



BANKRUPTCY

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GENERAL PRINCIPLES: DO NOT MEMORIZE,
BUT USE TO REVIEW THE DIFFERENT
PROCEDURES: TRY TO IDENTIFY THEM IN
EVERY TYPE OF PROCEDURE YOU SEE.

Important Milestones

1. Application:
 1. By whom?
 2. Conditions of Debtor?
2. Court Decision
 1. Three decisions: reasons
3. Moratorium?
 1. Start and end
 2. Effect
4. Trustee?
 1. Qualifications
 2. Yes?
 1. Function: differs between FR, and LQ
5. Claims?
 1. What claims
 2. Who decides
6. Contracts?
 1. What happens
 2. Who decides
7. Running the Business
 1. Yes or no
 2. Who runs it?
8. Proposal
 1. When?
 2. Who?
9. Voting
 1. Who
 2. When
 3. Conditions
10. Performance of Plan?
11. Liquidation ?
12. Termination ?

Investopedia Definition:

- Legal proceeding
- A person or business
- Unable to repay outstanding debts
- Begins with a petition filed by the debtor, or on behalf of creditors
- Debtor's assets are measured and evaluated,
- Assets may be used to repay a portion of outstanding debt.

7 Elements of Bankruptcy

1. A debtor
2. Usually a business, individual or incorporated
3. Creditors
4. Financial difficulty: Actual or Expected inability to pay debts
5. Court Proceedings....a formal process overseen by a judge
6. A petition: Formal request to start the process : by the debtor or creditor
7. Attempt to pay the debts of the creditors

7 Policy Concerns

1. Debtor may attempt to escape payment, or delay it until it is too late
2. Creditor will attempt to get payment before other creditors
3. Race to the bottom: as creditors seek payments, business goes down, and less creditors get paid
4. Preservation of businesses is important for social and economic reasons
5. Allowing some businesses to fail is important for market discipline
6. Individual proceedings may get complicated, overlap, and results in unfairness to some of the creditors
7. Judges are not experts in managing business nor is it their role to do so

7 Objectives of Bankruptcy

1. Start the proceedings as early as possible
2. End the proceedings as quickly as possible
3. Keep the business running as long as possible (preserve the goodwill)
4. Save the business if possible
5. Protect the rights of creditors to the extent possible
6. Preserve fairness between creditors
7. Achieve consent by all creditors to the extent possible

7 Pillars of Bankruptcy

1. Proceeding starts with a Petition (preferably the debtor)
2. Individual claims stop
3. Creditors accounted for, grouped and property represented
4. Priority to reorganizing the business or rescheduling the debts
5. Formal negotiations and plans prepared and approved by creditors
6. Judge presides and oversee the process
7. Formal liquidation if all other solutions fail

7 Steps in the SA Bankruptcy law

1. Preventive settlement (Protective)
2. Financial reorganization
3. Liquidation
4. Preventive settlement for small debtors
5. Financial reorganization for small debtors
6. Liquidation for small debtors
7. Administrative liquidation

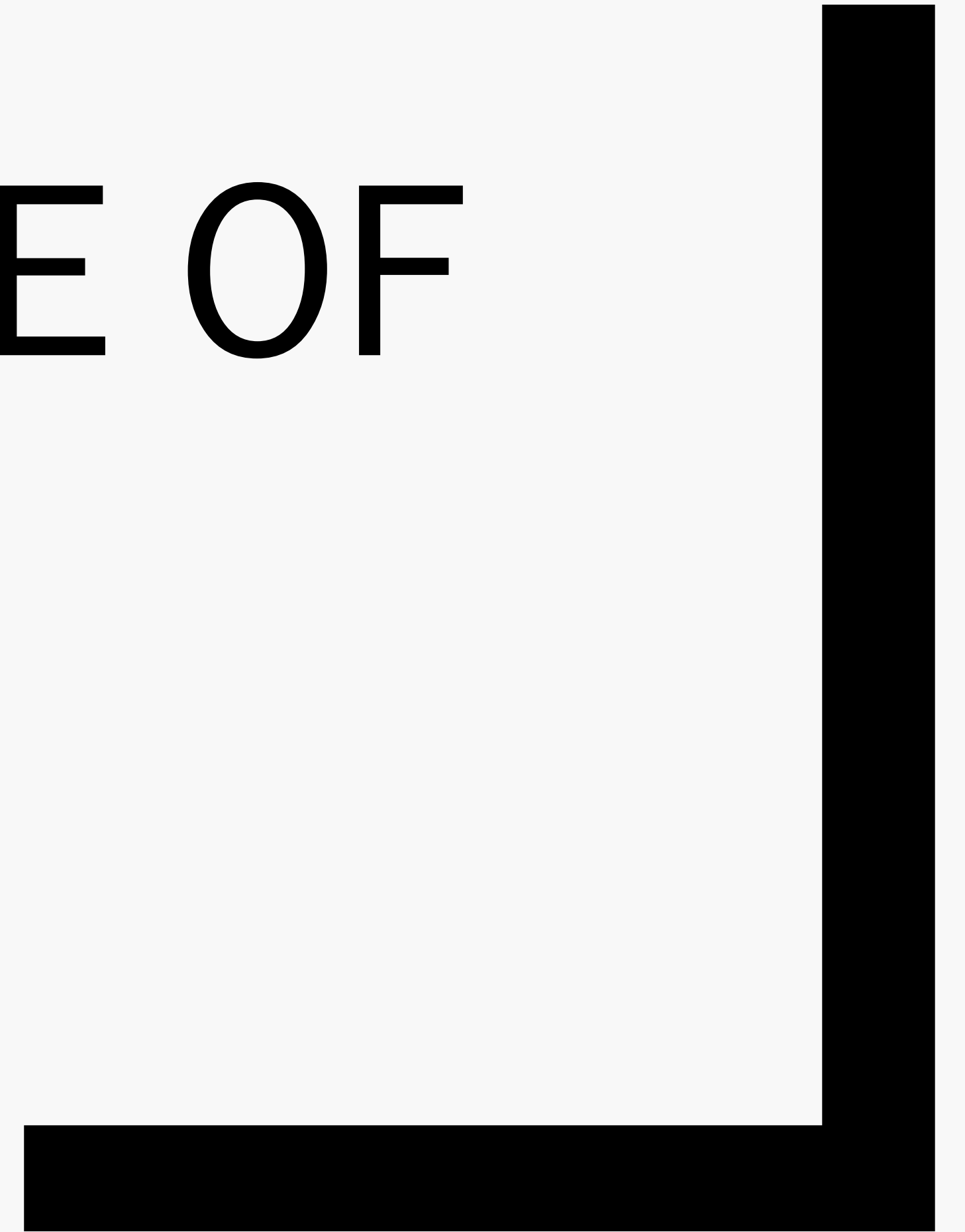
7 Important Entities Involved

1. The Debtor
2. The Creditor
3. The Bankruptcy Court (Commercial Court)
4. The Bankruptcy Commission
5. The Bankruptcy Trustee (Officeholder!)
6. The Bankruptcy Experts
7. The Regulatory Body (of a regulated debtor)

GENERAL PROVISIONS



PERSONAL SCOPE OF APPLICATION



Article 4 a: Natural Persons

(a) a natural Person practicing

(a) a Commercial Activity or (Merchant)

(b) a Professional Activity (A Professional)

(c) or any activity (!!)

with an aim to generate profits in the Kingdom;

Art. 1

- **Commercial Activities:** Commercial activities as provided for under any relevant laws.
- **Professional Activity:** Activities professionally practiced by a Person, for its own account, pursuant to its expertise, qualifications, talents or skills, without the entry into any employment agreement with the beneficiary which subject him to the beneficiary's subordination, supervision or responsibility

Art 3: Regulated Entities

(a) banking companies, financing companies, insurance companies and exchange houses;

(b) persons licensed to trade in securities;

(c) the Capital Market and the settlement, clearing and deposit companies;

(d) credit rating companies;

(e) credit information and record companies;

(f) telecommunications, water, electricity and gas companies;

(g) companies operating in the exploration of energy and mineral resources;

(h) companies operating the main activities in airports, railways, ports and the like, as specified in the Regulations;

(i) special purpose facilities;

(j) any other Person specified in the Regulations.

Art 5

- 2. Any application for the initiation of a Bankruptcy Procedure or a Judicial Depository in relation to a Regulated Entity **shall not be accepted without the issuance of a favorable decision by the Competent Authority.**
- 3. The Competent Authority shall – after the submission of a complete application - issue a decision approving or rejecting the application, within a period not exceeding thirty (30) days, and approval shall be deemed to have been granted by the Competent Authority if the latter failed to decide within the prescribed timeframe.
- 4. The Court shall have jurisdiction to hear proceedings arising from the Competent Authority's decision under paragraph (3) of this Article.

The Court

- **Art. 1: Court: The Commercial Court.**
- **Art 6: The Court shall issue the necessary judgements and decisions to implement the procedures provided for under this Law, oversee the implementation thereof, hear all disputes arising therefrom and impose the penalties and sanctions provided for under the Law.**

The Court

- Commercial Court
- We have seen though how the court may appoint several judges to administer the process
- Geographic jurisdiction based on the Cod of Civil Procedures
- Although the court plays a supervisory, it has power to call for witnesses, information, experts, and can end a procedures and start a different one as it sees fit.

