

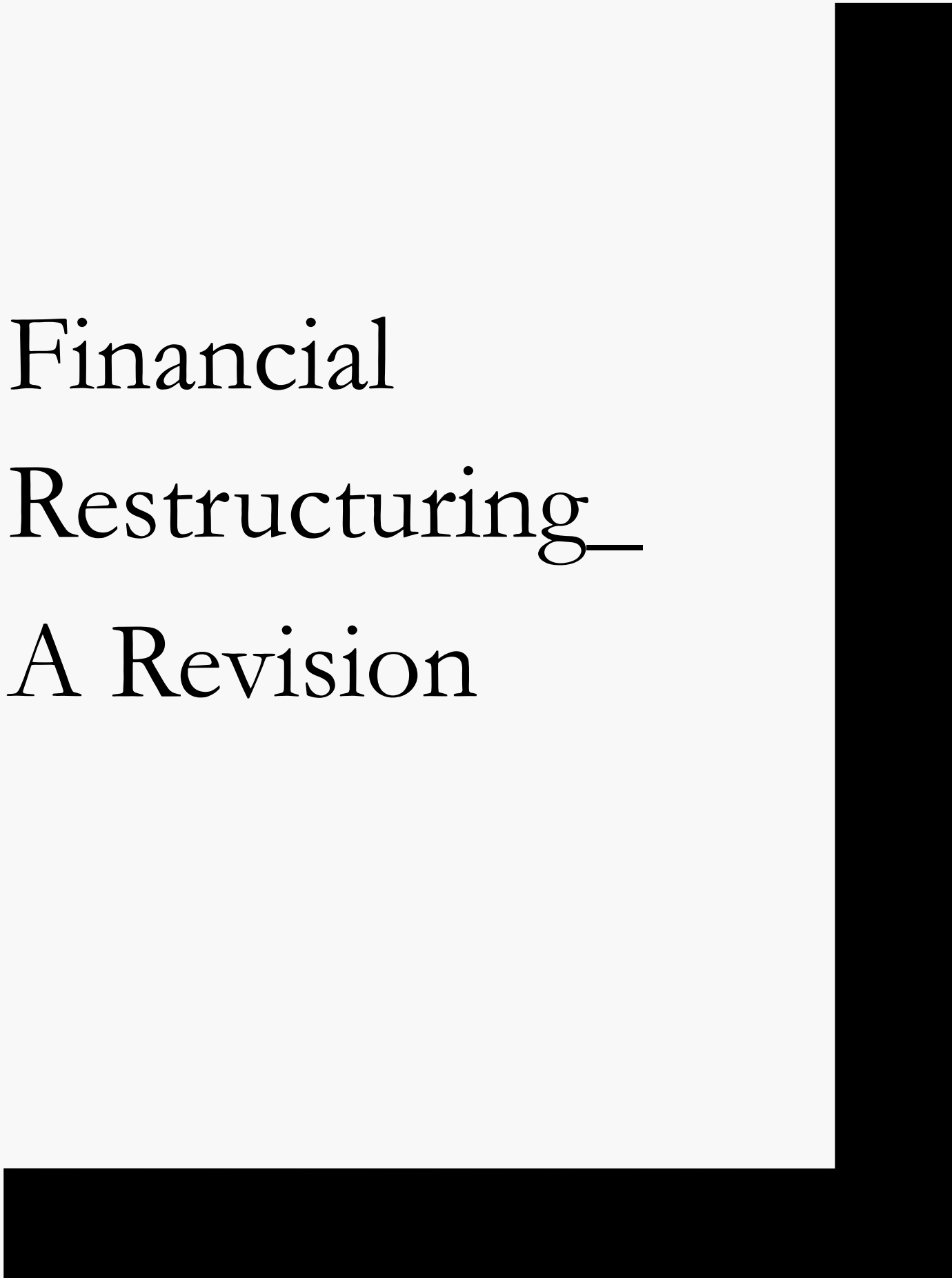


# BANKRUPTCY

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Financial  
Restructuring—  
A Revision



# Definition

- **Financial Restructuring Procedure:** A procedure **under the supervision of the Financial Restructuring Officeholder**, aiming to facilitate reaching an agreement between the Debtor and its Creditors **for the financial restructuring** of the Debtor's activity
- V.
- **Protective Settlement Procedure:** A procedure aiming to facilitate reaching an agreement between the Debtor and its Creditors **to settle its Debts**, where the **Debtor maintains the right to manage its activities**
- ❖ Objective
- ❖ Control



