



## **On Restoring Solvency and Bankruptcy of Citizens of the Republic of Kazakhstan**

### *Unofficial translation*

Law of the Republic of Kazakhstan No. 178-VII LRK of December 30, 2022

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This Law governs public relations resulting from the insolvency of a citizen of the Republic of Kazakhstan, specifies the grounds for the application of the solvency recovery proceeding, and out-of-court and court bankruptcy proceedings, as well as the order and conditions of their conduct.

### **Chapter 1. GENERAL PROVISIONS**

#### **Article 1. Basic concepts used in this Law**

The following basic concepts are used herein:

1) current costs - costs incurred by a individual after the date of the court's adoption of the application for restoration of solvency or bankruptcy proceedings, including the remuneration of the financial manager;

2) deliberate bankruptcy - actions of a national of the Republic of Kazakhstan committed in personal interests with a view to evading obligations to creditors by alienating, concealing or destroying property within three years prior to the application of out-of-court or court bankruptcy proceedings;

3) bankrupt - a debtor against whom an out-of-court bankruptcy proceeding has been completed or a court ruling on the completion of a court bankruptcy proceeding has become enforceable;

4) debtor - a national of the Republic of Kazakhstan, whose insolvency is grounds for applying the proceedings of solvency recovery, as well as out-of-court and court bankruptcy;

5) debtor's assets - the debtor's property that may be foreclosed upon in bankruptcy proceedings;

6) amicable settlement is a proceeding applied at any stage of the bankruptcy proceedings to end the proceedings through an agreement between the debtor and the creditors, approved by the court;

7) creditor - a person who owes claims against a debtor resulting from civil and/or other obligations, including an obligation secured by a pledge over the debtor's property;

8) creditor claims register - a list of creditors' claims against the debtor, stating their amount, grounds and occurrence date;

9) financial manager - a person engaged in solvency rehabilitation and bankruptcy proceedings;

10) court bankruptcy proceeding - a proceeding implemented against a debtor by court to meet the claims of creditors from the debtor's assets;

11) out-of-court bankruptcy proceeding - a proceeding implemented against a debtor out-of-courtly intended to terminate obligations to second-tier banks, branches of a non-resident bank of the Republic of Kazakhstan, organisations involved in certain types of banking activities, organisations implementing microfinance activities, or collection agencies under this Law;

12) insolvency - the debtor's inability to fully meet its monetary obligations and other pecuniary claims;

13) solvency recovery plan - a document containing a range of measures aimed at recovering the debtor's solvency, with a timetable for implementation;

14) solvency recovery proceeding - a proceeding applied by a court whereby financial, legal and other measures not contradicting the legislation of the Republic of Kazakhstan are applied to the debtor to restore the debtor's solvency;

15) competent authority - a public authority responsible for managing the state administration for restoring the solvency and bankruptcy of citizens of the Republic of Kazakhstan.

## **Article 2 Legislation of the Republic of Kazakhstan on the restoration of debtors' solvency and bankruptcy of citizens of the Republic of Kazakhstan**

1. Legislation of the Republic of Kazakhstan on the recovery of debtors' solvency and bankruptcy of citizens of the Republic of Kazakhstan shall be based on the Constitution of the Republic of Kazakhstan and shall consist of the Civil Code of the Republic of Kazakhstan, this Law and other normative legal acts.

2. Should an international treaty ratified by the Republic of Kazakhstan establish rules other than those contained herein, the rules of the international treaty shall apply.

## **Article 3: Scope of this Law**

1. This Law shall apply to relations resulting from the insolvency of a citizen of the Republic of Kazakhstan who is not registered as an individual entrepreneur.

2. Relations involving individual entrepreneurs in connection with their inability to satisfy creditors' claims in full shall be governed by the recovery and bankruptcy legislation of the Republic of Kazakhstan.

3. The court shall examine applications for recovery of insolvency and bankruptcy proceedings, as well as the conclusion of an amicable settlement under the general rules of civil proceedings, with the particulars laid down herein.

## **Article 4: Principles for the enforcement of solvency recovery proceedings, out-of-court and in-court bankruptcy proceedings against individuals**

The enforcement of solvency recovery proceedings, as well as out-of-court and in-court bankruptcy proceedings against individuals shall be based on the principles of:

1) legitimacy;

- 2) fairness;
- 3) publicity and transparency;
- 4) state regulation;
- 5) good faith of citizens;
- 6) ensuing of consequences.

#### **Article 5: Grounds for applying for an out-of-court bankruptcy proceeding**

1. The grounds for filing an application for an out-of-court bankruptcy proceeding with the competent authority shall be the existence of obligations not exceeding 1,600 times the monthly calculation index established by the law on the republican budget in force on the date of the application, and compliance in the aggregate with the following conditions:

- 1) absence of ownership of property, including property held in common ownership;
- 2) there has been no repayment of the liabilities to the creditors named in the application for twelve consecutive months as of the date of the application;
- 3) proceedings for settlement and/or recovery of outstanding obligations under a bank loan agreement and (or) micro-loan agreement under the Law of the Republic of Kazakhstan “On Banks and Banking Activities in the Republic of Kazakhstan” and “On Microfinance Activities” have been implemented against a debtor.

The debt settlement and/or recovery measures referred to in this sub-paragraph shall be undertaken within a period not exceeding eighteen months from the date the arrears arose;

- 4) failure to initiate an out-of-court or court bankruptcy proceedings within seven years as of the date of application.

2. Regardless of the provision of sub-paragraph 2) of paragraph 1 of this Article, the debtor shall be entitled to apply if he/she has been a recipient of state targeted social assistance for six months preceding the date of application.

3. Regardless of the provisions of paragraph 1 of this Article, the debtor may file an application if the period of default is in excess of five years as of the date of the application.

#### **Article 6: Grounds for filing an application for restoration of solvency or court bankruptcy proceedings**

1. The grounds for filing an application to the court for insolvency or bankruptcy proceedings shall be the existence of obligations in excess of 1,600 times the monthly calculation index established by the law on the republican budget in force on the date of the application, and compliance with the following conditions:

- 1) there has been no repayment of liabilities to creditors for twelve consecutive months as of the date of such application;
- 2) proceedings for settlement and/or recovery of outstanding obligations under a bank loan agreement and (or) micro-loan agreement have been implemented against a debtor under the Laws of the Republic of Kazakhstan “On Banks and Banking Activities in the Republic of Kazakhstan” and “On Microfinance Activities”.

The debt settlement and/or recovery measures referred to in this subparagraph shall be implemented within a period not exceeding eighteen months from the occurrence of the overdue debt;

3) no out-of-court or court bankruptcy proceedings have been pending for seven years as of the date of application.

2. A debtor whose total liabilities (including those not yet due) do not exceed the value of his/her assets may only apply to the court for recovery of solvency proceedings.

3. The provision of paragraph 1 of this article concerning the amount of the debtor's obligations shall not apply if the creditor is:

an individual;

a legal entity, including a creditor in an out-of-court bankruptcy proceeding where the debtor does not satisfy the condition stipulated in sub-paragraph 1) of paragraph 1 of Article 5 hereof.

### **Article 7: Powers of the debtor in solvency recovery, out-of-court or court bankruptcy proceedings**

1. The debtor shall have the right to:

1) apply to the competent authority for an out-of-court bankruptcy proceeding on the grounds set out in article 5 hereof;

2) file an application with a court for reinstatement of solvency or bankruptcy proceedings on the grounds set out in Article 6 hereof;

3) enter into deals for the disposal of his/her property subject to the proceedings laid down herein;

4) keep money at his/her disposal on a monthly basis in the amount of the subsistence minimum set by the law on the national budget for the financial year in question, for himself/herself and his/her dependent disabled family members, in the course of the solvency recovery proceeding.

The amount of money left at the debtor's disposal each month may be increased by creditor;

5) enjoy the other rights provided hereunder, as well as other laws of the Republic of Kazakhstan.

