

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

CHINA FISHERY GROUP LIMITED
(CAYMAN), *et al.*

Debtors¹.

Chapter 11

Case No. 16-11895 (JLG)

(Jointly Administered)

DECLARATION OF GUSTAVO MIRÓ-QUESADA MILICH

GUSTAVO MIRÓ-QUESADA MILICH, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am an attorney licensed to practice law in Peru and a partner with the law firm of Osterling Abogados in Lima, Peru. We serve as outside general counsel in Peru to CFG Investment S.A.C., Corporacion Pesquera Inca S.A.C. and Sustainable Fishing Resources, S.A.C., the foreign debtors in the related Chapter 15 proceeding captioned In re CFG Investment S.A.C. et al., Case No. 16-11891 (JLG) (collectively, the “Foreign Debtors”).

2. On June 30, 2016, involuntary insolvency proceedings were commenced in Peru (“Peruvian Insolvency Proceedings”) with respect to each of the Foreign Debtors before El Instituto de Defensa de la Propiedad Intelectual (the National Institute for the Defense of Competence and Protection of Intellectual Property, or “INDECOPI”). A specialized public agency attached to Peru’s Office of the Prime Minister, INDECOPI is the administrative body responsible for overseeing the Peruvian insolvency process.

¹ The Debtors are N.S. Hong Investment (BVI) Limited, Super Investment Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), China Fishery Group Limited (Cayman), Smart Group Limited (Cayman), Protein Trading Limited (Samoa), South Pacific Shipping Agency Limited (BVI), CFG Peru Investments Pte. Limited (Singapore), China Fisheries International Limited (Samoa), Growing Management Limited (HK), Fortress Agents Limited (BVI), CFGL (Singapore) Private Limited, and Ocean Expert International Limited (BVI).

3. I respectfully submit this declaration in support of the objections to the motion of Cooperativa Rabobank U.A., Standard Chartered Bank (Hong Kong) Limited and DBS Bank (Hong Kong), Limited (“Club Lender Parties”) for the appointment of a Chapter 11 trustee in the above-captioned proceeding.

4. Specifically, I submit this Declaration to assist the Court in its evaluation of Peruvian insolvency law as it relates to the pending motion. Based on my knowledge of Peruvian insolvency law, along with my review of the pending motion, it is my opinion that the Club Lender Parties have mischaracterized Peruvian insolvency law in arguing that the appointment of a trustee in these proceedings is necessary to protect their interests regarding certain assets located in Peru that are the subject of Peruvian Insolvency Proceedings. The declaration submitted by the Club Lender Parties’ purported Peruvian insolvency law expert, Renzo Agurto, in support of this position is incorrect, incomplete and ultimately misleading.

5. Contrary to the Club Lender Parties’ assertions, the Peruvian insolvency law constitutes a robust scheme that affords substantial protection to all creditors; specifically safeguards creditors that have no affiliation with a debtor from any over-reaching by creditors that are affiliated with the debtor; protects creditors by imposing significant restrictions on how debtors are operated during the insolvency process; and requires extensive disclosures and transparency on the part of debtors throughout that process. To the extent the Club Lender Parties have concerns regarding entities affiliated with the Chapter 11 debtors (“Debtors”) that are located in Peru and the subject of the Peruvian Insolvency Proceedings, the Peruvian insolvency law already provides them with a full and fair opportunity to protect their interests relating to those entities without prejudicing the rights of other local creditors.

6. Not only is the appointment of a trustee in these proceedings wholly unnecessary given the protection afforded to creditors under the Peruvian insolvency law, it would disrupt the Peruvian Insolvency Proceedings because through the trustee, the Club Lender Parties could undermine those proceedings, delay or deprive the Foreign Debtors of the automatic stay to which they are entitled and thus allow any one creditor to seize the Foreign Debtors' assets to the detriment of all creditors. There is no justification for any such interference with the Peruvian Insolvency Proceedings under fundamental principles of comity. If the Club Lender Parties are concerned with the impact the Peruvian Insolvency Proceedings may have on the Foreign Debtors, they should pursue their rights in Peru.

7. In Point I below, I set forth my qualifications to opine on the subject of Peruvian insolvency law. In Point II, I provide an overview of the objectives and mechanics of the insolvency process under Peruvian law. In Point III, I discuss the material inaccuracies in Mr. Agurto's declaration. Finally, in Point IV, I address the improper steps Mr. Agurto purported Peruvian insolvency law expert already has taken to disrupt the Peruvian Insolvency Proceedings.

I. Expert Qualifications

8. I have set forth below my professional and educational background. I respectfully submit that this experience qualifies me to opine on Peru's insolvency laws and proceedings, including the involuntary proceedings, which are formally referred to as Article 26 of the General Law of the Bankruptcy System (Law No. 27809) ("Peruvian Insolvency Law"). I note that Mr. Agurto did not submit with his declaration a copy of the Peruvian Insolvency Law, either in Spanish or English. For the Court's convenience, I have attached hereto as Exhibit A a translated copy of the Peruvian Insolvency Law.

A. Educational Background

9. I graduated from Universidad de Lima School of Law as a Bachelor of Laws in 2002. I obtained my Lawyers Degree (JD equivalent) in 2003 with *magna cum laude* honors after defending a bankruptcy case (Tribunal of INDECOPI mandatory precedent Resolution No. 0351-2000 dealing with fraudulent claims). I also served as a director/editor of the *Advocatus* Law Review.

10. In 2008, I obtained my LL.M (Masters of Laws) from the University of California, Berkeley. My studies at Berkeley focused on business, law and economics (including bankruptcy law).

11. I also hold a post-graduate degree in Finance from the Universidad del Pacífico, which I obtained in 2015.

B. Academic Positions

12. I have held numerous academic appointments over the years. From 2006 to 2014, I served as a Professor of Bankruptcy and Debt Restructuring Law at the University of Lima School of Law.

13. In 2009, I served as a Professor of Bankruptcy and Debt Restructuring Law at the Pontificia Universidad Católica del Peru (PUCP) School of Law.

14. From 2012 to 2015, I served as a Professor in the Business Law Master's Program at PUCP.

15. Since 2014, I have served as Professor of the Economic Analysis of the Law (including bankruptcy law) at PUCP School of Law.

16. In 2013 and 2014, I served as a Guest Professor at Universidad Nacional Mayor de San Marcos in Lima, teaching insolvency law and the economic analysis of the law in general.

17. In 2015, I was invited to offer a seminar on foreign investment and credit protection in Peru for the MBA program at the Universidad de los Andes in Chile.

18. In 2010, I was invited to present on bankruptcy issues before the Congress of the Republic of Peru.

19. In addition, I have participated in different round tables with governmental representatives to discuss pending amendments to the Peruvian Insolvency Law.

20. Moreover, I have participated in expert teams analyzing and commenting on pieces of legislation (DU 061-2009) and bills of law (Bankruptcy for Individuals/Special Insolvency Regime for the Peruvian Soccer League) affecting the Peruvian bankruptcy system.

C. Professional Experience

21. I have been licensed to practice law in Peru since 2003. For the past 13 years, my practice has focused on advising clients regarding, among other things, matters relating to the insolvency and restructuring regimes under the Peruvian Insolvency Law.

22. At Osterling Abogados, I lead the firm's bankruptcy law department. Previously, I worked as a senior associate at Ferrero Abogados, now Philipi Prieto Carrizosa Delmar Ferrero Uria (2005-2007/2009-2011), as an international law clerk at Holland & Knight LLP (2008) and as an associate at Echeopar Abogados, now Baker & McKenzie LLP (2003-2005). In all of these firms my practice was focused on dispute resolutions, corporate and insolvency law matters.

23. My most recent experience includes participating in the Peruvian proceedings of Maple Ethanol, Castrovirreyna Compañía Minera and Abengoa Peru representing related and unrelated creditors.

24. My most significant experience relates to the Doe Run Peru (DRP) ordinary insolvency proceeding. In this case (considered the most sophisticated by its complexity and the

most material so far taking into account the amount of debts represented), I served as general and lead counsel to the debtor.

25. In my 13 years of experience I have handled debt restructurings and liquidation proceedings representing credits and debts for a total amount of approximately US\$750 million.

26. Since 2014, I have also served as an arbitrator registered with the Lima Chamber of Commerce, Peru's most prestigious arbitration panel.

27. During the last 13 years I have been distinguished by several local and international rankings, including: Leaders League (2015); Legal 500 (2015); Top Lawyer (2013); Who is Who Legal (2012); Chambers & Partners (2009-2011); Continental Who is Who (2009); Latin Lawyer (2004).

28. Finally, I have been a member of INSOL International (2013-2014), a professional turnaround and insolvency organization.

D. Publications

29. I have published a number of articles, papers, interviews and columns relating to issues arising under Peruvian insolvency law, including:

- a. Co-Author: "*Securitization of Claims: Financing Distressed Companies through the Securities Market*". Academic Paper *Advocatus* Law Review, Universidad de Lima School of Law. 2005.
- b. Author: "Hostile takeover of distressed companies". Colum. *Diario Gestion*. 2005.
- c. Author: "Secured Creditors and Movable Assets of the Debtor". Colum. *Diario El Peruano*. 2005.
- d. Author: "Secured Creditors and Bank Letters of Guarantee". Colum. *Diario Gestion*. 2005.
- e. Author: "*The Range of the Automatic Stay*". Article. *Advocatus* Law Review, Universidad de Lima School of Law. 2007.

- f. Contributor: “Expedited Restructurings in the US and Select Latin American and Caribbean Jurisdictions” by Richard J. Cooper, Joel Moss, and Adam Brenneman. *Pratt’s Journal of Bankruptcy Law*. 2011.
- g. Co-Author: “*Conflict of Interests*”. Article. *Anuario Latinoamericano de Arbitraje*. 2013.
- h. Latin Lawyer Magazine (2004) (interview).
- i. Rumbo Económico – Canal N (2010) (interview).
- j. Perro del Hortelano – Canal 11 (2010) (interview).
- k. 360° Ius Et Veritas – (2015) (interview).

E. Prior Service As Legal Expert

30. Last year a CCL arbitration panel in Peru called upon me to serve as an expert witness on Peruvian insolvency law.

II. Overview of the Peruvian Insolvency Process

31. Based on my review of the Club Lender Parties’ motion, they appear to argue that the appointment of a trustee in these proceedings is necessary, in part, because of inadequate protections afforded to them as creditors under the Peruvian Insolvency Law. They also appear to maintain that the Debtors could manipulate the Peruvian Insolvency Proceedings unless this Court appoints a Chapter 11 trustee.

32. The Club Lender Parties’ apparently negative view of the Peruvian Insolvency Law is wholly unfounded. The Peruvian insolvency process is specifically designed to provide adequate protections and due process to all creditors. As the Club Lender Parties’ witness, Mr. Agurto, conceded at his deposition, the Peruvian Insolvency Law achieves these important objectives.

A. Principles and Objectives of the Peruvian Insolvency Law

33. The Peruvian Insolvency Law is inspired, in part, from the bankruptcy laws of the United States. As a result, the Peruvian Insolvency Law reflects many of the same fundamental

concepts incorporated into the bankruptcy laws of the United States for the protection of creditors. Similarly, the Peruvian Insolvency Law is designed to advance many of the same objectives as the bankruptcy laws of the United States. Under the Peruvian Insolvency Law, INDECOPI maintains exclusive jurisdiction for the insolvency proceedings of Peruvian companies such as the Foreign Debtors and the application of Peruvian Insolvency Law is mandatory. See Peruvian Insolvency Law, Articles 2 and 3.

34. The stated purpose of the Peruvian Insolvency Law is to enhance credit recovery through the maximization of the debtor's estate and orderly bankruptcy proceedings. See Peruvian Insolvency Law, Preliminary Title, Article I.

35. Peruvian insolvency proceedings are designed to promote the efficient allocation of resources to achieve the maximum value of the debtor's equity. Id.

36. Further, Peruvian bankruptcy proceedings are intended to promote a suitable environment for negotiations between creditors and insolvent debtors in order to allow them to reach a restructuring agreement or, alternatively, arrange for the debtor's orderly exit from the market under reduced transaction costs. Id., Article II.

37. Bankruptcy proceedings under the Peruvian Insolvency Law seek the participation of all creditors affected by the debtor's insolvency in order to obtain the greatest benefit for all creditors. The Peruvian Insolvency Proceedings seek to promote and protect the collective interest of creditors rather than the individual interest of each creditor. Id., Article V.

38. As a general rule under Peruvian Insolvency Law, creditors participate proportionately in the economic outcome of a bankruptcy proceeding. Id., Article VI.

39. The rules applicable to proceedings under the Peruvian Insolvency Law promote truthfulness, honesty, loyalty and good faith. Conversely, recklessness, bad faith and other forms of misconduct are subject to sanction. Id., Article VIII.

40. Through INDECOPI, the Peruvian government is committed to facilitating and promoting negotiations between not only a particular group of creditors but all creditors and debtors. Id., Article X.

B. Initiation of Insolvency Proceedings

41. The initial step in the Peruvian insolvency process is the filing with INDECOPI of a request to initiate bankruptcy proceedings. The request can be made either by a debtor, or one or more of its creditors. Id., Article 23.

42. To initiate an involuntary proceeding, the Peruvian Insolvency Law only requires that a creditor hold a credit in excess of approximately US\$61,000 (50 UITs) which is due and payable by the debtor but has remained unpaid for at least thirty days. In its request, the creditor must submit documentation establishing the credit. Id., Article 26.

43. There are no other restrictions upon a creditor's right to make an application to INDECOPI. A creditor is not, for example, prohibited under the Peruvian Insolvency Law from conferring with the debtor in connection with an application. In fact, Resolution No. 1239–2015/CCO – INDECOPI supports this position. There, INDECOPI found no wrongdoing when faced with evidence of a debtor and its creditor coordinating the initiation of an involuntary filing.

44. Indeed, the creditors who initiated the Peruvian Insolvency Proceedings conferred with the Foreign Debtors prior to filing their applications with INDECOPI. The Club Lender Parties' argument that this was in some way improper under the Peruvian Insolvency Law is incorrect. They cite to no provision of the Peruvian Insolvency Law in support of their position,

and there is none. Mr. Agurto has failed to quote any policy or decision prohibiting such coordination (because there is not any). In fact, precedent exists allowing such behavior given that in many circumstances doing so (that is filing an involuntary petition instead of seizing the debtor's assets through the judiciary) may benefit the debtor, the petitioning creditors and most importantly all the other creditors.

45. After verifying a creditor's claim, INDECOPI notifies the debtor that a creditor has requested the initiation of insolvency proceedings. Id., Article 27. The debtor must appear in the proceeding within ten working days to respond to the creditor's request.

46. In response to the creditor's request to INDECOPI, the debtor can elect to pay the claim in full. If the debtor elects to do so, INDECOPI will reject the creditor's request and declare the proceeding terminated. Id., Articles 28.1(a), 28.2.

47. Alternatively, the debtor can challenge the claim. If the challenge is sustained, INDECOPI will deny the creditor's request and declare the proceeding concluded. See Article 28.1(c), 28.5.

48. If the debtor refuses to pay the claim, or if the debtor's opposition to the request is rejected, INDECOPI formally opens the insolvency proceeding to every other creditor. Id., Article 28.3.

C. Publication of Proceedings

49. After it has determined that the claim on which the creditor has instituted the proceedings meets the threshold requirements I discuss above, INDECOPI issues a decision and later publishes a public notice advising that the debtor is the subject of a bankruptcy proceeding under the Peruvian Insolvency Law (the "Publication"). Id., Article 32.1.

50. The Publication requires the debtor's creditors to request recognition of their credits if they wish to participate in the creditors' meeting. Id., Article 32.2.

51. From the date of Publication, the enforceability of all obligations that the debtor had accrued is suspended. The suspension remains in place until a restructuring, global refinancing or liquidation agreement is agreed to. Id., Article 17.

52. Further, during the same period no order enjoining the debtor's assets may issue. Id., Article 18.

53. In the Peruvian Insolvency Proceedings, the requests to initiate the proceeding remain under review by INDECOPI. Because INDECOPI's review is ongoing and there has been no decision nor Publication (due to additional delay generated by Mr. Agurto's wrongful conduct, which I discuss below in Point IV), the Foreign Debtors do not yet have the benefit of the automatic stay.

D. Debtors' Post-Publication Disclosure Obligations

54. The Peruvian Insolvency Law imposes substantial post-Publication disclosure obligations on a debtor. A debtor who fails to comply with those disclosure requirements is subject to fines of up to approximately US\$120,000.00 (100 UITs). Id., Article 31.

55. The information a debtor is required to disclose following Publication includes:

- a. financial statements for the past two years;
- b. income statements for the past two years;
- c. cash flow statements for the past two years;
- d. information regarding sources of financing to which the debtor has had access during the last two years;
- e. a list of outstanding obligations, identifying each creditor and the amount owed;
- f. a list of movable and fixed property;
- g. a list of receivables reflecting the likelihood of recovery on each; and
- h. an affidavit addressing whether any creditor is related to the debtor.

Id., Articles 31, 25.

E. Recognition of Credits

56. Creditors have thirty days from the date of Publication to submit their proofs of claim to INDECOPI. Id. Articles 32 and 34. Creditors seeking recognition of their claims are required to submit supporting information to INDECOPI. Id., Articles 37.1 and 39. Creditors must also submit a sworn statement addressing the existence or non-existence of any “relevant proximity of interests” between the debtor and creditor. Id., Articles 37.2, 12.

57. INDECOPI reviews the claim documentation submitted by creditors to ensure the creditor meets the threshold requirements noted above. For creditors unrelated to the debtor -- i.e., creditors with no financial or familial ties to, or have shared management with, the debtor -- this review is fairly cursory. Certain supporting documentation, such as deeds of title and letters of credit, are presumed to be legitimate for purpose of assessing the propriety of the claim.

58. An entirely different standard is applied to claims filed by related creditors, or creditors who do share financial or family ties to, or have shared management with, the debtor. To protect the interest of all creditors, INDECOPI subjects claims made by related creditors to heightened scrutiny. Documentation a related creditor submits in support of its claims is not afforded any presumption of legitimacy. The documentation and all information submitted in support of a related creditor’s claim is subject to an aggressive and thorough review in which INDECOPI’s accounting staff participates. Id., Articles 38.5 and 38.6. Not surprisingly, INDECOPI’s review of a related creditor’s claim consumes substantially more time than the review of a non-related creditor’s claim (especially if a third party -- not invited yet to the proceeding -- raises allegations of fraud or other misconduct to the authority).

59. It is important to mention that after the credits are recognized by INDECOPI any other creditor may challenge such recognition (even those credits that were used for the involuntary petitions). Id., Article 38.4.

F. Creditors' Meeting

60. Once INDECOPI completes its review and recognition of the submitted claims, it convenes a meeting of creditors. Id., Article 43.

61. At the creditors meeting, the Peruvian Insolvency Law empowers the creditors with sole authority to make a series of crucial decisions affecting the debtor. Among other things, the creditors are authorized to decide the debtor's fate by choosing between either the commencement of a debt/equity restructuring or, alternatively, the debtor's dissolution and/or liquidation. Id., Article 51.1.

62. As a general rule, a restructuring plan, liquidation agreement or global refinancing agreement typically is adopted on first call if it secures the support of creditors representing credits amounting to more than 66.6 percent of the total amounts of credits recognized by INDECOPI. On second call, the agreement is adopted with the favorable vote of creditors representing an amount greater than 66.6 percent of the total credits who are present or represented at the meeting. Id., Article 53.1.

63. To protect the interests of non-related creditors, the Peruvian Insolvency Law provides for special voting requirements to approve the fate of a debtor when its related creditors represent more than 50 percent of the total credits recognized by INDECOPI. See Article 59.

64. In this scenario, a restructuring plan, liquidation agreement or global refinancing agreement requires, on first call, a favorable vote of more than 66.6 percent of the class of related creditors as well as 66.6 percent of the class of non-related creditors. Further, on a second call,

those agreements require more than 66.6 percent of all the creditors of each class represented at the meeting.

65. These special voting requirements safeguard the interests of non-related creditors because even if related creditors account for a majority of credits they will still require the approval of non-related creditors in order for their preferred plan to be approved.

66. If the creditors are unable to agree on the debtor's fate, the Peruvian Insolvency Law requires INDECOPI to arrange for the winding up and liquidation of the debtor. Id., Article 96.1. INDECOPI is required to convene a creditors meeting for the sole purpose of appointing a liquidator and approving a liquidation agreement. Id., Article 97.1.

67. The liquidator appointed in this manner is required to liquidate all of the debtor's assets. Id., Article 97.5. Any liquidator that would be appointed by INDECOPI is independent, selected from a court approved panel and has the ability to take actions similar in some respects to a trustee in the United States, such as hiring professionals. Id., Articles 82 and 83.

G. Restrictions on Debtor's Management

68. Throughout the insolvency process, significant restrictions are imposed on how the debtor's management operates the business.

