

Bankruptcy Act

Staatsblad (Bulletin of Acts and Orders - Official Gazette) 1893-140, in force from 1 September 1896, as last amended (*Staatsblad* 2002-429) with effect from 1 January 2003.

Title I Bankruptcy

Chapter 1 The Declaration of Bankruptcy

Article 1

1 A debtor in a situation where he has ceased to pay his debts as they fall due shall be declared bankrupt by a court order either on his own application or on the petition of one or more of his creditors.

2 The bankruptcy order may also be issued for reasons of public interest or upon the requisition of the Public Prosecution Service.

Article 2

1 The bankruptcy order is issued by the *rechtbank* (district court) of the residence of the debtor.

2 If the debtor has left the Kingdom in Europe, the court of his last residence has jurisdiction.

3 With respect to the partners of a general partnership, the court within whose district the office of the partnership is established shall also have jurisdiction.

4 If a debtor who is not resident within the Kingdom in Europe conducts a profession or business there, the court within whose district his office is situated shall have jurisdiction.

5 If, in the cases referred to in the third or fourth paragraph, bankruptcy orders are issued by more than one court having jurisdiction on different dates, only the first order will have legal effect. If orders of different courts are issued on the same date, only the order of the court listed first in the Act of 10 August 1951 *Staatsblad* (Bulletin of Acts and Orders - Official Gazette) 347 has legal effect.

Article 3

1 If an application or petition for bankruptcy concerns a natural person who has not applied for an order for the implementation of a debt rescheduling scheme referred to in Title III, the clerk of the court shall immediately notify the debtor by letter that he may lodge an application referred to in article 284 within fourteen days of the date of despatch of such letter.

2 A hearing on the application or petition for bankruptcy shall be suspended until expiry of the period referred to in the first paragraph.

Article 3a

1 If an application or petition for bankruptcy and an application for an order for the implementation of a debt rescheduling scheme referred to in Title III are pending at the same time, the latter shall be heard first.

2 The hearing of the application or petition for bankruptcy shall be suspended until the implementation of an order for the debt rescheduling scheme is decided by an order that has become final and binding.

3 The application or petition for bankruptcy shall lapse by law upon an order for the definitive implementation of the debt rescheduling scheme.

Article 3b

Articles 3 and 3a shall not be applied if an application or petition for bankruptcy concerns a debtor to whom a debt rescheduling scheme applies.

Article 4

1 Application for a bankruptcy order is made and the petition therefor is lodged at the office of the clerk of the court and shall be heard in chambers as soon as possible. The clerk of the court shall immediately notify the debtor that he may lodge an application referred to in article 284, irrespective of article 15b, paragraph 1. The Public Prosecution Service will be heard thereon.

2 A debtor who is married or has entered into a registered partnership may only make application with the cooperation of his spouse or registered partner, as the case may be, unless any community of property has been excluded between the spouses and the registered partners, as the case may be.

3 In the case of a general partnership, the application must list the names and addresses of each of the partners who are jointly and severally liable for the whole.

4 The bankruptcy order shall be pronounced in open court and is enforceable on the basis of the original order, notwithstanding appeal or any contrary action.

As last amended with effect from 1 August 2002

Article 5(*1)

1 The petitions referred to in the preceding article and in articles 8, 9, 10, 11, 15c, second paragraph, 67, 155, 166, 198 and 206 shall be lodged by a member of the local Bar.

2 The first paragraph does not apply to an appeal instituted against an order of the *rechter-commissaris* whereby the *curator* is authorised to terminate a contract of employment.

As last amended with effect from 1 July 2002



Article 6

1 The court may order the debtor to be summoned to be heard either in person or by proxy. The clerk of the court shall cause the summons to be made in the manner to be provided by *Algemene Maatregel van Bestuur* (Regulation).

2 If the debtor summoned to be heard is married or has entered into a registered partnership, his spouse or registered partner, as the case may be, may also appear in person or by proxy.