2. The debtor shall be obliged to:

1) inform creditors of the application for solvency restoration, out-of-court or court bankruptcy proceedings no later than two business days from the date such application is submitted under the proceeding prescribed by the laws of the Republic of Kazakhstan;

2) apply to the competent authority in writing (on paper and/or electronically) via the Government for Citizens State Corporation to terminate the out-of-court bankruptcy proceedings if, during such proceedings, he/she has acquired property or otherwise changed

his/her property status, allowing him/her to fulfil his/her obligations to creditors fully or by more than thirty percent, or has concluded an agreement with a creditor to settle debts to creditors;

3) participate in the drafting of a solvency recovery plan;

4) provide the competent authority, the financial manager as well as creditors with accurate information on his/her financial position, assets and liabilities based on their written request no later than ten business days from the date of receipt thereof;

5) assist the financial manager with information on his/her financial status, assets and liabilities;

6) fulfil the requirements of the financial manager as set out herein and not to hinder her/him in the exercise of her/his powers;

7) implement the measures of the solvency recovery plan;

8) inform the creditor(s) on the progress of the solvency recovery plan pursuant to paragraph 1 of Article 32 hereof;

9) not assume any new monetary or property obligations, except for transactions under a solvency recovery plan;

10) within seven business days of the commencement of the event, notify the creditors that the execution of the solvency recovery plan has become impossible due to force majeure, i.e. extraordinary and unavoidable circumstances (natural disasters, warfare, state of emergency, etc.) or due to the fault of third parties;

11) apply to a court for the termination of the restoration of solvency proceedings at the end of the enforcement period or upon early execution of the solvency recovery plan;

12) transfer the assets to the financial manager within three business days after one of the following court decisions enters into legal force:

on the application of the court bankruptcy proceeding;

on the cessation of solvency recovery proceedings and the enforcement of court bankruptcy proceedings;

13) fulfil other obligations hereunder and other laws of the Republic of Kazakhstan.

#### **Article 8: Powers of creditors in solvency recovery, out-of-court or court bankruptcy proceedings**

1. The creditor shall have the right to:

1) assert their claims against the debtor in the manner and within the time limits prescribed herein;

2) obtain from the debtor, the financial manager information relating to the proceedings hereunder, as well as reliable information on the debtor's financial status, assets and liabilities ;

3) in solvency recovery proceedings, consider increasing the amount of money left at the debtor's disposal on a monthly basis;

4) notify the financial manager and the court of circumstances that become known as grounds for refusing to terminate the bankrupt's liabilities;

5) file an application with a competent authority to review the debtor for deliberate bankruptcy;

6) enjoy other rights specified in this Law and other laws of the Republic of Kazakhstan.

2. The creditor shall be obliged to:

1) provide the financial manager with documents certifying the grounds and amount of his/her claims when making his/her claims against the debtor;

2) at the request of the financial manager, present available information on the causes of the debtor's insolvency, her/his financial status, assets and liabilities no later than ten business days from the date of receipt of the request;

3) review the draft solvency recovery plan and submit its proposals and/or comments (if any) within the deadline set out herein;

4) when considering a draft solvency recovery plan, propose one of the debt restructuring instruments envisaged in paragraph 2 of Article 29 hereof.

This sub-paragraph shall not apply to creditors for alimony, compensation for injury to life or health;

5) fulfil other obligations envisaged hereby and other laws of the Republic of Kazakhstan.

3. The creditor who has not fulfilled the obligation stipulated in sub-paragraph 4) of paragraph 2 hereof shall be satisfied as set out in paragraph 6 of Article 40 hereof.

#### **Article 9: Powers of the competent authority**

The competent authority shall:

1) approve the form of the debtor's application for an out-of-court bankruptcy proceeding;

2) approve the form of the opinion of the financial manager;

3) approve the form of the standard plan for recovery of solvency;

4) approve the form of the conclusion of the financial manager on the presence or absence of grounds for termination of the bankrupt's obligations;

5) approve the form of the financial manager's final report;

6) review complaints on actions (inaction) of a financial manager on violation of solvency recovery and court bankruptcy proceedings;

7) maintain a state electronic register of permits and notifications of persons on notification of persons on commencement or termination of activities of financial manager;

8) publish on the competent authority's website the data on sent notifications of persons on commencement or termination of activities of financial managers, conditions of sending such notifications;

9) publish on the competent authority's website the list of citizens against whom the proceedings stipulated hereby have been applied, terminated and completed;

10) inquiry from public authorities within their competence, individuals and legal entities information on the debtor, his/her property and obligations within the proceedings of

restoration of solvency, as well as out-of-court and court bankruptcy given the requirements established by the laws of the Republic of Kazakhstan to the proceeding of providing secrecy protected by law;

11) submit to the financial manager any information on the debtor's financial status, property and liabilities;

12) exercise state control over the activity of the financial manager in the proceedings of recovery of solvency and court bankruptcy;

13) develop and approve the rules for monitoring of the debtor's financial status;

14) appoint a financial manager;

15) exercise other powers specified herein, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

#### **Article 10. Governmental control over the activity of the financial manager in solvency recovery and court bankruptcy proceedings**

1. Governmental control over the activities of the financial manager in solvency recovery and court bankruptcy proceedings shall be exercised in the form of verification and preventive control.

2. The proceeding for organising and performing an inspection and preventive control with a visit to the person subject to control shall be determined by the Entrepreneurial Code of the Republic of Kazakhstan.

Preventive control without a visit to the person being controlled shall be exercised under the Entrepreneurial Code of the Republic of Kazakhstan and this Law.

#### **Article 11. Preventive control without a visit to the person being controlled**

1. The objectives of preventive control without a visit to the person being controlled shall be the timely suppression, prevention of violations and granting the audited entity the right to rectify the violations detected by the competent authority independently.

The financial manager shall be the person under control.

2. The manner of performing preventive control without visiting the controlled person shall be the collation of data obtained through examination and analysis of reporting submitted by the controlled person, the data of authorised public authorities, as well as data received from state information systems and electronic information resources, as well as other documents and information on the activities of the controlled person.

3. When infringements are identified based on the findings of preventive control without a visit to the controlled person, a notification in the form prescribed by the competent authority shall be sent within five business days of the identification of the infringement, with an obligatory clarification to the controlled person of the proceeding for their elimination.

The notification must be delivered to the controlled person against signature or in another manner confirming its sending and receipt.

A notification sent by one of the following ways shall be deemed to have been served in the following cases:

1) by personal delivery - from the date of the notification of receipt;

2) electronically:

from the date of sending by the competent authority to the email address of the financial manager specified in the notification of the commencement of activities or amendment to the competent authority's data;

from the date of delivery of the notification by the competent authority to the web application of the competent authority's website and (or) a special mobile application.

This method shall apply to those controlled persons interacting with the competent authority electronically under the legislation of the Republic of Kazakhstan on the electronic document and electronic digital signature and/or those using a special mobile application.

4. The notification to rectify infringements detected as a result of preventive control without a visit to the person being controlled must be executed within ten business days from the day following the day of its delivery.

5. Should the controlled person disagree with the infringement indicated in the notification, he or she may submit an objection to the competent authority within five business days of the day following the day when the notification is served.

6. Failure to comply in due time with the notification to rectify the infringements detected as a result of preventive control without a visit to the person being controlled shall entail the scheduling of preventive control with a visit to the person being controlled by including it in the semi-annual list of preventive control with a visit to the person being controlled.

7. Preventive controls without a visit to the person being monitored shall be performed on a quarterly basis.

## **Article 12. Confidentiality**

1. The competent authority and the financial manager shall be entitled to request and receive data on the debtor's financial status, assets and liabilities for the period of up to three years preceding the application of the proceedings foreseen herein without obtaining the debtor's consent.

2. Unless otherwise provided by this Article, disclosure of information protected by the laws of the Republic of Kazakhstan on a debtor by a financial manager or an official of the competent authority to whom they are entrusted or known in the course of their service or work, as well as the loss of documents comprising such data, shall entail liability established by the laws of the Republic of Kazakhstan.

3. Disclosure by the competent authority or financial manager of data provided thereto to public authorities in the cases specified in the laws of the Republic of Kazakhstan shall not constitute a disclosure of confidential information.

4. The following details shall not be confidential in proceedings under this Law:

1) on the financial manager;



- 2) on creditors;
- 3) on the amount of claims included in the register of creditors' claims and the amount of their satisfaction by order of priority;
- 4) on the timing of the proceedings;
- 5) on implementation of the schedule of satisfying creditors' claims;
- 6) on the existence of complaints on actions (inaction) of a financial manager and the results of their consideration;
- 7) on bringing a financial manager to administrative liability due to revealed offences;
- 8) on the grounds for termination of proceedings hereunder;
- 9) on legal proceedings initiated by authorised persons in the exercise of the rights set out herein.

### **Article 13. Interaction of participants in solvency recovery, out-of-court or court bankruptcy proceedings**

Participants in solvency recovery, out-of-court or court bankruptcy proceedings shall be entitled to cooperate in any way not prohibited by the laws of the Republic of Kazakhstan, unless otherwise stipulated herein.

When communicating electronically, participants in solvency, out-of-court or court bankruptcy proceedings shall employ the web application of the competent authority's website.