Finance

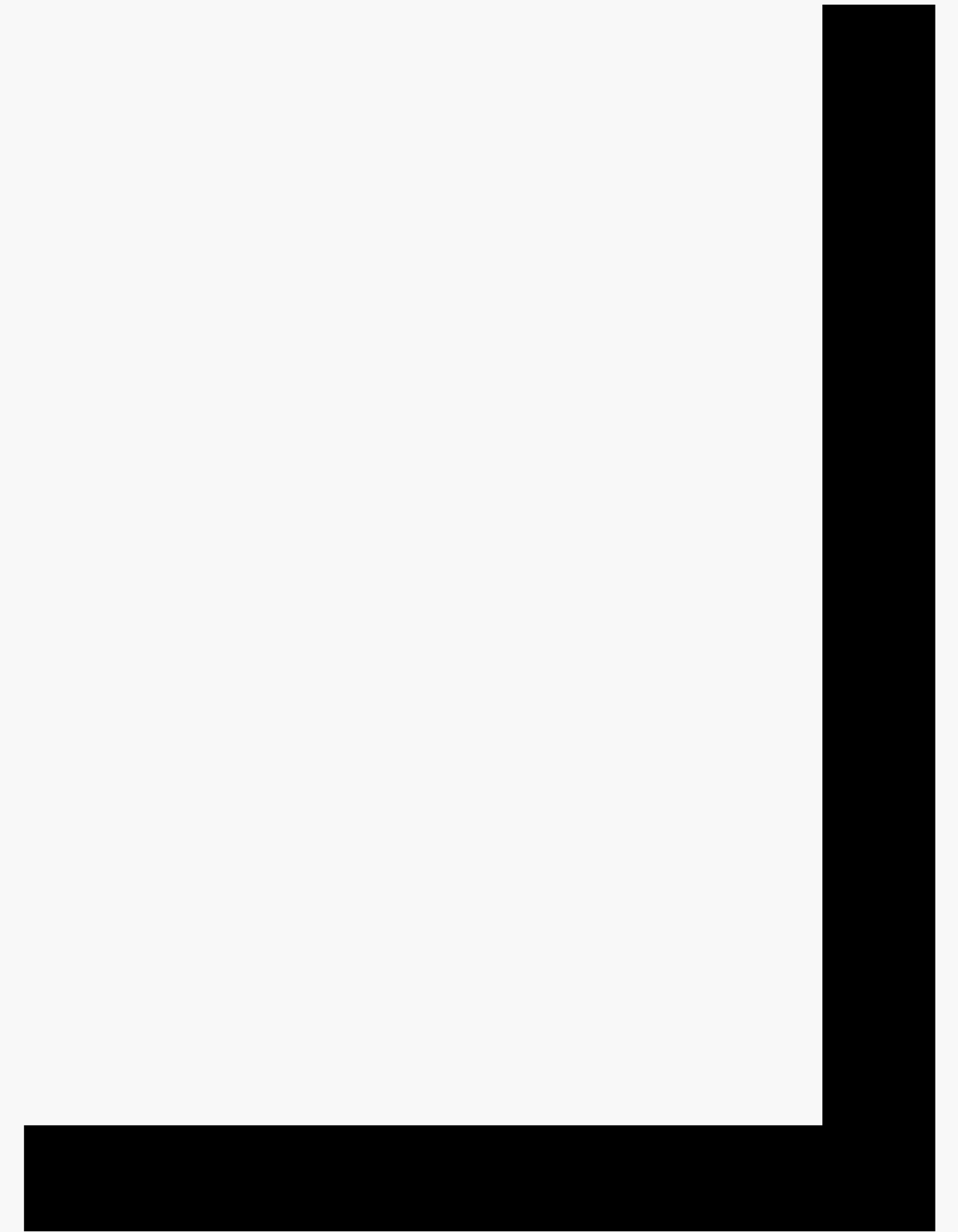
- Chapter 10 of the law talks about the debtor obtaining financing (basically borrowing more money):
 - *What do you expect the rules to be?*
- 1. Secured Finance: only after court approval
- 2. Non secured finance: NO court Approval in PS, and FR
- 3. Non secured finance: only after court approval in Liquidation
- 4. In Administrative Liquidation: no new financing

New Financing

	Secured Finance	Non Secured Finance
Protective Settlement	Only After Court Order	No Court Order Required
Financial Restructuring		
Liquidation		Only After Court Order
Administrative Liquidation		



RETROACTIVE ANNULMENT



- Any interested party shall have the right to object before the Court against any of the following actions taken by the Debtor:
 - during the twelve (12) months preceding the commencement of the procedure with a non-Related Party,
 - or during the twenty-four (24) months preceding the commencement of the Procedure with a Related Party:
- (a) assigning any of its Assets, rights or security interests provided, wholly or partially;
- (b) executing transactions without consideration or for a consideration that is below its fair value;
- (c) executing transactions involving the settlement of Debts prior to their maturity dates or the unfair settlement of the Debts;
- (d) providing security for Debts prior to them being recorded as liabilities;
- (e) discharging its Debtor wholly or partially from its due debt.
- 2. Any objection under paragraph (1) of this Article shall not be accepted after the lapse of twenty-four (24) months from the date of commencement of the procedure.

- The Court shall rule on the objection referred to in Article (210) of the Law, **by nullifying the Debtor's disposal of Assets or otherwise and its consequences**, unless:
 - such disposal was in the interest of the Debtor
 - who was not Distressed or Bankrupt at the time of making such disposal.

Along with the annulment of the act of disposal, the Court may order any of the following measures:

- (a) recovery of Assets and the revenues generated from such Assets, if any, or the payment of a fair value therefor if not capable of recovery;
- (b) reconstitute the security interests provided by the Debtor;
- (c) oblige any Person who received funds from the Debtor to reconstitute such funds to the Bankruptcy Officeholder;
- (d) oblige the guarantor who was wholly or partially discharged to resubmit its security or to submit a new security with a value and ranking not less than the previous security in the event where such security cannot be reinstated.

Final Chapters

- Process for Objecting to Trustee's or Court orders
- Deceased Debtor

**PREVENTIVE
SETTLEMENT**

Definition

- 1) A procedure aiming to:
- 2) facilitate reaching
- 3) an agreement between the Debtor and its
Creditors
- 4) to settle its Debts,
- 5) where the Debtor maintains the right to
manage its activities.

Protective Settlement

1. Application by debtor: with a Proposal
2. Consideration by Court
3. If Yes: A Plan for a Vote
4. Possible Moratorium
5. Vote
6. If Yes: Settlement
7. If no: Another procedure ?

1- APPLICATION BY THE DEBTOR

Who Files and When ?

- Notice: if regulated needs permission from regulator
- the Debtor files
- Conditions for Filing:
 - 1: His financial status: he is either one of the those
 - a) if he is more likely to suffer financial difficulties leading to Distress;
 - (b) if Distressed;
 - (c) if Bankrupt.
 - 2: Debtor may not file he has already been subject to such procedure during the (12) months before the date of application

Application must include a Proposal

- **The Proposal** must include background information on:
 - the financial position of the Debtor,
 - the effects of the economic situation thereon
 - and classification of Creditors into categories in accordance with the **provisions of Article (29) hereof.**

40/5

- Within 5 days decide on hearing date. Hearing Date within 5 days.
- The Court shall decide on any of the following:
 1. Commencement
 2. Rejection
 3. Adjourn

Commence Procedures if:

- (i) the Debtor's activities are likely to continue, and the Creditors' claims will be settled within a reasonable timeframe;
- (ii) the Debtor is Distressed, Bankrupt or is likely to suffer financial difficulties leading to Distress;
- (iii) the Debtor submits the information and documents referred to in Article (14) hereof;
- (iv) the Debtor has classified with due care the Creditors into categories, in a fair manner.

Reject Application if

- **(b) Rejection** of the application in the following cases, if:
 - (i) the application does not satisfy legal requirements or is incomplete without legal justification;
 - (ii) the applicant acted in bad faith or commits any of the offenses provided for under the Law.
- **If the application is rejected, the Court may order the commencement of another suitable Bankruptcy Procedure.**

Adjourn and request amendments

- **(c) Adjourn the hearing for a period not to exceed twenty-one (21) days for any of the following reasons:**
 - (i) the submission of any additional information or documents requested by the Court from the Debtor;
 - (ii) the Court requesting the Debtor to amend Creditor classifications as stated in the Proposal to ensure that such classification is fair.
- **The Debtor shall** provide the Court with the relevant information or documentation or evidence of the amendment of Creditors classification on the date set by the Court, prior to the date of the adjourned hearing, and **the Court should either order the commencement of the Procedure or reject the application in accordance with the provisions of this Article.**

Evidence...Process

- The Court may: **summon to attend its hearing any Person holding information or documents relevant to the application request**

Art 16: Commencement = Voting Date

- 1. In the judgment ordering the commencement of the Protective Settlement Procedure, the **Court shall determine the date on which the Creditors shall vote on the Proposal**
- Must be within (40) days from the commencement date and can be extended for another (40) days.

Who Votes ?

1. Creditors
2. Owners of a share in the Debtor's capital
3. ONLY if they will be affected by the proposal
4. In this case Owners vote first

Creditors

- Must be classified into groups representing similar types of claims
- Disputed claims must be examined by an expert to decide the value of the debt to be included

Article 31:

- 1. Creditors shall vote on the Proposal in accordance with the Procedures set forth therein and **after the Owners (if any) have voted to accept** the same in accordance with Article (28) hereof

. If no vote

- 5. If the vote of the Creditors on the Proposal did not take place at the time scheduled by the Court, then the Court shall, at its discretion, **decide as it deems appropriate to postpone the voting to a later date or terminate the Procedure.**

- 2. The Proposal shall be deemed approved if:
- approved by **each class of Creditors.**
- A class of Creditors shall be deemed to have approved the Proposal, if it was approved by Creditors **whose claims represent two-thirds of the value of Debts owed to voters in the same class and**
- **such voting class included Creditors whose claims represent more than half of the non-Related Party's Debts (if any). (??)**

- **Article 32:**

- If the Creditors accept the Proposal, then the Debtor must request that the Court ratifies it and, prior to submitting its application, must inform the Creditors accordingly. **The Court shall set a date for the ratification hearing.**

- **Article 33:**

- The commencement of a Protective Settlement Procedure and the ratification of the Proposal shall not relieve the Debtor of any of the obligations relating to its activity under any other regulations.