EASY POINTS

# Application

1. By debtor, Creditor, or Competent Authority
2. Debtor is distressed, Bankrupt, or likely to suffer difficulties Financial or Economic leading to distress
3. Have not been subject to procedure within 12 months.
4. Court Hears, and Accepts, Rejects, or adjourn for same reasons as PS.
5. 5/40 hearing.
6. No proposal attached to Application
7. Vote procedure (similar)
8. Debtor May object to application by others:
  - (a) if the conditions for the commencement of the procedure are not applicable;
  - (b) if the Debt is disputed;
  - (c) if the Creditor aims to abuse the procedure.

# Moratorium

- The filing of an application for the commencement of a Financial Restructuring Procedure or the commencement of such Procedure shall result in a Claim Moratorium until such date where the commencement application is rejected, or when the Court ratifies the Proposal or the termination of the procedure is ordered at a prior date.
- Automatic upon Application
- Indefinite until ends of procedures: rejection, termination, ratification of proposal.

# After Application and Moratorium

1. Appointment of a Trustee and its function
2. Contracts
3. Claims
4. Inventory
5. Supervision of the Debtor's Business
6. Proposal
7. Application of the Plan

# SUPERVISION OF THE PROCEDURES



# Supervision

1. Judges

2. Trustees

3. Experts

# Supervision

## ☐ Judges:

- **Article 53:** The Court, at its sole discretion, may appoint one or more judges to supervise the Financial Restructuring Procedure, and shall determine his/their duties.

## ☐ Trustees:

- Appointed in the decision ordering commencement
- **Applicant** may suggest a name.

## ☐ Experts:

- Appointed upon request of Trustee to carry on a specific task or help him.

# Trustee

- **Bankruptcy Officeholder or Officeholder:** Whoever appointed by the Court or an applicant – as the case may be – to perform the tasks and duties entrusted to him in accordance with the type of procedure. This shall include the Financial Restructuring Officeholder and the Liquidation Officeholder.
- **Bankruptcy Officeholders' List:** A list prepared by the Bankruptcy Commission in which the Officeholders meeting the conditions provided for in the Regulations are listed.

# Trustee

1. From a list held by the Commission
2. May be more than one. Chairperson. Joint liability.
3. Dismissed for a legitimate cause by court discretion or upon application
4. May resign only for a legitimate cause, acceptable to Court
5. No conflict of Interest:
  - Should disclose information about relationship with debtors and creditors before appointment
  - None of the following may be appointed as an Officeholder or an expert:
    - (a) the Debtor's Creditor, spouse, son-in-law or relative down to the fourth degree;
    - (b) the Debtor's partner, employee, auditor or agent during the two years preceding the commencement of procedure.

# Duties

- The Officeholder must exercise the necessary duty of care to safeguard the interests of Creditors
- Article 57:
- The Officeholder shall supervise the activity of the Debtor during the Financial Restructuring Procedure period to verify the fairness of the Procedure, and implement the Plan in such way as to ensure speed of performance and provide the necessary protection to the interests of those affected by the procedure in accordance with the provisions of the Law
- + Article 58
- Art 59: Authority to obtain information from anyone and everywhere. But duty to keep them confidential