69. Article 19.3 sets forth a list of acts that will be declared "ineffective and, therefore, unenforceable against creditors" during this period. These acts include:

- a. any advance payment for obligations not yet due;
- b. all payments made in a manner not consistent with the controlling contract, such as pre-payment;
- c. acts on contracts that do not relate to the debtor's normal course of business;
- d. offsetting for mutual obligations between the debtor and creditors;
- e. encumbrances and transfers charged against the debtor's property;

- f. guarantees granted on the debtor's assets to ensure payment of obligations; and
- g. mergers, takeovers or spin-offs involving a capital expense.

70. These restrictions, intended to protect the interests of creditors, have real teeth. If a debtor's management exceeds these restrictions, they are subject to administrative and criminal liability.

H. Remedies Available to Creditors

71. If at the creditors' meeting stage any creditor believes another creditor or group of creditors is acting in a manner not designed to ensure the collection of the claims, the complaining creditor may pursue its administrative and judicial remedies. Id., Article 118.1.

I. Availability of Post-Insolvency Financing to Debtors

72. To facilitate a debtor's rehabilitation for the benefit of creditors, the Peruvian Insolvency Law provides incentives for lenders to extend financing to debtors in the post-insolvency phase.

73. Article 16 provides that post-bankruptcy credits shall be paid at maturity without regard to the automatic stay. Moreover, it allows for the debtor to offer collateral to new creditors.

74. In dissolution and liquidation procedures, post-bankruptcy credits are subject to recognition until the debtor is judicially declared bankrupt or the bankruptcy proceedings are terminated. Id., Article 16.3.

III. Declaration of the Club Lender Parties' Expert

75. In support of their trustee motion, the Club Lender Parties rely on Mr. Agurto's declaration. I have reviewed Mr. Agurto's thin declaration. It is incomplete, incorrect and misleading in material respects.

**A. The Timing of INDECOPI's Resolution of Petitions
for the Commencement of Insolvency Proceedings**

76. At paragraph 7 of his declaration, for example, Mr. Agurto attempts to leave the impression that INDECOPI's resolution of petitions for the commencement of an insolvency matter is uniformly expeditious. He states that in 2015, INDECOPI on average resolved these petitions within 37 days, less than the 90 days required under the Peruvian Insolvency Law. This is the same argument under which the Club Lender Parties requested an expedited hearing on this trustee motion.

77. What Mr. Agurto does not disclose is that these statistics refer to business days, not calendar days, and thus the delay in resolution is longer than he suggests. This 37-day statistic includes a disproportionate number of relatively non-complex insolvency matters, involving small businesses, proceedings involving individuals, and mandatory liquidations ordered by the judiciary. These categories of insolvency matters typically are processed quite quickly. In contrast, the time it takes for INDECOPI to process more complex claims or claims submitted by related creditors is typically greater than 37 days.

78. In my experience, contrary to the Club Lender Parties' representations in seeking an expedited hearing on the trustee motion, there was little doubt that INDECOPI would take more than 37 business days to issue a decision on the involuntary petitions filed in the Peruvian Insolvency Proceedings.

79. In fact, more than 38 business days already have passed since the Foreign Debtors' creditors initiated the Peruvian Insolvency Proceedings on June 30, 2016 and the Foreign Debtors have not even been notified by INDECOPI of the involuntary petitions. Due to Mr. Agurto's wrongful conduct which I discuss below in Part IV, INDECOPI will take longer to

dispose of those petitions. As a result, and by the Club Lender Parties' design, there has been no Publication and thus the automatic stay has yet to go into effect. This has deprived the Foreign Debtors of the much-needed protection and predictability that the Peruvian insolvency system provides to most of the stakeholders of those debtors.

B. Management Does Not Retain "Unfettered" Control of the Debtor's Operations

80. At paragraph 9 of his declaration, Mr. Agurto states that "the current management of the Peruvian debtor remains in control of the business and continues unfettered management of its operations" during the period between the commencement of the insolvency proceeding and the creditors' meeting. This is incorrect, as I noted above -- and as Mr. Agurto conceded at his deposition in this matter.

81. Article 19.3 sets forth a list of acts by debtor's management that will be declared ineffective and unenforceable if taken before the creditors can weigh in on the fate of the debtor at the creditors meeting.

82. These restrictions are specifically intended to prevent the debtor's management from taking actions adverse to the interests of creditors during the pendency of an insolvency proceeding.

C. Delays Between Formal Commencement of Insolvency Proceedings and the Creditors' Meeting

83. At paragraph 9 of his declaration, Mr. Agurto states that it is not uncommon for more than 14 months to pass between a creditor's petition to commence insolvency proceedings and the impaneling of a creditors' meeting. He presumably makes this statement to leave the impression that if the Club Lender Parties were to pursue their rights as creditors under the Peruvian Insolvency Law, they would experience extensive delays before they could advocate their position at a creditors' meeting.

84. In suggesting that the Peruvian insolvency process is subject to extensive delays, Mr. Agurto refers to two wholly atypical Peruvian insolvency proceedings -- Doe Run Peru and Castrovirreyna Compañía Minera, S.A. -- that bear no resemblance to the Peruvian Insolvency Proceedings and thus are not indicative of when a creditors' meeting will be convened in those proceedings.

85. The Doe Run Peru insolvency proceeding upon which Mr. Agurto relies is widely regarded as by far the largest and most complex proceeding in Peru's history. It involved more than 3,600 creditors, massive environmental challenges, the judicial controversy of credits and a criminal investigation of corporate wrongdoing. Those complexities explain why more than 17 months passed between INDECOPI's public disclosure of that insolvency proceeding and the convening of the creditors' meeting. None of those complexities are presented here. Nothing about the Doe Run Peru matter supports the conclusion that the Club Lender Parties would experience anything like a 17-month lag before having access to a creditors' meeting at which to press their agenda.

86. Similarly, the Castrovirreyna Compañía Minerainsolvency proceeding upon which Mr. Agurto relies bears no resemblance to the Peruvian Insolvency Proceedings. In that case, my understanding is that there has been no incentive for the creditors to press for a creditors meeting to be scheduled because it is extremely unlikely the creditors will be able to collect.

87. Based on my experience in Peruvian insolvency proceedings and in dealing with INDECOPI, the reality is that if creditors do not pressure INDECOPI to schedule a creditors meeting, given the volume of matters it processes, INDECOPI is less likely to expeditiously schedule a creditors' meeting. This is what explains the delay in Castrovirreyna Compañía

Minera. In contrast, there is little chance in the Peruvian Insolvency Proceedings that creditors will be disinterested in the scheduling of a creditors meeting. Plainly, the Club Lender Parties are very likely to pressure INDECOPI to promptly schedule a creditors' meeting. In my experience, heightened interest among creditors in scheduling the creditors' meeting almost always translates into a faster scheduling of that meeting. *Id.*, Article VII. Furthermore, it is very likely that a preliminary restructuring/liquidation plan would be discussed and agreed to with at least the major creditors of the Foreign Debtors before the creditors meeting is even scheduled. If indeed that happens, most of the agreements can be implemented even before the creditors meeting occurs, and the proper approval of said plan will result just as a mere formality.

**D. Related Debtors Cannot
"Block" A Restructuring Plan**

88. At paragraph 12 of his declaration, Mr. Agurto suggests that the special voting rules applicable to determining the fate of a debtor can be manipulated so that related creditors "may have the power to block a restructuring plan even if other creditors fully support such a plan." This statement is not only speculative but, as a practical matter, it is simply wrong.

89. First, based on my knowledge of the universe of the Foreign Debtors' creditors, the related creditors likely will represent much less than 50 percent of the universe of creditors that is expected to file proofs of claim and to participate in the creditors meeting. Hence, considering that decisions in the creditors meeting may be adopted with a majority of two-thirds of the recognized creditors, the related creditors could not block their decisions.

90. Second, even if the related creditors represented more than 50 percent of the total universe of recognized creditors, as noted above, special provisions provided by law to protect the unrelated creditors will be triggered.

91. Third, if under such a special voting regime the unrelated creditors and the related creditors failed to reach an agreement with respect to the fate of the debtor and/or the terms and conditions of the plan, liquidation will be mandatory as ordered by INDECOPI.

92. So, if the Foreign Debtors, the petitioning creditors, the related creditors and other stakeholders are supporting the continuation of the Peruvian Insolvency Proceedings because they believe that within those proceedings a successful debt restructuring may be implemented, they would have no incentive to block a decision in favor of restructuring.

IV. The Improper Efforts By the Club Lender Parties' "Expert" to Disrupt the Peruvian Proceedings

93. Pursuant to article 11 of the Peruvian Insolvency Law, prior to Publication, a creditor's request to commence insolvency proceedings is a strictly confidential matter between INDECOPI and the creditor filing the request as a means of protecting the debtor.

94. Notwithstanding the pre-Publication confidentiality of the Peruvian Insolvency Proceedings, it is now known that Mr. Agurto -- who also represents the Club Lender Parties as Peruvian counsel in connection with the Peruvian Insolvency Proceeding -- recently had ex parte communications with INDECOPI in an attempt to disrupt and interfere with those proceedings. Based on my experience in Peruvian insolvency matters and in dealing with INDECOPI, such ex parte communications with INDECOPI in the pre-Publication phase of those proceedings were extraordinarily improper. This position is supported by Resolution No. 0988-2005/TDC-INDECOPI. There, INDECOPI confirmed that until the creditors are duly recognized in the proceedings, they are to have no access to the case file nor are they to have access to the INDECOPI personnel to discuss the information therein. It is important to note that this ruling constitutes a mandatory precedent.

95. On or about August 9, 2016, Mr. Agurto forwarded three letters to INDECOPI regarding the Peruvian Insolvency Proceedings. He sent one letter for each of the Foreign Debtors. The existence of this letter was unknown to me or the Foreign Debtors until Mr. Agurto was deposed on August 16, 2016.

96. In the letters, Mr. Agurto urges INDECOPI to find that all of the creditors seeking to commence involuntary proceedings against the Foreign Debtors are related creditors whose claims should be subjected to heightened scrutiny. He also accuses the Foreign Debtors of wrongfully colluding with those creditors in order to orchestrate the involuntary insolvency proceedings. Mr. Agurto's purpose is clear: On behalf of the Club Lender Parties, he is seeking to manipulate and delay the proceedings in order to deny the Foreign Debtors the protection of the automatic stay to which they are entitled.

97. In addition to these letters, we now know from Mr. Agurto's deposition that he met with the Technical Secretary of INDECOPI who is administering the involuntary petitions within days sending the letters to discuss the Peruvian Insolvency Proceedings. It is beyond question under Peruvian law that the Peruvian Insolvency Proceedings are confidential at this stage. Only the petitioning creditors and the debtor are part of said proceeding and INDECOPI is prohibited to discuss it with any third party.

98. Neither Mr. Agurto nor any other representative of the Club Lender Parties advised me or the Foreign Debtors of their intention to communicate directly with INDECOPI during this period of confidentiality. In my opinion, they plainly are attempting to sandbag the Foreign Debtors by delaying the automatic stay so that they or some other creditor can take adverse action in Peru against the Foreign Debtors' assets. This is plainly improper, and precisely the kind of conduct the Peruvian Insolvency Law is designed to prevent.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2016
New York, New York

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Gustavo Miró-Quesada Milich

Exhibit A

GENERAL LAW OF BANKRUPTCY SYSTEM

LAW No. 27809
(Published on 08/08/2002)

THE PRESIDENT OF THE REPUBLIC

WHEREAS

The Standing Committee of the Congress
of the Republic
Has passed the following Law:

THE PERMANENT COMMITTEE OF THE CONGRESS OF THE REPUBLIC;

Has passed the following Law:

GENERAL LAW OF BANKRUPTCY SYSTEM

PRELIMINARY TITLE

TITLE I
GENERAL RULES

CHAPTER I
APPLICATION OF THE LAW

CHAPTER II
RULES OF JURISDICTION AND APPLICABLE LAW

CHAPTER III
INFORMATION AND RESERVATIONS OF THE BANKRUPTCY PROCEEDINGS

CHAPTER IV
EQUITY SUBJECT TO BANKRUPTCY PROCEEDINGS

CHAPTER V
REGISTRATIONS

TITLE II
ORDINARY BANKRUPTCY PROCEEDINGS

CHAPTER I
APPLICATION FOR PROCEEDINGS

CHAPTER II
DISSEMINATION OF PROCEEDINGS

CHAPTER III
RECOGNITION OF CREDITS

CHAPTER IV
BOARD OF CREDITORS' MEETINGS

CHAPTER V
EQUITY RESTRUCTURING

CHAPTER VI
DISSOLUTION AND LIQUIDATION

CHAPTER VII
WINDING UP AND LIQUIDATION INITIATED BY THE COMMISSION

TITLE III
BANKRUPTCY

TITLE IV
PREVENTIVE BANKRUPTCY PROCEEDINGS

TITLE V
MEANS OF CHALLENGE

CHAPTER I
CHALLENGE OF ADMINISTRATIVE ACTS

CHAPTER II
CHALLENGE OF AGREEMENTS OF BOARD OF CREDITORS

TITLE VI
ADMINISTRATIVE AND LIQUIDATOR ENTITIES

TITLE VII
OFFENSES AND SANCTIONS SYSTEM

TITLE VIII
SUPPLEMENTAL PROCEDURAL RULES

SUPPLEMENTAL PROVISIONS

GENERAL LAW OF BANKRUPTCY SYSTEM

PRELIMINARY TITLE

Article I. Purpose of the Law

The purpose of this Law is the credit recovery by means of regulating bankruptcy proceedings that promote the efficient allocation of resources to achieve the maximum possible value of the debtor's equity.

Article II .- Purpose of bankruptcy proceedings

Bankruptcy proceedings are intended to promote a suitable environment for negotiations between creditors and the debtor subject to bankruptcy, allowing them to reach a restructuring agreement or, otherwise, to the orderly exit from the market under reduced transaction costs.

Article III .- Decision on the debtor's fate

The creditors involved in the respective bankruptcy proceedings, who assume the responsibility and consequences of the adopted decision, determine the viability of debtors in the market.

Article IV .- Universality

Bankruptcy proceedings produce their effects over all the debtor's assets, except as expressly provided by law.

Article V .- Collectivity

Bankruptcy proceedings seek the participation and benefit of all the creditors involved in debtor's crisis. The collective interest of the mass of creditors overlaps the individual interest of each creditor to collect.

Article VI .- Proportionality

Creditors participate proportionately in the economic outcome of the bankruptcy proceedings, given the impossibility of the debtor to meet the existing credit with its assets, except for orders of preference expressly provided in this Law.

Article VII .- Initiation and promotion of bankruptcy proceedings

Bankruptcy proceedings are initiated at the request of an interested party before the bankruptcy authority. The handling of the bankruptcy proceedings is at request. The intervention of bankruptcy authority is subsidiary.

Article VIII .- Procedural Behavior

The parties of the proceeding, their representatives, and their lawyers and, in general, all participants in bankruptcy proceedings, must adapt their behavior to the duties of truthfulness, honesty, loyalty and good faith. Recklessness, bad faith or any other misconduct are subject to sanction, according to law.

Article IX .- Integration of the standard

The bankruptcy authority may not fail to resolve because of error or deficiency of standards. In such a case, it shall apply the general principles of law, particularly those that inspire the Bankruptcy Law.

Article X .- The Role of the State as a Promoter

The State, through the INDECOPI, facilitates and promotes negotiations between creditors and debtors, respecting private autonomy regarding decisions taken in bankruptcy proceedings with legal formalities.

TITLE I GENERAL RULES

Article 1 .- Glossary

For purposes of the application of the rules of Law, the following definitions shall apply:

- a) **Bankruptcy System.**- The Bankruptcy System consists of the rules applicable to bankruptcy proceedings, of the agents involved in bankruptcy proceedings and of the Administrative and Judicial Authorities to which the Law and / or additional rules or amendments assigns competence.
- b) **Committee:** The Headquarters Committee on Bankruptcy Proceedings and the Decentralized Committees of Bankruptcy Proceedings in the Offices of INDECOPI.
- c) **Debtor.- Natural or legal person,** marital partnerships and undivided estates. It includes branches in Peru of foreign organizations or companies. For the purposes of this Law, only those conducting business in the terms described in this law shall be considered as susceptible debtors of being subject to bankruptcy proceedings.
- d) **Creditor.-** Natural or legal person, marital partnerships, undivided and other autonomous equities that are holders of credit.
- e) **Credit.-** Right of the creditor to obtain a benefit assumed by the debtor because of a mandatory legal relationship.
- f) **Business Activity.-** Economic **habitual** and autonomous activity that brings together the factors of production, capital and labor, developed in order to produce goods or provide services.
- g) **Board.-** Board of Creditors.
- h) **Court.-** The Court for Defense of competence and Intellectual Property of INDECOPI.
- i) **INDECOPI.-** National Institute for the Defense of competence and Protection of Intellectual Property.
- j) **Law.-** General Law of Bankruptcy System.
- k) **TUPA.-** Single Text of Administrative Procedures of INDECOPI.
- l) **Bankruptcy Credit:** Credit generated until the date of publication provided for in Article 32 of the General Law of the Bankruptcy System.
- ll) **Credit post - bankruptcy:** Credit generated after the date of publication provided for in Article 32 of the General Law of the Bankruptcy System.

CHAPTER I APPLICATION OF THE LAW

Article 2 .- Scope of the application of the rule and preferred application

2.1 The Law is necessarily applied to bankruptcy proceedings of debtors who are domiciled in the country, without admitting agreement to the contrary. Private agreements related to being placed outside the protection of Peruvian law and jurisdiction are not effective against bankruptcy purposes.

2.2 Entities that make up the structure of the State, such as government agencies and other entities of public law; private pension fund managers, people who are part of the financial system or the insurance system are not covered by the Law, as debtors. Furthermore, neither are included in the Law autonomous assets or natural persons not engaged in business, except for marital partnerships and undivided successions whose assets derives from this type of activity, in the terms established in Section 24.4 of Article 24 of this Law.

2.3 For the processing and resolution of bankruptcy proceedings, the provisions of the Law shall be applied preferably to any other rule containing different provisions.

Article 3. Bankruptcy Authorities

3.1 The Committee on Bankruptcy Proceedings and the Decentralized Committees of the Regional Offices of INDECOPI have jurisdiction over the bankruptcy proceedings regulated in this Law. The Court has jurisdiction in last administrative instance.

3.2 The mentioned Committees are in charge of monitoring the activities of administrative and liquidator bodies, debtors and creditors subject to the bankruptcy proceedings. The Committee on Bankruptcy Proceedings of INDECOPI may issue mandatory directives to regulate the performance of manager and liquidator institutions, as well as above mentioned debtors and creditors.

3.3 The competence of the Committee to hear any matter related to a bankruptcy proceeding extends to the date of the debtor's judicial declaration of bankruptcy or termination of the proceedings, except as provided in paragraph 125.4 of Article 125.

Article 4 .- Authorization for temporal competence

4.1 The competence of the Committee on Bankruptcy Proceedings of INDECOPI may be exercised temporarily by public or private institutions designated by the Board of Directors of INDECOPI in order to meet the demand for services that might arise from the bankruptcy regime.

4.2 For the exercise of the referred jurisdiction, these institutions shall enter into a private agreement establishing the creation of a Committee whose structure corresponds to that prescribed by law for the Committee on Bankruptcy Proceedings of INDECOPI.

4.3 The prohibitions, incompatibilities and responsibilities attaining to public officials members of the Committee on Bankruptcy Proceedings INDECOPI extend to people who assume these functions in institutions in which temporal jurisdiction in bankruptcy matters is enabled.

4.4 Competence authorization agreements shall establish the rights and obligations of each of the parties involved. The remuneration received by the public or private entities with which the respective agreement is signed are of civil nature.

Article 5 .- Scope of competence authorization

5.1 As a result of the authorization referred to in the preceding article, public or private institutions with which the relevant agreements are signed, exercise original jurisdiction over procedures provided by this Law.

5.2 In exceptional circumstances, the Committee on Bankruptcy Proceedings of INDECOPI may redistribute the caseload of the institutions among other institutions of the same territorial scope.

CHAPTER II RULES OF JURISDICTION AND APPLICABLE LAW

Article 6 .- Rules on Territorial Jurisdiction

6.1 The Committees have jurisdiction over the bankruptcy proceedings of all debtors domiciled in Peru.

6.2 The Committees are also competent to deal with the bankruptcy proceedings of natural or legal persons domiciled abroad in the case the corresponding Peruvian judicial authorities have recognized the foreign judgment declaring the bankruptcy or where provided by the rules of Private International Law. In both cases, such competence shall extend exclusively to assets located in the national territory.

6.3 The Peruvian Bankruptcy Authority shall have jurisdiction over bankruptcy procedures promoted against debtors domiciled in the country, even in cases where part of their goods and / or rights comprising their assets are outside the territory of the Republic.

6.4 The Board of Directors of INDECOPI, by means of a Directive, shall determine the territorial jurisdiction of the decentralized Commissions.