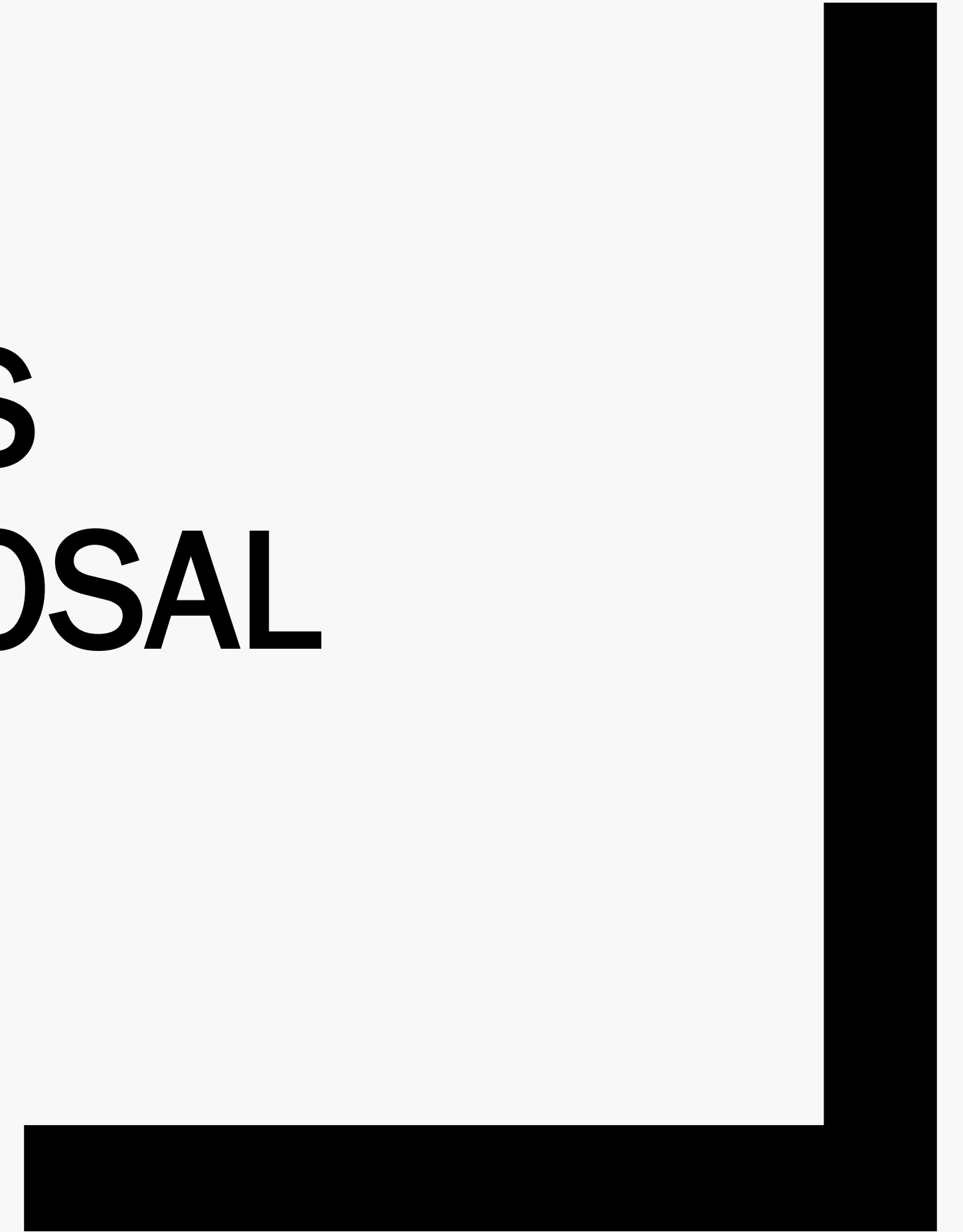
Ratification of the Proposal art 34

- 1. The Court shall ratify the Proposal after verifying that it has been accepted by the Creditors and **is in compliance the standards of fairness.**
- 2. **The Creditor shall have** the right to object to the Proposal before the Court at the ratification hearing on the grounds of **breach of the standards of fairness** if such Creditor has **voted against such Proposal** and **reasonably believes** that the Proposal is prejudicial to its position.

Fairness art 35

- The Proposal shall be in compliance with the standards of fairness if the following conditions are met:
 1. (a) the Creditors' voting **procedures** have been complied with;
 2. (b) the Creditors have received **sufficient information** to study the Proposal and the alternatives available to the Debtor compared to the items contained in the Proposal;
 3. (c) **observing the existing rights** of Creditors, especially in respect of sharing the losses and the distribution of new rights, benefits and security interest.

6- EFFECTS OF THE COURT'S RATIFICATION OF THE PROPOSAL



Binding on parties

- Article 37:
- **The Plan shall be binding upon the Debtor, the Creditors and the Owners, and the Debtor must complete the procedures provided for by the relevant regulations.**

Termination of the Procedures

Regular causes for Termination

- (a) if the Debtor's submits a termination application to the Court following the **completion of the Plan implementation**;
- (b) **if the required voting quorum is not met by the Owners or Creditors** on the Proposal, or if it was not possible for the Owners or Creditors to vote on the Proposal at the specified time, without prejudice to Article (31) (5) hereof;
- (c) **if the Court refuses to ratify the Proposal**;

Applications for Termination

- (d) if the Debtor's submits a termination application if the conditions for commencement of the procedure do no longer apply to the Debtor;
- (e) if the Debtor or the Creditor submits a request to terminate the procedure due a failure to implement the Plan;
- (f) if the Debtor submits an application to terminate the procedure due to its intent not to continue its activities or to continue the implementation of the Plan;
- (g) if a party having interest submits an application requesting the termination of the procedure due to material breaches during the procedure or due to the Debtor committing any of the offences prohibited under the Law.

Process

- **Article 40:**
- The Debtor shall file the judgement ordering the termination of the procedure with the Bankruptcy Register within no later than five (5) days.
- **Article 41:**
- The Court shall, at its discretion or at the request of the Debtor or any of the Creditors, order the commencement of another appropriate Bankruptcy Procedure if the following conditions are met:
 - (a) the Debtor is Distressed or Bankrupt;
 - (b) the conditions required for the commencement of the appropriate Bankruptcy Procedure are met;
 - (c) the termination of the Protective Settlement Procedure must be based on paragraph (b), paragraph (c), paragraph (e), paragraph (f) or paragraph (g) of Article (39) of the Law.

7- MORATORIUM

Moratorium: The suspension of the right to take or continue any procedure or action or file a claim against the Debtor, its Assets or against the guarantor of the Debtor's Debts during a specific period under the provisions of the Law.

The purpose of the Moratorium

1. Make sure all creditors are represented
2. Make sure the financial situation of the debtor remains the same for the period of deliberation
3. Make sure all processes are before ONE court

Debtor MAY Request Article 17:

1. Upon applying for the commencement of a Protective Settlement Procedure, **the Debtor may request the Court to order a Moratorium,**
2. provided that **the Debtor request must be accompanied with a report signed by an Officeholder أمين إفلاس**, registered in the Officeholder's List stating that,
 - in his opinion, **the Protective Settlement Proposal**
 1. will likely be approved by the majority of the Creditors and
 2. is capable of being implemented.

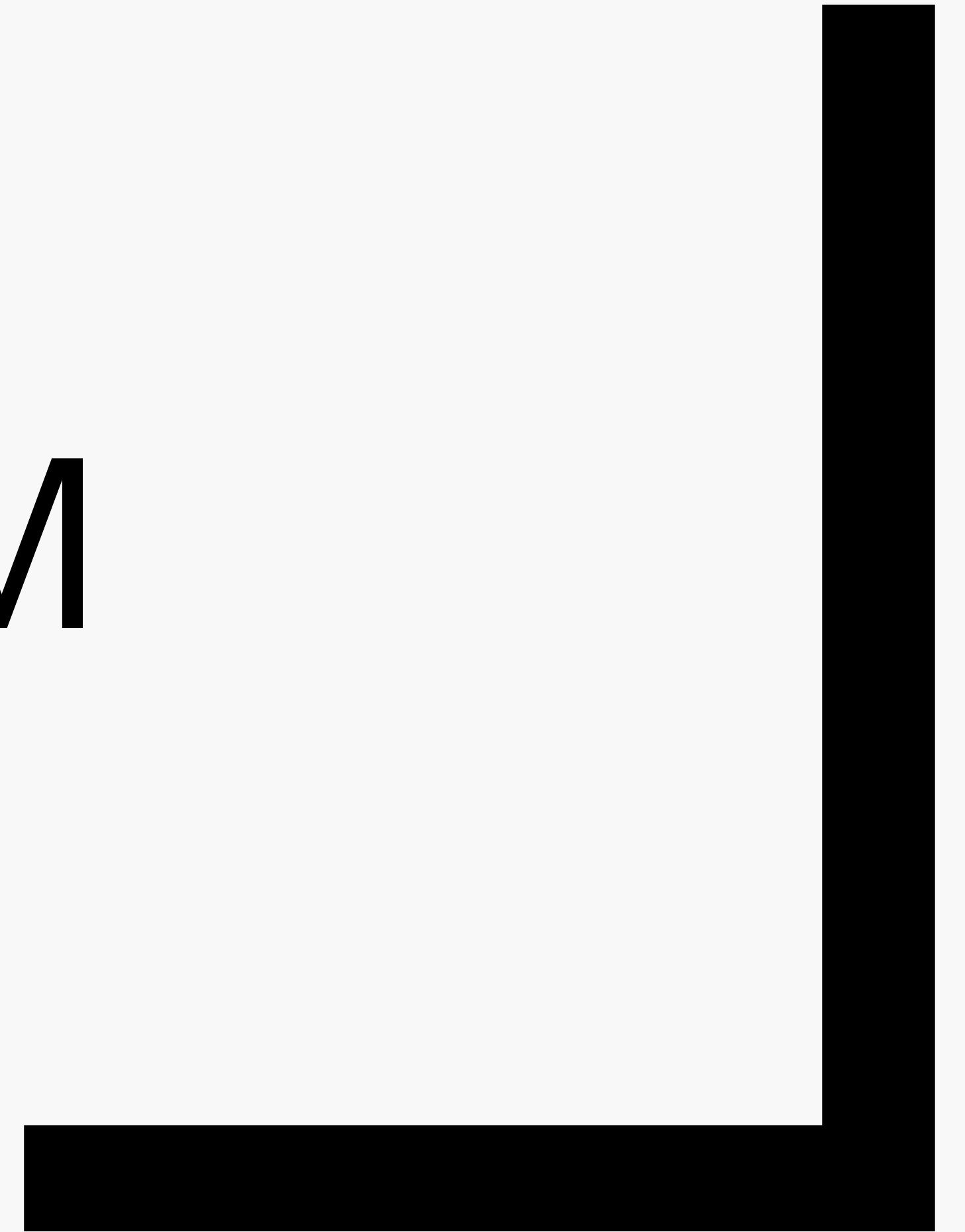
Duration of Moratorium Article 18:

- 1. Moratorium for a period **not exceeding ninety (90)** days at the request of the Debtor from the date of ordering the commencement of the procedure and may extend but should not exceed one hundred and eighty **(180) days**.

- **2. A Moratorium shall expire:**
 - 1. upon the lapse of the period specified in paragraph (1) of this Article or
 - 2. at an earlier date by the Court's ratification of the Proposal or termination of the Procedure.