### **Article 14. Annulment of debtor's transactions and recovery of property**

1. Transactions shall be declared null and void if committed by the debtor or its authorised person within three years prior to initiation of the proceedings for application of the solvency recovery and court bankruptcy proceedings, if there are grounds stipulated by the civil legislation of the Republic of Kazakhstan.

2. If transactions under this article are revealed, the financial manager shall, inter alia, at the request of the creditor who revealed the transaction, apply to a court within ten business days from the date of the discovery to declare such transactions void.

3. If a transaction is deemed null and void, the defendant must return everything received under the transaction; if it is impossible to return in kind, the defendant must compensate the value of the property to be returned, the value of the use of the property, work performed or services rendered in money, unless other consequences of the invalidity of the transaction are provided for by the Civil Code or other laws of the Republic of Kazakhstan.

In doing so, the defendant acquires a right of claim against the debtor, enforceable pursuant to paragraph 4 of Article 40 hereof.

4. If the property cannot be returned due to its loss, damage or subsequent acquisition by third parties in good faith, or if the property is transferred free of charge, the original acquirers of the claimed property shall be liable to the debtor for compensation for losses incurred in connection with the above actions up to the value of the property lost, damaged, transferred or acquired by third parties in good faith.

## **Article 15. Financial manager**

1. A citizen of the Republic of Kazakhstan may act as a financial manager, whose notification of the commencement of activities as a financial manager is included in the state electronic register of permits and notifications under the legislation of the Republic of Kazakhstan on permits and notifications.

2. The notification of the commencement of the activities of the financial manager may be submitted by:

1) an administrator operating under the Law of the Republic of Kazakhstan “On Rehabilitation and Bankruptcy”;

2) a professional accountant;

3) an auditor;

4) a legal adviser.

3. The activities of a financial manager shall not constitute an entrepreneurial activity, nor do they constitute an auditing activity.

4. The notification of the commencement of the activities of a financial manager shall be accompanied by a professional accountant's certificate if the applicant is a person referred to in sub-paragraph 2) of paragraph 2 of this Article.

5. The persons mentioned in paragraph 2 of this Article shall submit a notification on commencement of the activities as financial manager in the following circumstances:

1) there is no record of a mental health-care provider's registration for mental, behavioural or substance use disorders (illnesses);

2) in the absence of an unexpunged or outstanding criminal record;

3) there is no evidence that he or she has been declared legally incompetent or of limited competence by a court.

6. The financial manager shall not exercise his/her powers if:

1) he/she has claims or obligations against the debtor or his creditors;

2) if he/she is a close relative, spouse, close relative of the debtor's spouse or the creditor.

7. If the data specified in the notification of commencement of activities is amended, the financial manager shall notify the competent authority thereof within ten business days from the date of the amendment of the data.

8. When a financial manager terminates his/her activities, he/she must notify the competent authority within ten business days of the termination of his/her activities.

9. The competent authority shall remove the notification of the financial manager from the state electronic register of permits and notifications in cases:

1) termination of citizenship of the Republic of Kazakhstan;

2) failure to submit a document stipulated by paragraph 5 of this Article;

3) detection by competent authority of the circumstances provided for by paragraph 6 of this Article;

4) upon the results of an inspection, there are violations of the requirements established hereby and other laws of the Republic of Kazakhstan;

5) cessation of criminal proceedings or exemption from criminal liability on the grounds stipulated in subparagraphs 3), 4), 9) and 12) of paragraph one of Article 35 or paragraph one of Article 36 of the Code of Criminal Proceeding of the Republic of Kazakhstan;

6) the commencement into legal effect of a sentence of conviction against such a person;

7) registration in organisations providing medical assistance in the field of mental health for mental and behavioural disorders (illnesses), including those associated with the use of psychoactive substances;

8) recognition in court of incapacity or diminished capacity;

9) a notification by the financial manager on termination of activities;

10) cessation of activities or deprivation of the right to practice as an administrator, professional accountant, auditor, legal adviser under the laws of the Republic of Kazakhstan;

11) death or declaration by the court as deceased or declaration as missing.

10. The notification of the financial manager shall be removed from the state electronic register of permits and notifications by the competent authority within five business days of the detection of the cases set out in paragraph 9 of this Article.

11. Within five business days of the removal of a notification from the state electronic register of permits and notifications, the competent authority shall inform the debtor and the creditor on the removal of the financial manager from the register and on the appointment of a new financial manager.

12. A person whose notification has been removed by the competent authority from the state electronic register of permits and notifications shall be entitled to resubmit a notification of commencement of the activities of a financial manager, provided the grounds for the removal have been eliminated, but not earlier than three years from the date of removal.

## **Chapter 2. OUT-OF-COURT BANKRUPTCY PROCEEDING**

### **Article 16. Debtor's application for an out-of-court bankruptcy proceeding**

1. The debtor shall file an application for an out-of-court bankruptcy proceeding in writing (paper and/or electronic) via the Government for Citizens State Corporation in the prescribed form.

2. The debtor's application for an out-of-court bankruptcy proceeding shall be accompanied by:

1) a list of creditors with indication of their name, amount of debt, location;

2) a copy of the document confirming that the debtor has taken measures for the settlement and/or collection of debts under the bank loan agreement and (or) micro-loan agreement.

Documents certifying implementation of the proceeding specified in this subparagraph shall be replies of the second-tier bank, branch of non-resident bank of the Republic of

Kazakhstan, organization engaged in certain types of banking operations and (or) organization engaged in microfinance activities on refusal to change conditions of the bank loan agreement and (or) micro-loan agreement with specification of reasoned justification thereof.

In case a second-tier bank, branch of non-resident bank of the Republic of Kazakhstan, organisation engaged in certain types of banking operations and (or) organisation engaged in microfinance activity fails to provide response to the application of the debtor, the document confirming proceeding stipulated by this subparagraph shall be a copy of application of the debtor or confirmation of sending the application in electronic format.

3. If the debtor satisfies the circumstances stipulated in Article 5 hereof, the competent authority shall publish information on the debtor on the e-government web portal within fifteen working days.

4. If the debtor fails to comply with the circumstances stipulated in Article 5 hereof, within fifteen working days, the competent authority shall notify of the refusal to apply the out-of-court bankruptcy proceeding in the form prescribed by the competent authority.

5. The debtor may reapply for out-of-court bankruptcy proceedings after the grounds for the rejection have been removed, but not earlier than three months after the date of the rejection.

#### **Article 17. Application of an out-of-court bankruptcy proceeding**

1. The time limit for the competent authority to undertake an out-of-court bankruptcy proceeding shall be six months from the date the information on the debtor is posted on the e-government web portal.

2. From the day the information on the debtor is posted on the e-government web portal, the following consequences shall arise:

1) the deadlines of the debtor's debt obligations to the creditors indicated in the application for applying the out-of-court bankruptcy proceedings are deemed to have expired;

2) the creditors named in the application for out-of-court bankruptcy proceedings are prohibited from enforcing the debtor's obligations;

3) forfeits (fines, penalties) and interest on all types of debts owed by the debtor to the creditors listed in the application for extra-judicial bankruptcy proceedings are discontinued;

4) the debtor is prohibited from assuming new monetary or property obligations (except for micro-loans from pawnshops);

5) the debtor's consent to obtain information on her/his assets, including common joint property, from public authorities and other bodies and organisations for a period of up to three years prior to the application of the out-of-court bankruptcy proceeding is deemed to have been granted;

6) no money may be recovered from the debtor's bank accounts to satisfy the claims of creditors;

7) the execution of court decisions on debt recovery shall be suspended.

## **Article 18. Termination of out-of-court bankruptcy proceeding**

1. An out-of-court bankruptcy proceeding shall be terminated if, during the term of the proceeding:

1) the debtor has submitted an application in writing (on paper and/or electronically) to the competent authority via the Government for Citizens State Corporation to terminate the out-of-court bankruptcy proceeding due to the receipt of his/her property or a change in his/her financial and/or property situation that allows him/her to fulfil his/her obligations to creditors fully or by more than thirty per cent, or an agreement with a creditor to settle a debt to the creditor;

2) facts of concealment of property or property obligations, information on property, its size, location or other information on property, transfer of property into other possession, alienation or destruction of property, as well as concealment, destruction, falsification of documents reflecting information on property have been revealed;

3) the death of the debtor, a court ruling declaring him/her missing or declaring him/her dead has come into force;

4) the existence of other creditors mentioned in sub-paragraph 1) of Article 1 hereof has been revealed, whereby the total amount owed exceeds the amount mentioned in sub-paragraph 1 of Paragraph 1 of Article 5 hereof.