6.5 Jurisdiction of Commissions is determined taking into account the place where the debtor is domiciled. In this regard:

- a) If the debtor is domiciled in the province of Lima or the Constitutional Province of Callao, the jurisdiction shall correspond to any of the Delegated Committees operating in those provinces.
- b) If there are no Delegated Committees in the province in which the debtor domiciles, the jurisdiction shall correspond to the Delegated Committee that is in the territorially closest province, unless there is another Delegated Committee that, because of the access roads, is closer to the province in which the debtor is domiciled.

Article 7 .- Address

For identifying the territorial jurisdiction, the domicile of the debtor shall be determined according to the criteria below:

- a) Legal entities: The address is the location indicated in the statutes of the debtor, duly registered in the Public Registry.
- b) Individuals, marital partnerships and undivided successions: The domicile of natural persons and marital partnerships is the one determined in the Civil Code. The address of the undivided successions is the last known address of the deceased.

Article 8 .- Regulations on Prevention or Disputes over Jurisdiction

8.1 In the event that two or more applications are submitted in respect of the same debtor for the start of Ordinary Bankruptcy Proceedings provided by Law, in two or more Committees of the same territory, the procedure shall be followed before the Committee where the application was filed at an earlier date. If applications were filed on the same date, the Court shall decide the jurisdiction of the proceeding.

8.2 In the case the proceeding is initiated by creditors, the jurisdictional dispute may be brought by the debtor only within the deadline set for it to appear before the proceeding.

8.3 Without prejudice to the provisions of the preceding paragraphs, at any time before the issuance of the resolution declaring bankruptcy of the debtor, the Board may declare void the actions taken in the proceedings on which it deems to have no territorial jurisdiction under the provisions of Articles 6 and 7, submitting the case to the Committee that is found competent.

8.4 In no case, the agreement between the parties related to the prorogation of the jurisdiction regulated in this article shall be valid.

8.5 Jurisdictional disputes are resolved by the Court based on an informed decision.

Article 9 .- Processing of plurality of proceedings against the same debtor

9.1 When requests to start bankruptcy proceedings of different nature against the same debtor are promoted, the procedure whose application was filed at an earlier date shall prevail, declaring the suspension of the procedure initiated later.

9.2 Had such applications been filed on the same date, the preventive bankruptcy proceedings shall prevail, and the proceedings of ordinary nature shall be suspended.

9.3 If during the proceeding of the request for bankruptcy, a global refinancing agreement is not approved, or the bankruptcy is not declared, the ordered suspension shall be lifted and the process of the subsisting procedure shall continue. Otherwise, the suspended proceedings shall conclude without a declaration on the merits.

9.4 In those cases when the beginning of bankruptcy proceedings has been released under Article 32, the proceedings covered by this rule regarding the debtor whose procedure was released shall not be initiated.

CHAPTER III

INFORMATION AND RESERVATIONS OF BANKRUPTCY PROCEEDINGS

Article 10 .- Nature of affidavit of information presented

10.1 Any information presented is an affidavit in nature. The legal representative, the creditor itself and the debtor, as appropriate, shall be responsible for the accuracy of the information and the authenticity of the documents submitted.

10.2 The nature of affidavit concerning the accuracy of the documents and information submitted does not relieve the parties to develop the presentation of evidence that is required to them by the bankruptcy authority.

10.3 Failure to acquit the requirements of the bankruptcy authority may generate the complaint for the crime of resistance and disobedience to authority, without prejudice to the sanctions provided for in Title VII of the Law.

Article 11 .- Reserve and information of the proceeding

11.1 Bankruptcy proceedings at the request of creditors shall be processed in reserve until the publication referred to in Article 32. Civil servants who have knowledge of the proceedings and the parties shall insure the reserve in a cautionary manner.

11.2 The reserve shall not preclude the publication of edicts when the domicile of the summoned person is unknown; however, the reserve regarding the information and documentation submitted shall be maintained.

Article 12 .- Declaration of relationship between the debtor and its creditors

12.1 For purposes of the application of this Law, the relationship between the debtor and creditor shall be declared when property, kinship, control or management relationships exist or have existed, as well as any other circumstances involving a relevant proximity of interests between the two.

12.2 In particular but without limitation, relationships that show the existence of bankruptcy link are:

- a) The kinship up to the fourth degree of consanguinity or second of affinity between both two parties or between one of them and shareholders, partners, associates of the other or between one of them and shareholders, partners or members of the other or between who hold such quality.
- b) The marriage or co-habitation.
- c) The employment relationship involving the exercise of management or trust duties.
- d) The direct or indirect property of the creditor or the debtor in any business of its respective counterpart. Excluded from this condition are the workers who are creditors of worker cooperatives.
- e) The association or partnership or similar agreements between creditor and debtor.

- f) The existence of common accounting between economic activities of the creditor and the debtor.
- g) The common integration of an economic group in the terms established in the relevant legislation.

12.3 The existence of these relationships should be declared by the creditor and the debtor at the first opportunity they appear before the Committee.

Article 13 .- Access to bankruptcy information

13.1 Creditors have the right to access all the information they require to make decisions in the bankruptcy proceedings, without prejudice to the exceptions stipulated in the Constitution and the legal framework. It is the obligation of the debtors and the administrative and liquidator entities providing such information.

13.2 In the case of Boards, the right to information of creditors is governed by Article 52.

13.3 Manager and liquidator institutions with current registration have the right to access information contained in the records of the bankruptcy proceedings, with the limitations contained in the relevant Law.

CHAPTER IV EQUITY SUBJECT TO BANKRUPTCY PROCEEDINGS

Article 14 .- Equity comprised in bankruptcy proceedings

14.1. The equity comprises all assets, rights and obligations of the insolvent debtor, except for their unseizable assets and those expressly excluded by special laws.

14.2. The debtor whose equity is subject to the regime of community of property shall replace that system by the division of equity, in accordance with the requirements and formalities provided by the rules of civil procedure in order to allow accurate identification of goods that shall make up its assets included in the procedure. This condition is a requirement for admissibility in the case that the debtor intends submission to bankruptcy regime provided by the Law.

14.3 In the case a debtor who is subject to the regime of community property is summoned and its subjection to bankruptcy regime is declared, it shall meet the requirement provided in the previous paragraph prior to the call of the meeting of creditors arranged by the Committee. During the pendency of this proceeding and as long as the requirement is not satisfied, deadlines shall be suspended and the suspension of enforceability of obligations and the framework of legal protection of equity, regulated in Articles 17 and 18 of the Law shall not apply.

14.4 In the undivided successions, property matters of inheritance shall form part of the bankruptcy estate.

Article 15 .- Credits included in the bankruptcy proceedings

The following shall be subject to the bankruptcy proceedings:

15.1 The obligations of the debtor caused to the date of the publication provided for in Article 32, with the exception provided in Article 16.3.

15.2 Credits that, as of the date specified in the preceding paragraph have prescribed may be entered into the bankruptcy proceedings in case that, after being notified of the respective application, the debtor does not deduct the prescription or recognize the obligation. If prescription is verified at the request of the debtor, the Committee shall declare inadmissible the recognition of credit in question. Loans supported by final judicial and administrative resolutions are exempted from this rule, in which case the Committee can only check the prescription of credits contained in such titles prior to judicial or administrative ruling who so declare.

15.3 In the case of undivided successions, the charges referred to in Article 869° of the Civil Code are considered obligations, in addition to the debts described in the Civil Code.

Article 16 .- Post Bankruptcy Credits

16.1. The post-bankruptcy credits shall be paid at maturity, and the provisions contained in Articles 17 and 18, with the exception provided in the third paragraph of this Article, shall not be applicable. Applications for recognition of these credits shall be declared inadmissible.

16.2. The appropriations referred to in the preceding paragraph may be executed at maturity, corresponding to the judicial authority in charge of the execution, the respect of the rank of guarantees granted.

16.3. In the dissolution and liquidation procedures, post-bankruptcy credits shall be subject to recognition, until the judicial declaration of bankruptcy of the debtor or termination of the bankruptcy proceedings.

Article 17 .- Suspension of enforcement of obligations

17.1 From the date of publication referred to in Article 32 to, the enforceability of all obligations that the debtor had outstanding as of that date shall be suspended, without this constituting a novation of such obligations, applying to them, where applicable, and the interest rate that was agreed by the Board if it is deemed appropriate. In this case, no default interest shall be accrued by the aforementioned debts, nor the capitalization of interest shall proceed.

17.2 The suspension will last until the Board approves the Restructuring Plan, the Global Refinancing Agreement or the Liquidation Agreement in which different conditions are established, regarding the enforceability of all obligations included in the proceeding and the applicable interest rate in each case, which is effective against all creditors included in the bankruptcy proceedings.

17.3 The unenforceability of the debtor's obligations does not affect that creditors are directed against property of third parties who have made real or personal guarantees in their favor, which shall be subrogated with full legal rights in the position of the original creditor.

17.4 In the event of bankruptcy of a branch, unenforceability of its obligations does not affect the possibility that creditors can be directed, by appropriate legal means, against property of headquarters located in foreign territory.

Article 18 .- Framework of Legal Protection of Equity

18.1 From the date of publication referred to in Article 32, the authority with competence on judicial, arbitration, coercive or extrajudicial sale proceedings against the debtor, shall not order, under responsibility, any injunction affecting its assets and if already ordered, it shall refrain from executing them.

18.2 This abstention does not extend to liable registration measures or any other that does not mean the dispossession of the debtor or which, by their nature, do not affect the operation of the business, which may be ordered and issued but cannot be subject of forced execution.

18.3 If the injunctions, other than those mentioned in the preceding paragraph, have been executed, its lifting and return of property involved in the injunction to the person exercising the administration of the debtor's assets shall be ordered. However, the injunctions referred to in Article 18.2 shall not be lifted, but they may not be subject to forced execution.

18.4 In any case, the debtor's assets under bankruptcy may be subject to enforcement under the terms provided in the Law, with the exception provided in the first and second paragraphs of Article 16. In this sense, from the date of publication specified in Article 32, any judicial or administrative authority shall be prevented from processing, under responsibility, the initiation of any proceeding intended exclusively to the collection of the credits included in the bankruptcy. If such procedures have been initiated before the

above-mentioned date, the authority in charge of them shall suspend their processing at the stage where they are, under responsibility.

18.5 The framework of legal protection does not extend to perishables. In this case, the proceeds of sale of such property shall be made available to the administrator or liquidator, as appropriate, to proceed with the corresponding payment, observing the relevant rules.

18.6 Once the bankruptcy has been declared and the procedure has been disseminated, the judicial or extrajudicial execution of the debtor's property affected by guarantee shall not proceed, unless such property had been used as collateral for obligations of third parties, in which case they may be subject to execution as in the assumptions of articles 16.1 and 67.5.

18.7 In judicial or administrative proceedings initiated for the declaration of obligations, the prohibition on execution of goods does not reach the stages aimed at determining the obligation liable to the debtor. The competent authority shall continue hearing to issue final decision on these issues, under responsibility.

Article 19 .- Ineffectiveness of Acts of the Debtor

19.1 The judge declared ineffective and, therefore, unenforceable against creditors of the competence, all taxes, transfers, contracts and other legal acts, whether gratuitously or for consideration that do not relate to the normal development of the debtor's activity that damage its equity and that have been made or entered into by it within the year prior to the date it filed its application to invoke one of the bankruptcy proceedings, it was notified of the decision of formal notice or was notified of the start of the dissolution and liquidation. .

19.2 The acts of disposal carried out pursuant to any change or modification of the corporate purpose of the debtor, made in the previous period, shall be evaluated by the judge based on the nature of the respective commercial operation.

19.3 The judge shall declare ineffective and, therefore, unenforceable against creditors, all legal contracts executed between the date of its request for invoking any of the bankruptcy proceedings, it was notified of the decision of summoning or was notified of the start of the dissolution and liquidation until such time as the Board names or ratifies the administration of the debtor or approves and signs the respective Settlement Agreement, as applicable, as detailed below:

- a) Any advance payment for obligations not yet due, regardless of how it is performed;
- b) All payments for obligations due that are not conducted according to the manner agreed or established in the respective contract or title;
- c) Acts and contracts for consideration, made or entered into by the insolvent that do not relate to its normal course of business;
- d) Compensation made for mutual obligations between the debtor and its creditors;
- e) The encumbrances constituted and transfers made by the debtor charged against its property whether it is for consideration or free of charge;
- f) The guarantees granted on assets of the debtor, within the period referred, to ensure payment of obligations incurred prior to this date;
- g) The judicial or extrajudicial executions of its assets, from the dissemination of the bankruptcy proceedings; and
- h) Mergers, takeovers or splits (spin-offs) involving a capital expense.

19.4 The third party that in good faith acquires for valuable consideration any right of the debtor that in the relevant Registry appears with powers to grant it, shall not be affected by the ineffectiveness which this article refers to, once its rights is registered.

Article 20 .- Claim for declaration of ineffectiveness and reinstatement of property to the bankruptcy assets

20.1 The declaration of ineffectiveness, and its consequent unenforceability for creditors of the bankruptcy proceedings, shall be conducted in the way of summary procedure. The person or entity engaged in the administration of the debtor or the Liquidator, or one or more recognized creditors are entitled to bring the claim.

20.2 The judge declaring the ineffectiveness of the acts of the debtor shall order the reinstatement of property to the bankruptcy estate or removal of encumbrances, as appropriate.

CHAPTER V REGISTRATIONS

Article 21 .- Registration of initial actions of the bankruptcy proceedings

21.1 Within ten (10) business days after publishing the bankruptcy proceedings according to Article 32, the debtor, its directors or legal representatives, as appropriate, under sanction of a fine of one (1) to one hundred (100) Applicable Tax Units (UIT, by its initials in Spanish), shall request the registration of the resolution declaring the status of bankruptcy or its dissolution and liquidation, as well as the publication used to disseminate the proceeding in the Personal Legal Entities and Commercial Registry, as applicable, and Public Registry where its property or guarantees granted on those are registered. Such sanction may be applied to the referred persons, if they do not meet with the remedy for the observations that the Registrar could make, if applicable.

21.2 For registration, a copy of the resolution by which the procedure or the dissolution and liquidation is initiated, as appropriate, and a copy of the publication referred to in Article 32 shall be sufficient.

21.3 In those cases where bankruptcy proceedings are concluded, it shall be the obligation of the debtor or administrator or liquidator, or their legal representatives, as appropriate, under sanction of a fine of one (1) to one hundred (100) UIT, to apply for registration of the resolution declaring that conclusion. For these purposes, the submission of a certified copy of the resolution declaring the conclusion of the procedure, and stating the date it was granted or a matter settled by judgement, as the case is, shall suffice. Such sanction may be applied to the referred persons, if they do not meet to remedy the observations that the Registrar could make, if applicable.

21.4 Registrations may be requested by any interested party before the corresponding Registry.

Article 22 .- Registration of agreements

The public registrar shall record the resolutions adopted at Board of Creditors' Meeting, the Restructuring Plan, the Settlement Agreement, the Global Refinancing Agreement and the court order declaring bankruptcy. For this purpose, it will be sufficient to submit a copy of the corresponding instrument, duly certified by a representative of the Committee. The registrar shall comply with such inscriptions only pursuant to the aforementioned instruments, under its operational and administrative responsibility, according to Law.

TITLE II ORDINARY BANKRUPTCY PROCEEDINGS

CHAPTER I APPLICATION FOR PROCEEDINGS

Article 23 .- Initiation of proceedings

Ordinary Bankruptcy Proceedings may be initiated by the debtor itself or by its creditors, fulfilling the requirements established by Law.

Article 24 .- Initiation of proceedings at the request of the debtor

24.1 Any debtor may request the initiation of Ordinary Bankruptcy Proceedings provided it shows proof to be in, at least, one of the following cases:

- a) That more than one third of its total obligations are due and unpaid for a period of thirty (30) calendar days;
- b) Having accumulated losses, net of reserves, the amount of which is greater than the third of the paid-in stock capital.

24.2 If the application is filed by the debtor, it shall express its request to carry out a capital restructuring or a dissolution and liquidation, if appropriate, taking into account the following:

- a) For a capital restructuring, the debtor must prove, by means of a report signed by its legal representative and certified public accountant, that its accumulated losses, net of reserves, do not exceed the total of its paid-in stock capital.

The debtor shall also specify the mechanisms and requirements necessary to make viable its bailout, and present a preliminary projection of its results and cash flow for a period of two (2) years.

- b) If not found in the case of item a) above, the debtor may only request its dissolution and liquidation, which shall be declared with the resolution declaring the debtor bankrupt.

If the debtor requests to qualify for the Ordinary Bankruptcy Proceedings pursuant to paragraph a) of the preceding paragraph, but has accumulated losses, net reserves, exceeding the amount of its stock capital, it can only request its dissolution and liquidation.

24.3 The application based on a situation other than those mentioned in the preceding paragraph shall be declared inadmissible.

24.4 Natural persons, marital partnerships or undivided successions shall also meet, at least, one of the following assumptions:

- a) That more than 50% of its revenues are derived from the exercise of a business activity carried out directly and on its own behalf by the above-mentioned subjects.
- b) That more than two-thirds of its obligations have originated in business activity carried out by the aforementioned subjects. For these purposes, compensation and reparations liability generated by the exercise of the referred activity.

Article 25 .- Documents attached to the application

25.1 The debtor shall accompany its application with an Executive Summary supporting the beginning of Ordinary Bankruptcy Proceedings, the economic viability of its activities, where applicable, and the means to pay the debt obligations. It shall also present, as applicable, the following documents:

- a) Copy of the Minutes of the Shareholders or the relevant body's meeting stating the agreement to benefit from the Ordinary Bankruptcy Procedure;
- b) Name or corporate name of the debtor, its business activity, its address and provinces where it holds administrative offices or performs productive activities;
- c) Copy of identity document and of the power of attorney of its legal representative;
- d) Copies of the Statement of Financial Position; Income Statement; Statement of Changes in Equity and Cash Flow Statement, of the two (2) latest years; and with a monthly closing no older than two (2) months from the date of filing of the application. In the case of people whose obligations amount exceeds one hundred (100) Applicable Tax Units, the aforementioned Financial Statements shall be duly audited and it shall present its corresponding opinion, without exceptions.
- e) Information about funding sources accessed by the debtor during the last two tax years, as well as the agreement for the return of said funding and time that has been allocated for this purpose;
- f) A copy of the book folio sheets for the last month;
- g) A detailed account of his obligations of any kind, stating the identity and address of each creditor, the amount owed for capital, interest, expenses, and the expiration date of each of these obligations. The list should include contingent obligations, specifying in these cases, the position of both parties regarding its existence and amount. The referred information shall be no older than two (2) months from the date of

filing of the application; and shall reflect the debtor's obligations contained in the submitted balance according to paragraph d) of this paragraph and shall be reconciled with it;

h) A detailed list of its movable and immovable property and of its charges and encumbrances, as well as holders and amounts thereof. The referred information shall be no older than two (2) months from the date of filing of the application and must be adjusted to accounting or appraisal values, specifying which of the two criteria was followed. Such information shall reflect the debtor's assets contained in the balance presented according to paragraph d) of this paragraph and be reconciled with it;

i) A detailed account of its receivables, indicating their chances of recovery. The referred information shall reflect the credits of the debtor contained in the submitted balance according to paragraph d) of this paragraph and be reconciled with it;

j) Accrediting to be a contributor to the tax administration.

k) Affidavit of the existence or nonexistence of linkage with each of its creditors, according to the assumptions set out in Article 12.

25.2 The relationships mentioned in subparagraphs g), h) and i) of the preceding paragraph, should be updated to the date of dissemination of the proceedings.

25.3 If the applicant is a natural person, marital partnership or undivided succession, it will not accompany the documentation detailed in foregoing subparagraphs d), e) and f).

25.4 The information and documentation submitted shall be signed by the legal representative of the debtor. A certified public accountant shall also sign the documents identified in paragraph d) above.

25.5 All of the information listed in this article shall be also submitted in a magnetic disk or similar medium according to the specifications of the Committee.

25.6 Should the requirements established in this Article be fulfilled, the Committee shall declare the debtor bankrupt.

Article 26 .- Initiation of proceedings at the request of creditors

26.1 One or more unpaid creditors whose receivable amounts are due, not paid within thirty (30) calendar days after its expiration and which, collectively, exceed the equivalent of fifty (50) Applicable Tax Units in effect on the filing date, may request the initiation of Ordinary Bankruptcy Proceeding of their debtor. The withdrawal of any of the creditors, who filed the application after the debtor has been summoned, shall not prevent the continuation of the procedure.

() 26.2 Promoting Ordinary Bankruptcy Proceeding is not applicable for unpaid obligations that are secured by assets of the debtor or third parties, unless the process of implementing these guarantees is unfruitful.*

() Repealed*

26.3 Once bankruptcy proceedings are disseminated under Article 32, and as long as the processing thereof subsists, the dissolution and liquidation of the debtor shall be suspended under the provisions of the General Corporation Law, leaving the debtor and its representatives subject to the rules of this Law.

26.4 The application shall specify the name or corporate name, domicile and economic activity of the debtor with an affidavit from the creditor on the existence or nonexistence of linkage with its debtor, under Article 12. The debtor shall accompany copy of the supporting documentation of the respective credits and indicate the name or corporate name, address and, if applicable, the name and powers of the legal representative of the applicant.