EFFECTS OF MRT'M

1- Effect on Claims



1- Effect of M on Claims

1. Suspension

2. But, Exceptions!

Moratorium

Prohibited Actions

1. Claims : دعاوى
2. Enforcement: تنفيذ
3. Guarantors: كفلاء
4. They are null and void
5. Court may recover the assets

Exceptions

1. No effect: on business or on consent to proposal
2. Effect but outweighed by
 - A. Serious damage to creditor
 - B. Debtor cannot compensate it
3. Recovery of own specific property in possession of debtor
4. Claims taken b/f M, that benefits debtor and majority creditors

EFFECTS OF MORATORIUM (2)

2- Effect on Contracts



Effect of M on K

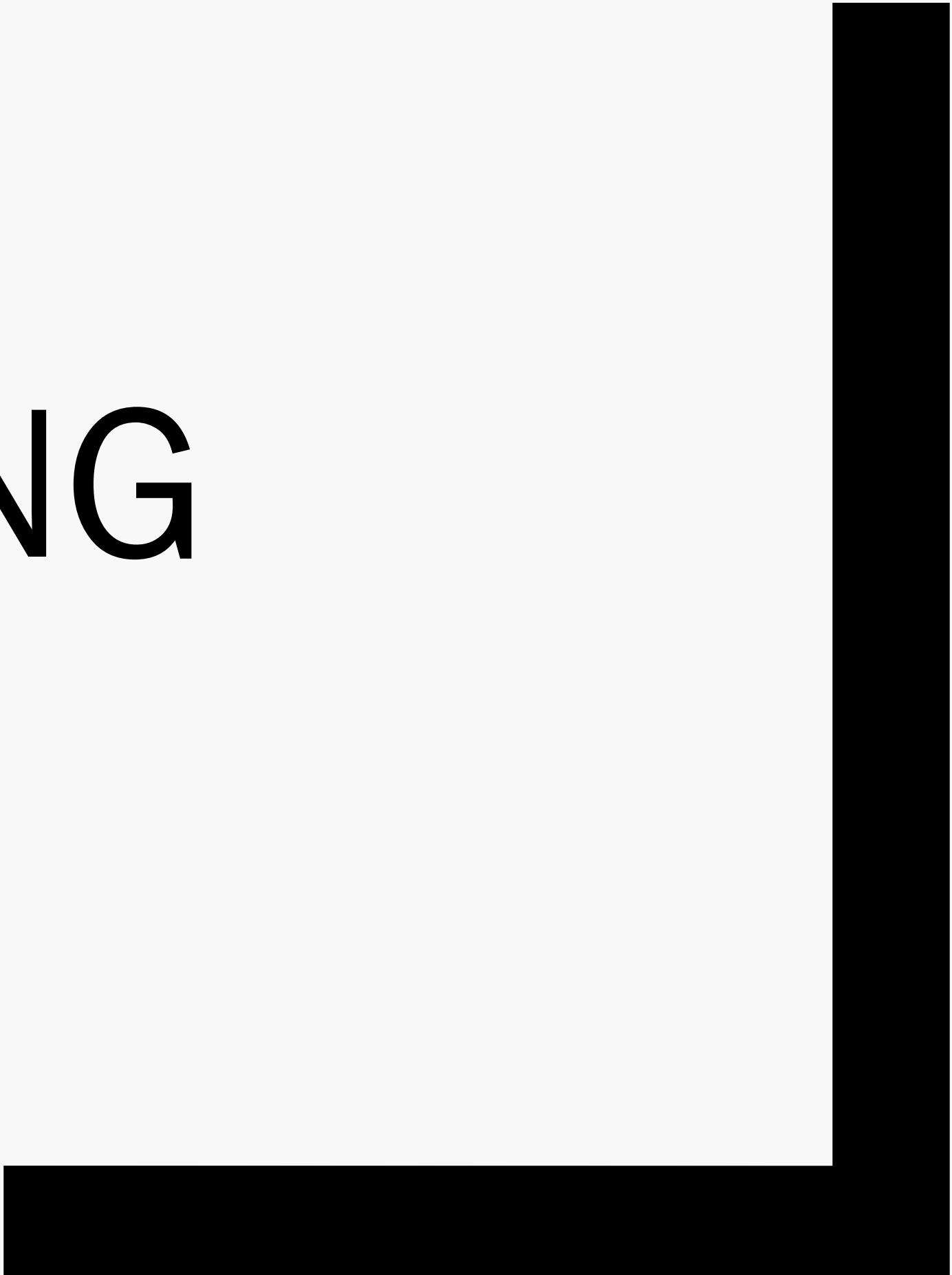
NO Effect

1. No effect on due dates of debts
2. No effect on contracts (no termination or changes)
3. Contracts remain valid
4. Debtor must pay on due date
5. Debtor must exercise due care in performing or providing guarantees
6. Other party must continue performing as long as debtor is performing

But

1. Termination if debtor stops performing, and releases counterpart of contract
2. Termination for benefit of business and majority creditors, if no serious harm to counterpart
3. 2 does not apply to security contracts

All those provisions do not apply to contracts with Banks and Financial Companies and Government and Governmental Entities



FINANCIAL RESTRUCTURING PROCEDURE

Financial Reorganization

1. Application:
2. Consideration by Court
3. If Yes: A Plan for a Vote
4. Moratorium
5. Vote
6. If Yes: Plan and Implementation
7. Termination

But

1. Application: **by debtor, Creditor, or Competent Authority**
2. Consideration by Court
3. **No Proposal, but plan afterwards**
4. Moratorium : **Automatic**
5. **Appointment of a Trustee (officeholder)**
6. **Claims by Creditors**
7. Vote
8. If Yes: Plan and Implementation
9. Termination



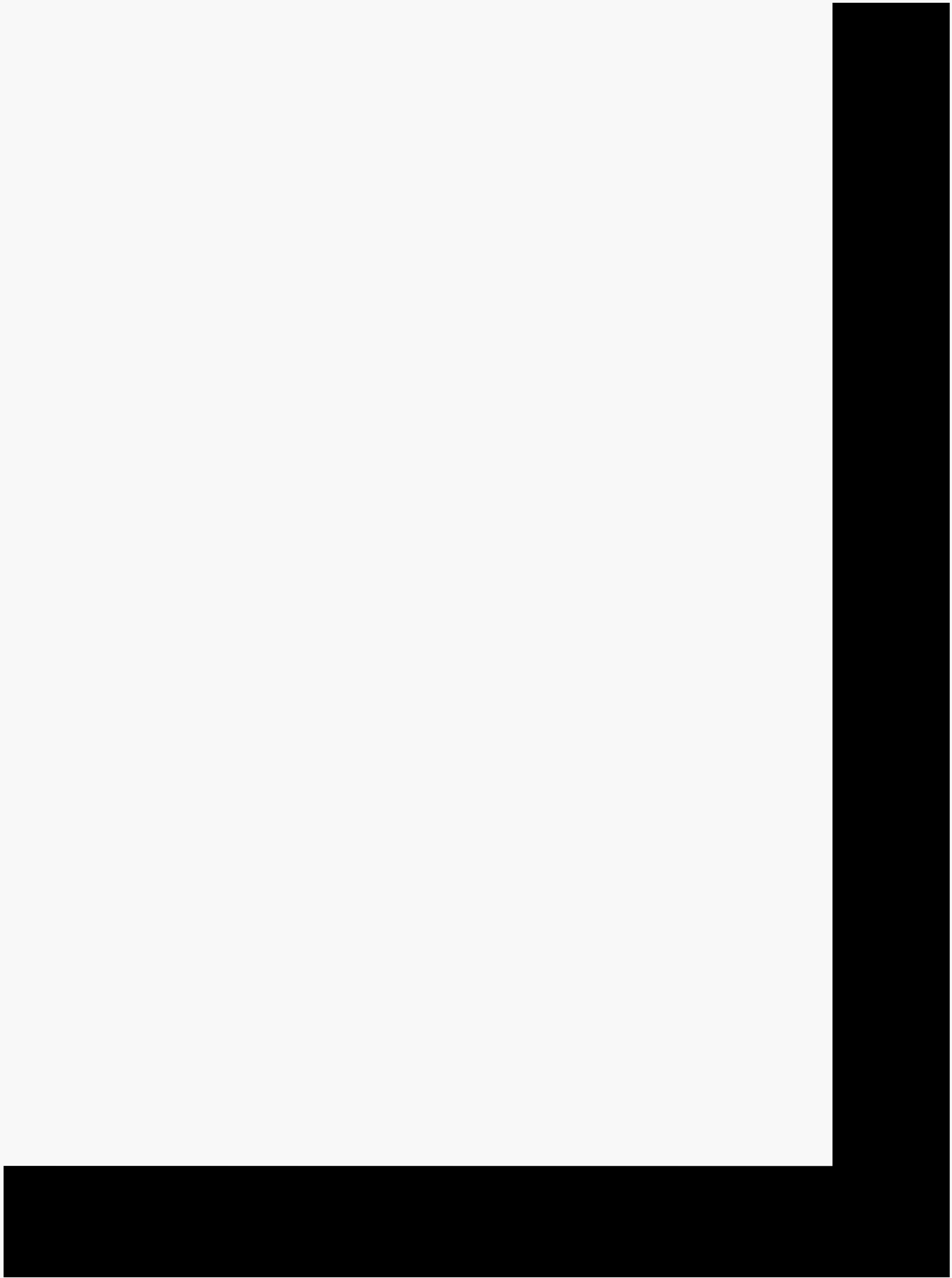
EASY POINTS

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 !! Not commencement !**
- Indefinite until ends of procedures: rejection, termination, ratification of proposal.



AND NOW!

