sup>2</sup> I of the Draft.

<sup>24</sup> Comp. Article 25<sup>7</sup> IV 1 of the Draft.

## 11. Special Treatment of Energy Companies

It is reasonable to remove the special treatment set by the current law for companies “owning generation services, electricity transmission, electricity distribution and regional gas network”<sup>25</sup> from the law regulating general bankruptcy proceedings and if necessary regulate it by a special law. In this regard should be mentioned the idea of establishment of a debt restructuring agency. It could be a precondition for objecting the exemption treatment which contradicts to the essence of bankruptcy proceedings.

### III. Draft Law on Changes and Amendments to the Law on Bankruptcy Proceedings

1) Article 2 shall be read as follows:

#### Preconditions for Opening the Bankruptcy Proceedings

Bankruptcy proceedings shall be opened on assets of any person or group of persons on the basis of bankruptcy application if there are grounds for bankruptcy. Legal person of public law shall not be subject to bankruptcy.

2) The following Article 2<sup>1</sup> shall be added to the law:

#### Right to Application

An application for bankruptcy shall be admissible if it is brought by a debtor, or by a creditor, who has a legal interest in opening of bankruptcy proceedings on a debtor's assets and convincingly demonstrates the existence of the right of claim and of grounds for opening bankruptcy proceedings.

3) The following Article 2<sup>2</sup> shall be added to the law:

#### Grounds for Opening the Bankruptcy Proceedings

1. Grounds for opening the bankruptcy proceedings may be insolvency. It occurs when a debtor is not able to fulfill the payment obligation that is due. Insolvency is presumed if the debtor does not fulfill the payment obligation.

2. In the case of a debtor's application the grounds for opening bankruptcy proceedings may be an anticipated insolvency or if it is a legal person not having personally liable partner – over indebtedness. Over indebtedness occurs when a debtor's assets can not cover his obligations any more. The evaluation of assets shall be based on the possibility of continuation of an enterprise's operation that stems from the existing circumstances.

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<sup>25</sup> See Article 40<sup>1</sup> II of the current law.

4) The following Article 2<sup>3</sup> shall be added to the law:

Withdrawal of Application

An applicant shall have the right to withdraw an application before the opening of bankruptcy proceedings or before a court ruling on refusal to open the proceedings comes into force.

5) The following Article 2<sup>4</sup> shall be added to the law:

Debtor's Obligation to Provide the Court with Full and Accurate Information

1. Upon bringing the application or immediately after deeming the creditor's application admissible, a debtor shall provide the bankruptcy court with full and accurate information needed for the court to adopt a decision on opening bankruptcy proceedings, including:

- its foundation documents;
- a list of its assets, indicating the cost each object is valued at and bank account details;
- list of rights *in rem* on third parties' assets;
- list of creditors indicating their names, legal addresses and existing obligation;
- list of debtors indicating their names, legal addresses and existing claims.

2. A debtor shall also provide the court with a statement on the possibility of continuation of operation of an enterprise or its separate unit.

6) Article 3 shall be read as follows:

Bankruptcy Court

1. A bankruptcy case shall be heard by a specialized bankruptcy court according to the debtor's registered seat, place of residence or habitual residence. If the main place of the debtor's economic activity is elsewhere, then the case shall be heard by the bankruptcy court located closest to that territorial unit.

2. The bankruptcy court shall at its initiative study the factual circumstances important for bankruptcy proceedings.

3. The bankruptcy court shall be entitled to adopt the ruling without an oral hearing.



7) Article 4 shall be read as follows:

#### Applicable Law

Unless this law contains a special provision, the rules of the Civil Procedure Code shall apply to bankruptcy proceedings. The norms of more general law shall be applied if they do not contradict the purpose of this law.

8) Article 5 shall be read as follows:

#### Bankruptcy Assets

Bankruptcy proceedings shall apply to a debtor's assets existing upon opening of proceedings and purchased during the proceedings.

9) Article 6 shall be read as follows:

#### Urgent Measures before Adopting the Decision on Opening of Bankruptcy Proceedings

1. Provided the bankruptcy application is admissible, the court shall adopt the ruling on admission of application to legal proceedings and on taking urgent measures within five days.