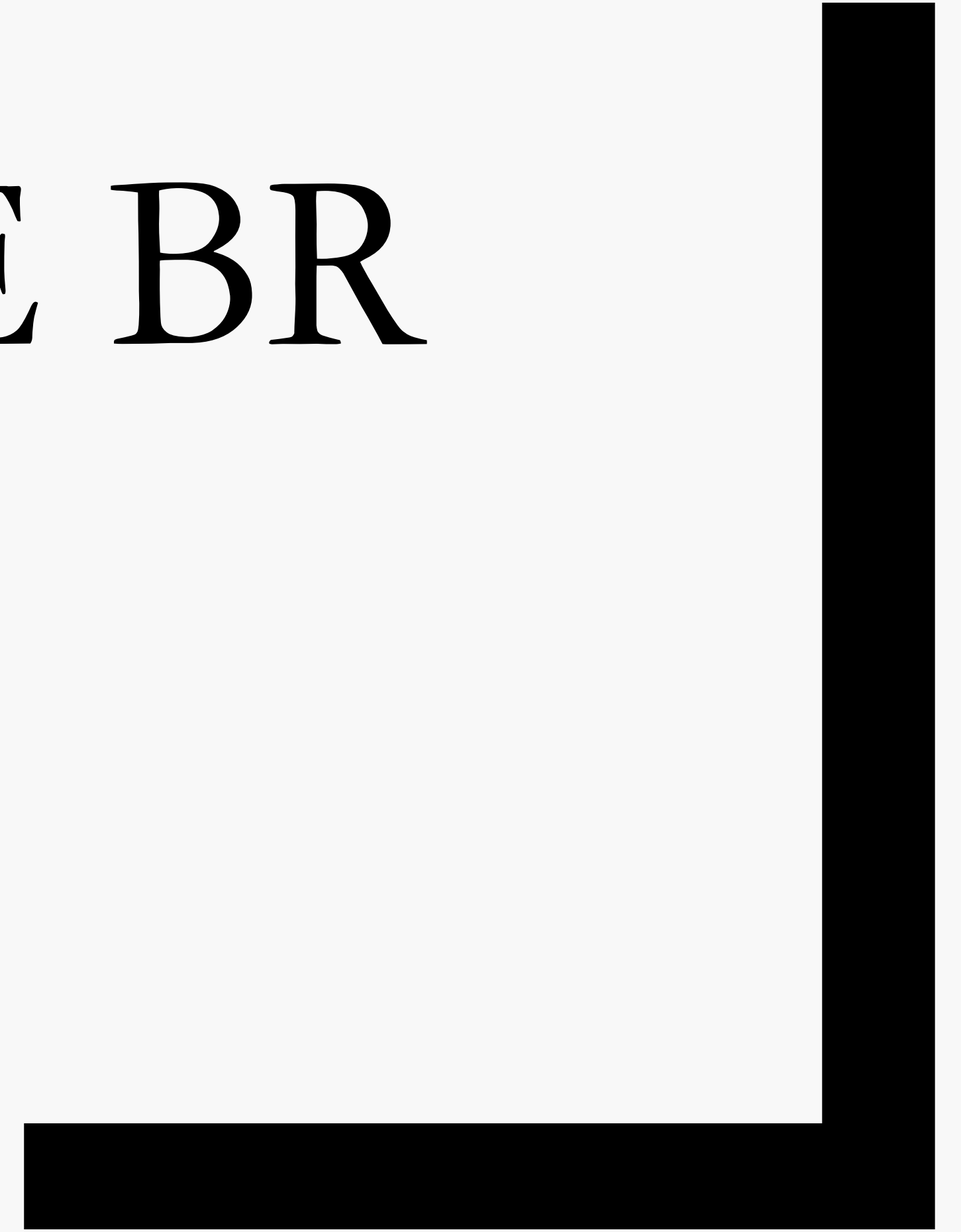
# RESTRUCTURING PROCESS



# The Process

- Moratorium
- Trustee
- Then:
  1. Defining the Bankruptcy Estate
  2. Running the Business
  3. A plan
  4. Vote
  5. Implementation of the Plan

# DEFINING THE BR ESTATE



# Defining the Bankruptcy Estate

1. Contracts

2. Claims

3. Assets

# Contracts

1. Debtor produces a list of all current contracts including
  - A. Copies of the contracts
  - B. Which contracts he would like to continue and which to terminate and why
2. Trustee within 60 days: terminating any contract if:
  - A. Termination necessary to apply the proposal and protection of creditors
  - B. Does not cause the counterpart a great harm
3. Counterpart may object
4. Exceptions, Extensions
5. Do not apply to government contract or finance contracts.

# Claims

- Any Creditor
- whose Debt has been **established prior to the Court judgment ordering the commencement** of the Financial Restructuring Procedure,
- **must submit to the Officeholder - within the period specified in Article (56) of the Law –**
- any due, future or conditionally suspended or potential claims etc. that may have current or future financial value
- . The Creditor must attach to its claim the documents and information provided for in the Regulations, a statement of the value of its claim on the date the Court issued its decision to commence the Procedure, the Debt that is not yet due, the due date thereof and any other document supporting his claim.
- **The Creditor must also determine if his claim is secured and the nature of such security interest.**

# No Claim = No Vote

- Any Creditor whose claim has not been submitted within the period specified under Article (56) of the Law shall be excluded from the voting on the Proposal unless he proves to the Court before the vote takes place that:
  - (a) he filed his claim but such claim did not reach the Officeholder for reasons beyond his control;
  - (b) the Debtor omitted his claim from the list submitted to the Officeholder;
  - (c) the Officeholder omitted his claim from the list submitted to the Court.