2. Termination of out-of-court bankruptcy proceedings shall be implemented by the competent authority by posting a notification of the termination on the e-government web portal.

3. Cessation of out-of-court bankruptcy proceedings shall not result in the termination of the debtor's obligations to creditors.

The consequences prescribed in paragraph 2 of Article 17 hereof shall cease to apply from the date of termination of the out-of-court bankruptcy proceedings.

## **Article 19. Completion of out-of-court bankruptcy proceedings and discharge of debtor**

1. If there are no grounds for suspension of the out-of-court proceedings pursuant to Article 18 hereof, after six months from the date of the debtor's application for an out-of-court bankruptcy proceeding, the competent authority shall issue a decision on the completion of the out-of-court bankruptcy proceeding and declare the debtor bankrupt. The decision shall be issued in a form approved by the competent authority and shall be made available on the e-government web portal.

2. The debtor's obligations specified by him/her in the application for an out-of-court bankruptcy proceeding shall discontinue as of the date of the announcement of the completion of the out-of-court bankruptcy proceeding and the declaration of the debtor bankruptcy on the e-government web portal.

3. No loan shall be granted to the bankrupt within five years from the date of the announcement of the end of the out-of-court bankruptcy proceeding (excluding obtaining

micro-loans from pawnshops) and no collateral, guarantees or sureties shall be accepted from him/her under the bank loan and micro-loan contracts.

### **Chapter 3. SOLVENCY RECOVERY OR OUT-OF-COURT BANKRUPTCY PROCEEDING**

#### **Article 20. Debtor's application for reinstatement of solvency or court bankruptcy proceedings**

1. A debtor shall apply to the court for restoration of solvency or court bankruptcy proceedings if there are the grounds stipulated in Article 6 hereof.

2. An application for restoration of solvency or bankruptcy proceedings shall be submitted by the debtor to the court at her/his place of residence in writing or in the form of an electronic document.

The debtor's application must contain:

- 1) the name of the court to which the application is filed;
- 2) justification of the inability to satisfy the claims of creditors;
- 3) list of documents to be attached.

The debtor's application may also include other details, if they are necessary for the examination of the case for restoration of solvency or court bankruptcy proceedings, as well as available petitions from the petitioner.

3. The debtor's application for restoration of solvency or court bankruptcy proceeding shall be accompanied by:

1) a list of all creditors and debtors (with amounts owed and date of creation, address of residence or domicile, e-mail addresses and contact telephone numbers (if available) for their further notification);

2) an inventory of the debtor's property, accompanied by a valuation report (if any), drawn up at least six months prior to the filing of the bankruptcy application;

3) a list of civil and/or other obligations, including those secured by a pledge over the debtor's property, for the last three years prior to the application for insolvency or judicial bankruptcy proceedings;

4) a copy of the document proving that the debtor has taken steps to settle the debt under the bank loan agreement and/or the micro-loan agreement.

Documents evidencing implementation of the proceeding specified in this subparagraph shall be replies of the second-tier bank, branch of non-resident bank of the Republic of Kazakhstan, organisation engaged in certain types of banking operations and (or) organisation engaged in microfinance activity on refusal to change conditions of the bank loan agreement and (or) micro-loan agreement with specification of reasoned justification.

Should the second-tier bank, branch of non-resident bank of the Republic of Kazakhstan, organisation engaged in certain types of banking operations and (or) organisation engaged in microfinance activity fail to provide response to the application of the debtor, the document confirming proceeding stipulated by this subparagraph shall be a copy of application of the debtor or confirmation of sending the application in electronic format.

4. A debtor's application for restoration of solvency or a court bankruptcy proceeding that fails to comply with the requirements stipulated in this Article shall be returned by the court without consideration.

#### **Article 21. Initiation of recovery of solvency or bankruptcy proceedings**

1. No later than ten business days from the receipt of the application, the court shall decide on the initiation of solvency restoration or court bankruptcy proceedings, if the application meets the conditions set out in Article 20 hereof.

2. The ruling on the initiation of solvency recovery proceedings or court bankruptcy proceedings shall specify the obligation of the competent authority to appoint a financial manager within two business days from the date of such ruling, as well as the obligations of the debtor, public authorities and other bodies, as well as the Government for Citizens State Corporation which registers property rights, to enforce the consequences provided by Article 22, paragraph 1 hereof.

The ruling on the initiation of bankruptcy proceedings shall also specify the debtor's obligation to provide access for the financial manager to take an inventory of the debtor's property.

3. The court shall send copies of the court ruling on the initiation of solvency recovery or bankruptcy proceedings to the debtor, the competent authority and the territorial justice body at the debtor's place of residence and the Government for Citizens State Corporation, responsible for the registration of property rights.

#### **Article 22. Consequences of instituting restoration of solvency or court bankruptcy proceedings**

1. From the date of the ruling on the initiation of solvency or court bankruptcy proceedings, the following shall occur:

1) the debtor's debt obligations specified in the application for enforcement of the solvency or court bankruptcy proceedings are deemed to have expired;

2) no creditors specified in the application initiating the solvency restoration or court bankruptcy proceedings may demand from the debtor the fulfilment of his/her obligations;

3) no penalties (fines, penalties) and remuneration for any type of debtor's debts to creditors listed in the application for restoration of solvency or court bankruptcy proceedings may be imposed;

4) the debtor is prohibited to undertake new monetary or property obligations ( with the exception of receiving micro loans from pawnshops);

5) the debtor's consent to obtain information on his/her property from public authorities and other bodies and organisations is deemed to have been granted;

6) the debtor is prohibited to leave the Republic of Kazakhstan, except for the necessity to provide medical treatment, to accompany a close relative for treatment, to conduct burial of a close relative outside of the Republic of Kazakhstan;

7) no recovery of money from the debtor's bank accounts to satisfy the creditors' claims, as well as recovery of the debtor's property is allowed;

8) claims against the debtor may be brought only within the procedure of recovery of solvency or court bankruptcy, excluding the case referred to in paragraph 2 hereof;

9) the enforcement of previously issued court decisions in respect of the debtor's property is suspended;

10) enforcement of decisions of public authorities, other bodies and organisations whereby the debtor is obliged to transfer the property, make payment or otherwise fulfil property obligations, is suspended.

The requirements of paragraphs 1), 2), 3), 7), 8) and 9) of this paragraph shall not apply to claims for alimony and for compensation for harm to life or health.

2. Should the debtor fail to fulfil his/her obligations secured by a guarantee, suretyship or pledge of third parties, the initiation of solvency recovery or bankruptcy proceedings shall not prevent the creditor from pursuing claims against guarantors, sureties and pledgers for the outstanding obligations of the debtor beyond the framework of the solvency or bankruptcy proceedings.

### **Article 23. Powers of the financial manager in solvency recovery or court bankruptcy proceedings**

1. Within two business days from the date of the court ruling on the initiation of solvency recovery or court bankruptcy proceedings, the competent authority shall appoint a financial manager from among persons whose notifications of the commencement of activities as financial managers are included in the state electronic register of permits and notifications under the legislation of the Republic of Kazakhstan on permits and notifications.

2. The powers hereby conferred on the financial manager may not be delegated to other persons.

3. The remuneration of the financial manager in solvency or bankruptcy proceedings shall be paid from the debtor's funds, unless otherwise stated herein.

The financial manager's monthly remuneration shall amount to one minimum wage, as set out in the law on the national budget for the financial year concerned.

4. The financial manager shall open a current account in his/her name in a second-tier bank (organisation performing certain types of banking operations) under the procedure determined by the National Bank of the Republic of Kazakhstan to credit the money of the debtor, repay current expenses and satisfy the creditors' claims in the court bankruptcy proceeding.

Money held in the financial manager's current account for the debtor's money, current expenses and creditors' claims in court bankruptcy proceedings shall not be his/her property and/or income and shall not be included in his/her inheritance.

No seizure, foreclosure and suspension of debit transactions on the financial manager's current account to credit the debtor's money, pay current expenses and settle the creditors'



claims in court bankruptcy proceedings against the financial manager's obligations shall be allowed.

#### **Article 24. Opinion of the financial manager**

1. Based on the results of the collection of information on the debtor's financial status, the financial manager shall prepare an opinion in a prescribed form with one of the following conclusions:

- 1) the debtor is insolvent and there are grounds to initiate solvency recovery proceeding;
- 2) the debtor is insolvent and there are grounds for a court bankruptcy proceeding;
- 3) the debtor is solvent and there are no grounds for a solvency recovery or a court bankruptcy proceeding.

The opinion shall be lodged with the court within twenty business days following the decision of the court to initiate solvency recovery or court bankruptcy proceedings.