Article 27 .- Summoning the debtor

27.1 After verifying the existence of the mentioned credits, the Committee shall require the formal notification to the debtor so that within ten (10) working days of being notified, it appears before the proceedings opting for any of the alternatives provided in paragraph 28.1 of Article 28.

() 27.2 At the request of the summoned, information on its financial statements may be declared reserved, being an obligation of the functional body taking steps to ensure the secrecy and confidentiality of the same under responsibility, according to the provisions of Article 6 of Legislative Decree No. 807. Once the bankrupt debtor is declared, such information shall be available to creditors, and the declaration of reservation is automatically void.*

() Repealed*

Article 28 .- Appearance at the proceedings

28.1 The summoned person may appear in person at the Ordinary Bankruptcy Proceedings opting for any of the following:

a) Paying the full amount of the receivables in question. If the creditor refuses to receive payment, the debtor may cover the full amount of the requested amount, in accordance with the provisions of the Civil Code and the Civil Procedure Code, in which case the obligation is extinguished.

b) Offering to pay the full amount of the receivables in question. A term of five (05) days shall be granted to the creditor to give its consent. Silence constitute acceptance of the offer of payment.

c) Opposing the existence, ownership, enforceability or amount of the receivables in question. The exercise of this option cannot undermine the right of the summoned person to raise subordinatedly the previous alternative. The Committee shall decide in the same administrative act on both, upon transfer to the creditor.

d) Acquiescing to the request.

28.2 When the summoned person opts for the above a) alternative, the Committee shall issue a decision rejecting the application for initiation of the proceeding and declare terminate the proceeding, if the payment or allocation of credits in question is verified.

28.3 The bankrupt condition shall be declared under the following assumptions:

a) When the applicant creditor refuses the offer of payment made by the summoned person.

b) When the opposition filed by the debtor proves to be unfounded or inadmissible, and in case it had opted subordinatedly for the expected option provided in option b) of the first paragraph, it has been rejected by the creditor.

c) When the summoned person recognizes the amount of loans subject of these proceedings and acquiesces to the application submitted.

d) When the summoned person does not take a position on any of the alternatives provided in this article, within the period specified in Article 27.1.

() 28.4 In any of the cases mentioned in the preceding paragraph, the dissolution and liquidation of the debtor shall be declared in the resolution declaring the situation of bankruptcy, provided that its accumulated losses, net of reserves, exceed all its stock capital.*

() Repealed*

28.5 If the opposition is well founded, the application for initiation of the proceedings shall be denied and the proceeding shall be declared concluded.

28.6 The agreement of the creditor with the payment offering terminates the proceedings, and rejecting decision to initiate the same shall be issued.

Article 29 .- Compensation of credits in opposition

When raising its opposition, the debtor may oppose compensation to the effect that the bankruptcy authority declare bankruptcy prior to the declaration of the debtor bankrupt in accordance with the Civil Code.

() **Article 30 .-** Execution of the warning issued pursuant to Article 703 of the Civil Procedure Code*
Once certified copies of court documents are received, the Committee, pursuant to the warning given by the court under Article 703 of the Civil Procedure Code shall order the publication in the Official Gazette "El Peruano" the name of persons subjected to dissolution and liquidation, and continue to apply the provisions of Article 32.

() **Repealed***

Article 31 Debtor's duty to submit information

Following the publication pursuant to Article 32, the debtor, its directors or legal representatives, as appropriate, shall submit to the Committee, if they have not done before, within a period not exceeding ten (10) days, the entire information and documentation referred to in Article 25, under sanction of a fine of one (1) to one hundred (100) Applicable Tax Units.

**CHAPTER II
DISSEMINATION OF PROCEEDINGS**

Article 32 .- Dissemination of proceedings

32.1 Once the resolution providing the dissemination of the procedure is final and with full consent, the Committee on Bankruptcy Procedures of INDECOPI shall provide the weekly publication in the official gazette El Peruano of a list of debtors who, in the preceding week, have been subject to bankruptcy proceedings.

32.2 The publication shall require creditors to request the recognition of their credits, they shall be informed about the deadline for appearance to the proceedings and the list of obligations declared by the debtor shall be made available at the offices of the Technical Secretariat.

Article 33 .- Accumulation of bankruptcy proceedings

The accumulation of proceedings initiated against the same debtor is valid, after the dissemination of any of them, as provided in Article 32. The accumulation shall be declared in the proceedings where the first publication was made. The other proceedings shall be processed as requests for credit recognition.

Article 34 .- Appearance of creditors at the proceedings

34.1 Creditors seeking recognition of their claims within thirty (30) days after the date of publication of the notice reporting on the bankruptcy, plus the distance term, and who have obtained recognition, have the right to participate and vote at the Board establishment meeting and subsequent meetings.

34.2 The same right corresponds to the creditor whose credit led to the declaration of bankruptcy, in which case the Committee shall recognize the corresponding credits officially.

34.3 Those creditors who obtain the belated recognition of their credits shall have no right to speak or vote on the Board's meetings.

34.4 The applications for recognition submitted by the deadline and whose credits the Committee has declared contingent shall not be considered late. Once the contingency is defined, the holder of credit may participate in the Board's Meetings with voice and vote. The same rule applies in respect of credits for which recognition was requested in a timely manner, initially rejected and later recognized in process of being challenged in administrative or judicial proceedings.

34.5 When a total or partial change in ownership of a recognized credit occurs, the new owner shall have the same rights of the original creditor.

(*) Article 35 .- Appointment of a financial auditor

Creditors with credits recognized referred to in Article 42 of this Law may appoint auditors chosen from a short list of professionals with registration in INDECOPI to oversee the implementation of the

Restructuring Plan and report monthly to INDECOPI and Creditors about the situation and projection of the company.

The auditor's fees shall be assumed as an expense of the administration.

() Repealed*

Article 36 .- Lack of bankruptcy proceedings

36.1 In the case that no more than one creditor requesting recognition of their claims appears, within the period prescribed by law, or if more applications had been submitted but they had been rejected, the Committee shall declare the end of the proceedings for lack of bankruptcy proceedings.

() 36.2 When the Ordinary Bankruptcy Procedure has been initiated pursuant to Article 703 of the Civil Procedure Code, and the absence of bankruptcy proceedings is verified, the Committee shall declare the end of the proceedings and submit the actions taken to the Originating court for declaration of bankruptcy of the debtor.*

() Repealed*

CHAPTER III RECOGNITION OF CREDITS

Article 37 .- Application for recognition of credits

37.1 Creditors must submit all documentation and information necessary to support the recognition of their credits, indicating the amounts for principal, interest and expenditure paid from the date of publication of the notice referred to in Article 32, and invoke the order of preference that, according to their criteria, they are entitled to with the documents proving that order.

37.2 The application shall include a sworn statement on the existence or nonexistence of linkage with the debtor, according to Article 12.

37.3 For the recognition of tax credits, each public sector entity shall submit its application through representatives designated by the Ministry of Economy and Finance or independently, as it deems appropriate.

37.4 Credits of occupational origin may be submitted for recognition, by its principal representative before the Board, appointed in accordance with the rules on the matter or, independently, by each credit holder creditor.

Article 38 .- Credit Recognition Procedure

38.1 The Committee shall notify the debtor to, within a period not exceeding ten (10) days, it express its position on the application for recognition of credits.

38.2 After the deadline specified in the preceding paragraph is due, the Committee shall be empowered to issue a decision on the request for recognition of credits. The lack of pronouncement of the debtor does not prevent the Committee from issuing the respective resolution.

38.3 The Committee shall decide taking into account the documents submitted by the parties. Notwithstanding the foregoing, the Committee may request additional information when deemed appropriate.

38.4 The Committee, based on the nature of applications and the nature of the credit invoked, may proceed to accumulate them through the issuance of a single resolution.

38.5 If there are grounds for agreement between the debtor and the creditor, the Technical Secretariat may issue a decision on the request for recognition of credits, being applicable to this assumption, as relevant, the rules established in the preceding paragraphs.

38.6 In cases of loans invoked by creditors related to the debtor and those in which any controversy or doubt about the existence of the same arises, the ruling on the application for credit recognition shall only

be made by the Committee, which shall investigate its existence, origin, legitimacy and amount by all means, after which it shall issue the corresponding resolution.

38.7 The resolution of credit recognition is notified by the bankruptcy authority to the debtor and creditor that invoked them to the addresses set by them in the procedure. Other recognized creditors may challenge the act by means of challenge means established by Law, within fifteen (15) days the said act has been issued.

Article 39 .- Supporting documentation of credits

39.1 Credits that are supported by statements or self-assessments filed with tax manager entities or pension funds, subscribed by the debtor, shall be recognized for their merit alone.

39.2 In the same manner, credits that are supported by court decisions with full consent or final and binding judgment or arbitration awards, where the amount is apparent from the wording of the same or which have been settled on execution shall be recognized. The Committee may only suspend the recognition by express mandate of the Judiciary, Arbitrator or Arbitration Commission to order such a suspension, or if there is a judgment or arbitration award that brings the invalidity or unenforceability of the obligation.

39.3 Credits that are supported in securities or public documents shall be recognized by the Committee for the sole merit of submission of such documents, signed by the debtor where the amount appears from the tenor thereof, unless it deems to require further information.

39.4 For the recognition of credits of occupational origin, and provided that the employment relationship of workers has been established, the Committee shall recognize the summoned credits, based on the credit to the tax return submitted by the applicant, unless the debtor shows proof to have paid it or, being the case, the lack thereof.

39.5 The court, arbitration or administrative controversial credits shall be registered by the Committee as contingent, if such controversy is referred to its existence, origin, legitimacy, amount or ownership, and the controversial matter can only be clarified in court, arbitration or administrative jurisdiction for the exclusive competence of the authority in charge.

39.6 The existence of contingent loans will be made known to other creditors. The holder of contingent loans may attend the Board of Directors' Meeting with voice but without vote.

Article 40 °.- Rating Work-Related Credits

For the recognition of work-related credits, the Committee may apply the principle of the primacy of reality, privileging the verified facts over forms or contractual appearances supporting the credit.

Article 41 .- Contents of the resolutions of credit recognition

Resolutions of credit recognition issued by the Technical Secretariat and the Committee shall contain:

- a) The identification of the creditor and the debtor;
- b) The amount of credits because of principal, interest and expenses;
- c) The order of preference of credits; and
- d) The existence or nonexistence of linkage between creditor and debtor, in accordance with the criteria set out in Article 12.

Article 42 .- Order of Preference

42.1 In the dissolution and liquidation procedures, the order of preference in the payment of credits is as follows:

First: Salaries and social benefits owed to workers, unpaid contributions to the private pension system or pension schemes administered by the Office of Social Security Normalization - ONP, Fisherman's

Benefits and Social Security Funds or other pension schemes established by law; claimable debt from the Social Health Insurance - ESSALUD that is under measures of compulsion for which precautionary measures have been ordered; as well as interest and costs that may arise from such concepts. Unpaid contributions to Private Pension System include the concepts that Article 30 of Decree Law No. 25897 refers, except for the fees charged by the private pension fund managers.

Second: The food credits.

Third: Credits secured by mortgage, real property guarantee, antichresis, warrants, lien or protective measures that fall on debtor's assets, provided that the corresponding security has been lodged or the corresponding cautionary measure has been placed prior to the date of publication referred to in Article 32. These guarantees or encumbrances, if any, should be included in the registry before that date, to be effective against the mass of creditors. These credits maintain the present order of preference even if the assets guaranteeing them are sold or awarded to pay-off credits of previous orders, but only to the extent of the realization or award amount of the asset guaranteeing the credits.

Fourth: The State tax credits, including Social Health Insurance -ESSALUD that are not covered by the first order of preference; are taxes, interest, fines, arrears, costs and charges.

Fifth: The credits not included in previous orders; and the portion of tax credits that, pursuant to paragraph d) of section 48.3 of Article 48, are transferred from fourth to fifth order; and the balance of credits of the third order in excess of realizable value or award of good guaranteeing such credits.

42.2 Any payment made by the debtor to any of its creditors, in implementation of the Restructuring Plan or the Settlement Agreement, shall be attributed, first, to the debt for principal and then, to charges and interest, in that order.

CHAPTER IV BOARD OF CREDITORS' MEETINGS

Article 43 .- Call and installation of Board of Creditor's Meeting

43.1 The Committee shall convene the Board's meeting by making available to the debtor or creditor responsible, a notice that shall be published once in the official gazette El Peruano. There shall be at least three (3) days between the publication of the notice and the date of the Meeting on first call.

43.2 The call to a Board's Meeting shall state the place, date and time it will be held on first and second call. There shall be two (2) days between each call.

Article 44 .- Participation of the representative of the Committee

44.1 The Committee shall appoint one or more representatives to represent it before the Board's Meetings where the agenda shall be the decision on the fate of the debtor, the approval of the Restructuring Plan, Settlement Agreement and Global Refinancing Agreement, as well as their amendments. The participation of the representative of the Committee shall be mandatory.

44.2 It may send a representative to the other meetings to act as an observer and to collect information.

Article 45 .- Powers of the representative of the Committee at the Board of Creditors' Meeting

45.1 In the Board of Creditors' meetings, the representative of the Committee may intervene with voice but without vote, and shall verify compliance with the installation quorums and majorities required by law in the adoption of agreements.

45.2 In the Board meetings where the participation of the representative of the Committee is not compulsory, the Chairman of the Board shall compulsorily verify compliance with the installation

quorum and majorities required by law in the adoption of agreements. In any case, the administration of the debtor or the liquidator, as appropriate, shall be required to draw up the respective minutes of Board and update the list of creditors entitled to participate.

Article 46 .- Participation of debtor in the Board of Creditors' Meeting

The debtor shall be entitled to attend Board meetings personally or by proxy, only to express its position on the procedure. For these purposes, the representation of the debtor legal person may be exercised by its duly accredited representative in the proceedings or by any person to whom it delegates its representation by simple power of attorney with legalized signature, that must be submitted to the Committee with anticipation not less than two (2) days from the date of the first call.

Article 47 .- Representation of creditors in the Board of Creditor's Meetings

47.1 To participate in the Meetings, creditors may accredit representatives with anticipation not less than two (2) days from the date of the first call. The representation of creditor legal person may be exercised by its accredited representative or by any person to whom it delegates its representation by simple power of attorney with legalized signature.

47.2 Credits related to salaries and social benefits shall be represented by the person or persons designated by the Ministry of Labor and Employment Promotion under the procedure established for this purpose. The representatives or designees shall have sufficient powers for the adoption of any of the agreements provided for in the Law.

47.3 The representation of tax credits on Board's Meetings shall be exercised by an official designated by the Ministry of Economy and Finance.

Article 48 .- Participation of the tax creditor in Board of Creditor's Meeting

48.1 When the decision on the fate of the debtor, approval of the Restructuring Plan, Settlement Agreement or Global Refinancing Agreement, and any amendments thereto are subjected to the Board of Directors' Meeting, the representative of tax-based credits shall act under administrative responsibility, on proposed topics.

48.2 If it were contrary to the continuation of activities of the debtor, to the approval of the Restructuring Plan or the Global Refinancing Agreement, its vote shall be well founded, what shall be done by its sole accession to the position coinciding with its vote, and by leaving record of it in the minutes. The omission of substantiation shall not produce the nullity of the agreement.

48.3 The resolutions adopted by the Board are enforceable against tax credits originated in the same conditions applicable to most creditors listed in order of preference in which there is the greatest amount of credits recognized. The Committee shall resolve cases of disagreement about what those conditions are. Without prejudice to other preferences and privileges provided for tax credits, the following conditions shall be observed:

- a) Tax credits, calculated up to the time of the publication referred to in Article 32, shall not earn or generate arrears, surcharges and fines for nonpayment.
- b) The rate of compensatory interest for the credit rescheduling shall be approved by the Board for most creditors listed in order of preference in which there is the greatest amount of credits recognized.
- c) The rescheduling term of credits may not exceed the period that is approved for most creditors listed in order of preference in which there is the greatest amount of credits recognized.
- d) Credits shall not be capitalized or written-off. However, tax credits that, being in the fourth order of preference, are equivalent to the average percentage capitalized or are written off by the creditors listed in order of preference in which there is the greatest amount of credits recognized, shall pass to the fifth order of preference.

(*) Article 49 .- Participation of creditors with decisive position

49.1 Where a creditor, whose credit percentage represents a decisive factor for the adoption of an agreement, has a position contrary to the continuation of activities of the debtor or the approval of the Restructuring Plan or the Global Refinancing Agreement, it shall support, under sanction of nullity of the agreement, its position before the Board, and each of its foundations must be recorded in the minutes. Abstention, vote against and accession to the position of a third creditor shall not be sufficient to exempt the creditor from this obligation.

49.2 The evasive conduct regarding the grounds, when it may be, will lead to the imposition of a fine up to 100 Applicable Tax Units.

() Repealed*

Article 50°.- Installation of the Board of Creditors

50.1 In the place, date and time indicated in the call, it shall be proceeded to install the Board. To this end, it shall be required on first call the presence of creditors representing more than 66.6% of the credits recognized. In the second call, the Board shall be installed with the presence of recognized creditors who have attended.

50.2 If after the two dates indicated in the call notice of call, the Board is not installed within a maximum term of ten (10) days and one time, the debtor or creditors may request to the Committee the authorization to publish a new notice of call.

50.3 Ex officio or upon request of the debtor or creditors representing together more than 10% of the total amount of credits recognized, the Committee may suspend the installation of the Board of Creditors provided that there is good reason. If it is an ex-parte petition, the Committee shall provide that requestors grant a suitable guarantee, which shall be determined by the Committee, for the eventual compensation for the damages that such suspension may cause.

50.4 At the meeting of installation of the Board, it may pronounce on the following issues:

- a) Election of its authorities.
- b) Decision on the fate of the debtor.
- c) Approval of the administration or appointment system of the Liquidator, if applicable.
- d) Approval of the Restructuring Plan or Liquidation Agreement, if applicable.
- e) Appointment of the Committee of the Board of Creditors and delegation of powers.

50.5 If the dissolution and liquidation of the debtor has been initiated pursuant to paragraph b) of section 24.2 of Article 24°, the Board shall be held at the place, date and time indicated in a single call. The Board may be installed with the attendance of any recognized creditor and the agreements shall be adopted with the favorable vote of the creditor or creditors representing credits exceeding fifty percent (50%) of those attending credits to the Board of Creditors.

50.6 In the cases described in the preceding paragraph, in the installation meeting the Board may elect its authorities, appoint the liquidator, approve the Liquidation Agreement as well as adopt the decision referred to in subparagraph e) the fourth paragraph of this Article. The Board may not agree to modify the fate of the debtor or its assets, unless it makes the necessary actions to leave the status of equity shortfall or suspension of payments provided for in the Law as grounds for direct liquidation. The Board shall demonstrate to the Committee the reversal of such a situation.

50.7 If in the case referred to in the fifth paragraph of this article, the Board is not timely installed or within the term of thirty (30) days after the occurrence of such fact, the liquidation is not implemented by adopting the agreements necessary for this to occur, the Committee shall appoint, ex officio, a liquidator, following the regulations set forth in Article 97°.

Article 51°.- Generic powers and responsibilities of the Board of Creditors Committee, Administrators and Liquidators

51.1 Notwithstanding the other that are indicated in the articles of the Law, the Board shall have the following generic powers:

a) To decide the fate of the debtor, being able to choose among any of the following alternatives:

a.1 The commencement of an equity restructuring as provided in Chapter V of Title II of the Law; or
a.2 The dissolution and / or liquidation, except for non-seizable assets, in which case it shall come to a dissolution and liquidation as provided in Chapter VI of Title II of the Law;

b) To supervise the execution of the agreements it has taken in accordance with the previous subparagraph, for which it may take all measures it may deem appropriate;

c) To request the administrator or liquidator, as appropriate, the preparation of financial economic reports it may deem necessary for the adoption of its agreements;

d) To appoint among its members a Committee in which it may delegate all or part of the powers conferred by this Law, except for the decision referred to in subparagraph a) of this article, the approval of the Restructuring Plan or Liquidation Agreement, as applicable, as amended; and

e) If the Board of Creditors decides for restructuring and opts for the capitalization of its debts, it may at any time adjust the equity of the debtor, prior economic audit, carried out by auditors registered before INDECOPI.

51.2 Creditors who are part of the Committee as well as the administrators and liquidators respond, jointly and severally, to the creditors, shareholders and third parties for damages caused by any agreements or acts contrary to the Law, the bylaws or by those made with fraud, abuse of authority or gross negligence.

51.3 It is the responsibility of the Committee the compliance with the agreements of the Board, unless it has ordered something different.

51.4 The Committee members are also responsible with members who have preceded them for the irregularities they would had committed if, knowing them, would not denounce them in writing to the Board.

51.5 In no case there may be agreed the payment of allowances, remunerations or similar on behalf of the authorities of the Board of Creditors or members of Committee of Board of Creditors charged against the equity subject to proceedings, under penalty of law to impose on those authorities and members fines of not less than one (1) nor greater than one hundred (100) Tax Units.