# Decision about the Claims

1. **Trustee Prepares a List:** of the Creditors' claims on the basis of the information submitted to him in accordance with the Regulations, and submit such claims to the Court within fourteen (14) days of the expiry of the period specified for the submission of claims for approval
2. **Trustee notifies Creditors** whose claims were rejected or referred to an expert
3. **Creditor may appeal**

# Assets

1. **Trustee prepares a list (inventory):** of Bankruptcy Assets, including details pertaining thereto and any security interests associated therewith, a list of those Bankruptcy Assets in the possession of the Debtor, and those that are subject to third party claims, and other pertinent information. The Officeholder must provide the Court with a copy of such inventory list.
2. **A Debtor who is a natural person shall be entitled to retain** out of the Bankruptcy Assets, **what is reasonably required to provide him and his dependents with the necessary financial support to maintain a reasonable standard of living.** The Court shall determine the sufficient amount based on the Officeholders' recommendation. The Debtor undertakes to assist the Officeholder in the determination of Assets in his possession to evaluate those that may be retained by the Debtor. **Assets retained for this purpose shall not be included in the Proposal**
3. **Any third party whose assets are in the possession of the Debtor or attached by the Debtor** shall provide the Officeholder with any relevant details pertaining thereto, **and may file a request** with the Court to recover those assets supported by relevant title documents. The Officeholder may express its opinion to the Court on this matter.

# Assets (Co-Ownership)

1. The Court may order that **an Asset** be subjected to a Financial Restructuring Procedure,
  - if the **Debtor jointly owns such Asset** with another Person and
  - it is not possible to divide said Asset between them,
  - without prejudice to the rights of the Debtors' Creditors and the Creditors of the co-owner of such Asset.
  
2. The Court may order that another Person be subjected to the procedure
  - such other person is subject to the conditions of commencement of the procedure –
  - Subjecting him to the same procedure **represents an interest to the Debtor and to this such Person,**
  - and if undergoing the procedures by each of them **dependently will be costly and un-feasible** and provided that
  - the rights of the **Debtor's Creditors and to the Creditors of the other Person must protected.**

# After Application and Moratorium

1. **Trustee:** Appointment from list, removal for cause, Experts.
2. **Contracts** list by debtor, termination by Trustee, objections.
3. **Claims** by creditors, otherwise no vote, decision by Trustee, objections.
4. **Inventory:** by trustee, all assets, assets co-owned by decision of court, excludes assets owned by 3<sup>rd</sup> party, or necessary for family living.
5. **Supervision of the Debtor's Business**
6. **Proposal**
7. **Application of the Plan**

# RUNNING THE BUSINESS



# Management but Supervision

- Art 69: Without prejudice to the Officeholder's powers and duties, the Debtor shall continue to manage its business and activities during the period of the Financial Restructuring Procedure under the Officeholder's supervision.
- Art 58 : the Officeholder shall have the following duties and powers: (a) verify the soundness of the Debtor's management of its activities and to monitor Debtor's financial operations;

# Supervision of What?

- Art 70: Debtor must obtain written approval from the Officeholder when carrying out any of the following actions:
- List of 15 actions that need approval:
  - (a) preparing the Proposal and implementing its procedures, including inviting Creditors to vote thereon;
  - (b) requesting funding;
  - (c) repayment of due or outstanding Debts;
  - (d) signing a new insurance contract entailing new obligations upon him;
  - (e) evicting any of the leased Bankruptcy Assets and signing any lease contract necessary or beneficial for its business;
  - (f) concluding any agreement or settlement with one or more Creditors;

- (g) providing or renewing **any security interest in favor of third parties;**
- (h) changing any of Debtor's registered premises or office;
- (i) **voting on a Proposal of any debtor of the Debtor under any of the Bankruptcy Procedures entailing waiving any of the Debtor's rights;**
- (j) concluding a contract for the provision **of legal, accounting or other consultancy services to assist him in the financial restructuring** of its activities;
- (k) **filing lawsuits or litigating in any proceeding** before judicial, quasi-judicial and arbitration bodies;
- (l) **appointing an agent to act on its behalf, except if such appointment falls within the scope of ordinary course of business;**

- (m) establishing a subsidiary or purchasing shares or interests in another company;
- (n) transferring ownership of all or some of his businesses or assets outside the normal course of business;
- (o) requesting the termination of the procedure under paragraph (a) or (f) of Article (87) of the Law;
- (p) any other actions as stipulated in the Regulations.

