

**File: 01 Bankruptcy Draft4**

**ROYAL GOVERNMENT OF CAMBODIA**

**Ministry of Commerce**

**INSOLVENCY LAW**

**Draft – June 2001**

## TABLE OF CONTENTS

### **CHAPTER 1 GENERAL PROVISIONS**

- Article 1. Scope and Purpose
- Article 2. Definition of Terms
- Article 3. Court of Jurisdiction

### **CHAPTER 2 OPENING OF INSOLVENCY PROCEEDINGS – SUBJECTS, GROUNDS AND PETITION**

- Article 4. Subjects of Insolvency Proceedings
- Article 5. Grounds for the Opening of Insolvency Proceedings
- Article 6. Petition to Open Insolvency Proceedings
- Article 7. Duty to Petition for the Opening of Insolvency Proceedings
- Article 8. [Service of Petition]
- Article 9. Appointment of Provisional Administrator to Protect the Estate
- Article 10. Stay of all other Proceedings Upon Petition

### **CHAPTER 3 DECISION ON THE PETITION TO OPEN INSOLVENCY PROCEEDINGS**

- Article 11. Hearing of the Petition
- Article 12. Ruling on the Petition
- Article 13. Commencement of Liquidation by the Court
- Article 14. Date of Opening of Insolvency Proceedings
- Article 15. [No Opening of Insolvency Proceedings for Lack of Assets]
- Article 16. Costs for a Dismissed Petition
- Article 17. Publication and Notification of the Opening of Insolvency Proceedings

### **CHAPTER 4 EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS**

#### ***PART A – GENERAL EFFECTS***

- Article 18. The Estate
- Article 19. Supervision of the Debtor and its Activities
- Article 20. [Treatment of Joint Marital Property]
- Article 21. Valuation of Encumbered Asset
- Article 22. Protection for Secured Creditors

- Article 23. Maintenance Payments from the Estate  
Article 24. Duty of Debtor to Provide Information

***PART B – SAFEGUARDING AND ENHANCEMENT OF THE ESTATE***

- Article 25. Treatment of Contracts  
Article 26. Avoidance of Certain Prejudicial Transactions  
Article 27. Presumption of Required Knowledge  
Article 28. Avoidance of Payment for a Due Claim  
Article 29. Application to Avoid Transactions  
Article 30. Effects of an Avoided Transaction  
Article 31. Set-Off

***PART C – DETERMINATION OF CLAIMS***

- Article 32. Eligible Claims  
Article 33. Conversion of Claims  
Article 34. Filing of Proofs of Claims  
Article 35. Preparation of the Claims List

**CHAPTER 5  
PLANS OF COMPROMISE**

***PART A – GENERAL MATTERS***

- Article 36. Proposal for a Plan of Compromise  
Article 37. Contents of a Plan of Compromise  
Article 38. Costs for the Preparation and Proposal of a Plan of Compromise

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

- Article 39. Approval by Creditors  
Article 40. Approval by the Court  
Article 41. Effect of Court Approval of a Plan of Compromise  
Article 42. Implementation of the Plan of Compromise  
Article 43. Failure to Implement a Plan of Compromise – Resumption of Insolvency Proceedings

**CHAPTER 6  
THE OPENING CREDITORS' MEETING**

- Article 44. Convening of the Opening Creditors' Meeting  
Article 45. Activities at the Opening Creditors' Meeting  
Article 46. Verification of the Claims List  
Article 47. The Administrator's Report at the Meeting

Article 48. Decision Regarding Continuation of the Proceedings

## **CHAPTER 7**

### **COMMENCEMENT OF LIQUIDATION AND THE SATISFACTION OF CLAIMS**

Article 49. Vesting of Estate in the Administrator  
Article 50. Collection of Unpaid Capital  
Article 51. Sale of Assets  
Article 52. Priority of Distribution  
Article 53. Timing of Liquidation and Distribution

## **CHAPTER 8**

### **TERMINATION OF INSOLVENCY PROCEEDINGS FOLLOWING LIQUIDATION**

Article 54. Administrator's Report following Liquidation  
Article 55. Final Creditors' Meeting  
Article 56. Court Order to Terminate Insolvency Proceedings following Liquidation  
Article 57. [Termination of Insolvency Proceedings – Cancellation of Outstanding Claims  
Article 58. Other Effects of the Termination of the Insolvency Proceedings  
Article 59. Dissolution of Company Upon the Termination of Insolvency Proceedings

## **CHAPTER 9**

### **RESUMPTION OF INSOLVENCY PROCEEDINGS WHICH WERE TERMINATED AFTER LIQUIDATION**

Article 60. Application for Resumption  
Article 61. Conditions for Resumption  
Article 62. Effect of Resumption

## **CHAPTER 10**

### **PROVISIONS DEALING WITH THE ADMINISTRATOR AND CREDITORS**

#### ***PART A – THE ADMINISTRATOR***

Article 63. Qualifications  
Article 64. Discharge  
Article 65. Powers  
Article 66. Duty of Debtor to Cooperate with Administrator  
Article 67. Transactions which Require the Consent of Creditors  
Article 68. Accountability  
Article 69. Liability  
Article 70. Remuneration

***PART B – CREDITORS***

- Article 71. Convening of Other Creditors' Meetings
- Article 72. Notice of Creditors' Meetings
- Article 73. Quorum and Voting at Creditors' Meetings
- Article 74. Activities of Creditors' Meetings
- Article 75. Effect of Decisions Made at a Creditors' Meeting
- Article 76. Creditors' Committee
- Article 77. Powers of the Creditors' Committee

**CHAPTER 11  
MISCELLANEOUS PROVISIONS**

- Article 78. [Service of Documents Under this Law]
- Article 79. Penalties

**CHAPTER 1**  
**GENERAL PROVISIONS**

**Article 1. Scope and Purpose**

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

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

**Article 2. Definition of Terms**

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

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

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

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

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

(f) "Partnership" means a general or limited partnership formed under the Law of Commercial Enterprises.