2. An opinion containing conclusions that the debtor is solvent and there are no grounds for the implementation of the solvency restoration or court bankruptcy proceedings shall be prepared by the financial manager in the absence of one or more of the circumstances envisaged by Article 6 hereof.

#### **Article 25: Inventory of the assets of the debtor**

1. The financial manager shall inventory the debtor's property within ten business days from the date of the court ruling on the initiation of solvency recovery or court bankruptcy proceedings.

2. The property shall be inventoried in the presence of the debtor.

Close relatives or other persons authorised by the debtor may also be present at the inventory.

3. The inventory report of the debtor's property shall include:

- 1) the time and place of compiling the report;
- 2) the surname, name and patronymic (if it appears on the identity document) of the financial manager drawing up the report;
- 3) surname, name and patronymic (if stated in the identity document) of the debtor;
- 4) name of each item, its distinguishing features;
- 5) market value of each item separately and of the entire property.

Both financial manager and debtor (person authorised by the debtor) shall sign the inventory report.

4. Amendments and/or additions to the inventory report may be made if a court rules to discontinue the recovery of solvency proceedings as well as to apply a court-ordered bankruptcy proceeding.

#### **Article 26. Appraisal of the property of the debtor**

1. The financial manager shall be obliged to appraise the debtor's property by engaging an appraiser within the time period specified in paragraph 2 of this Article.

2. The financial manager shall independently determine the appraiser.

Payment for the services of an appraiser shall refer to current expenses.

The appraisal report shall be prepared within ten business days after the conclusion of the appraisal agreement.

Within three business days from the date the appraisal report is provided by the appraiser, the financial manager shall send the appraisal report to the debtor and the creditor.

3. A debtor or creditor who disagrees with the appraisal report may appeal against it in court within ten business days from the day of reading the appraisal report.

The fee for the repeated appraisal shall be borne by the person who filed the complaint.

#### **Article 27. Formation of a register of claims of creditors**

1. The financial manager shall submit an announcement in Kazakh and Russian to the competent authority for publication on the internet resource on the initiation of solvency recovery or court bankruptcy proceedings and the procedure for the application of claims by creditors.

The announcement shall be sent within two business days of the appointment of the financial manager by the competent authority.

Within two business days of receiving the announcement, the competent authority shall publish it on its website.

2. Creditors' claims against the debtor shall be declared by them within twenty business days from the date of publication of the announcement on the initiation of the solvency recovery or court bankruptcy proceedings and the procedure for filing claims by creditors on the competent authority's website. The financial manager shall receive creditors' claims in the manner stated in the announcement, under Article 13 hereof.

Creditors' claims must contain details regarding the creditor's mobile phone number and e-mail address (if available); details of the amount of the claim (separately for the principal, interest, forfeit and other penalties, losses) accompanied by copies of documents confirming the grounds and amount of the claim (enforceable court decisions, copies of contracts, recognition of debt by the debtor and others), while presenting the original documents for verification. The amount of the claim shall be determined as at the date of making the said claim.

Should the amount of the claim for remuneration (interest), forfeit and other penalties, losses specified in part two of this paragraph be changed on the date of the court's decision to apply the solvency recovery or court bankruptcy proceedings, the creditor shall resubmit its claims with due account of the said change within five business days from the date of such decision of the court.

Creditors' claims denominated in foreign currency shall be recorded in tenge based on the official exchange rate set by the National Bank of the Republic of Kazakhstan as of the date of the court decision to apply the solvency recovery or court bankruptcy proceedings.

3. Within five business days of receipt of the creditor's claim, the financial manager shall decide whether to recognise the claim as justified (unjustified) and include the recognised claim in the register of creditors' claims.

4. Within ten business days from the end of the period referred to in paragraph 2 of this Article, the financial manager shall send the register of creditors' claims to the competent authority for publication on the website.

The competent authority shall post the register of creditors' claims on its website no later than two business days after receiving the register from the financial manager.

Should there be grounds, a creditor and/or debtor, may appeal to the competent authority or the court against the failure of the financial manager to include all or part of the claims in the creditor claims register within ten business days of the posting of the creditor claims register on the competent authority's website.

An appeal shall not constitute grounds for suspending a court bankruptcy proceeding.

5. A creditor's claim submitted beyond the deadline referred to in paragraph 2 of this Article shall be subject to satisfaction after the claims of creditors filed within the deadline have been satisfied in full, excluding those for compensation for injury to life and health and for alimony payments.

Creditors' claims for compensation for harm to life and health and for alimony payments filed beyond the deadline established hereby shall be included in the register of creditors' claims as claims subject to satisfaction in the first instance.

6. Amendments and/or additions may be made to the creditor claims register under the procedure specified by the competent authority, if a court decides to terminate the solvency recovery and court bankruptcy proceedings.

#### **Article 28. Decision to apply the solvency recovery proceedings**

1. The decision on the application of the solvency recovery proceeding shall be taken by the court, subject to the opinion of the financial manager referred to in subparagraph 1) of paragraph 1 of Article 24 hereof.

2. The court's decision to apply solvency recovery proceedings must include instructions on:

1) the submission by the financial manager of a solvency recovery plan within two months from the date of enactment of the decision on the application of the solvency recovery proceedings;

2) preservation of the consequences envisaged by Paragraph 1 of Article 22 hereof.

#### **Article 29. Solvency recovery plan**

1. A solvency recovery plan shall include any financial, legal and other measures not contrary to the laws of the Republic of Kazakhstan aimed at recovering the debtor's solvency, with due regard to the income received and current expenses, as well as the schedule for satisfying creditors' claims and the money left at the debtor's disposal on a monthly basis.

The period of execution of the solvency recovery plan shall not exceed five years, unless specified in sub-paragraph 2) of paragraph 3 of Article 32 hereof.

A solvency recovery plan may be executed prematurely.

2. A solvency recovery plan shall envisage one or more of the following instruments:

1) change of the deadline for fulfilment of an obligation (deferment and (or) instalment payment of a debt);

2) forgiveness of debt or part thereof, including forfeit (fines, penalties);

3) reduction of interest rate for the use of loan;

4) reduction of the amount of regular current payments with simultaneous increase of the total term of loan agreement performance;

5) change in the manner of performance of the obligation;

6) satisfying the claims of the pledge lender by transferring the subject of the pledge to that lender on condition that the pledge lender forgives the obligations under the loan agreement;

7) other instruments not provided for in this paragraph.

3. A solvency recovery plan may include the following steps:

1) selling part of the property;

2) leasing (renting) of property;

3) collection of receivables;

4) exchange of housing (vehicles) for housing (vehicles) of lower value;

5) The selling of a dwelling (vehicle) followed by the purchase of a dwelling (vehicle) of lower value;

6) the debtor's employment;

7) other measures not inconsistent with the legislation of the Republic of Kazakhstan.

4. Within one month from the date of entry into legal force of the court decision on the application of the solvency recovery proceedings, the financial manager must develop, jointly with the debtor, a draft solvency recovery plan based on a model plan form.

A draft solvency recovery plan shall be forwarded for review to the creditors whose claims are included in the register of creditors' claims. Within ten business days from the date of receipt of the draft solvency recovery plan, creditors shall provide suggestions and comments.

Submission of proposals and/or comments after the specified deadline shall be equated with the lender's failure to make proposals and comments.

5. Within five business days of the expiry of the period referred to in the second part of paragraph 4 of this Article, the financial manager shall prepare a final solvency recovery plan and forward it to the court as well as to the creditors whose claims are included in the register of creditors' claims.

Creditors' proposals and/or comments to the draft solvency recovery plan shall be submitted to the court at the same time as the final solvency recovery plan.

Should the proposals and/or remarks of the creditor(s) not be partly or fully accounted for when preparing the final solvency recovery plan, the financial manager must attach to the solvency recovery plan calculations reflecting the estimated amount to meet the claims of all creditors upon termination of the solvency recovery proceedings.

**Article 30. Results of the review by the court of the solvency recovery plan**

1. Based on the results of the review of the solvency recovery plan filed by the financial manager, the court shall issue one of the following judgments:

- 1) a ruling on the approval of the solvency recovery plan;
- 2) the decision to terminate the solvency recovery proceedings and to apply for a court bankruptcy proceeding.

2. A ruling on the approval of the solvency recovery plan shall be issued by the court in the event of

- 1) absence of creditors' proposals and (or) comments to the draft solvency recovery plan;
- 2) all proposals and (or) creditors' remarks are considered when drafting the final solvency recovery plan;
- 3) if calculations attached by the financial manager to the final solvency recovery plan show that the execution of the solvency recovery plan will result in the satisfaction of all creditors' claims in an amount not less than in the case of termination of the solvency recovery proceedings.