2. The bankruptcy court shall take all measures it deems necessary in order to prevent the change of a debtor's assets to the detriment of creditors before adopting the decision on opening of bankruptcy proceedings. Namely, the court shall have the right to:

- a) appoint a temporary bankruptcy administrator;
- b) deprive the debtor of the right to dispose or restrict this right so that disposal is valid only with the consent of temporary bankruptcy administrator;
- c) suspend compulsory enforcement against the debtor;
- d) restrict correspondence;
- e) if these measures are not sufficient, rule debtor's compulsory appearance before the court and take a written undertaking not to leave a place after hearing him.

10) Article 7 shall be read as follows:

#### Temporary Bankruptcy Administrator

1. Appointment of a temporary bankruptcy administrator and depriving a debtor of the right to dispose causes the transfer of the right to manage and dispose assets to this bankruptcy administrator. Namely, the bankruptcy administrator shall:

- a) ensure maintenance of the debtor's assets;
- b) carry on the operation of the debtor's enterprise until the decision on opening of bankruptcy proceedings is adopted, unless the court rules on the suspension of the operation in order to avoid significant reduction of assets;
- c) check whether the debtor's assets can cover the costs of proceedings;

d) the court shall have the right to give him additional assignment on carrying out expert inspection of the grounds for bankruptcy and reasonability of continuation of enterprise's operation.

2. If a temporary bankruptcy administrator is appointed without depriving the debtor of the right to dispose, the court shall define his duties within the limits set by Paragraph 1.

3. The temporary bankruptcy administrator shall be entitled to enter the debtor's enterprise and carry out inspection. The debtor shall provide him with all information related with the enterprise's activity, show business correspondence, accounting and reporting documentation.

4. The court shall determine temporary bankruptcy administrator's remuneration and amount of current expenses, which shall be paid from the debtor's assets. When determining the remuneration for a temporary bankruptcy administrator, the court may guide the amount of the remuneration of a person having representative authority.

11) Article 8 shall be read as follows:

#### Obligation of Publication and Registration

Any restriction of a debtor's right to dispose and appointment of temporary bankruptcy administrator shall be published as well as registered in the public and entrepreneurial registers.

#### Chapter Two

#### Bankruptcy Proceedings

12) Article 9 shall be read as follows:

#### Opening of Bankruptcy Proceedings

1. The ruling on opening of bankruptcy proceedings shall be adopted by the court immediately, under accelerated proceedings.

2. If, based on the circumstances of the case, the opinion of a temporary bankruptcy administrator or expert is necessary, the court shall adopt the ruling on opening of bankruptcy proceedings within 30 days from the admission of the application. This term may be extended by 20 days on the basis of the application of the temporary bankruptcy administrator or expert or on the initiative of the court, if the application is not submitted within three days before the expiration of the term.

3. The ruling shall contain:

- a) debtor's name, type of activity, legal address or place of residence;
- b) identity and address of bankruptcy administrator;
- c) the hour of opening of proceedings.

4. In the ruling on opening of bankruptcy proceedings:

a) the court shall ask all creditors to submit their claims to the bankruptcy administrator within the set time period. The period for submission of claims shall not be less than two weeks and longer than six weeks;

b) creditors shall be asked to notify immediately the bankruptcy administrator which secured rights they are going to realize against debtor's movables or rights. A creditor shall point out the object of secured right, type and basis for origination of this right. In case of culpable refrain from or delay of notification, the right to claim damages shall arise;

c) persons who have to fulfill obligations before the debtor shall be asked to fulfill them before the bankruptcy administrator;

d) the date of informatory meeting of creditors shall be set which shall not be appointed earlier than six weeks and later than nine weeks after opening of bankruptcy proceedings. On the basis of the bankruptcy administrator's report the decision on carrying out bankruptcy proceedings shall be made at this meeting;

e) the date of the meeting for examining creditors' claims shall be set which shall not be appointed earlier than one week and later than six weeks upon expiration of time limit for submission of claims. The court may combine these two dates.