(g) "Related person" means:

(i) in the case of a debtor which is not a natural person, any shareholder, director, partner or manager of the debtor;

(ii) the debtor's spouse or, in the case of a debtor which is not a natural person, the spouse of any shareholder, director, partner or manager of the debtor;

- (iii) any ascendant or descendant of the debtor or of any person described in paragraphs (i) and (ii);
- (iv) the spouse of any person described in paragraph (iii);
- (v) any sibling, or the spouse of any sibling, of the debtor or of any person described in paragraphs (i), (ii), (iii) or (iv);
- (vi) any company in which a person described in paragraphs (i), (ii), (iii), (iv) or (v) holds more than five percent of the shares, or is a director or a manager;
- (vii) any partnership in which a person described in paragraphs (i), (ii), (iii), (iv) or (v) is a partner or a manager;
- (viii) any legal person formed under the laws of a foreign country in which a person described in paragraphs (i), (ii), (iii), (iv) or (v) holds more than five percent of the capital, or is a director, a manager or a partner;
- (ix) in the case of a debtor who is a natural person, any person living in the debtor's household;
- (x) any natural or legal person who, by reason of its professional or commercial relationship with the debtor, has access to non-public information about the financial or commercial affairs of the debtor; or
- (xi) any creditor whose claim against the debtor exceeds ten percent of the total value of all creditors' claims against the debtor.

[Germany, S.138; Thailand, S.6; Bulgaria, Supplementary provisions]

### ***Article 3. Court of Jurisdiction***

[Notes:

- Which courts will have jurisdiction?
- What will be the appeals process throughout the law?

Answers to the above questions will have to be harmonized with the law(s) on court organization.]

## ***CHAPTER 2 OPENING OF INSOLVENCY PROCEEDINGS – SUBJECTS, GROUNDS AND PETITION***

**Article 4. Subjects of Insolvency Proceedings**

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

- (i) a partnership or company;
- (ii) a natural person who is domiciled in the Kingdom of Cambodia with respect to debt which arises from a business or trade engaged in by such person;
- (iii) a legal person or partnership formed under the laws of a foreign country which owns property situated in the Kingdom of Cambodia; and
- (iv) a natural person who is domiciled outside the Kingdom of Cambodia and who owns property situated in the Kingdom of Cambodia.

(b) Insolvency proceedings shall not be opened under this law against any debtor which is a covered entity under the Law on Banking and Financial Institutions.

(c) Insolvency proceedings opened under this law against the persons set out in paragraphs (a)(iii) and (a)(iv) shall apply only to the assets of such persons which are situated in the Kingdom of Cambodia. The following shall be considered assets situated in the Kingdom of Cambodia:

- (i) tangible assets located within the territory of the Kingdom of Cambodia;
- (ii) property and rights for which the ownership of or entitlement to must be entered in a public register under the authority of the Royal Government of Cambodia; and
- (iii) claims against any entity which has the center of its main interests in the Kingdom of Cambodia. In the absence of proof to the contrary, any company or partnership shall be presumed to have the center of its main interests in the Kingdom of Cambodia.

[EU Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, Article 2(g)]

[Note:

- This Article is drafted in line with the recommendation to limit the current application of the law to: (a) business entities; and (b) for foreign entities, only assets located in the Kingdom of Cambodia.

- Under the Law on Commercial Enterprises, all partners have joint and several liability for all partnership debts. It is recommended that partnerships be included in this law, to provide



for orderly partnership insolvencies through one “central” insolvency proceeding against the partnership, instead of separate proceedings against each partner.

- The relevant parts of the Law on Commercial Enterprises dealing with dissolution and liquidation of partnerships and companies may need to be changed to incorporate the provisions of this law.

- Banks and financial institutions have been specifically excluded for the time being because the treatment of these institutions in insolvency requires the consideration of very complex policy questions (e.g., treatment of depositors, use of government money for bank rescues, etc.). Such policy questions will require the input of, among others, the Central Bank and the Ministry of Finance.]

#### ***Article 5. Grounds for the Opening of Insolvency Proceedings***

(a) In the case of a petition by the debtor, a creditor or creditors, the failure of a debtor to meet one or more valid obligations to pay an aggregate amount in excess of [Riels 5,000,000 – about US\$1,300] shall be a ground for the opening of insolvency proceedings with respect to the debtor. The Minister of Commerce may, by regulation, change the minimum amount of obligation required for the opening of insolvency proceedings set out in the first sentence of this paragraph.

[Note on (a): Adjustment of the minimum amount by ministerial regulation is indispensable. We understand that the Cambodian Constitution has an instrument akin to the French *Decret-Loi*? If Cambodia has a minimum wage, a multiple thereof may also be used as the minimum amount.]