Article 52°.- Rights of Information of creditors at Board

52.1 There may only be covered at the meetings of the Board, under penalty of nullity, those issues entered on the agenda published with the call. Exceptions may include those cases where gathered at Board the holders or representatives of 100% of the credits recognized, they agree with the vote of creditors representing 100% of the total amount of credits recognized by the Committee, discuss issues not included in the diary. Such agreement shall be recorded in the minutes.

52.2 The necessary information and documentation shall be made available by the debtor to the creditors, in the premises of the Committee or, in other duly publicized place, with a prior notice of not less than three (3) days before the completion of the first call at Board.

52.3 The delivery of this documentation is an exclusive obligation of the debtor. The breach or partial, late or defective breach of this obligation does not prevent the Board to properly be in session and adopt agreements.

Article 53°.- Majorities required for adopting agreements

53.1 The agreements of the Board referred to in subparagraph a) of Article 51.1, the agreement of approval of the Restructuring Plan, of the Liquidation Agreement and of the Global Refinancing Agreement, as amended, as well as those for which the General Corporations Law require qualified majorities, shall be adopted, on first call, with the vote of creditors representing credits for an amount greater than the 66.6%

of the total amount of credits recognized by the Committee. On second call the agreements shall be adopted with the favorable vote of creditors representing an amount greater than the 66.6% of the total attending credit.

53.2 With the exception of the special provisions contained in the Law, the other agreements submitted for consideration by the Board shall be adopted on first call, with the vote of creditors representing credits for an amount exceeding 50% of the total amount of credits recognized by the Committee. On second call, the favorable vote of creditors representing an amount greater than 50% of the total attending credits shall be required.

Article 54°.- Election and functions of the authorities of the Board

54.1 The Board shall elect among its members the creditors who shall exercise the positions of President and Vice President. In case of impossibility, impediment, absence or unjustified refusal of the President, his duties shall be assumed by the Vice President or, failing that, the Board shall elect by vote with a simple majority the creditor who shall temporarily assume the duties of the President.

54.2 It is a requirement to formalize the election of President and Vice President, under penalty of nullity, the acceptance, in the act, of creditors elected.

54.3 In case of absence of the President and Vice President, the Board may elect in each session the creditor to chair the meeting. For this purpose, the representative of the Committee, in case of participating in the Board, shall preside the meeting until the aforementioned election is made. In case the representative of the Committee does not participate in the meeting and until the aforementioned election is made, the Board shall be presided by the attending creditor who has the highest percentage of recognized credits.

54.4 The President of the Board represents such collegiate body and is responsible for calling and conducting the meetings thereof. In addition, under penalty of a fine, it is responsible for the development, signing, presentation of the minutes under the terms set forth by this Law or the relevant guideline as well as its conservation.

Article 55°.- Formalities, content, approval and validity of the minutes

55.1 The agreements of the Board shall be recorded in minutes, which shall be recorded in a book with the formalities of the General Corporations Law. The minutes shall be signed by the President, the Committee representative and a creditor appointed by the Board itself.

55.2 On the Boards which the representative of the Committee does not participate in, the minutes must be signed by the President and the creditor designated within ten (10) days of the completion of the Board. The President of the Board shall submit to the Committee a copy of the minutes duly signed, within a period not exceeding three (3) days following the end of the above period, so that is incorporated into records.

55.3 The minutes of Meetings, duly certified, are enforceable titles only in respect of the execution of agreements related to the appointment and assumption of functions of administrators and / or liquidators.

55.4 The Committee of Bankruptcy Proceedings of INDECOPI shall regulate by guideline the formalities, content, approval and validity of the minutes of the Board.

55.5 The agreements of the Board, the Restructuring Plan, the Liquidation Agreement, the Global Refinancing Agreement, the resolution declaring the conclusion of the bankruptcy proceedings and the court order declaring bankruptcy, take their effects against the debtor and its creditors from the time they are adopted, signed or are consented, as appropriate.

55.6 If there are no authorities of the Board, the administrator or liquidator, as appropriate, responsible for the development, signing and conservation of records of the Board, under penalty of fine.

Article 56°.- Operation of the Committee

56.1 If the Board agrees to delegate its powers to a Committee, the following rules shall be observed:

- a) The Committee shall consist of four members. The Presidency corresponds to the President of the Board, who, in his absence, resignation or disability, may be replaced by the Vice President. The other three shall mandatorily represent, among them and with respect to the President, and whenever possible, credits of different origin, if any present at the meeting, except express refusal of such creditors to integrate it.
- b) The President of the Committee shall report to the Board in the next meeting thereof, on agreements and actions taken and carried out in compliance with the conferred delegation. The breach of this obligation shall subject the President of the penalty referred to in subparagraph d) of Article 125.1.
- c) The position of member of the Committee cannot be delegated to another creditor.
- d) The Committee shall keep a minute book which may be the same the minutes of the Board are recorded in, in which it is registered their agreements, which shall be signed by at least three of its members, under penalty of nullity of these documents and ineffectiveness of contained agreements.

56.2 For installing a Committee meeting and for the adoption of agreements, attendance and favorable vote of three of its members shall be required. In case of a tie, the President has the casting vote.

56.3 The agreements may only be reviewed by the Board, but it is the obligation of the President to submit to the Commission, within ten (10) days following the completion of the Committee meeting, a copy of the corresponding minutes signed by the attendees.

Article 57°.- Call to Board sessions after installation

57.1. After installation, every meeting of the Board shall be called by the President by notice published once in the official gazette El Peruano with an anticipation of not less than ten (10) business days from the date of its completion on first call. The summons to Meeting shall indicate place, date and time it shall be held on first and second call. Between each call there shall be two (2) business days. When the presence of a representative of the Committee is required, the President shall previously coordinate with the Technical Secretariat.

57.2 The creditors representing at least 10% of the recognized credits may require the President, by a certain date document with the suggested agenda, the call to meeting of the Board.

57.3 If, within ten (10) business days of the requirement, the President fails to make the call, the requestors may appeal to the Committee to authorize them to publish the notice.

57.4 Exceptionally, for the small number of creditors and the impossibility to meet the costs, the Committee may exempt from the obligation to publish the call. In this case, it may be called by communications of a certain date sent to each creditor integrating the Board. By submitting copy of the minutes in accordance with Article 55.2, the Administrator or Liquidator, as applicable, shall attach a copy of the charges.

57.5 In cases where there are no authorities of the Board, creditors representing at least 10% of the recognized credits may request the Committee to authorize them to publish the notice of call.

57.6 Board sessions convened after its installation, may also be suspended by the Committee pursuant to the provision in Article 50.3.

57.7 For the purposes of the meeting of the Board after the installation session, when agenda issues require qualified majority for approval, it shall apply the quorum established in section 53.1 of Article 53°. For cases of agenda issues requiring a simple majority for approval, it shall apply quorum established in section 53.2 of Article 53°.

Article 58°.- Term to decide the fate of the debtor

58.1 The Board shall have a period of up to forty-five (45) days of being installed to decide the fate of the debtor, under subparagraph a) of Article 51.1.

58.2 If the Board would not take agreement on the fate of the debtor, the provisions contained in Chapter VII of Title II of the Law shall apply.

Article 59°.- Special forms of voting

When creditors identified as related represent more than 50% of total recognized credits and put to consideration of the Board the approval of the fate of the debtor, of the Restructuring Plan, of the Liquidation Agreement or of the Global Refinancing Agreement, as amended, two voting acts shall be carried out, separately:

- a) On first call, for the approval of the aforementioned issues, the favorable vote of more than 66.6% in the class of creditors recognized as related shall be required, as well as more than 66.6% in the class of creditors recognized as non-related.
- b) On second call, the favorable vote of more than 66.6% of attending creditors, in both classes shall be required.

**CHAPTER V
EQUITY RESTRUCTURING**

Article 60°.- Commencement of equity restructuring

When the Board decides the continuation of the activities of the debtor, it shall enter a system of equity restructuring during the term established in the corresponding Restructuring Plan, which may not exceed the date set for the cancellation of all obligations in the schedule of payment of obligations incorporated in such Plan.

Article 61°.- Administration System

61.1 The Board shall agree the temporary administration system of the debtor during its equity restructuring. To this purpose, it may order:

- a) The continuation of the same administration system;
- b) The administration of the debtor by an Administrator registered before the Committee in accordance with the provisions of Article 120°; or,
- c) A joint administration system keeping all or part of the administration of the debtor and necessarily involves the participation of natural and / or legal persons designated by the Board.

61.2 If the Board chooses to keep the same administration system, directors, managers, administrators and representatives of the debtor may remain in their positions until the conclusion of the restructuring, without ratification by the end of the period that would have been established in the bylaws of the debtor or in the regime of powers, unless the Board varies such agreement.

61.3 In this case, the Board may appoint up to two representatives who shall have the right to attend sessions of the Board of Directors, or the body substituting it according to the nature of the debtor, with right to speak and request information related to the activities of the debtor they may deem convenient.

61.4 If the Board chooses the alternative provided for in subparagraph b) of the first paragraph of this article, the administration designated shall substitute by operation of law in its legal and statutory powers to directors, managers, legal representatives and proxies of the debtor, without any reservation or limitation, being able to celebrate all kinds of acts and contracts.

61.5 If the Board chooses the joint administration system, it shall appoint persons who shall occupy administrative and managerial positions it may deem appropriate. The President of the Board, under responsibility, shall inform the Committee, within fifteen (15) days of having adopted the agreement on the new organizational structure of the bankrupted debtor, the name of those responsible for each position and the date of appointment. Persons in full possession of powers of representation of the debtor shall keep these powers until they are revoked.

61.6 The representatives designated by the Board have the general and special powers of representation established in the Civil Procedural Code from the time of their appointment, unless otherwise agreed.

61.7 The provisions contained in this article shall apply to legal persons constituted under any form provided for in the national legislation as well as any organization included in the scope of the Law.

61.8 Whatever the administration system chosen, the designated administration is obliged to refer, with the regularity set out in Article 122.3, information timely indicated by the Committee. The breach of provisions generates personal responsibility of those in charge of the position, which may result in the imposition of a sanction ranging from a reprimand to fifty (50) Tax Units.

Article 62°.- Vacancies in the administration bodies

If a vacancy in a position of director, manager or proxy occurs, it shall be covered by a person appointed by the Board or the Committee if applicable, taking into consideration, if possible, the proposal of the Shareholders' or Associates' Meeting or the debtor.

Article 63°.- Powers of the Board of Creditors during restructuring

63.1 During the restructuring it shall be suspended the jurisdiction of the Shareholders' or Associates' Meeting or the owner, whose functions shall be assumed by the Board.

63.2 The Board, by itself, may adopt all the necessary agreements for the administration and operation of the debtor during the proceedings, including the approval of balance sheets, conversion, merger or demerger of the partnership, change of corporate name, object or registered office as well as those importing statutory amendments including capital increases by capitalization of credits in accordance with the formalities provided for capitalization in Article 68°.

63.3 The bylaws of the debtor under equity restructuring remains valid as long as it is not contrary to the agreements of the Board or the Law. The Board substitutes in all its functions, duties and powers the highest hierarchy corporate body.

Article 64°.- Right to separation of the shareholders or partners

64.1 The agreements giving rise to the exercise of the right to separation of shareholders or members shall be published by the President of the Board, once, in the official gazette El Peruano within ten (10) days after their adoption.

64.2 The right to separation may be exercised only within ten (10) days after publication of the notice referred to in the preceding paragraph, through notarial letter sent to the administration designated by the Board. The repayment of the value of shares may only be paid after completion of the payment of all credits contained in the schedule of payments of the Restructuring Plan, unless otherwise agreed to the contrary by the Board, taking into account, if applicable, the voting system set forth in Article 59°. The value of the shares shall be determined in accordance with Article 200° of the General Corporations Law.

Article 65°.- Approval of Restructuring Plan

65.1 Once the continuation of the activities of the debtor is agreed, the Board of creditors shall approve the Restructuring Plan in a term no later than sixty (60) days.

65.2 The administration of the debtor may submit to the Board more than one proposal of the Restructuring Plan.

65.3 If the Board does not approve the Plan within the said period, Chapter VII of Title II of the Law shall apply.

Article 66°.- Contents of the Restructuring Plan

66.1 The Restructuring Plan is the legal transaction by which the Board defines the mechanisms to carry out the economic and financial restructuring of the debtor, in order to extinguish the obligations included in the proceedings and overcome the financial crisis that caused its commencement, depending on the particularities and characteristics of debtor under restructuring.

66.2 The Restructuring Plan may detail:

- a) Balance Sheet as of date of preparation of the Restructuring Plan.
- b) Actions proposed to execute the administration.
- c) Relationship of the obligations arising until the publication referred to in Article 32°, even if they have the quality of quotas or shall not have been recognized for being matter of challenge.
- d) Proposals for financing the investment required for the continuation of the activity of the debtor.
- e) Labor policy to be adopted.
- f) System of interests.
- g) Budget containing expenses and administration fees.
- h) Cash Flow Statement projected to time for the payment of all obligations included in the proceedings.

66.3 The Restructuring Plan shall include, under penalty of nullity, a schedule of payments including all of the obligations owed to the date of dissemination of the bankruptcy proceedings, regardless of whether those obligations have been recognized in the proceedings. The schedule of payments shall specify the manner, amount, date and place of payment of the credits of each creditor. Also, it shall establish a regime of provisions for contingent credits.

66.4 In such schedule of payments it shall be specified, under penalty of nullity of the Plan, that from the funds or resources annually allocated for the payment of the credits, at least 30% shall be equally allocated to the payment of labor obligations having the first order of preference, in accordance with Article 42°. The determination of the payment in equal parts implies that the right to collect of each labor creditor is determined according to the total number of recognized labor creditors in the preference.

66.5 The Board shall approve the Restructuring Plan observing the provisions of the first paragraph of Article 53° and shall be signed in the same act by the President of the Board, on behalf of all creditors, and the administration designated or to be designated to such effects.

Article 67°.- Effects of the approval and the breach of the Restructuring Plan

67.1 The Restructuring Plan approved by the Board obliges the debtor and all creditors included in the proceedings, even when they have opposed to the agreements, they have not attended the Board for any reason, or have not timely requested for recognition of their credits.

67.2 The enforceability of the Restructuring Plan to the State, in its capacity as tax creditor shall be governed by the provisions contained in Article 48°.

67.3 The approval of the Restructuring Plan does not relieve third party guarantors of the debtor, unless such guarantors would have foreseen the release of the guarantees in the constitutive act of the warranty.

67.4 The Committee shall declare the dissolution and liquidation of the debtor for breaching the terms and conditions set forth in the Restructuring Plan upon request of a creditor or ex officio, where the breach has been declared by the debtor. In such cases, the Board within thirty (30) days may adopt the agreements referred to in subparagraphs b), c) and d) of paragraph 50.4 of Article 50, otherwise, the provisions of paragraph 97.4 of Article 97 shall apply.

67.5 The Restructuring Plan approved does not take effect on the assets of the debtor guaranteeing obligations of third parties, incurred in prior to the date of dissemination of the bankruptcy proceedings. In this case, the holder of the real right may proceed to enforce its warranty according to the originally agreed terms, in accordance with provisions of Article 18.6.

Article 68°.- Capitalization and remission of credits

68.1 When the Board agrees the capitalization of credits, shareholders, associates or holder in the debtor may in such act exercise their preemptive subscription right. Any agreement of capitalization of credits adopted without having been convened in the respective notice shall be void.

68.2 It may be disregarded from the call mentioned in the previous paragraph, if a document of certain date in which it is expressly included the waiver of shareholders, associates or holder of the debtor to exercise their preemptive subscription right is submitted.

68.3 The agreements of capitalization or remission of debts shall take effect in respect of all creditors only when they are approved by the majority set forth in Article 53.1, with the exception provided in subparagraph d) of Article 48.3 related to the tax credit.

68.4 The agreement of capitalization shall not give rise to the creation of actions establishing different rights between capitalizing creditors.

68.5 To the creditors who would have voted oppositely, who would have not attended the Meeting or would have not timely requested for recognition of their credits, the agreements of capitalization or remission of receivables shall be enforceable in the same terms as to creditors who, having voted on behalf of the agreement, are less affected.

Article 69°.- Payment of credits during the equity restructuring

69.1 The order of preference established in Article 42° for payment of credits shall not apply in cases in which the restructuring may have been agreed, except for distribution among creditors of the sale or transfer of fixed assets of the debtor.

69.2 Preferred creditors may waive the collection order for the credits corresponding to them when so unambiguously demonstrated, being able to require sufficient guarantees to decide the postponement of its right to collection. In the case of labor credits, such waiver is invalid.

69.3 To give effect to the right to collection of the reprogrammed credits in the Restructuring Plan, they shall first be recognized by the bankruptcy authority. Once the entire amount of the recognized credits is paid, the debtor shall pay the unrecognized credits provided in the Restructuring Plan.

69.4 The administration of the debtor shall pay the creditors observing the Restructuring Plan. It shall be responsible for updating the recognized credits and liquidating interest until the date of payment, applying the rate established in the Restructuring Plan.

Article 70°.- Change in the decision regarding the fate of the debtor

70.1 When the administration warns that the equity restructuring of the debtor is not possible, it shall immediately call the Board to pronounce on the commencement of the dissolution and liquidation. Equal power may be exercised by it or the creditors representing at least 30% of the recognized credits.

70.2 For the adoption of the agreement referred to in the preceding paragraph, the majority established in Article 53.1 is required.

Article 71°.- Conclusion of the equity restructuring

The equity restructuring concludes after the administration of the debtor proves before the Committee that the credits contained in the Restructuring Plan have been extinguished, in which case the Committee shall declare the conclusion of the proceedings and the extinction of the Board.

Article 72°.- Effects of the conclusion of the restructuring

72.1 Once the conclusion of the restructuring of the debtor is declared, the Shareholders' Meeting, Partners, Associates or Holder, as applicable shall reassume their functions, and the appropriate administration according to bylaws.

72.2 The agreements that the Board would have adopted during the term of its mandate are not subject to review.

Article 73°.- Dispute Resolution related to Restructuring Plan

73.1 The Board shall establish in the Restructuring Plan the jurisdiction, whether judicial or arbitral, for the solution of any dispute that may arise regarding its execution or interpretation; in the absence of indication, it shall be understood that is the judicial jurisdiction.

73.2 The judge or arbitrator of the place where the bankruptcy proceedings takes place shall have jurisdiction to know the claim.

73.3 The dispute resolution arising from the Plan shall be processed in the way of summary and urgent procedure.

CHAPTER VI DISSOLUTION AND LIQUIDATION

Article 74°.- Dissolution and liquidation agreement

74.1 May the Board decide the dissolution and liquidation of the debtor, this may not continue to develop the activity of the line of business from the signing of the Liquidation Agreement. In case those who develop such activity in the name and on behalf of the debtor are directors, managers or other administrators of the debtor dismissed in functions from the date of signing of the agreement, they may be imposed a fine of one (1) to one hundred (100) Tax Units. If the activity in question is performed by the liquidator entity designated by the Board of Creditors or the Committee, it may be imposed the sanctions provided for in paragraph 123.1 of Article 123 of this Law. In both cases, the administrative sanctions may be imposed notwithstanding the corresponding civil and criminal liability.

74.2 However, the Board may decide to continue activities only if they opt for liquidation during the course of business, for estimating a higher realization value under that mode. The liquidation shall be made within a maximum period of one (1) year, which may be exceptionally extended by an equal period, by a duly substantiated decision of the Board of Creditors.

74.3 The Board shall appoint a person or entity having valid registration before the Committee as liquidator in charge of the proceedings. The liquidator shall express its willingness to assume the position.

74.4 The Board shall approve and sign the corresponding Liquidation Agreement in such meeting or within the following thirty (30) days. If the aforementioned approval is not made, the provisions contained in Chapter VII of Title II shall apply.

74.5 The credits on account of capital, interest and expenses incurred during the duration of the proceedings are included in the proceedings of dissolution and liquidation; with the exception of the fees of the liquidator and expenses incurred in by it for the proper development of the liquidation proceedings.

74.6 The agreement of dissolution and liquidation generates a jurisdiction of bankruptcy attraction of credits by which the post-bankruptcy credits are integrated to the bankruptcy proceedings, so that all the obligations of the bankrupted debtor, regardless of their date of origin, are recognized in the proceedings. Recognition of credits grants to its holders the right to speak and vote in the Meeting of Creditors as well as the right to collection as it is allowed by the bankruptcy equity.

74.7 Creditors who have obtained the belated recognition of their credits shall have right to speak and vote at the Meeting of Creditors, once the agreement in dissolution and liquidation is adopted. In this regard, in this case, the provisions of paragraph 34.3 of Article 34° of the Law shall not apply.

74.8 The ancillary jurisdiction of credits does not cover the debts generated by the implementation of the liquidation provided for in paragraph 74.2 of Article 74° of the General Law on the Bankruptcy System, and these debts shall be canceled upon maturity.