3. The court ruling approving the solvency recovery plan shall instruct (on):

- 1) approval of the solvency recovery plan;
- 2) terms of execution of the solvency recovery plan, notification of creditors on the execution of such plan and application of the debtor to the court for completion of the solvency recovery proceedings.

4. The decision to discontinue the solvency recovery proceedings and apply bankruptcy proceedings shall be made by the court if the calculations attached by the financial manager to the final solvency recovery plan show that the execution of the solvency recovery plan will result in the satisfaction of all creditors' claims to a considerably lower extent than in the case of discontinuing the solvency recovery proceedings and applying bankruptcy proceedings at the creditors' request.

5. The court decision on the termination of the solvency recovery proceedings and the application of the court bankruptcy proceedings shall specify the termination of the solvency recovery proceedings and the application of the court bankruptcy proceedings, as well as the instructions stipulated in paragraph 2 of Article 36 hereof.

**Article 31. Effect of the approval of a solvency recovery plan by the court**

Once the court ruling approving the solvency recovery plan enters into legal force, the following effects shall follow:

- 1) the debtor's obligations are to be discharged in the manner and on the terms set out in the solvency recovery plan;

2) the debtor is prohibited to perform transactions on alienation of its property or assuming new obligations, not covered by the solvency recovery plan;

3) based on the debtor's application, a copy of the court ruling on the approval of the solvency recovery plan, restrictions on the debtor's property are lifted;

4) the accrual of interest on the received loans is terminated;

5) the debtor is prohibited to make transactions involving loans (other than obtaining micro-loans from pawnshops), guarantees and sureties.

### **Article 32. Implementation of a solvency recovery plan**

1. The debtor shall be responsible for implementing a solvency recovery plan on her/his own..

Creditors may monitor the implementation of the solvency recovery plan by imposing an obligation on the debtor to provide them with regular information on the progress of the solvency recovery plan or by entrusting one of the creditors with the monitoring functions.

Following the expiry of the time limit for the implementation of the solvency recovery plan, on the day following the expiry date, the debtor shall send creditors a notification on the implementation of the solvency recovery plan and apply to the court for the termination of the proceedings.

2. In ten business days after receipt of the debtor's petition, the court shall decide on the completion of the solvency recovery proceedings, indicating:

1) the completion of the solvency recovery proceedings;

2) restoration of the debtor's solvency;

3) the debtor's continuing obligation to fulfil the obligations laid down in paragraph 3 of this Article.

3. Once the recovery of solvency has been completed, the obligations of the debtor shall remain with regard to the fulfilment of:

1) obligations referred to in Article 46 hereof;

2) obligations, having a longer term than the term of execution of the solvency recovery plan, under the conditions stipulated by such plan.

### **Article 33. Consequences of failure to implement a solvency recovery plan**

1. Should it become impossible to perform the measures specified in the solvency recovery plan, by no later than one month following the expiry of the planned measures, the debtor must apply to the court for the termination of the solvency recovery proceedings and the application of the court bankruptcy proceedings.

2. Should the debtor fail to comply with the measures stipulated in the solvency recovery plan for more than two months, the creditor may apply to the court for the termination of the solvency recovery proceedings and the application of bankruptcy proceedings.

3. The debtor's failure to perform the obligation prescribed in paragraph 1 of this Article shall constitute grounds for the court to refuse to terminate his obligations remaining unfulfilled at the date of completion of the judicial bankruptcy proceedings.

This paragraph shall not apply in the event that the execution of the measure under the solvency recovery plan has become impossible due to force majeure, i.e. extraordinary and unavoidable circumstances (natural disasters, warfare, state of emergency, etc.), or due to the fault of third parties.

#### **Article 34. Examination of the debtor's or creditor's petition in court**

1. The court shall schedule a court session no later than ten business days from the date of receipt of the debtor's or creditor's petition for termination of the solvency recovery proceedings and application of the court bankruptcy proceedings with notification of the debtor, creditors, the competent authority on the date, time and venue of the court session.

2. Following the hearing of the petition, the court shall decide whether to terminate the solvency restoration proceedings and apply the court bankruptcy proceedings or to reject the petition as per the general rules of civil proceedings.

3. The court decision on the termination of the solvency recovery proceedings and the application of the court bankruptcy proceedings shall include instructions on the termination of the solvency recovery proceedings and the application of the court bankruptcy proceedings, as well as the instructions specified in paragraph 2 of Article 36 hereof.

#### **Article 35. Discontinuation of the solvency recovery or court bankruptcy proceedings**

1. A creditor or a competent authority shall apply to the court for suspension of the restoration of solvency or court bankruptcy proceedings in the following cases

1) the death of the debtor, entry into legal force of a court decision declaring the debtor missing or declaring him/her dead;

2) the debtor's failure to fulfil the obligations under Article 7 hereof.

2. Based on the results of the application of the creditor or the competent authority, the court shall decide on the termination of the restoration of solvency or court bankruptcy proceedings.

3. Termination of the solvency restoration or court bankruptcy proceedings shall not result in the termination of the debtor's obligations to creditors.

#### **Article 36. Decision to apply for a court bankruptcy proceeding**

1. The court shall decide on the application of the court bankruptcy proceedings, subject to the opinion of the financial manager.

2. The court decision on the application of the court bankruptcy proceedings shall contain instructions on:

1) the filing by the financial manager of an announcement on application of the court bankruptcy proceedings to the competent authority for posting on the competent authority's website;

2) the sale of the debtor's property by the financial manager and his/her settlements with creditors;

3) the transfer of the right to manage the debtor's property to a financial manager;

4) the transfer by the debtor of the documents of title to the debtor's property to the financial manager within three business days from the effective date of the court decision;

5) the transfer of funds by the debtor from bank accounts to the current account of the financial manager for depositing money, repayment of current expenses and satisfaction of creditors' claims;

6) the removal of any restrictions and encumbrances on the debtor's property (collection orders issued on its accounts, arrests on the property, etc.) without taking relevant decisions of the authorities that imposed them, based on the application of the financial manager;

7) the prohibition for the debtor to assume new monetary or property obligations (excluding receipt of micro-loans from pawnshops);

8) the prohibition for a debtor to leave the Republic of Kazakhstan.

### **Article 37. Time limit for court bankruptcy proceedings**

1. The time limit for the court bankruptcy proceedings shall not exceed six months from the date of entry into legal force of the court decision on the application of the court bankruptcy proceedings.

The time limit established by this paragraph may be extended by the court for a period not exceeding six months, if the grounds stipulated by paragraph 2 of this Article exist.

2. The grounds for extending the period of the court bankruptcy proceedings shall include:

1) the existence of a case pending before the court that affects the debtor's and his/her creditors' property interests;

2) availability of unrealised property;

3) application by the financial manager to the state revenue authorities for evidence of deliberate bankruptcy or misconduct in the restoration of solvency and bankruptcy of citizens of the Republic of Kazakhstan;

4) the necessity to rectify infringements of the legislation of the Republic of Kazakhstan specified in the court ruling on refusal to approve the final report of the financial manager;

5) the necessity to remove infringements of the legislation of the Republic of Kazakhstan, revealed by the competent authority.

### **Article 38: Assets of the debtor**

1. The debtor's assets shall consist of all movable and immovable property in the Republic of Kazakhstan and beyond, including:

property where the right and (or) the transaction are subject to state or other registration with a competent authority, including in a foreign state in accordance with the laws of a foreign state;

money in bank accounts, including in foreign banks located outside the Republic of Kazakhstan;

cash;

share in a residential building under an agreement on shared participation in housing construction;



participation interest in the authorised capital of a legal entity, including a legal entity established outside the Republic of Kazakhstan;

securities, derivative financial instruments (excluding derivative financial instruments executed through acquisition or sale of underlying asset);

investment gold;

items of intellectual property, copyrights;

debts of other persons to the debtor (accounts receivable) in the presence of an agreement or other document serving as the basis for the obligation or claim, notarised (certified);

animals in the presence of a veterinary passport or other document confirming the right of ownership;

precious stones and precious metals, jewellery made from them, and other items containing precious stones and precious metals, as well as works of art and antiques, furs and other valuable clothing;

digital assets.

2. The share of a debtor from jointly owned property shall be divided as stipulated by the civil legislation of the Republic of Kazakhstan.

3. Property that cannot be foreclosed on under the legislation of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs, as well as the debtor's sole dwelling not constituting security for obligations, shall not be included in the asset portfolio.