(b) In the case of a petition by the debtor, a determination by the debtor that it is likely to be unable to meet its existing obligations to pay on the respective maturity dates of those obligations shall also be a ground for the opening of insolvency proceedings with respect to the debtor. [This paragraph (b) is modeled after Germany’s S.18]

#### ***Article 6. Petition to Open Insolvency Proceedings***

(a) A petition to open insolvency proceedings may be filed by a debtor, one or more creditors or the [Minister of Commerce/Director of Companies/public prosecutor].

(b) A petition to open insolvency proceedings shall be made in writing and shall be signed by the petitioner. The petition shall contain the following information:

- (i) the name and address of the debtor;
- (ii) the name and address of the petitioner, if it is not the debtor;

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

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

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

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

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

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

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

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

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

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

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

[Note:

- In many civil law systems, it is not for the plaintiff/petitioner to serve process but for the court to do so. This article may therefore not be needed.

- In any event, if retained, the article will need to be harmonized with the rules on civil procedure in Cambodia. We will require the input of the Ministry of Justice and other related officials in Cambodia on this issue.]

#### ***Article 9. Appointment of Provisional Administrator to Protect the Estate***

(a) From the time of the filing of a petition to the court's issuance of its order whether to open insolvency proceedings, the court shall, upon the written application of the debtor, any creditor[ or the Minister of Commerce/Director of Companies/public prosecutor], issue an order to appoint a provisional administrator.

(b) The provisions of Chapter 10, Part A shall apply, *mutatis mutandis*, to a provisional administrator.

(c) An order of court made under paragraph (a) shall be published, including [in the Official Gazette of the Kingdom of Cambodia].

[Modeled after Germany, S.21 and S.23; Bulgaria, A. 629a]

[Note: The automatic appointment of an interim administrator upon application to the court will help to ensure that:

- petitions are taken seriously as is the liability for frivolous petitions;
- the full risk of liability is with the petitioner and not with the court;
- the court is relieved from responsibility for a very critical and economic decision; and
- a rescue, especially of the liquidation type, can be prepared from the very first day.]

#### ***Article 10. Stay of all other Proceedings Upon Petition***

(a) Upon the filing of a petition to open insolvency proceedings, and until the termination of the proceedings, no action, proceedings or execution process of any kind shall be commenced or continued against the debtor or assets of the estate, except:

- (i) by the administrator or provisional administrator; or

(ii) with the permission of the court.

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

(c) The stay of action under paragraph (a) shall not apply to claims pertaining to the remuneration, fees and expenses of the administrator and other claims incurred by the administrator in course of the insolvency proceedings.

### **CHAPTER 3**

#### **DECISION ON THE PETITION TO OPEN INSOLVENCY PROCEEDINGS**

##### ***Article 11. Hearing of the Petition***

(a) A debtor's petition shall be heard by the court as soon as possible after it is filed and in any event no later than [seven days] after the petition is filed.

(b) A creditor's petition [or a petition by the Minister of Commerce/Director of Companies/public prosecutor] shall be heard by the court no later than fourteen days after the petition has been served on the debtor.

(c) The debtor, any creditor [and the Minister of Commerce/Director of Companies/public prosecutor] shall be entitled to participate in the hearing.

##### ***Article 12. Ruling on the Petition***

(a) If the court is satisfied, after the hearing of the petition, of the existence of the ground or grounds on which the petition is based, the court shall issue a written order:

- (i) opening insolvency proceedings against the debtor;
- (ii) appointing an administrator, who could be the provisional administrator appointed under Article 9;

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

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

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

(c) If the court is satisfied, after the hearing of the petition, that the ground or grounds on which the petition is based do not exist, the court shall issue a written order dismissing the petition.

(d) The court's order to open insolvency proceedings or to dismiss the petition shall be issued no later than fourteen days after the hearing of the petition.

(e) The debtor or any creditor may appeal the court's order made under this article within seven days after the issuance of the order. An appeal shall not operate as a stay on the execution of the court's order made under this article.

[Note: The appeals process needs to be discussed further, especially with reference to the civil procedure rules of Cambodia.]

### ***Article 13. Commencement of Liquidation by the Court***

(a) The court may, when it issues the order to open insolvency proceedings, or at any time thereafter, order that the liquidation of the debtor's business be commenced forthwith on the ground that the rehabilitation of the debtor's business is not feasible.

(b) The court may make an order under paragraph (a) either on its own motion or upon the application of the debtor, the provisional administrator, the administrator or any creditor.

### ***Article 14. Date of Opening of Insolvency Proceedings***

The insolvency proceedings shall be considered opened on the date of the court order opening the insolvency proceedings.

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

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

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

***Article 16. Costs for a Dismissed Petition***

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

***Article 17. Publication and Notification of the Opening of Insolvency Proceedings***

(a) A court order opening insolvency proceedings shall be published, including in the [Official Gazette of the Kingdom of Cambodia].

(b) No later than seven days after the opening of the insolvency proceedings, the administrator shall publish notices, including by placing advertisements in at least two major newspapers in the Kingdom of Cambodia, announcing the following:

- (i) that insolvency proceedings have been opened against the debtor;
- (ii) the deadline for the submission of written proofs of claims; and
- (iii) the address to which all written proofs of claims should be sent.

(c) No later than seven days after the administrator receives the statement of the debtor filed pursuant to Article 24, the administrator shall notify in writing all creditors listed in the statement of the matters set out in paragraphs (b)(i) to (b)(iii).