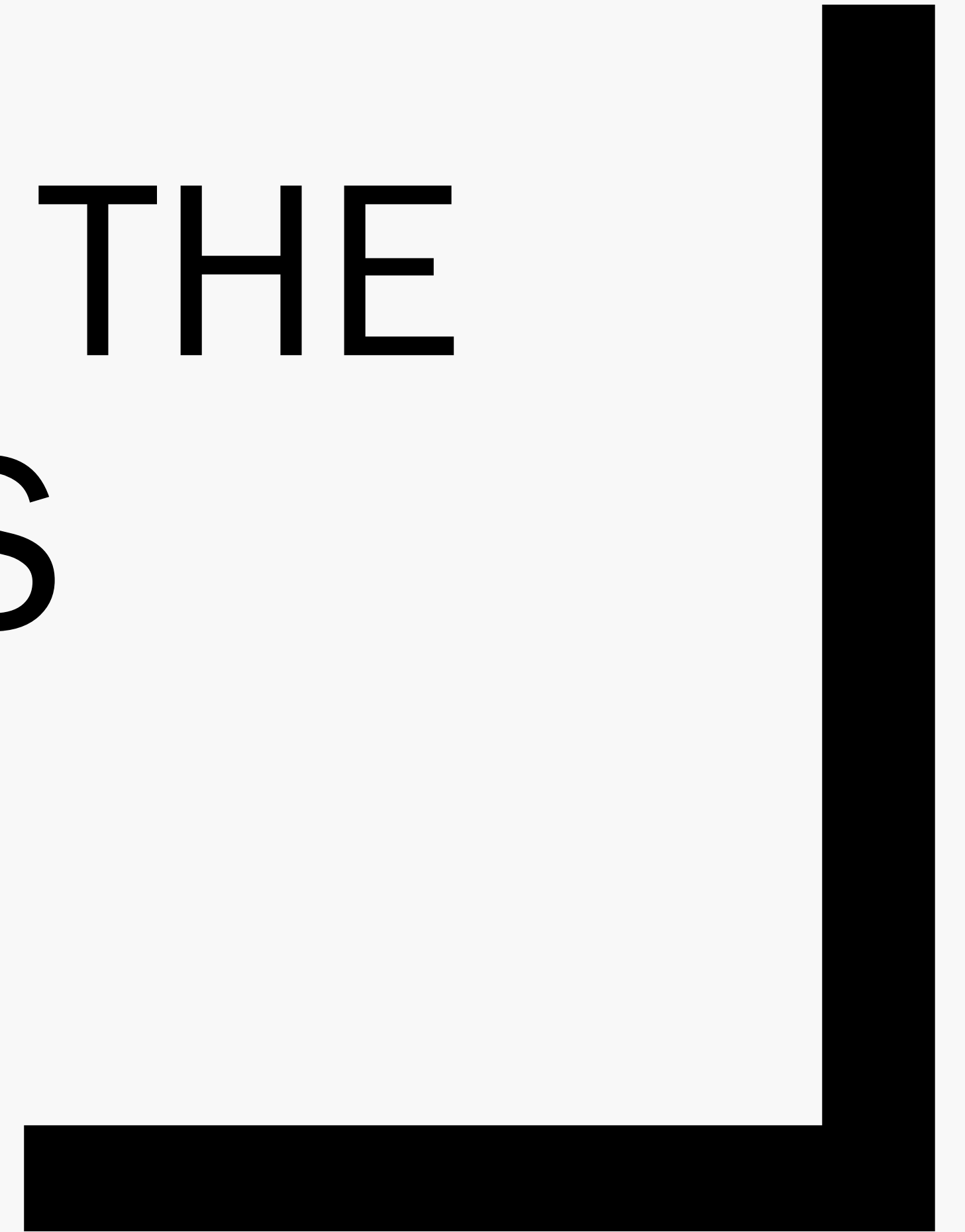
After Application and Moratorium

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

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 3rd party, or necessary for family living.
5. **Supervision of the Debtor's Business**
6. **Proposal**
7. **Application of the Plan**

SUPERVISION OF THE PROCRODURES



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.