Article 75°.- Administrative bodies in the transition restructuring a liquidation

In cases where the Board decided to change the fate of the debtor subject to bankruptcy proceedings, from restructuring to dissolution and liquidation, the functions of the legal representative and all organs of the administration shall expire, which shall be assumed by the Liquidator. The expiration is operated by law from the signing of the Liquidation Agreement.

Article 76°.- Contents of the Agreement

The Liquidation Agreement shall contain, necessarily, under penalty of nullity:

1. The identification of the Liquidator, the debtor and the President of the Board, the date of approval, the statement of the Liquidator who has no limitations to assume the position, and the assumptions under which credits are to be paid.
2. The projection of expenses estimated by the Liquidator in order to be approved by the Board.
3. The fees of the Liquidator indicating the concepts integrating them and their method and time of payment.
4. The mechanisms under which the Liquidator shall meet the requirements of regular information during liquidation.
5. The modality and conditions of the realization of assets of the debtor.
6. The system of interests. Tax credits shall be applied the rate of compensatory interest in accordance with the provisions of Article 48°.

Article 77°.- Approval and signing of the Agreement

The proposed Liquidation Agreement shall be approved with the majority provided for in Article 53.1. It is signed in the same act in which the liquidation is agreed or within thirty days of having adopted such agreement by the Liquidator and the President of the Board of Creditors, on behalf of all creditors.

Article 78°.- Advertising and registration of Liquidation Agreement

78.1 Within five (5) days of the execution of the Agreement, the Liquidator, under responsibility, shall publish in the official gazette El Peruano, a notice making public the commencement of the dissolution and liquidation of the debtor and the approval of the Agreement, requiring to those having assets and documents of the debtor, the immediate delivery thereof to the liquidator. Failure to comply may lead to the penalties provided by Law.

78.2 Within fifteen (15) days of the execution of the Liquidation Agreement, the Liquidator shall request its registration in the Registry in accordance with Article 22. In case of breach of the Liquidator, any interested party may complete the formalities relating to such registration.
To the purposes referred to in Article 22 of the Law, the only bankruptcy instrument to which the Public Registrar shall make the registration is the certified copy of the Liquidation Agreement.

Article 79°.- Dispute resolution related to the Liquidation Agreement

The provisions contained in Article 73°, where relevant, shall be applied to the Liquidation Agreement.

Article 80°.- Supply of assets and documentary heritage

80.1 The debtor, under penalty of a fine against its administrators and legal representatives, and notwithstanding the civil and criminal liability that might be attributed, shall provide the Liquidator with books, documents and property. In case of breach, the Committee may sanction with fines of not less than one (1) nor greater than one hundred (100) Tax Units. The fine shall be doubled in case of recidivism.
The Liquidator shall take the necessary security measures for the conservation of assets and documents of the bankruptcy proceedings and make an inventory with the intervention of a Notary Public, if the debtor, its legal representative, the former liquidator or administrator refused to sign the inventory.

80.2 It is the prerogative of creditors to take part in taking inventory performed by the liquidator.

80.3 If the liquidator is prevented from entering the premises of the debtor, it may request the Magistrate or Justice of the Peace, as appropriate, to order the forcible unlocking and support of the security forces.

80.4 The Liquidator, once in possession of the assets, shall proceed to liquidate the business of the debtor, to perform all acts and contracts and to make the necessary expenses to maximize the performance of its assets, as agree by the Board.

Article 81°.- Enforceability of Liquidation Agreement

81.1 The Liquidation Agreement shall be binding not only for those who have approved it, but also for those who have not attended the Board, have opposed the Agreement or have not credits recognized by the Committee.

81.2 The effects of the Liquidation Agreement approved by the Board are not applicable to the holder of real guarantees on the assets of the debtor guaranteeing obligations of third parties, whose right is governed according to the provisions of Article 85.2.

Article 82.- Effects of the execution of the Liquidation Agreement

The following are immediate effects of the execution of the Liquidation Agreement:

- a) To produce an indivisible state between the debtor and its creditors, which includes all the assets and liabilities thereof, even when such obligations are not due and payable, unless the assets and obligations that the Law expressly exempts;
- b) The directors, managers and other administrators of the debtor cease their functions and, consequently, are private from the right to administer the assets thereof;
- c) The administration and legal representation corresponds to the Liquidator appointed by the Board to such effect and, therefore, those who exercised the legal representation of the debtor to the date of execution agreement of the Liquidation Agreement shall lack procedural representation, whether the debtor is plaintiff or defendant;
- d) The Liquidator shall administer the assets subject to divestment referred to in subparagraph b) of this article and also the assets for which the debtor has a right of usufruct caring, in both cases, that the liquidated fruits enter the liquidation mass;
- e) All payment obligations of the debtor shall be enforceable, even though they are not due, discounting the interests corresponding to the remaining term to maturity;
- f) Remission agreements shall take effect in respect of all creditors, except those exempted by Law only when they have been approved by the majority set forth in Article 53.1. To the creditors who would have voted oppositely, who would have not attended the Meeting or would have not timely requested for recognition of their credits, the agreements shall be enforceable in the same terms as to creditors who, having voted on behalf of the agreement, are less affected.

Article 83.- Liquidator powers, authorizations and obligations

83.1 The following are Liquidator's obligations:

- a) To perform with due diligence all the actions corresponding to its role according to the agreement reached by the Board and the current legal provisions.
- b) To represent the creditor and debtor general interests which may interest the mass without prejudice of the authorizations that belong to the creditors and debtor, in accordance with the Law.

83.2 The following are Liquidator's powers and authorizations:

- a) To act as per the mass or debtor best interests, whether in judgement or not, with fully representation or the creditors';
- b) To use the debtor's personal and real estate properties, financial claims, stocks and assets. For those effects, the Agreement may require an economic valuation and a judicial or extrajudicial public auction;
- c) To hold the necessary acts and agreements in order to keep, maintain and guarantee the debtor's assets prior knowledge of the Board of Creditors, the Chair of the Board or the Committee, if any;
- d) To hold the necessary contracts and compromise and execute, whether guaranteed or not, the absolutely necessary credit operations to cover the expenses and obligations that the liquidation might require, upon knowledge of the Board of Creditors, the Chair of the Board or the Committee, if any. Said acts may be only done with financial system companies;
- e) To terminate the debtor's contract workers;
- f) To exercise all the roles and authorizations that correspond to the liquidators, administrators and managers according to the General Corporation Law, as well as, the ones that the Liquidation Agreement or the Board may assign;

g) To request the release of charges and liens that might be on the debtor's assets for which the transfer contract and the Liquidation Agreement, duly recorded in the Public Records, are sufficient to submit in accordance with the Article 78°; and

h) To submit pertinent complaints before the Public Ministry if there are elements that might claim the commission of wilful or fraudulent acts during the debtor administration, or that may entail its fraudulent bankruptcy as per the regulation contained in the Criminal Code to be known by the Board.

83.3 The limitations for the Liquidator position appointment, the legal prohibitions for its appointment, the liquidators' obligations and responsibilities shall govern, when applicable, as per the provisions of the Articles 161°, 162°, 177° and 184° in the General Corporation Law.

83.4 Once the position is taken, by Liquidation Agreement execution or Commission nomination, the Liquidator is forced to open a current account on behalf of the debtor to be liquidated, from which he shall manage all the flow of money pertinent to the liquidation. According to the Law, the funds of said account are immune from seizure.

83.5 The liquidator shall pay the credits once he has obtained, resulting from the assets, not less than 10% of the total amount of the acknowledged credits.

Article 84°.- Selling and allocation of debtor's assets

84.1 After the liquidator takes the debtor's position and assets, he shall establish the realisation schedule in a period not more than ten (10) days. The offer process of said assets shall commence in a maximum period of thirty (30) days. The liquidator's obligation is to realise the assets in a reasonable period.

84.2 If the Liquidation Agreement establishes to sell the assets on sale, the provisions contained in Chapter V, Title V of the Civil Process Code Fifth Section, shall apply where applicable. If after three calls for sale, it could not be done, the allocation of direct selling shall take place. When there are injections, charges or liens on the debtor's assets, they may be only transferred on sale.

84.3 All the sales will be done by a Public Auctioneer.

84.4 During the allocation of assets to a creditor, the value to be paid shall be the base of the one fixed on the last call on sale. The assigned creditor shall pay the amount of the allocated asset, unless there are no creditors in a preference order, in which case, only the excess of the credit value shall govern.

Article 85°.- Effects of the assets transfer by the liquidator

85.1 The transfer of any asset to the debtor by the Liquidator shall automatically release all the liens, injunctions and charges without a requirement of a judicial order or the intervention of the debtor guaranteed with that property. The Registrar shall register the release of said injunctions, under responsibility.

In such case, the person who makes the release arrangements of the referred charges or liens before any national registry organization is unaffected of the payment of the corresponding administrative fees or charges.

85.2 Regarding the selling of the debtor's assets that guaranty third parties obligations in accordance with the mentioned in the Article 81.2, the Liquidator shall respect the real warranty rights contemplated on them paying the credits of the third parties by the result of said selling and considering the pertinent registration rate and amounts but without affecting the payment of credits of the first preference order that may exist in the procedure.

Article 86°.- Administration of future assets

The assets administration that the debtor might acquire, whether free of charge or not, after the Liquidation Agreement execution, shall be taken in charge by the Liquidator.

Article 87°.- Hiring of third party services

The Liquidator is forbidden to hire third party services associated to him, as per the criteria established in Article 12°.

Article 88°.- Payment of credits by the liquidator

88.1 The Liquidator, under responsibility, is forced to pay first the credits acknowledged by the Commission as per the preferential order established in Article 42° until the debtor's assets reaches.

88.2 The preference of credits implies that those of a previous order exclude the ones of a subsequent order according to the priority established in Article 42°.

88.3 The credits corresponding to the first order are paid on a pro rata basis and proportional to the percentage that represents the financial claims in favor of each creditor.

88.4 The credits corresponding to the second, fourth and fifth order are paid at the previous of each preference order in a pro rata basis among all the acknowledged credits of the pertinent order. It shall be understood for pro rata basis the proportional distribution of the percentage that represents the credits of the total of debts of a preference order.

88.5 The Liquidator is forced to update all the acknowledged credits by liquidating the interests produced to the date the payment is done and applying for such effect the interest rate approved by the Board, if any.

88.6 The credits acknowledged by the Commission, after the Liquidator has paid the preference order credits that might be allocated, shall be immediately paid but without modifying the already payments.

88.7 If after one or more payments, the debtor's asset is paid off by remaining creditors outstanding of payment, the Liquidator shall request, under responsibility, in a period not more than thirty (30) days, the judicial declaration of debtor's bankruptcy, which shall be known by the Committee or the Chair of Board and the Commission.

88.8 If all the acknowledged credits are paid, the Commission shall announce the conclusion of the procedure. If there are registered credits in the debtor's books which have not been acknowledged by the Commission, the liquidator shall pay them in accordance with the preference order established in Article 42 by recording its amount in the National Bank (Banco de la Nación) whenever the creditors' address is unknown.

88.9 If the non-payment is under liquidator's responsibility, the creditors may assert their credits to the liquidators after the liquidation.

88.10 When all the credits are paid, the Liquidator shall give to the shareholders or debtor's shareholders the surplus assets of the liquidation and the remainings, if any.

Article 89°.- Payment of Secured Loans

89.1 Unless there are outstanding preferential loans, secured assets shall be used to pay third-priority creditors.

89.2 Third-priority loans are paid from the realization of debtor's secured assets. However, they shall keep this privilege, considering their order of priority, as established in Article 42, if secured assets are realized to pay lower priority loans. In this case, third-priority loans shall be paid on a pro rata basis.

89.3 Upon realization of assets holding security over third-priority loans to pay lower priority loans, those loans shall be paid according to the set order of priority on a pro rata basis, considering the priority of securities originally created.

89.4 Pro rata payment implies that creditors' right to collect is determined in proportion to the percentage that represents their secured loan in relation to the universe of creditors with equally secured loans.

Article 90°.- Creditors' Right to Be Discharged from the Ordinary Bankruptcy Proceeding

Creditors may communicate, in writing and with notarized signatures, to the Commission their final and irrevocable intention to circumvent the future bankruptcy proceeding and request the certificate of bad debts referred to in Article 99.5. Such request may be filed by creditors once the Board has accepted the debtor's winding up and liquidation agreement. This privilege does not extend to inalienable rights.

Article 91°.- Transition from Liquidation to Restructuring

91.1 Upon finding of new or unforeseen factors at the time of the decision on the fate of the debtor, and whenever the restructuring thereof is feasible, the liquidator shall notify it to the Chairman of the Board so that, if necessary, a meeting is convened for the purpose of taking a decision, as appropriate.

() 91.2 Under no circumstance shall vary the decision of liquidation if the debtor has accumulated losses exceeding the amount of his share capital.*

() Repealed*

91.3 If the Board of a debtor subject to a winding up and liquidation proceeding changes their decision on the fate of the same, the loans generated after the date of publication referred to in Article 32, and incorporated thereto upon acceptance of the winding up and liquidation agreement, shall be excluded from bankruptcy; therefore, the payment of such loans shall be governed by the provisions of Article 16.

Article 92°.- Removal of the Liquidator

A liquidator is removed on the following grounds:

a) Having completed the liquidation by accrediting the discharge of loans subject to the proceeding, with the consequent registration of the debtor's discharge, as applicable, in the corresponding records;

b) Revocation of his powers as agreed by the Board. For the revocation to take effect, it shall be also agreed the appointment of a new Liquidator, which shall be recorded in an additional clause referred to in Article

93. The outgoing Liquidator is responsible for the preservation of the debtor's assets until the above additional clause is signed by the new Liquidator. The outgoing Liquidator, subject to penalty, shall submit the information referred to in subparagraph d) of this Article; in this case, the provisions of Article 16.3 do not apply to fees, charges and expenses not paid to the outgoing liquidator;

c) Notice to the liquidator of the resolution declaring his disqualification or revoking his registration under the provisions of the Act, determining as of right, the conclusion of the functions of the liquidator.

In this case, the Commission shall inform the Chairman of the Board so that, subject to penalty, within a period not exceeding ten (10) days, he may summon creditors in order to appoint a new Liquidator, and where there is no Chairman, the Commission shall provide notice to creditors by publishing an excerpt of the resolution in the Official Gazette El Peruano.

The Liquidator shall submit to the Board a complete balance sheet until the end of his functions, and from the notice of the resolution ordering his disqualification or revoking his registration, he may only perform the requisite acts of administration and may not dispose of the debtor's assets, under penalty of being punished, together with his representative, in accordance with the provisions of subparagraphs a) and c) of paragraph 125.2 of Article 125.

d) By waiver that must be made to the Board so that it may proceed immediately to the appointment of a new Liquidator or to the Chairman of the Board by letter notarized. The Liquidator may depart from office if after thirty (30) days no replacement was appointed. Notwithstanding the foregoing, the declining Liquidator may not depart from office prior to submitting to the Board or, failing that, to the Chairman of this, a complete balance sheet until the end of his management and a report with a list of actions performed, the inventory of goods being delivered and outstanding actions. A resignation failing to comply with the above obligations shall not take effect. The Chairman is bound, subject to penalty, to convene the Board within ten (10) days following the Liquidator's resignation to appoint a replacement.

Article 93°.- Replacement of Declining Liquidator

93.1 Once the declining Liquidator's replacement has been appointed, the Board shall approve a new Liquidation Agreement or a modification of the foregoing, in compliance with paragraph 53.1 of Article 53.

93.2 If within thirty (30) days after the date on which the liquidator resignation became effective, the notice of disqualification to the Chairman of the Board was made or cancellation of the liquidator's registration, or the publication provided for in subparagraph c) of Article 92 was made, and a substitute was not appointed, a liquidator shall be appointed under the provisions of paragraph 97.4 of Article 97 of the Act.

Article 94°.- End of the Liquidator's Duties

The Liquidator's duties end by recording the debtor's assets discharge in the corresponding Public Registry.

Article 95°.- Supplementary Application of the General Corporation Law

Articles 413 and following of the General Corporation Law are applicable to the completion of the winding up and liquidation proceeding.

**CHAPTER VII
WINDING UP AND LIQUIDATION INITIATED
BY THE COMMISSION**

Article 96°.- Winding Up and Liquidation Initiated by the Commission

96.1 If after convening the Board, it is not convened, or upon convening, it may not agree upon the fate of the debtor, the Restructuring Plan shall not be approved, neither the Liquidation Agreement shall be executed, nor the declining liquidator shall be replaced within the time provided by Law, the Commission shall, by resolution, arrange the winding up and liquidation of the debtor. An excerpt of such resolution shall be published by the Commission in the Official Gazette El Peruano only once. Exceptionally, when in the opinion of the Commission the small number of creditors does not require the above publication, the Commission shall notify of the above resolution to the debtor and each creditor listed therein.

() 96.2 The winding up and liquidation initiated by the Commission may not be reversed by a decision of the Board.*

() Repealed*

Article 97°.- Appointment of the Liquidator and Approval of the Liquidation Agreement

97.1 The publication mentioned in the previous article, shall also summon creditors to a single Board meeting to rule solely on the appointment of the liquidator and approval of the Liquidation Agreement.

97.2 This Board shall be convened with the presence of recognized creditors who might have been present, and decisions shall be made with the favorable vote of creditors representing more than 50% of the total present loans.

97.3 This meeting may only be suspended for a period not exceeding five (5) days.

97.4 In the event that the Board does not convene or upon convening, it does not agree upon the relevant liquidation, the Commission may appoint, ex officio, the responsible liquidator, upon his acceptance. If there is no liquidator interested, the process shall be concluded.

97.5 The liquidator appointed by the Commission shall perform all acts aimed at the realization of found assets, as well as a final report of the liquidation, prior to the submission of the request for judicial bankruptcy. The liquidator appointed by the Commission shall not require Liquidation Agreement to hold office, unless the Board of Creditors agrees otherwise. The liquidator appointed by the Commission shall continue on duty until the end of the liquidation process, under penalty of being banned from one (1) and one hundred (100) Tax Units, unless replaced by the Board, disqualified by the Commission or his registration is canceled, pursuant to the provisions of the Act.

Article 98°.- Supplementary Regulation

98.1 The following provisions apply to processes not including a Liquidation Agreement:

- a) Prior to starting the process of the realization of an asset, the liquidator shall submit to the Commission a copy of the appraisal of the debtor's assets made by an expert, subject to penalty.
- b) The realization of assets is done through an auction, pursuant to the provisions contained in Chapter V of Title V of Section Five of the Civil Procedure Code, as applicable. It shall be awarded by direct sale if after three calls to auction, the latter was not concluded. A public auctioneer shall make all auctions.
- c) The fees for the liquidator shall be determined based on a percentage of the value obtained by the transfer of realizable assets and liquid value of other unrealizable assets.

98.2 The Commission shall sanction the liquidator failing to fulfill any of the obligations contained in the preceding paragraph, in accordance with the provisions of Article 123.

98.3 Once the previous article has been agreed upon or the Commission has appointed a liquidator, the rules contained in Chapter VI of Title II are applicable to the winding up and liquidation proceeding initiated by the Commission, with respect to that not expressly regulated.

TITLE III BANKRUPTCY

Article 99°.- Bankruptcy Court Proceeding

99.1 When the provisions of Article 88.7 are found in the winding up and liquidation proceeding, the liquidator shall request the debtor's bankruptcy declaration before the Specialized Civil Court Judge.

99.2 Upon initiation of a proceeding, the Judge, within thirty (30) days of the initiation, and upon verification of discharge of the debtor's assets from the final liquidation balance sheet to be attached in copy, without further formalities, shall declare the debtor's bankruptcy and bad debts.

99.3 The order declaring the debtor's bankruptcy, the discharge of the debtor's assets and bad debts shall be published in the Official Gazette El Peruano for two (2) consecutive days.

99.4 After consenting or enforcing the resolution declaring bankruptcy, the proceeding shall be concluded and the Judge shall order to file it, as well as to record the discharge of the debtor's assets, if any, and issue bad debt certificates for all unpaid creditors. Similarly, the declaration of discharge of the debtor's assets contained in that order shall be recorded by the Liquidator in the corresponding Public Registry.

99.5 Bad debt certificates may also be delivered by the Commission when a creditor states his intention to obtain them, once agreed or arranged the winding up and liquidation of the debtor. These certificates shall generate the same effects as those issued by the judicial authority in bankruptcy proceedings. In such case, the Commission shall issue a resolution to exclude the creditor of the bankruptcy proceeding.

99.6 The bad loan declaration made before a branch that went bankrupt does not prevent the unpaid creditor from seeking by legal remedies to collect his loan before the main headquarters incorporated abroad.

Article 100°.- Bankruptcy Effects

100.1 As the bankruptcy lasts, the bankrupt is prevented from:

- a) forming companies or legal entities, in general, or being part of those already established;
- b) holding office of director, manager, agent or representative of companies or legal persons in general;
- c) being a guardian or conservator, or legal representative of natural persons;
- d) being an administrator or liquidator of debtors in the proceedings regulated by the Act.