**CHAPTER 4**  
**EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS**

**PART A – GENERAL EFFECTS**

**Article 18. The Estate**

- (a) The opening of the insolvency proceedings shall create the estate.
- (b) The estate shall comprise all property, rights and claims of any kind in which the debtor has an ownership interest or to which the debtor is otherwise entitled on the date of opening of the insolvency proceedings or after that date, with the exception of, in the case of a debtor who is a natural person:
- (i) the primary place of residence of the debtor, the market value of which shall not exceed [Riels 20,000,000 – approx. US\$5,200]; and
  - (ii) personal clothing of the debtor, the aggregate market value of which shall not exceed [Riels 400,000 – approx. US\$104].

[Note:

- This provision is based loosely on the UNCITRAL draft legislative guide.
- The exemptions in (b) above are retained from the March 1999 draft Cambodian bankruptcy law.
- The definition of “estate” may have to be harmonized with the relevant provisions for normal debt-collection situations in the Civil Code and/or the Law of Civil Procedure and Debt Enforcement. In particular, the exemptions in (b) above will need to be examined.]

**Article 19. Supervision of the Debtor and its Activities**

- (a) During the period up to the opening creditors’ meeting, the debtor, its management or partners, as the case may be, shall continue to exercise management and power over the debtor’s business and all assets in the estate, subject to the general supervision of the administrator.

[Note on (a): It may be useful to specify the kinds of transactions which must be approved by the administrator.]

- (b) In the event it is shown that the debtor or its management or partners, as the case may be, has acted fraudulently or with gross negligence with regard to the debtor’s business either before the opening of or during the insolvency proceedings, the court may order that the

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

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

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

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

***Article 21. Valuation of Encumbered Asset***

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

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

***Article 22. Protection for Secured Creditors***

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

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

[Modeled after Germany's S.169]



***Article 23. Maintenance Payments from the Estate***

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

***Article 24. Duty of Debtor to Provide Information***

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

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

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

***PART B – SAFEGUARDING AND ENHANCEMENT OF THE ESTATE***

***Article 25. Treatment of Contracts***

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

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

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

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

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

[Note on (e):

- This provision preserves the application of *ipso facto* clauses in contracts when insolvency proceedings are opened against a party to the contract. The preservation of such clauses means that such contracts cannot be continued against the wishes of all parties to the contract. This could undermine the ability to formulate rehabilitation plans.

- There is therefore a policy choice to be made here as to whether it should be possible to continue a contract against the express wishes of all parties as expressed in an *ipso facto* clause. Further, if the decision is to make it possible to "override" an *ipso facto* clause, then a carve-out will be necessary to enable close-out netting in the case of framework contracts for certain financial transactions.]

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

(g) The administrator's election to continue a contract which requires regular payments to the counter party shall not bind the administrator to effect payments that were not made prior to the opening of insolvency proceedings. [Bulgaria, A. 644(5)]

(h) All claims arising from a contract which the administrator has elected to continue shall be treated as claims incurred by the administrator in the course of the insolvency proceedings and accorded the applicable priority under Article 52.

[Note: This article is based loosely on A.37 of the Netherlands' law.]

***Article 26. Avoidance of Certain Prejudicial Transactions***

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

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

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

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

***Article 27. Presumption of Required Knowledge***

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

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

(b) In the event of prejudice to the creditors caused by a transaction for no consideration performed by the debtor within the period of one year before the opening of the insolvency proceedings, it shall be presumed that the debtor performed the transaction with the knowledge that it would prejudice the creditors.

(c) For the purposes of paragraph (a)(iii), a person having only the characteristics set out in Article 2, paragraph (g)(xi) shall not be considered a related person.

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

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

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

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

***Article 29. Application to Avoid Transactions***

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

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

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

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

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

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

***Article 31. Set-Off***

**Option 1**

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

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

[Note on (a):

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

(b) [If, on the date of the opening of the insolvency proceedings, one or more of the claims or obligations giving rise to set-off are subject to a condition precedent, or are not due and payable, or do not cover similar types of performance, set-off may only be effected if the such conditions have been met. Article 32, paragraph (b) shall not apply. There shall be no set-off if the claim or obligation that is the subject of the set-off becomes unconditional or due prior to the time that the set-off can be effected.]

[Note on (b): Based on Germany’s S. 95(1).]

(c) [Set-off shall not be excluded by reason of the fact that the claims or obligations are in different currencies or units of exchange, if such currencies or units of exchange can be freely converted at the place of payment of the claim or obligation that is to be set-off. Conversion shall be at the rate of exchange at such place at the time of the receipt of the declaration of set-off.]

[Note on (c): This paragraph is based on Germany’s S. 95(2).]

(d) Set-off shall be prohibited if the creditor’s claim or obligation arose from a transaction which is subject to contest under this or other laws.

[Note on (d): This is meant to rule out set-offs arising from transactions subject to avoidance/cancellation.]

## Option 2

(a) In any insolvency proceedings, a creditor shall be entitled to set-off its claim in the insolvency proceedings against an obligation owed to the debtor, if both the claim and the obligation arose before the opening of the proceedings, or if they result from transactions entered into with the debtor before the opening of the proceedings. [Netherlands, A.53]

(b) Set-offs shall be prohibited if:

- (i) the creditor’s claim against the debtor was acquired after the opening of the insolvency proceedings;

- (ii) the creditor's obligation to the debtor was incurred after the opening of the insolvency proceedings; or
- (iii) the creditor's claim or obligation arose from a transaction which is subject to contest under this or other laws.