5. On the basis of the debtor's application and creditors' consent, the court may rule on management of assets by a debtor under the bankruptcy administrator's supervision. If bankruptcy proceedings were opened on the basis of the debtor's application, the management of assets by debtor with the restriction provided for by the 1<sup>st</sup> sentence of this paragraph shall be treated preferentially.

13) Article 10 shall be read as follows:

Refusal on Opening of Bankruptcy Proceedings

The court shall adopt the ruling on the refusal of opening of bankruptcy proceedings if there are no grounds for bankruptcy or the debtor natural person's assets cannot cover the expenses provided for under Article 18.

14) Article 11 shall be read as follows:

Private Appeal

A private appeal may be lodged against the ruling on refusal of opening of bankruptcy proceedings within 12 days after the ruling comes into force.

15) Article 12 shall be read as follows:

Obligations of Publication and Notification

1. The ruling on opening of bankruptcy proceedings shall be made public. To this end it should be immediately published in the court's official journal and addendum of "Sakanonmdeblo Mazne". The court may rule on its publication in other official gazettes too. The ruling shall be deemed published two days after its publication in the last official gazette.
2. The court shall send the ruling on opening of bankruptcy proceedings to the debtor and persons known to it as having claims or obligations before the insolvent debtor.
3. Publication of the ruling shall be deemed as sufficient evidence of making it public and notification of all participants of bankruptcy proceedings.
4. If a debtor is a legal person the bankruptcy court shall notify the court of its registering or the Ministry of Justice about the opening of bankruptcy proceedings.
5. Information about the opening of bankruptcy proceedings shall be registered in the public register with regard to immovable property owned by a debtor or on which the debtor has the rights in rem and it is presumed that without registration creditors interests may be damaged.

16) Article 15.1 shall be read as follows:

Bankruptcy Administrator

1. The bankruptcy administrator shall be a natural person, who has necessary experience, is independent from parties, is impartial and has adequate bank guarantee and/or compulsory professional liability insurance. The court shall elect the bankruptcy administrator from the common list of bankruptcy administrators kept at the Ministry of Justice with due consideration of the amount of bank guarantee and/or insurance.

17) The following Paragraph 1<sup>1</sup> shall be added to Article 15:

- 1<sup>1</sup>. After holding the creditors' meeting the court may rule on the appointment of the candidate for bankruptcy administrator elected at the creditors' meeting and/or setting of higher amount of bank guarantee and/or of compulsory professional liability insurance on the basis of the decision of the creditors' meeting. In such a case consideration for bank guarantee and/or insurance premium shall be paid from bankruptcy assets.

18) The following Paragraphs 7 and 9 shall be added to Article 15:

7. The bankruptcy administrator shall be remunerated from the bankruptcy assets. Remuneration shall be calculated from the value of assets available at the end of bankruptcy proceedings with the following interest rate:

up to GEL 50 000	– 30%
from 50 000 to 100 000	– 20%
from 100 000 to 500 000	– 7 %
from 500 000 to 1 000 000	– 3%
from 1 000 000 to 50 000 000	– 2 %
from 50 000 000 to 100 000 000	– 1%
100 000 000 and more	– 0,5%

8. Remuneration higher than the above given interest rate shall be paid to the bankruptcy administrator if:

- a) a bankruptcy administrator increased the bankruptcy assets and due to the reduction of the interest rate his/her remuneration is not any more adequate to the work performed;
- b) he/she continued the operation of an enterprise or its unit but this had not caused significant increase of bankruptcy assets;
- c) he/she worked out an expert opinion or plan of rehabilitation.

9. Interest rate of the bankruptcy administrator may be reduced if:

- a) a temporary bankruptcy administrator was appointed and this has significantly eased the tasks of the bankruptcy administrator;
- b) a large part of bankruptcy assets was sold before his/her appointment;
- c) proceedings were suspended or bankruptcy administrator's authorization was terminated.