100.2 The bankrupt does not become incapable because of bankruptcy; therefore, he may exercise his civil rights without restrictions other than those mentioned in the preceding paragraph.

() 100.3 The same effects mentioned in the first paragraph hereof are also applicable to the Chairman of the insolvent company and the holder thereof.*

() Repealed*

100.4 The liquidator or any interested party is entitled to file the bankruptcy in the relevant Record.

Article 101°.- Rehabilitation of the Bankrupt

101.1 After the period of five years from the date of issuance of the court decision declaring bankruptcy, this condition shall be concluded, even when the assets of the bankrupt did not suffice to pay the loans, provided that it is established that the debtor has not been convicted of offenses under Articles 209 or 211 of the Penal Code, and that no criminal proceedings have been initiated for such offenses. The condition of bankruptcy shall continue if the bankrupt fails to pay loans arising from civil damages established in favor of the State.

101.2 Upon cessation of bankruptcy, any interested party may request removing the files made in the Personal Register and the relevant records, whereby submitting the certificate issued by the competent authority attesting no conviction of offenses under the articles mentioned in the previous paragraph, and no criminal proceedings initiated by them will suffice.

101.3 Where the debtor has been convicted, the Criminal Judge shall order to file it in the Personal Record of the consensual or executed resolution that establishes criminal responsibility for such crimes. In this case, rehabilitation may only be obtained upon execution of the sentence.

101.4 The rehabilitation term for representatives referred to in Article 101.1 is calculated from the date of execution or consent of the resolution declaring the bankruptcy of the legal entity they represent.

101.5 In these cases, filing under the terms of Article 100.4 also apply.

Article 102°.- Bankruptcy in the General Corporation Law

When the case provided for in Article 417 of the General Corporation Law occur, the competent Judge shall provide for the debtor's bankruptcy declaration in accordance with the provisions of this Title, without requiring the debtor to be subject to the Ordinary Bankruptcy Proceeding established by Law.

**TITLE IV
PREVENTIVE BANKRUPTCY PROCEEDINGS**

Article 103°.- Requirements to be protected by the proceedings

103.1 Any debtor may request the initiation of a Preventive Bankruptcy Proceedings, which shall be governed by this Title and additionally by Chapter V of Title II, provided that it is not in any of the assumptions set out in the first paragraph of Article 24°.

103.2 For this purpose, the debtor shall submit a request to the Committee, including the documentation and information referred to in Article 25°, as applicable, which is a requirement for admissibility of the request.

Article 104°.- Admission of the request

Once the compliance with the admissibility requirements set forth in the preceding article is verified, the Committee shall accept the request for processing and shall arrange for the publication of the notice referred to in Article 32°.

Article 105°.- Creditors qualified to participate in Board

105.1 There shall only be entitled to participate in the Board of Preventive Bankruptcy Proceedings the creditors submitting their requests for recognition of credits under the terms established in Article 34.1. It shall not proceed the recognition of credits submitted after the deadline.

105.2 The procedure for recognition of credits shall be subject to the provisions to such effects in Article 38°.

Article 106°.- Effects of the approval of the Global Refinancing Agreement

106.1 The approval of the Global Refinancing Agreement shall be governed by the provisions contained in Article 53.1.

106.2 The Global Refinancing Agreement shall necessarily cover all recognized credits, as well as those which without having been verified by the bankruptcy authority would have accrued to the date of dissemination of the procedure, and shall be binding upon its holders for all the purposes set out by law.

106.3 The Global Refinancing Agreement shall detail at least:

- a) The schedule of payments to be made, in which it shall be specified, under penalty of nullity of the Global Refinancing Agreement, that from the funds or resources annually allocated for the payment of credits, at least 30% shall be allocated in equal parts to the payment of labor obligations having the first order of preference, in accordance with Article 42°. The determination of the payment in equal parts implies that the right for collection of each working creditor is determined according to the total number of labor creditors recognized in the preference.
- b) The applicable interest rate.
- c) The guarantees to be offered, if applicable.

106.4 The approval or disapproval of the Global Refinancing Agreement determines the conclusion of the Preventive Bankruptcy Proceedings, except for the case provided for in Article 109.1.

106.5 The same effect described in Article 106.4 shall occur if the Creditors' Board is not installed on schedule or installed it does not pronounce on the proposal of Global Refinancing Agreement within the maximum term set out in Article 107°.

Article 107°.- Extension of approval of the Global Refinancing Agreement

The Board may extend the approval of the Global Refinancing Agreement only once for a maximum period of fifteen (15) days after installation. To these effects, the Board shall be deemed suspended for the time between the date of execution thereof and the new date agreed.

Article 108°.- Suspension of the enforceability of obligations

108.1 When the debtor requests it at the commencement of the procedure, the publication referred to in Article 32° shall suspend the enforceability of all obligations that the insolvent debtor may have due and outstanding up to that date, without this constituting a novation of such obligations. The aforementioned suspension shall last until the Global Refinancing Agreement is approved, in which the conditions relating to the enforceability of all obligations included in the procedure and the applicable interest rate, if applicable, are established.

108.2 If the debtor does not request the suspension of the enforceability of the obligations referred to in the preceding paragraph, it shall be the submission of the Global Refinancing Agreement, duly certified by the representative of the Committee, which determines the new conditions for refinancing all the obligations of the debtor accrued until the publication referred to in Article 32°.

108.3 For the purposes referred to in the above paragraphs the provisions contained in Articles 17°, 18°, 22° and 67°, as relevant, are to be applied.

108.4 The Global Refinancing Agreement approved by the Board enforces the debtor and all its creditors, even when they have opposed the agreements, have not attended the Board for any reason, or have not timely requested for recognition of their credits, with the limitations set forth in Article 68°.

Article 109°.- Disapproval of the Global Refinancing Agreement

109.1. If the Global Refinancing Agreement is not approved, if the debtor requested the suspension of the enforceability of its obligations since the publication provided for in Article 32°, the Committee shall issue a resolution providing for the commencement of the Ordinary Bankruptcy Proceedings of such debtor, provided that, in accordance with the rules set out in Section 53.2 of Article 53°, more than 50% of total recognized credits or assistants, in the Board where the Global refinancing Agreement was disapproved, shall agree the admission to this proceedings. In this case, the Committee shall order the publication referred to in Article 32°. The resolution issued by the Committee is non-appealable.

109.2 In the case mentioned in the previous section, while the Committee issues the resolution providing for the commencement of the Ordinary Bankruptcy Proceedings and disseminate such situation in accordance with Article 32°, the legal measures to suspend the enforcement of obligations and equity protection specified in paragraphs 108.1 and 108.3 of Article 108° shall remain in force.

109.3 In addition, for the purposes of appearance of creditors, no new requests for recognition of credits of those creditors who attended the Preventive Bankruptcy Proceedings except invoking the extension of credits shall be required.

Article 110°.- Breach of Global Refinancing Agreement

When the debtor fails to pay any of its obligations under the terms established in the Global Refinancing Agreement, the latter shall be automatically terminated. In this case, any creditor may request the payment of the credits against the debtor, in the ways it may deem appropriate and under the conditions originally agreed.

Article 111°.- Submission of false information

If the falseness of statements made by the debtor in the proceedings is confirmed, the Committee declares the nullity thereof and the Global Refinancing Agreement, if it had been approved. The term for declaring the nullity of the agreement prescribes the year following the approval thereof.

Article 112°.- Inhibition period

The debtor itself may only have recourse to the Preventive Bankruptcy Proceedings once every twelve (12) months from the completion of the previous proceedings.

Article 113°.- Complementary application of rules of Law

In all cases not provided for in this Title shall apply the General Rules of the Law as well as the provisions governing the Ordinary Bankruptcy Proceedings, as applicable.

**TITLE V
MEANS OF CHALLENGE**

**CHAPTER I
CHALLENGE OF ADMINISTRATIVE ACTS**

Article 114°.- Challengeable resolutions and legitimacy to act

114.1 In the proceedings arising from the application of the Law there may be challenged only those acts that are pronounced definitively. Procedural resolutions are not challengeable.

114.2 For the admissibility of the recourse, the challenger shall identify the defect or error of the contested act and the detriment produced to it.

114.3 Prior to the dissemination of the bankruptcy proceedings, the legitimacy to intervene is restricted to the requestor and the debtor.

114.4 The holder creditors of recognized credits and third parties referred to in Article 116.1 are legitimated to intervene in the proceedings.

Article 115°.- Challenging means. Term and Processing of the appeals.

115.1 Against the challengeable resolutions, appeals for reconsideration or appeal can be lodged within five (5) days following its notice, plus the conclusion of the distance. The same term shall apply for the transfer of second instance.

115.2 The appeals for reconsideration shall be based on new evidence, which must necessarily be submitted at the time of lodging the appeal.

115.3 Appeals shall be based on a different interpretation of evidence produced or in questions of law. They are submitted to the authority who issued the challenged resolution. Once the requirements set out in this Article and TUPAs are verified, the Committee shall grant the appeal and execute the proceedings to the second administrative instance.

Article 116°.- Challenge of resolutions of recognition of credits issued by the Technical Secretariat

116.1 Within five (5) days of taking knowledge, creditors or appeared third parties to the proceedings may oppose the recognition of credit from another creditor made by the Technical Secretariat, if they consider that there are situations of fraud or irregularities intended to grant the holder credit benefits not belonging thereto.

116.2 Such objections shall be resolved by the Committee.

Article 117°.- Suspension of execution of challenged resolutions

117.1 The lodging of any challenging appeal shall not suspend the execution of the challenged act. Notwithstanding the foregoing, the authority who resolve the appeal may suspend ex officio or ex parte the execution of the contested resolution provided that there are significant reasons.

117.2 When a challenge is lodged against coercively enforceable sanctions, enforcement of the administrative act shall be suspended to such end in accordance with the provisions of Law No. 26979, Law on Coercive Execution Proceedings.

**CHAPTER II
CHALLENGE OF AGREEMENTS OF
BOARD OF CREDITORS**

Article 118°.- Challenge and nullity of agreements

118.1 The debtor or the creditors who together represent credits of at least 10% of the total amount of the credits recognized by the Committee, may challenge before it, the agreements adopted at Board within ten (10) days of the agreement, whether for breaching the legal formalities, for breaching the provisions of the law, or because the agreement is the abusive exercise of a right. Likewise, any questioning of the calling and meeting of the Board of Creditors shall be made by the proceedings provided for the challenge of agreements.

118.2 In the same cases mentioned in the previous paragraph, the Committee, on its own initiative, may declare the nullity of the agreement adopted at Board within a term of thirty (30) days.

Article 119°.- Processing of the challenge of agreements

119.1 The proceedings for the challenge shall be subject to the following:

- a) If the challenge is lodged by the debtor or creditors who were present at the corresponding session, they shall have left on record their opposition to the agreement and their intention to challenge it.
- b) If they had not attended the Meeting, the term shall be calculated since they were aware of the agreement, provided that they prove impossibility to know the call. In any case, the right to challenge an agreement shall expire fifteen (15) days after the adoption.

- c) The Committee shall transfer within five (5) days following the lodging of the challenge, to the President of the Board and the representative of the debtor.
- d) The Committee shall resolve the challenge with the attendance or not of the persons mentioned in the preceding section. An excerpt of the resolution shall be published by the Committee in the official gazette El Peruano only once. Exceptionally, when in the opinion of the Committee, the small number of creditors does not merit the so mentioned publication, the Committee shall notify the resolution to the debtor, the administrator or liquidator and to each of the creditors recognized by it.
- e) Upon ex-parte request, the Committee may order the suspension of the effects of the observed or challenged agreement, even if it is being executed. In this case, the Committee shall provide that the challengers grant a suitable guarantee, which shall be determined by the Committee, for the eventual compensation for damages that the suspension may cause.
- f) The challenges against the same agreement of the Board shall be resolved in a single act, for which shall be accumulated, ex officio, to the challenge that was first submitted.

119.2 The means of challenge against the resolutions resolving challenges against agreements adopted at Board as well as those that might be issued ex officio in exercise of the powers set forth in Article 118.2 shall be subject to the terms and formalities of Article 115°.

119.3 The resolution of the Court of appeals lodged, shall be notified to all creditors and put an end to the administrative proceedings in accordance with Article 16.2 of Law Decree No. 25868. The Court may replace the notice by the publication of the resolution in the official gazette El Peruano only once.

TITLE VI ADMINISTRATIVE AND LIQUIDATOR ENTITIES

Article 120° .- Registration of administrative and liquidators entities

120.1 Natural or legal persons registered before the Committee of Bankruptcy Proceedings may exercise the functions of Administrator or Liquidator.

120.2 To access to the registry of Administrator and / or Liquidator, the interested parties shall submit to the Committee of Bankruptcy Proceedings of INDECOPI an application certifying the compliance with the requirements contained in this section, meeting the specific requirements for each registration. The application shall specify the registration to which access is intended, notwithstanding that by such application it may be able to apply to both registrations indicated in section 120.1.

a) In case of natural persons:

- a.1 To have ability to exercise according to the Civil Code.
- a.2 To have an undergraduate degree or professional title.
- a.3 To not having been convicted or sentenced in court for criminal offense.
- a.4 To submit affidavit of assets and income.
- a.5 In the case of previously registered persons, its registration shall not be suspended nor shall it be permanently disqualified.
- a.6 To accredit a minimum experience of three (3) years in bankruptcy or corporate liquidations, in the case of registration for Liquidator.
- a.7 To accredit a minimum experience of three (3) years in corporate or equity restructuring within or outside the bankruptcy proceedings, in the case of registration for Administrator.
- a.8 To not being subjected to bankruptcy proceedings or having been declared insolvent.
- a.9 To not have coercively enforceable debt before the National Superintendency of Tax Administration - SUNAT or before INDECOPI.
- a.10 To be classified as "normal" in the credit risk central offices and not being in records of delinquent debtors.
- a.11 To keep the condition of verified or found actual address.
- a.12 To submit a letter of guarantee on behalf of INDECOPI under the terms and conditions established in the guidelines stated pursuant to section 3.2 of Article 3 of the Law. The letter of guarantee shall be joint and several, irrevocable, unconditional and of automatic realization upon requirement of INDECOPI.
- a.13 To have an active Single Taxpayer Identification Number before the tax administration.

b) In case of legal persons:

- b.1. To be registered in the Public Registries of the country.
- b.2 To submit affidavit of assets and income.
- b.3 In the case of previously registered entities, its registration shall not be suspended nor shall it be permanently disqualified, according to section 123.1 of Article 123.
- b.4 The representatives, proxies, managers, directors, shareholders and the like of the legal person shall meet the requirements for natural persons stipulated in subsection a.1, a.2, a.3, a.5, a.8, a.9, a.10 and a.11 of this section. If any of them would be a legal person, the natural persons composing it shall comply in turn with those subsections, notwithstanding that the legal person complies with subsections b.1, b.2, b.3, b.5, b.6, b.8, b.9 and b.12 of this section.
- b.5 To not have coercively enforceable debt before the National Superintendency of Tax Administration - SUNAT or before INDECOPI.
- b.6 To be classified as "normal" in the credit risk central offices and not being in records of delinquent debtors.
- b.7 Affidavit of the actual address of all its legal representatives, proxies, directors and shareholders.
- b.8 To not have or have had representatives, proxies, managers, directors, shareholders and the like maintaining or having maintained charges or similar conditions in a liquidator and / or administrative entity that is disabled.
- b.9 To keep the condition of verified or found actual address.
- b.10 To accredit a minimum experience of three (3) years in bankruptcy or corporate liquidations for liquidator entities, in the case of registration for Liquidator.
- b.11 To accredit a minimum experience of three (3) years in corporate or equity restructuring within or outside the bankruptcy proceedings, in the case of registration for Administrator.
- b.12 To not being subjected to bankruptcy proceedings or having been declared insolvent.
- b.13 To submit a letter of guarantee on behalf of INDECOPI under the terms and conditions established in the guidelines stated pursuant to section 3.2 of Article 3 of the Law. The letter of guarantee shall be joint and several, irrevocable, unconditional and of automatic realization upon requirement of INDECOPI.
- b.14 To have an active Single Taxpayer Identification Number before the tax administration.

120.3 The requirements set forth in the preceding section shall be met as the Administrator or Liquidator have the current registration. Otherwise, the Committee of Bankruptcy Proceedings of the Headquarters shall void the granted registration, thus ceasing the Administrator or Liquidator in its functions. Such registration shall be canceled in the event that it is verified that the registered entity has not been designated as Administrator in any proceedings within the term of two (2) years or as Liquidator within the term of one (1) year from the date of granting the registration or its adaptation to the provisions of the preceding section.

120.4 The Committee may request additional information to the various credit risk central offices or other bodies that it may deem appropriate.

120.5 The Administrators and Liquidators shall inform the Committee of any form of corporate reorganization performed by them, and any changes in its organizational structure, any change of control and generally any change involving the exit and entrance of representatives, proxies, managers, directors, shareholders and the like. In case of breach, the Committee may impose a fine of one (1) to one hundred (100) Tax Units.

120.6 If the same legal or natural person is registered as Administrator and / or Liquidator, the suspension or disqualification in a registration implies, in turn, the same effect in the other registration, except in the event of cancellation established in the second paragraph of section 120.3 of Article 120°.

Article 121°.- Adequacy of administrative and liquidator entities to Law

121.1 For the administrative and liquidator entities with current registration, get adapted to the Law, they shall meet the following requirements:

- a) To comply with each of the requirements referred to in Article 120° within a maximum term of thirty (30) days after the effective date of the Law.

b) To submit information on each of the proceedings under its responsibility, according to the provisions of Article 122.3.

121.2 The administrative entities which have complied with the requirements within the term shall retain the validity of their registration until the Committee pronounces. To this end, the Committee shall have a maximum term of thirty (30) days after filing the requirements, operating, if applicable, the positive administrative silence.

121.3 The administrative and liquidator entities which have not complied with these requirements within the prescribed term shall automatically lose the validity of the registration. Where appropriate, the relevant Committee shall order the call at Board for to choose a new administrator or liquidator.

121.4 The administrators and liquidators who are responsible for proceedings and do not meet the regularization required shall be prevented from taking on new proceedings, until they regularize their situation. However, they shall continue with the processing of proceedings they are in charge of.

Article 122°.- Information on administrative and liquidator entities

122.1 The Committee verifies the compliance with the requirements referred to in Article 120.2, but the assessment of the technical capacity of the registered administrative and liquidator entities corresponds to creditors.

122.2. The Committee of Bankruptcy Proceedings of INDECOPI shall manage the registrations of administrative and liquidator entities, and shall regularly publish information regarding the development of the entities, in order that creditors are adequately informed before making a decision. The Committee shall publish, without this list is limited, information about:

- a) Sanctions imposed.
- b) Duration of proceedings they are in charge of.
- c) Agreed fees and commissions.
- d) Status of proceedings they are in charge of and information detailing the level of compliance with payment of credits recognized by order of preference.”
- e) Expenses incurred in processing of proceedings they are in charge of.
- f) Professional integrating entities.
- g) Previous experience accredited for the entrance to the Registry of Liquidator Entities and / or to the Registry of Administrative Entities.

122.3 The registered entities are required to quarterly submit to the Committee a detailed report on the status of the proceedings they are in charge of and comply with the requirements of additional information. These reports shall be submitted on March 31, June 30, September 30 and December 31, respectively, with the following information for each proceedings:

- a) A copy of the Plan or Agreement, to be submitted in the quarter following the commencement of the proceedings and its possible amendments.
- b) Accounting valuation and pricing of all assets received at the commencement of the proceedings they are in charge of and of all existing assets as to date of the report.
- c) Paid and agreed fees and commissions, where appropriate.
- d) List of expenses incurred.
- e) Sale or award of personal and real estate properties.
- f) List of paid or awarded credits.
- g) Credits and expenses subsequently incurred upon the commencement of the proceedings.
- h) Any other information that the Committee deems appropriate request.

122.4 The Committee of Bankruptcy Proceedings shall publish on the website of INDECOPI the updated list of registered administrative and liquidator entities.

Article 123°.- Breach of the functions of administrative and liquidator entities

123.1 In case public or private legal persons or natural persons registered to act as administrators or liquidators in the performance of their duties fails to comply any of the obligations imposed by the Board, the Law or the Guidelines issued pursuant to section 3.2 of Article 3 of the Law, the Committee, considering the seriousness of the breach, may impose the following sanctions:

- a) Fines not less than one (1) or greater than one hundred (100) Tax Units.
- b) Suspension of registration.
- c) Permanent Disqualification.

123.2 The resolution of sanction may be published, at the discretion of the Committee.

123.3 Sanctions may be applied to both the entity and its legal representatives, proxies, directors, shareholders, managers and everyone who had directly participated in the offense, notwithstanding any criminal responsibility that may correspond, if applicable. The sanction procedure shall be subject to the provisions of Title VII.

Article 124°.- Of the functions and responsibilities of the administrative and liquidator entities

The Board of Directors of INDECOPI, through a guideline proposed by the Committee of Bankruptcy Proceedings of INDECOPI, shall determine the scopes of the regulations governing the registration, functions and responsibilities of the administrative and liquidator entities.