(c) A creditor exercising the right of set-off shall notify the administrator in writing of the details of the set-off within seven days of the event of set-off.

[Note: The compatibility of this option with the Civil Code's position on set-off needs to be determined.]

### ***PART C – DETERMINATION OF CLAIMS***

#### ***Article 32. Eligible Claims***

(a) The estate shall be used to satisfy all creditors holding claims against the debtor as of the date of opening of the insolvency proceedings, the remuneration, fees and expenses of the administrator and all claims incurred by the administrator in the course of the proceedings. [Germany, S.38]

(b) Claims that are not mature on the date of opening of the insolvency proceedings shall be deemed to have matured upon the opening of the insolvency proceedings. [Germany, S.41]

(c) Claims that are subject to a condition subsequent shall be treated as unconditional claims as long as the condition has not been satisfied. [Germany, S. 42]

#### ***Article 33. Conversion of Claims***

Non-liquidated claims shall be satisfied at the value estimated in Riels on the date of the opening of the insolvency proceedings. Claims denominated in foreign currency or in some other unit of exchange shall be converted into Riels using the exchange rate prevailing on the date of the opening of the insolvency proceedings.

[Germany, S. 45]

#### ***Article 34. Filing of Proofs of Claims***

(a) All proofs of claims shall be submitted in writing by creditors to the administrator by the determined deadline.

(b) Each proof of claim shall contain the following information:

- (i) the amount of the claim;
- (ii) the details of any asset against which the claim is secured;
- (iii) the details of any set-off effected or to be effected; and
- (iv) copies of documents and other evidence in support of the claim, if any.

***Article 35. Preparation of the Claims List***

(a) The administrator shall prepare a claims list setting out the details of all claims submitted by creditors. The claims list shall be filed with the court no later than [five days] before the date of the opening creditors' meeting. The claims list shall be open for inspection by any person free of charge. [Note on (a): Modeled after Germany's S. 175]

(b) The claims list shall contain the following information:

- (i) a brief description of each claim;
- (ii) in the case of a secured claim, the value of the collateral, as determined under Article 21; and
- (iii) the ranking of each claim under Article 52.

(c) The claims list shall be verified at the opening creditors' meeting in accordance with the provisions of Chapter 6.

***CHAPTER 5  
PLANS OF COMPROMISE***

***PART A – GENERAL MATTERS***

***Article 36. Proposal for a Plan of Compromise***

(a) Any proposed plan of compromise shall be filed with the court no later than [seven days] prior to the date of the relevant creditors' meeting at which it will be considered. A proposed plan of compromise filed with the court shall be open for inspection by the public free of charge.

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

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

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

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

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

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

[Bulgaria, A. 699]

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

***Article 39. Approval by Creditors***

- (a) The plan of compromise shall be submitted for the approval of creditors at the opening creditors' meeting, or at any subsequent creditors' meeting convened for that purpose.
- (b) Only creditors whose claims are included in the verified claims list shall be entitled to vote on a plan of compromise.



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

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

[Note on (c): Is the above classification breakdown appropriate in the context of Cambodia? Would the relevant Cambodian authorities have the capacity to administer such a classification system?]

(d) A plan of compromise shall require the approval of at least two classes of creditors.

(e) A plan of compromise shall be considered approved by a class of creditors if it receives the affirmative votes of creditors holding [not less than two-thirds]/[a majority] in value of all claims in the class. In the event that the plan of compromise envisages the full payment of claims held by creditors in a specific class, such class of creditors shall be deemed to have approved the plan of compromise without voting.

[Note: The above is modeled after Bulgaria's A. 703.]

#### ***Article 40. Approval by the Court***

(a) No later than [seven days] after a plan of compromise has been approved by the creditors as required under Article 39, the administrator shall make a written application to the court for court approval of the plan of compromise.

(b) The court shall issue an order to approve the plan of compromise if the following conditions are satisfied:

- (i) voting was carried out in accordance with the classification requirements of Article 39;

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

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

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

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

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

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

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

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

(a) During the period for the implementation of the plan of compromise, or for a period of two years after the court's approval of the plan of compromise, whichever shorter, every

business document issued by or on behalf of the debtor, being a document on which the debtor's name appears, shall contain a statement to the effect that a plan of compromise is being implemented with respect to the debtor.

(b) Upon the application of the debtor, any creditor or the administrator, the court may, when it approves a plan of compromise or at a later date, and for the purpose of ensuring the implementation of the plan of compromise, order that the administrator continue to supervise, on such terms as the court deems fit, the debtor's actions, or the actions of the debtor's managers or partners, in implementing the plan of compromise. In making an order under this paragraph, the court shall also determine the amount of remuneration for the administrator, which shall be paid by the estate. [Modeled after Bulgaria's A. 707]

***Article 43. Failure to Implement a Plan of Compromise – Resumption of Insolvency Proceedings***

(a) In the event that the plan of compromise is not being implemented, insolvency proceedings shall be resumed by order of the court against the debtor and an administrator shall be re-appointed accordingly.

(b) An application under paragraph (a) for the resumption of insolvency proceedings may be made by the debtor, the supervising administrator under Article 42, paragraph (b), or any creditor.