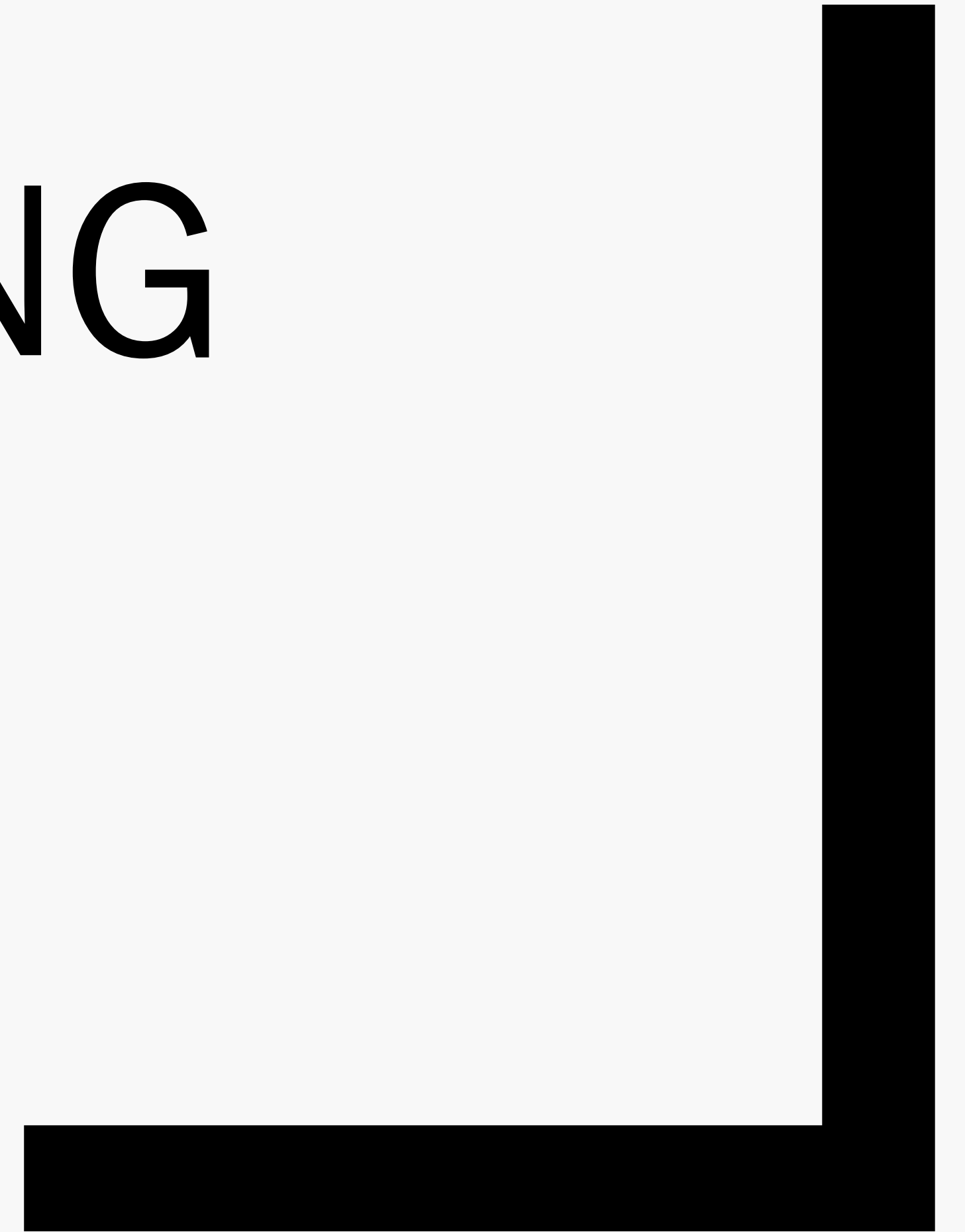
Trustee

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

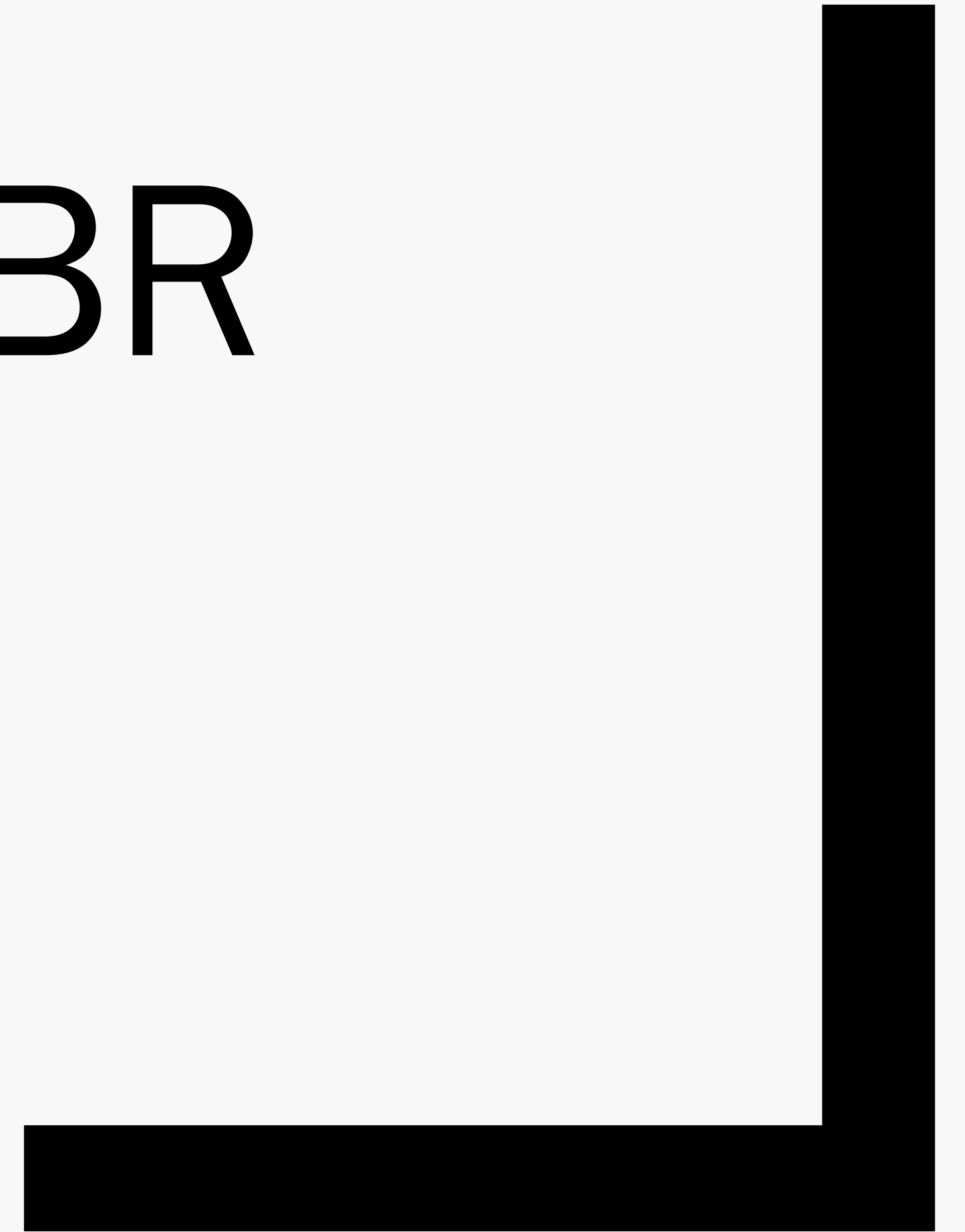
RESTRUCTURING PROCESS



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

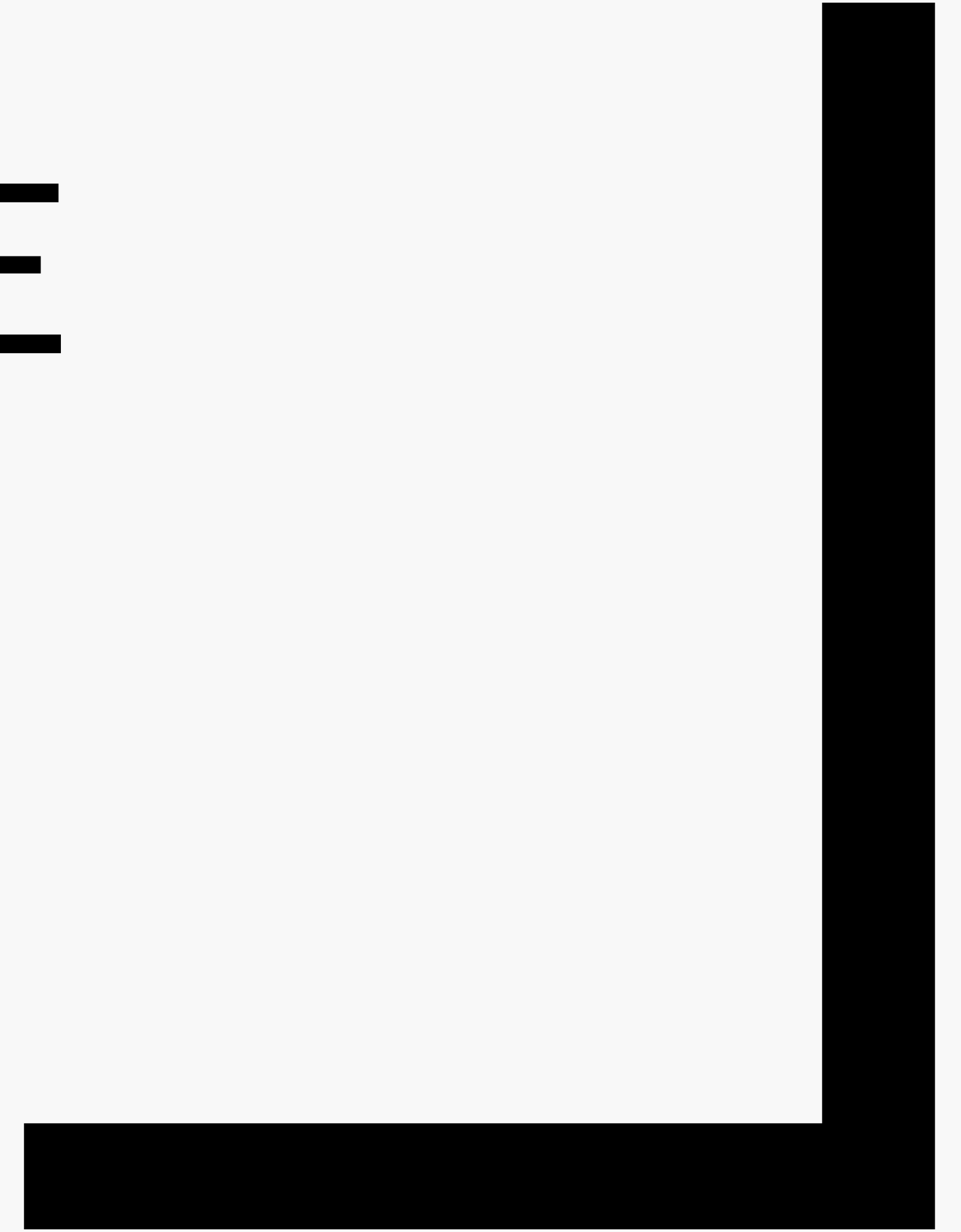
- 1. Trustee prepares a list (inventory):** of Bankruptcy Assets, including details pertaining thereto and any security interests associated therewith, a list of those Bankruptcy Assets in the possession of the Debtor, and those that are subject to third party claims, and other pertinent information. 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 unfeasible** and provided that
 - the rights of the **Debtor's Creditors and to the Creditors of the other Person must protected.**

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

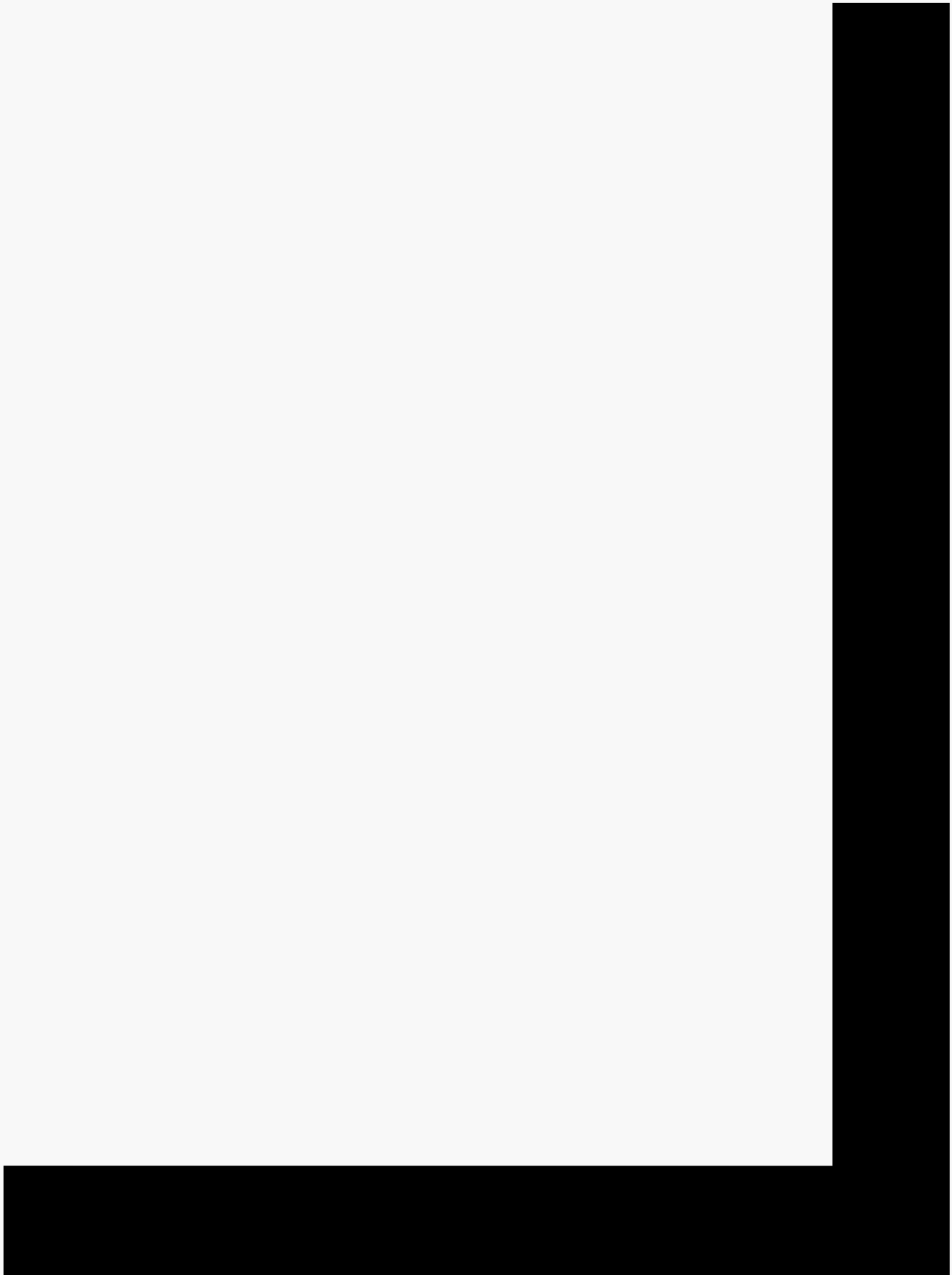
- The Court shall, at the request of the Officeholder, ratify the Proposal meeting the standards of fairness in the following cases:
- (a) if all classes of the Creditors and the Owners approve the Proposal;
- (b) if at least one class of Creditors approves the Proposal, and the Proposal is approved 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



LIQUIDATION PROCEDURE

Definition

- **Liquidation Procedure:** A procedure under the management of the Liquidation Officeholder, aiming to account for Creditors' claims, the sale of the Bankruptcy Assets and the distribution of the sale proceeds to the Creditors.

1. Trustee
2. Account
3. Sale
4. Distribution

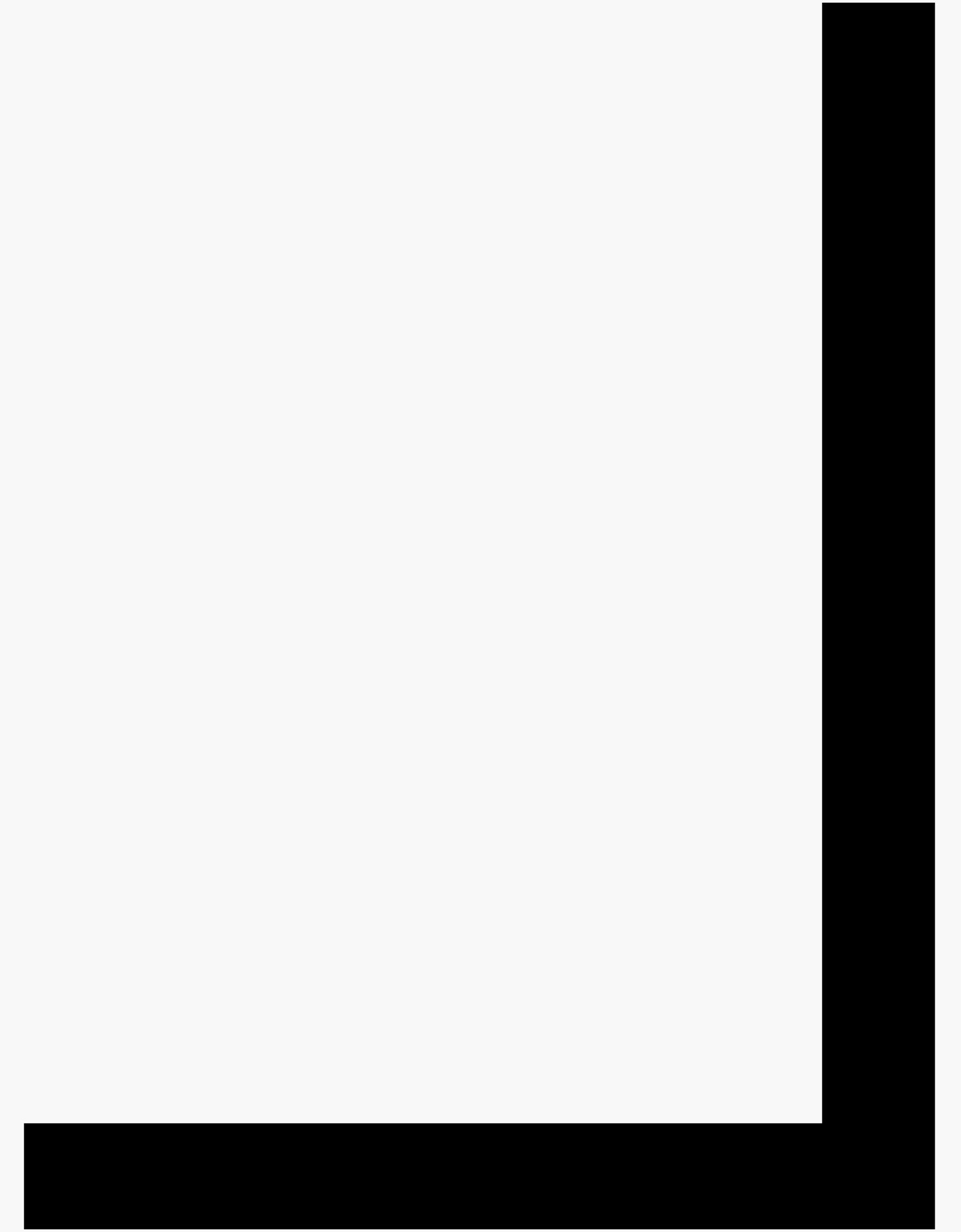
Application

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: Why and How?