**TITLE VII
OFFENSES AND SANCTIONS SYSTEM**

Article 125°.- Offenses and sanctions

125.1 The Committee is empowered to impose sanctions in the following cases:

- a) When the parties fail to comply with the requirement for information and documentation made by the Committee or incur in the behaviors described in Article 5° of the Legislative Decree No. 807, they shall be punished with fines no less than one (1) nor greater than fifty (50) Tax Units.
- b) When the registered entity fails to comply fully or partially with the obligation to refer to the information provided in Article 122.3, it shall be punished with fines no less than one (1) nor greater than one hundred (100) Tax Units, with suspension of the registration or permanent disqualification.
- c) Where it is found that the creditor who requested the opening of the Ordinary Bankruptcy Proceedings violates the duty of confidentiality provided for in Article 11°, it shall be punished with fines no less than one (1) nor greater than one hundred (100) Tax Units.
- d) When the President or Vice President of the Board fail to comply with any of the obligations under the Law, they shall be punished with fines no less than one (1) nor greater than one hundred (100) Tax Units.
- e) When the administrators or legal representatives of the bankrupted company fail to comply with the obligation referred to in Article 31 of the Law, they shall be punished with a fine no less than one (1) nor greater than one hundred (100) Tax Units.

125.2 The Committee shall punish with fines no less than one (1) up to one hundred (100) Tax Units or permanent disqualification, if applicable, to the debtor, to the person acting on its behalf, to the administrator or liquidator registered before the Committee, performing any of the following behaviors:

- a) Concealment of assets;
- b) Simulation, acquisition or realization of debts, divestitures, expenses or losses; and
- c) Performance of acts of equity disposal or obligations generators, which do not relate to the normal course of business.

125.3 The Committee may punish with fines no less than one (1) up to one hundred (100) Tax Units to the creditor or person who has acted on its behalf who:

- a) Has participated in any of the acts referred to in the precedent section 125.2;
- b) Coercively requires the collection of a credit which, mandated by law, has become in unenforceable. In that sense, the companies providing public services of water, drainage, electricity and telephone and all other creditors shall be prevented from requiring at court and out-of-court, the collection of bankruptcy credits outside the proceedings regulated by Law.

125.4 The Committee is competent to investigate and punish acts constituting an offense under this law which have been made during the proceedings. Such competence is not affected by the conclusion of the proceedings.

Article 126.- Sanctioning proceedings

126.1 The sanctioning proceedings is always initiated ex officio by decision of the Technical Secretariat. The decision adopted may be due to the favorable deliberation on the complaint filed by any citizen, the order of the hierarchical superior, or the discretionary decision of the body exercising its power intended to safeguard the compliance of the Law regulations.

126.2 At the time of deciding the commencement of the proceedings, the Technical Secretariat also provides notice to the accused with the allegation of the facts constituting the offense matter of the proceedings and grants a term of five (5) days to formulate depositions that may be deemed relevant and provide the evidence to support its statements.

126.3 Once the depositions of the accused are received and if applicable, the Technical Secretariat states that the proceedings is commenced to evidentiary stage indicating in such act those means of evidence that shall be taken. The trial period may not exceed thirty (30) days counted from receipt of the depositions of the accused.

126.4 After the evidentiary stage for the proceedings of the proposed evidence or for a statement that no evidentiary stage shall be commenced in the proceedings, the Technical Secretariat shall make its final report within a maximum term of five (5) days after the completion of the preceding stage. In case of an accusatory report it shall be sent to the Committee for a pronouncement within a maximum term of five (5) days after receiving the report. Otherwise, it shall declare the termination of the proceeding and shall file the dossier.

126.5 The pronouncement by the Committee determining the responsibility of the investigated and imposing a sanction may be subject to appeal.

126.6 In all matters not expressly provided for in this Article, it shall apply the relevant regulations regarding this matter in the Law on General Administrative Proceedings.

Article 127°.- Criteria for adjustment of fines

To adjust the amount of the fine to be imposed, the Committees shall consider criteria such as intentionality, the damaged caused, the aggravating or attenuating circumstances in the commission of the offense and recidivism.

Article 128°.- Publication of resolutions

The Board of Directors of INDECOPI, upon request of the corresponding Court or Committee, may order the publication of resolutions imposing sanctions for considering that they are important to protect the interests of the agents involved in bankruptcy proceedings.

Article 129°.- Benefit for prompt payment

The amount of the fine imposed shall be reduced by 25% if the offender pays the amount thereof and lets the term pass without lodging any challenging appeal against such resolution.

Article 130°.- Registry of Offenders

The Court and the Committees shall send to the Committee of Bankruptcy Proceedings of INDECOPI the resolutions by which they imposed a sanction, once they have been accepted or unchangeable, to be registered in the registry of offenders, in order to inform the public, and to detect cases of recidivism.

(*) Article 131° - Of the the concurrence of offenses with crimes

In cases where by reason of having committed any of the offenses provided for in this Law, any administrative sanction would have been imposed to the offender, it is not possible to commence criminal proceedings for such facts. However, when in the opinion of the Committee the observed offense shows particular seriousness, it shall decline to pronounce on the case and put the proceedings at the disposal of the Public Prosecutor for the corresponding purposes.

(*) Repealed

**TITLE VIII
SUPPLEMENTAL PROCEDURAL RULES**

Article 132: Exclusive Competence Bodies

132.1 The Committees on Bankruptcy Proceedings and the INDECOPI Tribunal, at the administrative stage, as well as the corresponding Divisions at the judicial stage have exclusive competence over the solution of challenges of orders issued in any bankruptcy proceedings in the matters governed by this Law.

132.2 Orders extinguishing the administrative channels in bankruptcy proceedings may only be challenged through an administrative contentious proceeding channel. Therefore, using different procedural channels to challenge agreements, decisions or orders on issues arising out of the application of Law and its supplementary rules or to suspend, void or non-enforce its effects is not admitted.

Article 133: Competent instances on guarantee actions or other legal complaints on bankruptcy matters

133.1 Guarantee actions are only admitted when the previous administrative channel is extinguished, unless exceptions covered in the Habeas Corpus and Amparo Actions Law and they shall be acknowledged at first instance by the Civil Specialized Appellate Division of the Court of Appeals and at the appeal stage by the Constitutional and Social Division of the Supreme Court of Justice of the Republic.

133.2 Applications for precautionary measures purported to suspend or produce any analogous effect on proceedings governed in the Law may be only processed and solved based on an administrative contentious proceeding opened pursuant to law.

133.3 In the event of court orders referred to guarantee actions or precautionary measures on bankruptcy matters which were not issued by the jurisdictional bodies mentioned in section 133.1 above, or processed through procedural channels other than the ones mentioned in section 133.2 above, INDECOPI shall advise the court records to the National Board of Judges, as well as to the corresponding Control Judges' Office so that, pursuant *ex officio*, the corresponding disciplinary proceeding may commence.

133.4 Legal complaints brought in relation to the procedures governed by the Law may be through a summons to INDECOPI.

Article 134: Effects of bringing guarantee actions or other legal complaints on bankruptcy matters

134.1 Guarantee actions brought by individuals or legal entities, comprised within the application for procedures governed by the Law, and suspending or causing an analogous effect on the proceeding, determines, automatically and with full rights, the lifting of suspension of enforceability of obligations performance and the lifting of measures indicated in Articles 17 and 18 of the Law and its supplementary rules.

134.2 Under any circumstances, the applications for innovative, general or other analogous precautionary measures purported to render null and void the lifting of property protection and payment suspension set forth in Articles 17 and 18 of the Law are inadmissible.

Article 135: Powers of the Committee to bring complaints for annulment of *res judicata* authority with bankruptcy effect

135.1 The Committee, before which a bankruptcy proceeding is processed, has the powers to order the commencement of a legal proceeding of annulment of a court sentence or arbitral award, judicial or out-of-court transaction or any act or convention with *res judicata* authority pursuant to Law.

The Committee shall request to bring a complaint, referred to in the paragraph above, if the Committee deems there is sufficient evidence giving rise to any doubts about the existence and origin of the created, changed, extinguished or recognized credits in these acts and which were produced as a private act or pursuant to a court order, in order to support the commencement of a bankruptcy proceeding or as a support for the application for credit recognition within an already commenced bankruptcy proceeding. Decisions to commence a legal proceeding are challengeable, with suspensive effect.

The process is undergone through abbreviated proceeding channels.

The term for bringing a complaint is barred by the statute of limitations twenty four months counted as from the filing of a sentence, agreement or other act with *res judicata* authority before the Committee, as per the previous paragraphs.

135.2 Only with the presentation of the complaint, a bankruptcy proceeding opened based on a sentence, agreement or act mentioned in section 135.1, Article 135 shall be suspended with full rights, as well as the procedure for credit recognition supported on the indicated documents and subject matter of questioning, while the corresponding legal proceeding takes place and the final order is issued. In these cases, the Committee shall proceed to register as contingent the credits subject matter of a *res judicata* authority annulment complaint with bankruptcy effects, pursuant to provisions set forth in section 39.5, Article 39.

Article 136: Proceeding Abandonment

136.1 The parties shall answer requirements and comply with the formalities ordered by the Committee within a term not longer than thirty (30) days, provided a different term has not been established. Otherwise, administrative authority may, pursuant to a court order or at the request of any party, declare an abandoned proceeding.

136.2 Declaring the abandonment of a proceeding may not be possible if, upon verifying the existence of bankruptcy, the interested creditor or debtor fails to publish notices of invitation to the Board of Creditors. In such cases, the Committee may impose sanctions from one (1) to ten (10) applicable tax units at most. If the interested creditor is a legal entity, the sanctions shall be imposed thereon and on its legal agent, who shall respond on a joint and several manner. If the debtor is a legal entity, which bankruptcy status has been published, the sanction may be imposed only on its legal agent. In this event of failure, the Committee shall publish the notice of invitation.

Article 137: Maximum terms for processing bankruptcy proceedings

137.1 According to the singular nature of bankruptcy proceedings, it is established that the term between the application for commencement of proceeding and final order may not exceed in any case ninety (90) days per stage. Otherwise, the negative administrative silence in favor of the applicant shall operate with the effects covered in paragraph 2), Article 33 and Articles 34.1.2, 188.3, 188.4 and 188.5 of Law 27444, as the case may be.

137.2 Provided no more provisions are expressed, when terms are indicated on a day-to-day basis, they are understood as working days.

137.3 Terms covered by the Law are peremptory and non-extendable. This provision is applied to procedural terms and those terms imposed by the duty of enforcement of proceedings on any of the parties to the bankruptcy proceeding.

Article 138: Resolutive Effects

Resolutions issued in bankruptcy proceedings have effects and these effects are enforced as from their issuance provided the involved parties have a possibility to hear the opinions contained therein, unless a

provision other than the one expressly established in those acts. Notwithstanding the foregoing, terms for challenging said resolutions referred to in this Law are calculated as from the day following the service of process thereof on the administered parties, plus the distance term as the case may be.

Article 139: Notices

All notices shall be sent not longer than within a term of ten (10) days, as from the serving act issuance.

Article 140: Application of Legislative Decree 807

Provisions contained in Title I of Legislative Decree 807 are applied to all procedures covered by the Law.

Article 141: Reduction of credits and change in ownership

141.1 The debtor shall advise of any reduction that may be caused in the amount of recognized credits.

141.2 Creditors who own recognized credits shall advise the Committee of any change in ownership of these credits.

141.3 The Committee shall sanction, with a fine from one (1) to fifty (50) Applicable Tax Units, the debtor, creditor and its legal agents, who fail to fulfill those obligations established in the previous sections.

Article 142: Scope of assignment or transfer of bankruptcy credits

142.1 Assignment or transfer of credits comprises transmitting preferential orders, unless a contrary agreement.

142.2 The bankruptcy link is not transmitted with the assignment or transfer of recognized credits by a related creditor.

**SUPPLEMENTAL PROVISIONS
FINAL PROVISIONS**

ONE: Supplemental Application of Rules

Regarding all issues different from the ones set forth in this Law, rules contained in the General Administrative Proceeding Law, Civil Procedural Code and General Corporations Act are applicable.

TWO: Preferential Application

In the course of bankruptcy proceedings, the Law must be of preferential application to rules of the Civil Code, Civil Procedural Code, Tax Code, General Corporations Act, Securities Law, Trade Code, General Financial System Law and Insurance System Law, and Organizational Law of the Superintendence of Banking and Insurance, Law of the Private System of Pension Fund Administration and all other rules that, under regular situations, govern and regulate the activity of market agents.

THREE: References to Bankruptcy Proceedings

Legal or administrative references to the proceeding of Declaration of Bankruptcy are understood as made to the Ordinary Bankruptcy Proceedings and the ones made as to the Preventive Bankruptcy are understood as made to the Preventive Bankruptcy Proceeding.

FOUR: Change in the Name of the Committee

References to Decree Law 26116, Legislative Decree 845 and Law 27146, as well as to the corresponding amending rules, the Committee on Market Exit or the Committee on Property Restructuring are understood as made to the Committee on Bankruptcy Proceedings.

FIVE: Collective Cessation

Only as from the entry into force of the Settlement Agreement, workers may be ceased, to this end a notarized notice shall be served ten (10) calendar days in advance to the date anticipated for cessation. Cessations prior to the entry into force shall be governed by current labor laws.

SIX: Stock Exchange Negotiation

The Creditor of a person subject to a bankruptcy proceeding may negotiate in the stock exchange and in any other mechanism centralized in negotiation, credits allegedly recognized by the Committee. To this end, the National Supervisory Committee on Companies and Securities - CONASEV shall approve, within a term of ninety (90) business days after the enactment of this Law, rules and guidelines deemed necessary

to establish requirements and characteristics of the securities to be negotiated and the requirements for the corresponding list.

(*) SEVEN - Rules approved by CONASEV

The National Supervising Committee on Companies and Securities - CONASEV shall approve, within a term of ninety (90) days, the corresponding rules to implement restructuring and dissolution and winding-up procedures of companies to whom it may grant an operation authorization, as well as competitions thereof.

(*) Repealed

EIGHT: Choice of the Labor Representative before the Boards of Creditors

For the purposes of Article 47.2 of the Law, the Ministry of Labor and Employment Promotion, by means of a Ministerial Resolution, shall determine the procedure to be selected and appoint the representatives of credits of remunerations and social benefits before the Board of Creditors, in compliance with the following criteria:

- a) The number of representatives shall be two, one regular member and one substitute.
- b) The representative shall be chosen upon reaching the higher number of votes between workers and former workers considering one vote per creditor.
- c) Appointment by the Ministry of Labor and Employment Promotion shall be made in accordance with the choice made by former workers and workers.
- d) Causes of reasoned replacement of the representative and control mechanisms over voters shall be established.

Regulations must be issued within a maximum term of thirty (30) days after enactment of this Law.

NINE: Exemption of the General Sales Tax

Payment of the General Sales Tax shall be exempted for awards of debtor property that, in execution of dissolution and winding-up, are made in favor of labor creditors in cancellation of recognized credits.

TEN: Processing of Actions before the Government Attorney General's Office

In the event of actions filed against public officials due to the processing of bankruptcy proceedings set forth in the Law, the competent Attorney's Office shall request a technical report to INDECOPI about the legality of accused facts, which shall be assessed for the purposes of qualification or dismissal of the action. This report must be issued within a maximum term of ten (10) working days as from the request presentation.

ELEVEN: Transitory Division

When the procedural burden increase justifies so, the Board of Directors of INDECOPI may appoint a Transitory Division within the Tribunal in order to see this procedural burden.

TWELVE: Agency and Legal Defense of INDECOPI

Agency and legal defense of INDECOPI is directly exercised by the representatives, or by attorneys-at-law to whom the Board of Directors delegate powers. Intervention of the Solicitor General of the corresponding sector is optional.

THIRTEEN: Term for Filing an Appeal through Single Procedures

For the purposes set forth in Article 38 of Legislative Decree 807, Law on Powers, Rules and Organization of INDECOPI, as amended by Law 27311, the term for filing of an appeal is of five (5) working days.

FOURTEEN: Term for Administrative Proceedings over INDECOPI

The maximum term for processing administrative proceedings charged to the resolutive bodies and composing the functional organizational structure of INDECOPI shall be of 120 working days, without prejudice to the special rules or terms deriving from the own nature of the corresponding proceeding.

FIFTEEN: Professionals for Audits and Assessments

For the purposes of an Economic Audit and Economic Assessment, the corresponding Professional Association shall submit a list of qualified professionals to INDECOPI biannually.

Professionals in charge of auditing the company in process of restructuring referred to in Article 35 of this Law may not be designated for an internal audit set forth in Article 51.1, item e).

SIXTEEN: Validity of Law

This Law shall enter into force sixty (60) days following the date of enactment of the law in El Peruano Official Gazette.

TRANSITORY PROVISIONS

ONE: Law Applicability

Provisions contained in this Law shall be applied to procedures processed under the Property Restructuring Law, at whatever stage.

TWO: Decentralization of INDECOPI Functions

Let the Board of Directors of INDECOPI be authorized to make the necessary adjustments to the System of Decentralization of Duties of the institution in order to ensure proper and supported operation.

REPEALING PROVISIONS

SINGLE: Let Legislative Decree 845 and Law 27146 as well as their amendments be repealed, unless supplemental, final, amending and transitory provisions in full force regarding all issues unrelated to this Law.

AMENDING PROVISIONS

ONE: Amendment to the Civil Code

Let Articles 95, 330, 846 and 852 as well as paragraph eight of Article 2030 of the Civil Code, approved by Legislative Decree 295 be amended, which will be written as follows:

"**Article 95:** The Association is dissolved by means of a winding-up, as agreed by the corresponding Board of Creditors pursuant to the law on this matter.

In the event of accrued losses, upon deduction of reserves greater than the third of share capital paid-up, the Board of Directors must request to commence the Ordinary Bankruptcy Proceeding of the association, in accordance with the law on this matter and under responsibility before creditors for damages arising out of an omission.

Article 330: Statement of commencement of the Ordinary Bankruptcy Proceeding of one of the spouses determines, with full rights, to replace the community property system by division of equity and, to produce effects on third parties, it shall be registered with the personal *ex officio* register at the request of the competent Committee on Bankruptcy Proceedings, the debtor, his spouse or administrator or liquidator, the Chairman of the Board of Creditors or any interested creditor.

Without prejudice to the foregoing, in the event that at the time of commencement of the bankruptcy proceeding of an individual, another proceeding of the same nature, as previously disseminated pursuant to the law on this matter is in force, regarding the integrating community property, no consequence set forth in the foregoing paragraph shall be produced whilst this proceedings is in process.

Article 846: The testator may establish indivisum of any company comprised within the heritage, for a four-year term at most, notwithstanding that the heirs distribute profits between themselves regularly. In the event of agricultural and farming exploitations, provisions set forth in the law on this matter are applied.

Furthermore, as from the publication and registration of the submittal of succession to any bankruptcy proceedings set forth in domestic laws, the indivisum of testamentary or intestate estate shall be produced.

Article 852: No partition can occur when the testator left a will, and in this event only the reduction of the portion in excess of the limits permitted by the law may be applied for.

Notwithstanding the provisions set forth in the foregoing paragraph, partition is not possible while the bankruptcy proceeding to which the indivisum succession is subject to is in force, if it occurs.

Article 2030: This register contains the following:

(...)

8. Statement of commencement of a bankruptcy proceeding, as well as other registration acts and agreements pursuant to the law on this matter."

TWO: Amendments to the Civil Procedural Code

Article 703 of the Civil Procedural Code must be replaced with the following wording:

"If after the sentence is issued at first instance, the executioner is unaware of the existence of property owned by the debtor, and it shall request to be asked for, within a five-day term, designating one or more unencumbered properties or partially encumbered properties the possible coverage balance of which is quantitatively sufficient for matching the value of obligation subject matter of execution, with a warning so that the judge may declare dissolution and winding-up of the company.

Upon the resolution becomes final, the executive proceeding shall conclude and the Judge shall submit certified copies of court records to the Committee on Bankruptcy Proceedings of INDECOPI or the competent Delegated Committee that, pursuant to Law on this matter, shall publish the corresponding status, in furtherance of the legal formalities.

Warnings contained in this Article shall be also applied at the procedural stage of forced execution developed after commencement of a sentence enforcement procedure arising out of an abbreviated or summarized taking over procedure."

THREE: Amendment to the Law on powers, rules and organization of INDECOPI

Let Article 18 f) of Decree Law 25868 be amended as follows:

"**Article 18:** INDECOPI is made up of seven Committees

(...)

f) Committee on Bankruptcy Proceedings; and

(...)"

Let the President of the Republic be advised of the following for the corresponding enactment.

In Lima, this 26th day of July, 2002.

CARLOS FERRERO

President of the Congress of the Republic

HENRY PEASE GARCÍA

First Vice-President of the Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

THEREFORE:

Let it be published and complied with.

Given in the Government House, in Lima, this 5th day of August, 2002

ALEJANDRO TOLEDO

Constitutional President of the Republic

LUIS SOLARI DE LA FUENTE

Chief of the Cabinet of Ministers