(c) Resumed insolvency proceedings shall immediately commence with the liquidation of the debtor. [In the liquidation, the transforming effect of the plan of compromise with regard to creditors' claims, rights and security shall remain.]

[Note: Modeled after Bulgaria's A. 709]

***CHAPTER 6  
THE OPENING CREDITORS' MEETING***

***Article 44. Convening of the Opening Creditors' Meeting***

The opening creditors' meeting and all adjournments thereof shall be convened and chaired by [a judge/an official] of the court[, with the assistance of the administrator].

***Article 45. Activities at the Opening Creditors' Meeting***

(a) At the opening creditors' meeting:

- (i) the claims list shall be verified; [Note: (i) is modeled after Germany's S. 29(2)]
- (ii) the creditors shall decide, based on the administrator's report for that meeting, on the continuation of the insolvency proceedings; [Note: (ii) is modeled after Germany's S. 29(1)]
- (iii) the creditors shall vote on any plan of compromise the may have been proposed by the debtor.

(b) At the opening creditors' meeting, the creditors may also decide other matters related to the insolvency proceedings, including whether to alter the extent to which the debtor, its management or partners, as the case may be, shall continue to exercise management and power over the debtor's business and all assets in the estate, or whether to vest such management and power in the administrator exclusively.

#### ***Article 46. Verification of the Claims List***

(a) The administrator, the debtor or any creditor may challenge the inclusion, exclusion, ranking or amount of any claim in the claims list, or the valuation of any asset as determined under Article 21. A claim is deemed admitted for satisfaction in the insolvency proceedings if it is not challenged at the opening creditors' meeting. [Modeled after Germany's S. 176 and S. 178]

(b) The presiding [judge/court official] at the opening creditors' meeting shall decide on the merits of any challenge under paragraph (a) and may adjourn the opening creditors' meeting for no longer than seven days for this purpose. [A decision by the presiding [judge/court official] on such challenge shall be final and shall not be subject to appeal.]

(c) The claims list shall be finalized by the administrator and filed with the court after any changes which may be necessary in light of the court's decision under paragraph (a).

[Note:

- Should challenges on contested claims be dealt with in the channels of general civil procedure?
- Should there be a provision to admit late filings of claims?]

#### ***Article 47. The Administrator's Report at the Meeting***

At the opening creditors' meeting, the administrator shall report on the debtor's business situation and the causes thereof. He shall indicate whether there is a chance to maintain the

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

[Germany, S. 156(1)]

#### ***Article 48. Decision Regarding Continuation of the Proceedings***

Following the consideration of the administrator's report, the creditors shall:

- (a) if a plan of compromise has been proposed by the debtor, vote on such a plan of compromise in accordance with Article 39;
- (b) in the event that no plan of compromise has been proposed by the debtor, or the debtor's proposed plan of compromise has not been approved by creditors in accordance with Article 39, the creditors shall decide to:
  - (i) adjourn the opening creditors' meeting, but by no more than sixty days, in order for the debtor, the administrator or any creditor or creditors[ holding not less than one-fifth of the total value of all claims] to propose a plan of compromise; or
  - (ii) commence the liquidation of the estate.
- (c) If the opening creditors' meeting is adjourned pursuant to paragraph (b)(i), at the reconvened meeting, the creditors shall consider and vote on any plan of compromise that may be proposed. In the event that no plan of compromise is approved by the creditors at the reconvened meeting, the liquidation of the estate shall commence.

### ***CHAPTER 7 COMMENCEMENT OF LIQUIDATION AND THE SATISFACTION OF CLAIMS***

#### ***Article 49. Vesting of Estate in the Administrator***

Upon the commencement of the liquidation of the estate, the management and power over all assets in the estate shall vest in the administrator. [Germany, S.80]

#### ***Article 50. Collection of Unpaid Capital***

The administrator shall collect and include in the estate any amounts remaining unpaid with respect to the issued share capital of a debtor or contributions to the debtor by partners.

***Article 51. Sale of Assets***

- (a) The administrator shall convert all non-cash assets of the estate into cash as soon as possible, in so far as it is required for the satisfaction of creditors' claims in the insolvency proceedings. [Modeled after Bulgaria's A. 716]
- (b) In dealing with the assets of the estate, the administrator may use any commercially reasonable method or methods which is likely to yield the highest cash return to the estate.
- (c) In converting all non-cash assets of the estate, all assets disposed of by the administrator shall be free of any and all encumbrances or liens.

***Article 52. Priority of Distribution***

- (a) The proceeds of the liquidation of the estate shall be used to satisfy claims in the following order:
  - (i) secured claims, including interest accruing after the opening of the insolvency proceedings on the amounts of such claims which are totally covered by the value of the relevant collateral as determined under Article 21, up to [the higher of:]
    - (1) the value of the relevant collateral as determined under Article 21[, or
    - (2) the price at which the relevant collateral is sold];
  - (ii) the administrator's remuneration and fees and other administrative expenses, being costs and claims incurred by the administrator in course of the insolvency proceedings;
  - (iii) wages payable to any employees of the debtor, limited to [Riels 1,200,000 – US\$312] for each employee;
  - (iv) unsecured claims;
  - (v) claims for which proofs of debts were not filed within the deadline established under Article 34;
  - (vi) interest accrued on any claim after the opening of insolvency proceedings, either under a contract between the debtor and the creditor or by operation of law;
  - (vii) any criminal or administrative fees or fines due to the Royal Government of Cambodia;

(viii) [any claim by the government of a foreign country for the recovery of taxes, fines or other public fees;] and

(ix) costs incurred by individual creditors due to their participation in the insolvency proceedings.