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 !! Not commencement !**

APPLICATION



Application

1. By debtor, Creditor, or Competent Authority
2. Debtor is distressed, Bankrupt
3. If the creditor applies:
 - 1) the Debt must be due and its amount, cause and related security interests (if any) must be identified;
 - 2) (b) the amount of Debt - or the aggregate value of Debts of the applicants– must not be less than the amount determined by the Bankruptcy Commission;
 - 3) (c) the Debt must be either due pursuant to a writ of execution or an ordinary document and the Creditor must prove that the payment has been requested from the Debtor twenty-eight (28) days prior to the date of the application, and that has remained unpaid and undisputed
4. The **Creditor's application** for the commencement of a Liquidation Procedure **shall not be registered** if the **Debtor disputed the Debt prior to the date of submission** of the Creditor's request. If the Creditor's requests to commence a procedure in the presence of evidence that the Debtor has disputed the Debt, then **such action shall constitute an abuse of the Liquidation Procedure.**

Objection to Application

■ A person other than debtor Applies:

- Court notifies the debtor w/i (5) days
- Debtor may object, may apply for PS or FR , if evidence of ability to maintain the activities in a manner that safeguards the interests of the majority of Creditors.

■ Application by Debtor:

- Debtor notify its Creditors
- Creditor may object , may apply for FR if evidence that maintaining the activities of the Debtor would safeguard the interests of the majority of Creditors.

DECISION BY THE
COURT



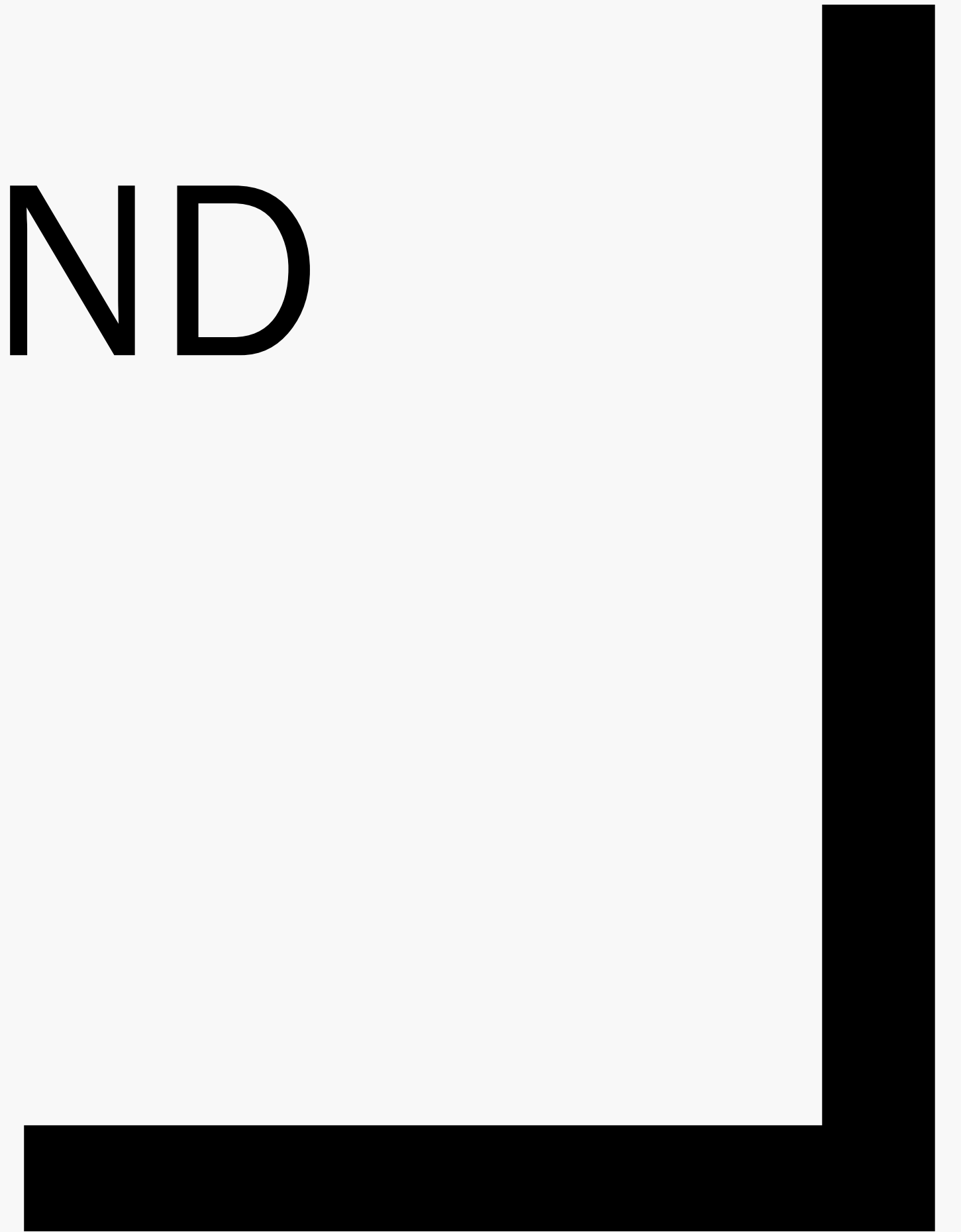
A. Accept:

1. Debtor is distressed or bankrupt
2. the continuation of the Debtor's activities is not possible based on the information provided to the Court; and that the Debtor's Assets are sufficient to meet liquidation expenses; (otherwise administrative liquidation)
3. Applicant submitted necessary info and documents

B. Rejection if:

1. Application is not complete
2. the continuation of the Debtor's activities is possible based on the information provided to the Court; and that Debtor can settle the Creditors' claims within a reasonable timeframe; (WHY?)
3. if the applicant acts in bad faith, or if the application involves abuse of the procedure;
4. if the Debtor's Assets are insufficient to meet the Liquidation Procedure expenses.

MORATORIUM AND
MORE



Moratorium and More

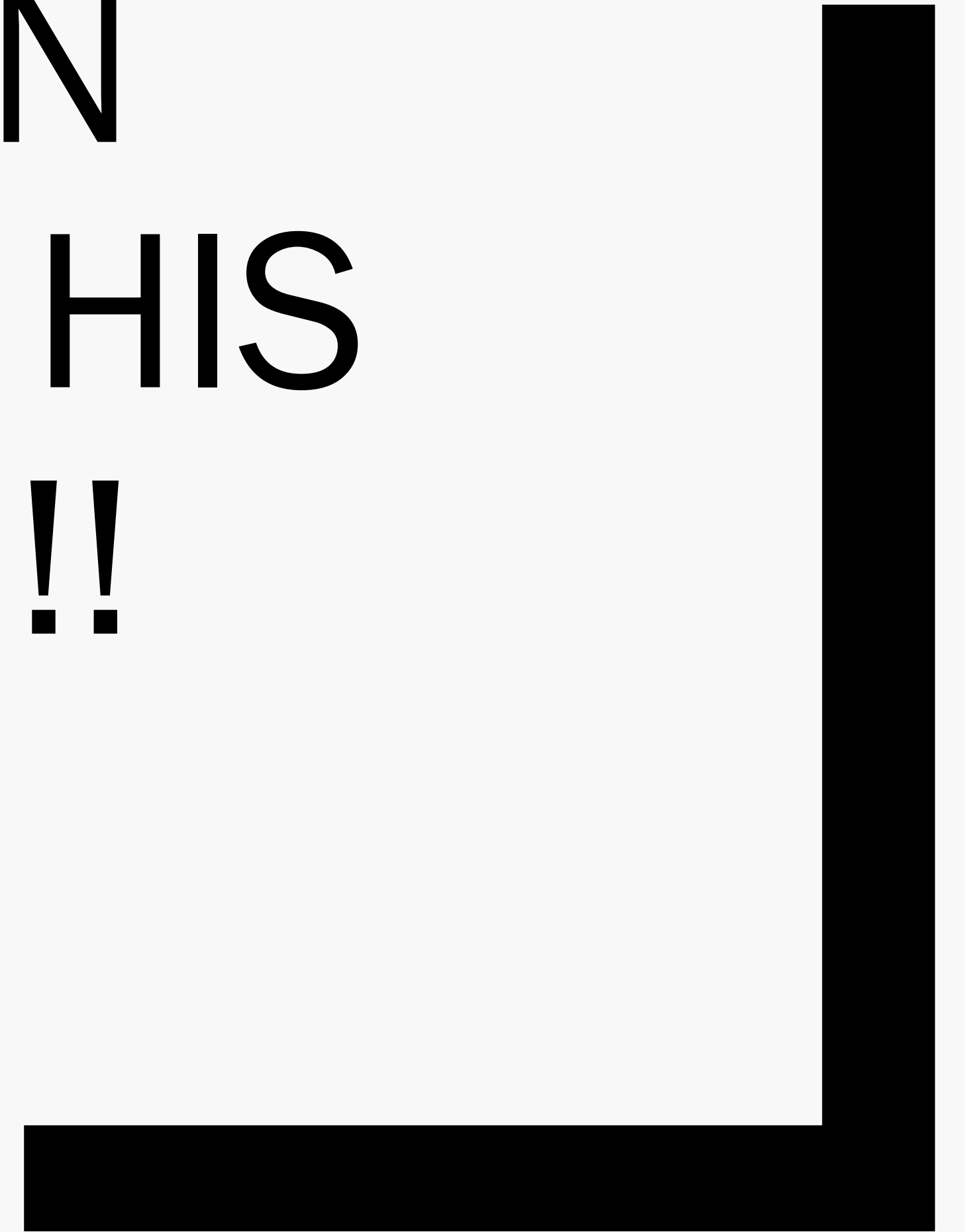
1. Court may order any precautionary measures (إجراءات تحفظية)
2. Automatic Moratorium
3. Exceptions:
 1. Court may allow a secured creditor to execute his security التنفيذ بتأمينه العيني
 2. A owner of a specific asset may request its return
 3. Specific claims if it is in the interest of debtor or majority of creditors !!!!
4. Confirmed debts that are NOT due, become due. (compare PS).
5. Court may consider terminating Labor contracts related to the business.