4. The amount of the claims asserted in bringing a person to subsidiary liability shall be equal to the amount of loss established by the judicial act whereby such person has been found guilty of deliberate bankruptcy, in the manner prescribed by the Administrative Offences Code of the Republic of Kazakhstan.

### **Article 39. Sale of the assets of the debtor**

1. The debtor's property shall be sold by an electronic auction or by direct sale as per the plan of sale of the debtor's property.

The debtor's property constituting a security for performance of obligations and not taken by the mortgagee in kind pursuant to Article 41 hereof shall be sold subject to the provisions stipulated by the Civil Code of the Republic of Kazakhstan and other laws of the Republic of Kazakhstan.

The debtor's property secured by a third party shall be sold subject to the existing encumbrance.

2. Within five business days of the court's decision on the application of bankruptcy proceedings, the financial manager shall prepare a draft plan for the sale of the debtor's assets independently.

The selected manner of sale of the debtor's property must ensure the most profitable sale of the property for the purposes of satisfying creditors' claims.

The debtor's property shall be sold at a value not lower than seventy-five percent of the appraised value of such property as specified in the appraisal report, from the date of which not more than six months has passed.

3. The draft plan of sale of the debtor's property shall be submitted for review to the creditors whose claims are included in the register of creditors' claims. Within five business days from the date of receipt of the draft plan of sale of the property, creditors shall make proposals and (or) comments.

Submission of proposals and/or comments to the draft plan for the sale of the debtor's property later than the deadline specified in part one of this paragraph shall be equated with the creditor's failure to submit proposals and/or comments.

4. Within five business days from the expiry of the period mentioned in the first part of paragraph 3 of this Article, the financial manager shall compile a final plan for the sale of the debtor's property and shall submit it for information to the creditors whose claims are included in the register of creditors' claims.

In the period of five business days following the receipt of the plan of sale of the debtor's assets, creditors may appeal against the plan to a court.

A court decision that becomes enforceable shall be the ground for amending the plan of sale of the debtor's assets.

5. The competent authority shall determine the procedure and the organiser of the electronic auction for the sale of the debtor's assets.

#### **Article 40. Priority of distribution of the assets of the debtor**

1. The debtor's current expenses shall be paid out of turn from the debtor's assets.

2. Claims for the recovery of debts for damages to life or health, for maintenance payments shall be settled first and foremost.

3. Tax arrears, customs arrears, other compulsory payments to the budget as well as payments to the budget recovered by a court decision shall be paid in the second instance.

4. Settlements with other creditors under civil law and other obligations shall be made in the third instance, and the claims of creditors shall be satisfied as well:

in the case envisaged by paragraph 7 of Article 41 hereof;

arising as a result of a court decision declaring a transaction null and void and returning the property to the debtor's assets.

5. Creditors' claims for damages and penalties (fines, penalties and interest) shall be satisfied in the fourth order of priority).

6. The claims of creditors who have not fulfilled the obligation prescribed in subparagraph 4) of paragraph 2 of Article 8 hereof, as well as those submitted beyond the term established by paragraph 1 of paragraph 2 of Article 27 hereof, shall be satisfied in the fifth order, excluding the claims for compensation for harm caused to life or health, for the recovery of alimony.

7. If the property is insufficient to pay the claims between creditors of the same rank, such property shall be distributed between them in proportion to the amount of their claims included in the register.

#### **Article 41. Satisfaction of claims of pledge creditors by taking the pledged property in kind**

1. If there is pledged property in the debtor's assets, the financial manager shall send to the pledgee a proposal for taking the pledged property in kind within three business days after drawing up an inventory report.

2. No later than five business days after receipt of the offer referred to in paragraph 1 of this Article, the pledgee shall agree in writing to take the pledged property in kind or to reject it.

3. In the event that the pledged property is accepted in kind, no later than one month from the date of written notification to the financial manager of the acceptance of the pledged property in kind, the pledgee shall pay the costs related to the appraisal and maintenance of the pledged property.

4. Within five business days of the payment of the costs referred to in paragraph 3 of this Article, the financial manager shall transfer the pledged property to the secured creditor in satisfaction of its claims.

5. Should the appraised value of the pledged property exceed the pledgee's claims, the difference shall be transferred to the debtor's assets by the pledgee within one month from the day of taking over the pledged property.

6. Should the appraised value of the pledged property be less than the claims of the pledgee, the claims of the pledgee shall be deemed extinguished.

7. Satisfaction of the claims of the pledged creditor shall be effected in the procedure stipulated by Paragraph 4 of Article 40 hereof, in cases of:

- 1) the pledge creditor refuses to accept the pledged property in kind;
- 2) failure by the pledged creditor to respond to the proposal of the financial manager within the term specified in paragraph 2 of this Article;
- 3) failure to pay in full the costs set out in paragraph 3 of this Article.

8. The pledge creditor shall deliver the documents of title to the debtor's pledged property to the financial manager within three business days of the occurrence of the cases stipulated in paragraph 7 of this Article.

#### **Article 42. Rules for the settlement with creditors**

1. The financial manager shall make settlements with creditors both in cash (in kind) and in non-cash form by transferring money from the financial manager's account to creditors' accounts.

2. When settling with creditors, the financial manager shall use the funds received from the sale of the debtor's property, as well as the debtor's income, excluding income that cannot be foreclosed under Article 98 of the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Court Bailiffs".

In doing so, the money remaining at the debtor's disposal shall not fall below the amount referred to in sub-paragraph 4) of paragraph 1 of Article 7 hereof.

3. Claims of creditors of the first priority, declared after the expiration of the term provided by part one of paragraph 2 of Article 27 hereof, but prior to completion of settlements with all creditors, shall be included in the register of creditors' claims of the first priority and shall be satisfied out of the debtor's assets. Prior to the inclusion of such claims in the register, the repayment of creditors' claims shall be suspended.

The claims of first priority creditors, filed after the completion of settlements with all creditors but prior to the approval of the liquidation balance sheet, shall be settled out of the debtor's property remaining after the creditors' claims have been satisfied.

4. The remaining amounts of funds and the debtor's assets that have been offered for sale but remain unsold and are not accepted by the creditor in satisfaction of the claim or by the financial manager against payment of the running costs shall be returned to the debtor after the creditor's claims have been satisfied.

#### **Article 43. Final statement and opinion of the financial manager**

1. Once the settlements with creditors have been completed, the financial manager shall prepare:

- 1) a final statement in the prescribed form;
- 2) an opinion on the presence or absence of grounds for termination of the bankrupt's obligations as per the prescribed form.

2. Within the deadlines stipulated by paragraph 1 of Article 37 hereof the financial manager shall submit to the court the final statement, the opinion on the presence or absence of grounds for termination of the bankrupt's obligations.

Both copies of the final statement and the opinion shall be sent by the financial manager to the debtor, creditors and the competent authority.

#### **Article 44. Consideration of the final statement of the financial manager by the court**

1. The court shall schedule a court hearing no later than ten business days following the receipt of the financial manager's final statement and opinion on the existence or absence of grounds for termination of the bankrupt's obligations.

2. When reviewing the financial manager's final statement in court, the competent authority must apply for the payment of remuneration to the financial manager from budgetary funds if the following circumstances are established in the course of the bankruptcy proceedings in the aggregate:

1) the debtor belongs to the category of socially vulnerable groups under the housing legislation of the Republic of Kazakhstan;

2) there is no property that may be subject to foreclosure under the laws of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs.

3. The court shall accept the financial manager's final statement and decide whether or not to terminate the bankruptcy proceedings and terminate the bankrupt's obligations remaining

unfulfilled during the bankruptcy proceedings, within one month from the date the court receives these documents.

4. Should the circumstances prescribed in Article 45 hereof exist, the court shall decide to terminate the bankruptcy proceedings and refuse to terminate the bankrupt's obligations remaining unfulfilled in the course of the bankruptcy proceedings.

5. In the absence of the circumstances stipulated in Article 45 hereof, the court shall resolve to complete the bankruptcy proceedings and terminate the obligations of the bankrupt that remain unfulfilled during the bankruptcy proceedings.

6. The decision on the completion of the court bankruptcy proceedings and the refusal to terminate the bankrupt's obligations remaining unfulfilled during the court bankruptcy proceedings shall provide instructions on:

- 1) approval of the financial manager's final statement;
- 2) completion of the judicial bankruptcy proceedings;
- 3) termination of the powers of the financial manager;
- 4) refusal to terminate the bankrupt's obligations remaining unfulfilled as a result of the bankruptcy proceedings;
- 5) the amount of creditors' claims remaining unsatisfied at the date of adjudication;
- 6) prohibition for five years to give a loan to bankrupt (apart from receipt of micro-loans from pawnshops) as well as refusal to accept security in form of pledge, guarantee or surety under bank loan and micro-loan contracts;
- 7) the payment of the amounts mentioned in the petition stipulated in paragraph 2 of this Article;
- 8) ordering the competent authority to post on the e-government web portal the announcement of the completion of the bankruptcy proceedings and the declaration of the debtor bankrupt.