# Prohibition:

- Article 71:
- If the Debtor disposes of any of the Bankruptcy Assets beyond the **scope of its ordinary course of business** in violation of the provisions of paragraph (1/n) of Article (70) hereof, then the Court may decide – based upon a request from an interested person – to annul his action, recover the Assets or take any other actions it may deem appropriate, without prejudice to the rights of third parties (acting in good faith). The person suffering from any harm may file a claim for compensation.

# Removal of Debtor : When ?

■ If during the procedure,

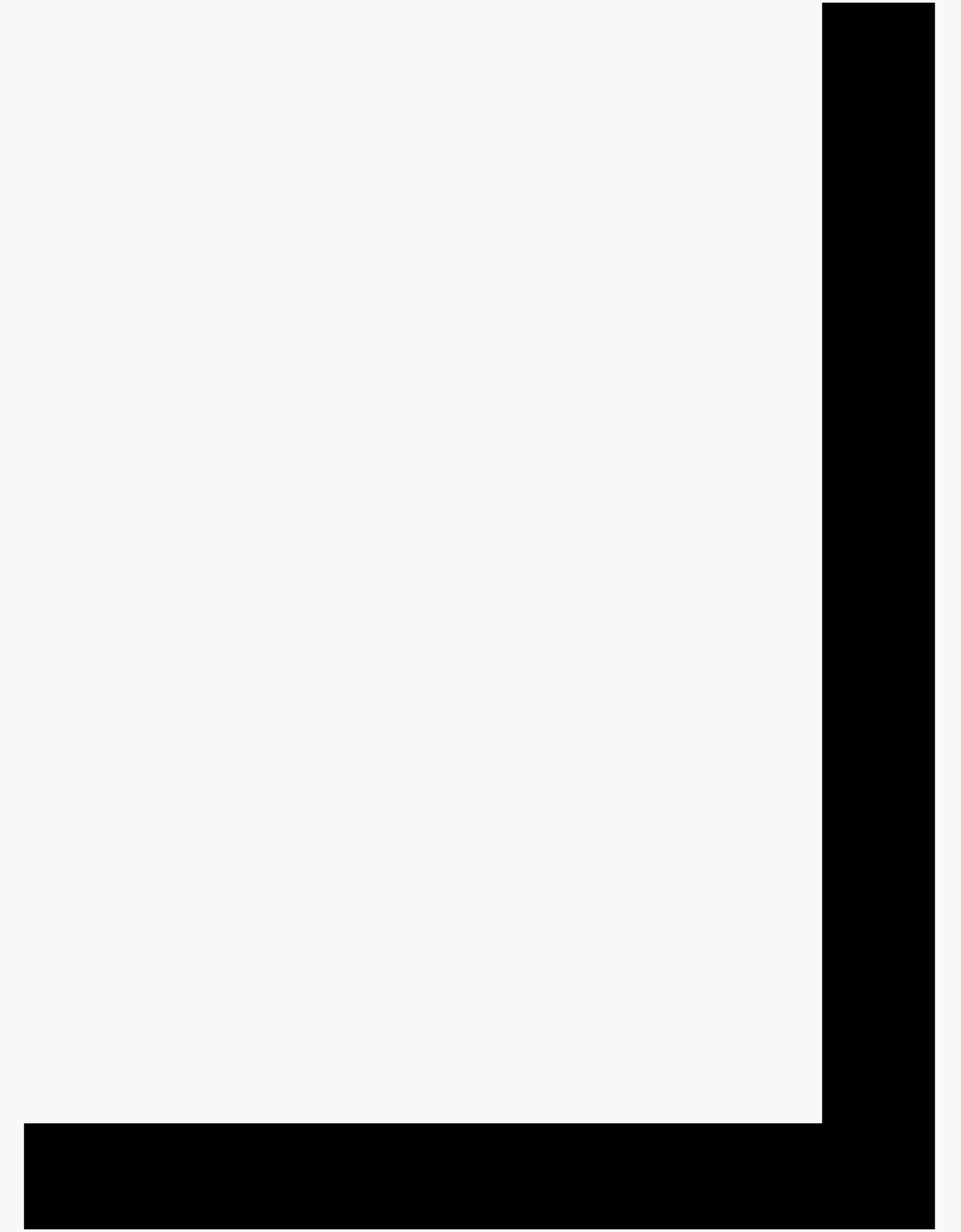
1. the Debtor or any of its officers **commits any act of negligence**, mismanagement, lack of cooperation with the Officeholder, or any of the offenses provided for herein
2. **the Debtor decides** not to continue to manage its activities during the course of the procedure for any reason whatsoever based on a signed application to that effect