19) Article 18 shall be read as follows:

#### Claims of Creditors on Bankruptcy Assets

1. A bankruptcy administrator shall settle the claims on bankruptcy assets with the following sequence:

- a) costs of bankruptcy proceedings;
- b) costs incurred while managing bankruptcy assets, including the costs originated from the contracts concluded by a bankruptcy administrator or with his/her consent or upheld valid by him/her;
- c) subsistence needed for a debtor natural person or personally liable partner of a debtor legal person and his/her dependants. Creditors' or court's consent is needed for the payment of subsistence.

2. If a debtor's assets cannot cover the claims of bankruptcy assets, the bankruptcy administrator shall notify the court about the necessity of covering the relevant costs from the state budget.

20) Article 19 shall be read as follows:

#### The Right of Preferential Satisfaction

A bankruptcy administrator shall settle preferentially the employees' salaries claims and claims for damages caused to their health.

21) Article 20 shall be read as follows:

#### Settlement of Secured Claims

Secured claims on debtor's immovable and movable property shall be settled separately during bankruptcy proceedings.

22) Article 21 I shall be read as follows:

After expiration of the term for submission of claims, the claims late for good reason shall be considered only before approval of final schedule and examined at the additional creditors' meeting examining the claims.

23) Article 22<sup>1</sup> shall be read as follows:

#### Creditors' Informatory Meeting

1. A bankruptcy administrator appointed by the court shall deliver a report at the creditors' informatory meeting about the debtor's economic condition and reasons causing it. He/she shall substantiate whether it is possible or not to maintain the debtor's enterprise fully or partially, to work out rehabilitation plan and how would it affect the settlement of creditors' claims.

2. A debtor, creditors' committee and representative of employees shall have the opportunity to make comments on the bankruptcy administrator's report. The creditors' meeting may hear the opinion of the representative of a state body of the field a debtor is engaged in.

3. The creditors informatory meeting shall adopt the decision about the reasonability of full or partial maintenance of the debtor's enterprise. It shall have the right to assign the bankruptcy administrator to work out a rehabilitation plan and identify the plan's objective. Decisions adopted at the informatory meeting may be modified at the next meetings.

24) Article 22<sup>2</sup> shall be read as follows:

#### Meeting for Examination of Claims

1. At the meeting for examination of claims every submitted claim shall be examined in terms of the amount and priority. Claims that are made disputable by a bankruptcy administrator, creditor or debtor, shall be reviewed individually and sequentially.

2. A claim shall be deemed established if not made disputable by a bankruptcy administrator or creditor. The court shall register each submitted claim in the list of claims according to the set amount and priority as well as point out which claims and by whom were made disputable. Disputability of a claim by a debtor shall be also registered.

3. If a claim is made disputable by a bankruptcy administrator or creditor the holder of presumable claim shall have the right to bring a suit on the acknowledgment of the claim within two weeks from the closing of the meeting for examination of claims. The cost of the case shall be fixed in the amount by which the settlement of his/her claim is presumed.

4. If there is an executive order or final decision of a court regarding the claim made disputable the claimant himself/herself shall bring a suit on rejection of the claim.

5. The court shall provide the presumable creditor whose claim became disputable as well as the party who has to reject creditor's claim by a suit with the abstract from the list of established claims.

25) Article 22<sup>2</sup> "Committee of Creditors" shall become Article 22<sup>3</sup>.

26) Article 25<sup>2</sup> I shall be read as follows:

Rehabilitation shall take place on the basis of the ruling on the suspension of bankruptcy proceedings and on the approval of implementation of rehabilitation.

27) Third sentence of Article 25<sup>4</sup> I shall be read as follows:

In case of submission of a bankruptcy application by a debtor, and with the consent of creditors, a debtor may be appointed as a rehabilitation administrator.

28) Article 25<sup>5</sup> II shall be read as follows:

Transactions on immovable property and the property the value of which is more than 20% of debtor's assets or exceeds the actions provided for by the rehabilitation plan shall need the consent of the committee of creditors.

29) First sentence of Article 25<sup>7</sup> IV shall be read as follows:

Termination of rehabilitation shall cause continuation of bankruptcy proceedings.

30) Article 40<sup>1</sup> shall be read as follows:

Legal persons owning generation services, electricity transmission, electricity distribution and regional gas network companies shall not be subject to bankruptcy before 1 September 2005.