(b) With respect to any claim listed under paragraphs (a)(i) or (a)(iii), the amount of such claim which is in excess of the respective limits stated in those paragraphs shall be eligible for satisfaction as an unsecured claim under paragraph (a)(iv) or, in the case of interest which accrued on a claim after the opening of insolvency proceedings, under paragraph (a)(vi).

(c) With respect to any claim for which subordination in the insolvency proceedings has been agreed upon between the creditor and debtor, such a claim shall be satisfied in accordance with the terms of the subordination. [Modeled after Germany's S. 39(2)]

(d) Any proceeds left undistributed after the satisfaction of all claims set out in paragraph (a) shall be returned to the debtor[ or, in the case of a debtor which is a partnership or company, to the partners or shareholders, respectively].

### ***Article 53. Timing of Liquidation and Distribution***

(a) With the exception of assets in the estate which cannot be sold, the administrator shall complete the liquidation of the estate and the distribution of the sale proceeds no later than [six months] after the commencement of liquidation. The court may, upon a written application by the administrator, extend by up to six months the period for the liquidation of the estate and the distribution of the sale proceeds.

(b) Funds may be distributed among the creditors of the insolvency proceedings as soon as sufficient cash is available in the estate.

## **CHAPTER 8 TERMINATION OF INSOLVENCY PROCEEDINGS FOLLOWING LIQUIDATION**

### ***Article 54. Administrator's Report following Liquidation***

The administrator shall submit to the court a written report on his activities. The report shall contain a final account of the distributions made and remaining unsatisfied claims. The report shall be submitted no later than [thirty days] after the depletion of all saleable parts of the estate.

[Bulgaria, A. 733]

***Article 55. Final Creditors' Meeting***

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

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

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

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

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

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

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

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

Upon termination of the insolvency proceedings following liquidation, the offices of the administrator and of the members of the creditors' committee shall cease to exist. The debtor shall recover the right to dispose freely of the estate. [Modeled on Germany's S. 259]

***Article 59. Dissolution of Company Upon the Termination of Insolvency Proceedings***

In the case of a debtor which is a company, the debtor shall be deemed dissolved upon the issuance of the court order terminating the insolvency proceedings, unless the termination of insolvency proceedings resulted from the satisfaction of all claims against the debtor in accordance with Article 52.



**CHAPTER 9**  
**RESUMPTION OF INSOLVENCY PROCEEDINGS WHICH WERE**  
**TERMINATED AFTER LIQUIDATION**

**Article 60. Application for Resumption**

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

[Modeled after Bulgaria's A. 745]

**Article 61. Conditions for Resumption**

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

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

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

[Modeled after Bulgaria's A. 744]

**Article 62. Effect of Resumption**

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

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

**CHAPTER 10**  
**PROVISIONS DEALING WITH THE ADMINISTRATOR AND CREDITORS**

## ***PART A – THE ADMINISTRATOR***

### ***Article 63. Qualifications***

- (a) Only a natural person may be appointed as an administrator.
- (b) An administrator shall not:
  - (i) have been convicted by a court of law of an offence involving fraud or dishonesty;
  - (ii) be the debtor, any creditor or a related person; or
  - (iii) be the spouse of any creditor, or be related to the debtor or any creditor in a way which could give rise to reasonable doubts as to his ability to discharge his duties as administrator impartially.
- (c) The Minister of Commerce may by regulation require:
  - (i) administrators to possess qualifications in addition to those set out in paragraph (b);  
or
  - (ii) that all administrators be licensed by the Ministry of Commerce, subject to such licensing requirements and conditions as the regulation shall determine appropriate.

[Note: This article is modeled substantially on Bulgaria's A.655.]

### ***Article 64. Discharge***

- (a) An administrator shall be discharged from the proceedings by the court in the following cases:
  - (i) the administrator requests in writing to the court that he be discharged;
  - (ii) the administrator ceases to possess the necessary qualifications set out in Article 63;
  - (iii) upon the request of creditors holding not less than two-thirds of the total value of all claims; or
  - (iv) where it is proven that the administrator has failed to perform his duties or that he is acting in a manner detrimental to the interests of the creditors as a whole.

(b) The court may discharge an administrator at any time, either on its own motion or upon the written application of the debtor, creditor or creditors on any of the grounds specified in paragraph (a).

(c) The court shall appoint a new administrator to replace a discharged administrator.