TRUSTEE

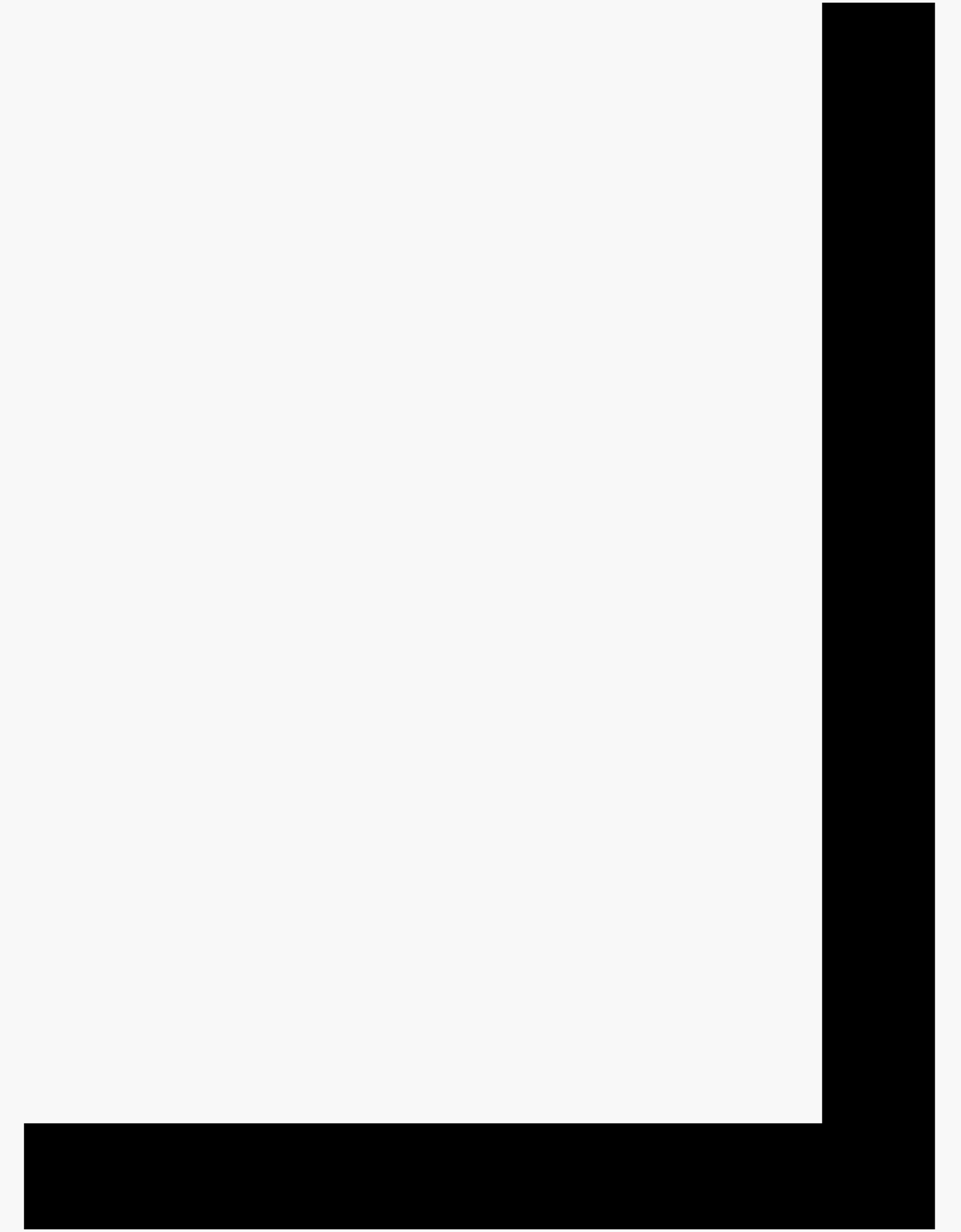


DIDN'T MENTION
ANYTHING ABOUT HIS
APPOINTMENT !!!

But Function



LIQUIDATION



The business

1. Debtor ceases management upon appointment of trustee
2. Trustee takes over, but with no personal responsibility
3. Any action by debtor is null and void
4. Liquidation of business starts (**except assets necessary for reasonable standard of living for family**)
5. Trustee starts sale while still confirming the claims against the debtor
6. Takes all necessary action to sell at best price, including the possibility of selling all the assets as one deal
7. If selling an asset that exceeds $\frac{1}{4}$ of estate: vote by creditors
8. Vote of creditors in many cases (art 108)

Distribution

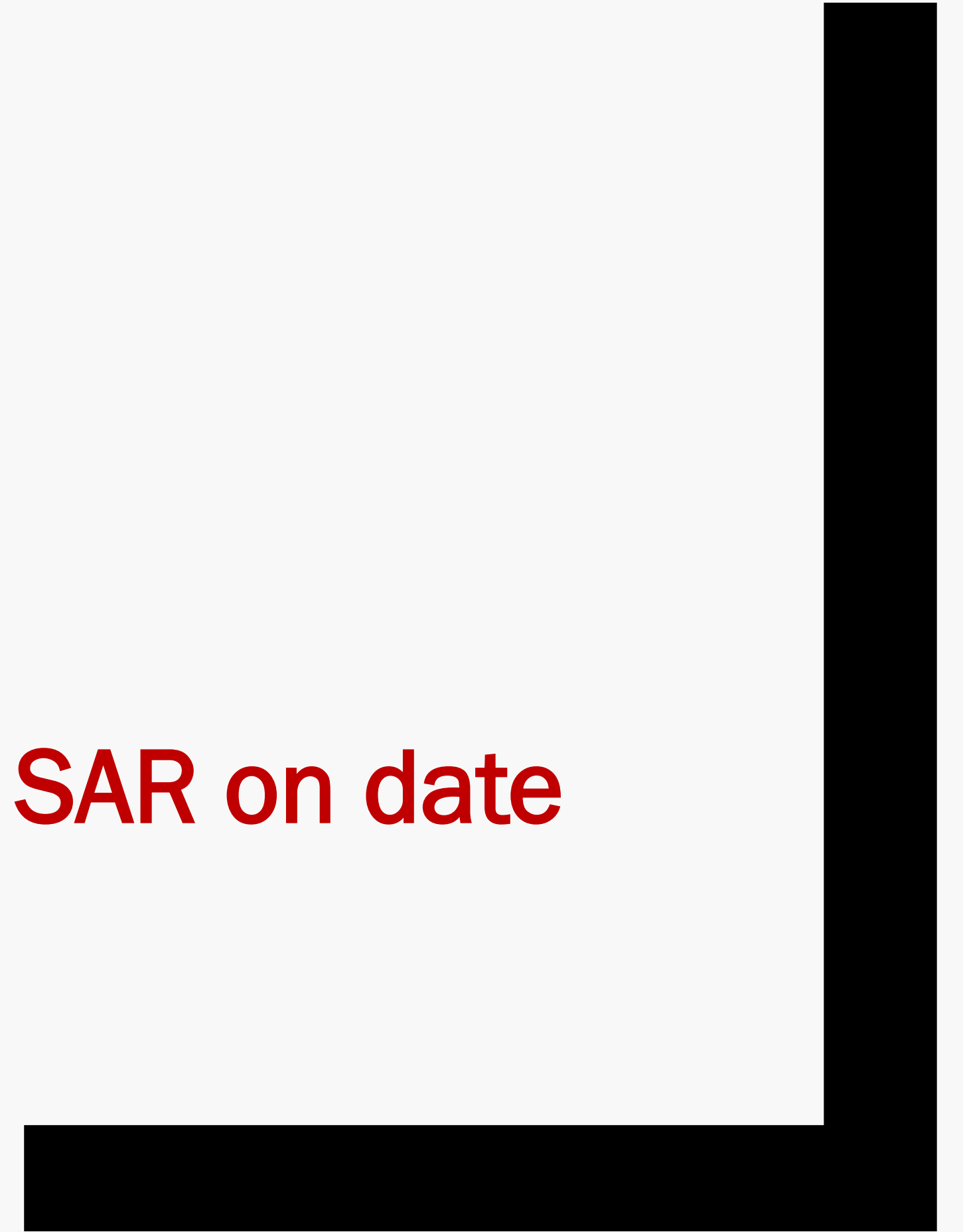
1. Regulation governs distribution
2. Trustee distributes that proceeds of the sale at the end of sale
3. Court may allow many distributions
4. Trustee must follow order of priority of creditors
5. Objections possible and court decides

ALTERNATIVES

1. Small Debtors
2. Administrative Liquidation

SMALL DEBTORS

Amount of debts does not exceed 2,000,000 SAR on date of commencement



Protective Settlement SD

1. Optional, may choose a regular PS
2. Commencement upon Decision by the SD, not the court.
3. Proposal before the decision
4. Deposit decision at court and notifies creditors
5. Moratorium, by decision of the court (simpler requirements)
6. Voting : only non-secured creditors and owners if affected.
7. Objections
8. Termination

Financial Restructuring SD

1. Optional
2. Decision by SD, or Regulatory Authority
3. SD or RA agree with a Trustee to appoint him to administer procedures
4. Or by the court, upon application of Creditor, debtor may object
5. Decision only takes effect upon depositing with the court
6. Court decision, see
7. Claims, plan, application and termination

Liquidation SD

1. Optional
2. Commencement by court decision
3. Trustee must request termination if assets sale will not suffice the cost of liquidation

Administrative Liquidation

- The Administrative Liquidation Procedure aims to sell Bankruptcy assets whose sale is not expected to result in proceeds sufficient to meet the expenses of a Liquidation Procedure or Small Debtors' Liquidation Procedure

Admin. Liquidation

1. Debtor (not necessarily SD) or RA
2. No creditor
3. Moratorium
4. Rejection: same reasons + assets are enough for judicial liquidation
5. NO TRUSTEE: Bankruptcy Commission appointed to manage the liquidation

END