Officeholder may request the Court to remove the Debtor from the management provided that the Officeholder expresses his opinion and the Creditor's committee (if any) **about the continuation** of the procedure.

# Removal then What?

- Accordingly, the Court may decide to:
- (a) **assign the Officeholder** instead of the Debtor to manage the activities and transfer of all the Debtor's powers and responsibilities to the Officeholder during the validity of the procedure. The Officeholder may seek assistance from whomever it deems appropriate to assist in the management of the Debtor's business;
- (b) **appoint another person to replace the Debtor** in managing the activities if the volume or type of the activity so requires, and the transfer of all Debtor's powers and responsibilities during the period of the procedure, provided that the designated person fulfils the Debtor's obligations towards the Officeholder. If the appointee is a corporate person, it shall appoint a natural person as its representative;
- (c) **terminate the procedure and commence the Debtor's Liquidation** Procedure if it deems it necessary;
- (d) make any other decision as stipulated in the Regulations.

PROPOSAL



# Creditors Committee

- **Article 73:**

- **A Creditors' Committee shall be formed** in the circumstances to be specified under the Regulations, which shall specify such committee's functions, duties and work procedures.

- **Article 74:**

- If there are numerous Creditors with Debts or rights of different nature, then the **Debtor must classify** them into categories as stipulated in the Regulations.

# Proposal

- 1. **Debtor prepares Proposal, with assistance of the Officeholder,**
- 2. Includes description of the Debtor's financial position, the effects of the economic situation on said position, and the information and documents specified in the Regulations.
- 3. **Officeholder prepare a report about : the chances of approving the Proposal by the Creditors and the enforceability thereof.**
- Vote.

# Vote

- 1. **Only Creditor whose rights will be affected by such Proposal and who has a claim included in the list of admissible claims approved by the Court.**
- 2. Owners only if Proposal will affect their statutory or contractual rights.
- **Notification of voting date (21) days prior to such date.** The notification must be accompanied by a copy of the Proposal or access details to the Proposal through any electronic means as specified by the Regulations. The Debtor must publish the date scheduled for voting on the Proposal through the methods prescribed by the Regulations.
- **If Owners' rights are affected by any part of the Proposal, then the Debtor shall, after obtaining Officeholder approval,** notify the affected Owners of the date scheduled for voting, at least twenty-one (21) days prior to such date.

# Ratification

- The Court shall, at the request of the Officeholder, ratify the Proposal meeting the standards of fairness in the following cases:
- (a) if all classes of the Creditors and the Owners approve the Proposal;
- (b) if at least one class of Creditors approves the Proposal, and the Proposal is approved by the Creditors whose claims represent at least fifty percent of the total value of the claims of the Creditors voting in all classes, and if the Court considers that the ratification of the Proposal realizes the interests of the majority of Creditors.
- 4. The Creditors shall have the right to object on the Proposal before the Court at the ratification hearing on the grounds that the Proposal violates the standards of fairness and the Creditor votes against the Proposal and believes – for reasonable grounds- that the Proposal will prejudice him.

# After ratification

- Implementation of the plan
- Trustee oversees the implementation
- Trustee resorts to court whenever necessary
- Some actions require always approval by the trustee
- Termination

# Termination

- (a) Debtor request: **conditions for the commencement** of the procedure are no longer applicable,
- (b) Officeholder request: conclusion of **the implementation of the Plan**
- (c) Officeholder request: quorum required for voting not met, or if **vote does not take place**
- (d) if the **Court refuses to ratify the Proposal;**
- (e) Officeholder or the Creditor request: **Plan is not capable of being implemented;**
- (f) Officeholder request: signed by the Debtor: **Debtor does not intend to maintain its activities or implement the Plan,**
- (g) interested party application: **occurrence of material offenses** during the procedure or due to the Debtor committing any of the violations set out herein during the procedure period

QUESTIONS?



THANK YOU!