7. The decision on the completion of the court bankruptcy proceedings and the termination of the bankrupt's obligations outstanding during the court bankruptcy proceedings shall contain instructions on (on):

- 1) approval of the financial manager's final statement;
- 2) completion of the judicial bankruptcy proceedings;
- 3) termination of the powers of the financial manager;
- 4) cessation of obligations of the bankrupt, remaining unfulfilled as a result of court bankruptcy proceedings, excluding obligations referred to in Article 46 hereof;
- 5) prohibition of transactions for obtaining loans (excluding obtaining micro-loans from pawnshops), issuing guarantees and sureties for a period of five years;
- 6) the payment of amounts specified in the application referred to in Paragraph 2 of this Article.

**Article 45. Circumstances constituting grounds for refusal to terminate the obligations of a bankrupt**

The obligations of the bankrupt shall not be ceased, if there is one or more of the following circumstances:

1) the debtor has provided false information and/or concealed information about his/her financial status, assets and liabilities, including when applying for solvency recovery and court;

2) in the course of solvency restoration and court bankruptcy proceedings, the debtor has concealed the property, its part and (or) information thereof or prevented the financial manager, court or the competent authority from obtaining information on its financial status, property and liabilities, and (or) failed to comply with the legal requirements of the financial manager and (or) otherwise prevented him/her from exercising his/her powers;

3) the debtor has increased the debt amount or otherwise worsened his/her financial situation, including through expropriation of property, new obligations, solvency recovery and court bankruptcy proceedings to the detriment of creditors;

4) the debtor has reduced assets to the detriment of creditors within three years prior to filing for bankruptcy;

5) the debtor has unjustified preference for one creditor over others or has performed other actions to the detriment of creditors during the solvency recovery and court bankruptcy proceedings, as well as for three years prior to the initiation of proceedings on the solvency recovery and court bankruptcy;

6) the debtor has been recognised as guilty of premeditated bankruptcy;

7) other circumstances at the court's discretion allowing to evaluate the debtor's actions (omissions) on initiation of solvency recovery and court bankruptcy procedures or in the course of them as a way to evade liability to creditors.

#### **Article 46: Obligations of the bankrupt not subject to termination after the completion of the solvency recovery and court bankruptcy proceedings**

Obligations of the bankrupt, not subject to termination after the completion of the recovery of solvency and court bankruptcy proceedings, shall consist of the following

1) payment of alimony to persons entitled to receive it under the legislation of the Republic of Kazakhstan;

2) compensation of harm, caused to life or health of a person;

3) claims resulting under the Law of the Republic of Kazakhstan “On the National Bank of the Republic of Kazakhstan”;

4) reimbursement of damages on criminal offences, as well as payments to the budget recovered by a court decision.

#### **Article 47: Publication on the website of the competent authority and the e-government web portal of the list of individuals for whom the solvency recovery, out-of-court and court bankruptcy proceedings have been applied, terminated and finalised**

1. The competent authority shall post on its website and the e-government web portal

1) a list of individuals in respect of whom an out-of-court bankruptcy procedure has been applied, terminated and completed;

2) the list of individuals in respect of whom the relevant court rulings and decisions have entered into force.

An individual shall be removed from the list in cases where the court's decision to impose solvency recovery or court bankruptcy proceedings has been overturned.

2. The list of individuals referred to in this Article shall be updated monthly, no later than the 20th day of the month following the expired month.

#### **Article 48. Monitoring of the financial status**

1. Throughout the period of out-of-court and court bankruptcy proceedings, the competent authority shall monitor the financial status of the debtor under the procedure and within the time limits established by the competent authority.

As part of the monitoring of the financial status, actions taken by the debtor to evade obligations to creditors shall be inspected, whereby its findings may constitute grounds for terminating the proceedings or for refusing to terminate the obligations of the bankrupt.

2. A competent authority shall monitor the financial status of a bankrupt for three years after the debtor has been declared bankrupt.

Creditors may also monitor the bankrupt's financial state.

Should it be found that the bankrupt has acquired property subject to state registration, including common joint property, the competent authority shall forward to the creditors the findings of the monitoring of the bankrupt's financial condition.

Upon receipt of information from the competent authority, creditors may apply to the court to cancel the declaration of bankruptcy of the debtor and resume bankruptcy proceedings under the Civil Procedure Code of the Republic of Kazakhstan.

### **Chapter 4. SETTLEMENT AGREEMENT**

#### **Article 49. Conditions for entering into a settlement agreement**

1. At any stage of the bankruptcy proceedings, the debtor and the creditors may enter into a settlement agreement.

2. Third parties may participate in the settlement agreement and assume the rights and obligations stipulated by the settlement agreement.

3. A settlement agreement shall be approved by the court.

Upon approval of a settlement agreement, the court shall issue a ruling on the approval of the settlement agreement, indicating that the court bankruptcy proceedings shall be terminated and the decision on the application of the court bankruptcy proceedings against the debtor shall not be enforced.

4. A settlement agreement shall become effective on the date of entry into force of the court ruling on its approval and shall be binding on the debtor, creditors and third parties involved in the settlement agreement.

5. A unilateral withdrawal from an enforceable settlement agreement shall be prohibited.

6. Should the court decide not to approve the settlement agreement, a settlement agreement shall be deemed unconcluded.

A court's refusal to approve a settlement agreement shall not preclude the conclusion of a new settlement agreement.

7. A settlement agreement may be terminated by court decision if the debtor and/or creditors and/or third parties fail to comply with the terms of the settlement agreement.

8. The court ruling on approval of a settlement agreement, as well as the court ruling on refusal to approve a settlement agreement, may be appealed against (protested) in the order established by the civil procedural legislation of the Republic of Kazakhstan.

9. Cancellation of a court ruling on approval of a settlement agreement shall be a ground for resumption of court bankruptcy proceedings.

A court that has decided to revoke a court ruling approving a settlement agreement or dissolving a settlement agreement shall specify in the court act initiation (renewal) of the court bankruptcy proceedings.

10. Should the court's ruling approving a settlement agreement be cancelled or a settlement agreement be terminated and court bankruptcy proceedings commenced, the claims of the creditors in respect of whom the settlement agreement has been concluded shall be determined with due regard to the terms and conditions set out in a settlement agreement.

#### **Article 50. Content of a settlement agreement**

1. A settlement agreement may be concluded, inter alia, under the following terms and conditions:

- 1) deferment and (or) instalment of the debtor's obligations;
- 2) assignment of the debtor's claims;
- 3) performance of the debtor's obligations by the third parties;
- 4) transfer of debt;

5) satisfaction of creditors' claims by other means not contrary to the legislation of the Republic of Kazakhstan.

2. A settlement agreement must contain details on the amount, procedure and timing of the debtor's obligations and (or) the termination of the debtor's obligations.

3. A settlement agreement shall be signed by the debtor and the creditor(s).

Should a third party be involved in the settlement agreement, the settlement agreement shall also be signed by such persons or their authorised representatives.

4. A settlement agreement must stipulate the procedure and deadlines for fulfilment of the debtor's obligations towards all creditors.

#### **Article 51. Consequences of approving a settlement agreement**

1. Approval of a settlement agreement shall be a ground for termination of the court bankruptcy proceedings.



2. The powers of the financial manager shall be terminated from the date of entry into force of the court ruling on the approval of a settlement agreement.

3. From the date of entry into legal force of the court ruling on approval of a settlement agreement:

1) the debtor and (or) third parties shall proceed to repay the debt to the creditors under the terms and conditions of a settlement agreement;

2) the consequences applied to the debtor under Article 22 hereof shall be terminated.

## **Chapter 5. FINAL PROVISIONS**

### **Article 52. Liability for breach of this Law**

Breach of this Law shall entail liability as stipulated by the laws of the Republic of Kazakhstan.

### **Article 53. Procedure for the enactment of this Law**

This Law shall be enacted sixty calendar days after the date of its first official publication excluding sub-paragraphs 7) and 8) of Article 9 and paragraphs 1, 2, 4 and 5 of Article 15, to be enacted on the date of its first official publication.

*President of the Republic of Kazakhstan*

*K. TOKAYEV*