[Note: This article is based substantively on A.657 of the Bulgarian law]

### ***Article 65. Powers***

(a) In order to facilitate the performance of his duties, an administrator shall have the power to:

- (i) represent the debtor and manage the debtor's business for the purposes of the insolvency proceedings;
- (ii) carry on the business of the debtor, but only to the extent necessary to fulfill the objectives of the insolvency proceedings;
- (iii) receive all assets of the estate;
- (iv) use and deal with the assets of the estate, including by selling any such asset free of encumbrances and liens;
- (v) commence, prosecute, defend, abandon or settle any court proceedings in which the debtor is a party and which relates to the asset of the estate;
- (vi) permit a creditor to sell asset which is the subject of security held by the creditor for a claim, and to apply the proceeds of the sale in satisfaction of the creditor's claim;
- (vii) [in the case of insolvency proceedings opened against a company, to sell any or all of the shares held in that company in furtherance of the objectives of the insolvency proceedings;]
- (viii) apply to the court to examine, under oath before the court, any person on questions pertaining to the debtor's business;
- (ix) terminate, cancel or avoid, in accordance with this and other laws, and including by application to the court, any transaction, contract or agreement to which the debtor is a party;
- (x) convene and organize the meetings of creditors as provided for in this law;
- (xi) prepare and propose a plan of compromise;

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

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

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

[Note:

- This provision is a combination of the existing Article 117 of Cambodia's draft Bankruptcy Act and A.658 of the Bulgarian law.
- Paragraph (a)(xiii) may not be needed.
- Paragraph (b) may be useful because as the law develops and a pool of insolvency practitioners is cultivated, it may be necessary to issue new "codes of conduct" or "professional guidelines" to govern administrators, e.g., perhaps guidelines on separation of accounts, etc.]

***Article 66. Duty of Debtor to Cooperate with Administrator***

The debtor shall cooperate fully with the administrator and shall provide the administrator with all necessary information pertaining to the business of the debtor.

***Article 67. Transactions which Require the Consent of Creditors***

(a) The administrator shall obtain the consent of the creditors at a creditors' meeting if he intends to:

- (i) sell any real property by private treaty;
- (ii) sell or transfer any part of the estate to a related person by any means; or
- (iii) to carry out any transaction that would irreversibly preclude the proposal, approval or implementation of a plan of compromise, unless such transaction is to be carried out after the commencement of the liquidation of the estate.

(b) Any transaction undertaken in violation of paragraph (a) shall be null and void.

***Article 68. Accountability***

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

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

#### ***Article 69. Liability***

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

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

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

#### ***Article 70. Remuneration***

(a) An administrator shall be paid reasonable remuneration and be reimbursed for all reasonable expenses incurred in the performance of his duties. In calculating the rate of such remuneration, the factors to be taken into account shall include the time spent by the administrator in the performance of his duties, the total value of the estate and the scope and complexity of the insolvency proceedings. [Modeled after Germany's S. 63]

(b) The Minister of Commerce may issue regulations governing the rate of remuneration for administrators.

### ***PART B – CREDITORS***

#### ***Article 71. Convening of Other Creditors' Meetings***

(a) A creditors' meeting may be convened by the administrator at any time if he thinks that such a meeting will be beneficial to the administration of the insolvency proceedings.

(b) Any creditor may make a written request to the administrator to convene a creditors' meeting. The written request shall state the proposed matters for discussion at the meeting.

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

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

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

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

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

- (i) the date and time of the meeting;
- (ii) the place where the meeting will be held; and
- (iii) the matters proposed for discussion at the meeting.

(b) All creditors shall be given at least seven days' advance notice of the convening of a creditors' meeting.

(c) Any failure to comply with the requirements of this article shall render null and void any decision taken at the relevant creditors' meeting.

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

#### ***Article 73. Quorum and Voting at Creditors' Meetings***

(a) [The quorum for any creditors' meeting shall be two creditors.]

(b) Save as otherwise provided in this law, at any creditors' meeting, all decisions shall be taken by the affirmative votes of creditors holding a majority of the total value of the claims of creditors present at the meeting.

(c) Only creditors whose claims are not disputed by the administrator or by other creditors shall vote at a creditors' meeting. Creditors with disputed claims shall vote only to the extent permitted by the administrator or the creditors with a right to vote at the meeting. [Where agreement cannot be reached between the parties as to the right of any creditor to vote at the creditors' meeting, the administrator shall make a written application to the court for a decision on the matter, and the creditors' meeting shall be postponed to a date [seven days] after the court's decision on the matter.] [Modeled after Germany's S.77]

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

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

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

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

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

#### ***Article 75. Effect of Decisions Made at a Creditors' Meeting***

Any decision taken at a creditors' meeting shall be binding on all creditors, including creditors absent from the meeting.

[Bulgaria, S. 678]

#### ***Article 76. Creditors' Committee***

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

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

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

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

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

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

***CHAPTER 11  
MISCELLANEOUS PROVISIONS***

***Article 78. [Service of Documents Under this Law]***

(a) [The service of any document on a partnership or company shall be effected by leaving a copy of the document at the registered place of business of such partnership or company.

(b) The service of any document on a natural person who is domiciled in the Kingdom of Cambodia shall be effected by leaving a copy of the document at the person's normal place of residence in the Kingdom of Cambodia.

(c) The service of any document on a legal person formed under the law of a foreign country or a natural person who is domiciled outside of the Kingdom of Cambodia shall be effected [by the publication of a notice of the document in at least one major newspaper in the Kingdom of Cambodia and one major newspaper in the country where the person is formed or domiciled].

(d) The court may, on the application of any interested party, order that the service of any document under this law be effected by a method different from those set out in paragraphs



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

***Article 79. Penalties***

Any person who falsifies any document filed in any insolvency proceedings, or who gives false testimony in any insolvency proceedings, shall be punished upon conviction by imprisonment of up to [one year], or a fine of up to Riels [40,000,000 – US\$10,400], or both.

[Note: This section has been retained from the March 1999 draft law]