3 The bankruptcy order shall be issued if facts or circumstances have been summarily proved which show that the debtor is in a situation where he has ceased to pay and, where the petition is made by a creditor, his right to claim.

Article 7

1 Pending examination, the court may, if so requested, grant the petitioner leave to have the estate of the debtor put under seal. It may do so subject to security being given in such amount as it may determine.

2 The seals shall be affixed by a notary designated by the court when granting leave. The goods

referred to in article 21 shall not be sealed; a brief description thereof shall be included in the official record.

Article 8

1 A debtor declared bankrupt after his hearing on the application for a bankruptcy order has the right to appeal within eight days following the date of the order.

2 If he has not been heard, he has the right to apply for the order to be set aside within fourteen days of the date of the order. If he is not within the Kingdom in Europe at the time the order is issued, this period shall be extended to one month.

3 He may appeal against a judgment given on his application to set aside within eight days following the date of the judgment.

4 The application to set the order aside or the appeal is made by a petition lodged at the office of the clerk of the judicial body which will hear the matter. The President shall immediately set the date and time for the matter to be heard.

No later than on the fourth day following the day on which he lodged his petition, the debtor shall procure that a bailiff serves a writ on the member of the local Bar who lodged the petition for a bankruptcy order, notifying him of the action to set aside or appeal and of the time set for the hearing of the matter.

5 This notification serves as a summons to appear for the creditor who instigated the bankruptcy order.

6 The matter will be heard as provided in article 4.

Article 9

1 If an application or petition for a bankruptcy order is rejected, an appeal may be instituted within eight days following the date of rejection.

2 The same applies if a bankruptcy order is nullified following an action to set it aside, in which case the clerk of the court of appeal before which the appeal proceedings were instituted shall forthwith notify the clerk of the court which ordered the nullification of the bankruptcy order.

3 The appeal proceedings shall be instituted and heard as provided under articles 4 and 6.

Article 10

1 Each creditor, except the creditor who applied for the bankruptcy order, and each interested party has the right to apply to set the bankruptcy order aside within eight days following the date of the order.

2 The action to set aside is by way of petition lodged at the office of the clerk of the court which issued the bankruptcy order.

3 The president shall immediately set the date and time for the hearing. No later than on the fourth day following the day on which he lodged his petition, the petitioner shall procure that a bailiff serves a writ on the debtor and, if the bankruptcy order was applied for by a creditor, on the member of the local Bar who lodged the petition for the bankruptcy order on the latter's behalf, informing them of the action to set aside and of the time set for the hearing.

4 This notification shall serve as a summons on the debtor and that creditor.

5 The matter will be heard as provided in article 4.

Article 11

1 A creditor or interested party whose action to set aside referred to in the preceding article has been rejected by the court has the right to appeal within eight days following the date of rejection.

2 The debtor, the creditor who applied for the bankruptcy order and the Public Prosecution Service have the same right to appeal if the bankruptcy order is nullified by the court as a result of such action to set aside, in which case the second paragraph of article 9 shall apply.

3 The appeal proceedings shall be instituted and heard as provided in articles 4 and 6.

4 If the action to set aside was submitted to the court of appeal, any further appeal shall be excluded.

Article 12

1 The debtor, the creditor who applied for the bankruptcy order, the creditor or interested party referred to in article 10 and the Public Prosecution Service have the right of cassation (*appeal to the Supreme Court*) eight days after the date of the judgment rendered by the court of appeal.

2 The cassation shall be lodged and heard as provided in articles 4, 6 and 8.

3 If the cassation is directed against a judgment nullifying the bankruptcy order, the clerk of the Supreme Court shall without delay notify the clerk of the court of appeal which rendered such judgment.

Article 13

1 If, as a result of an action to set aside, appeal or cassation, the bankruptcy order is nullified, the acts performed by the *curator* prior to or on the day on which publication in accordance with article 15 was made, shall remain nevertheless valid and binding as regards the debtor.

2 Pending an action to set aside, appeal or cassation (*appeal to the Supreme Court*), no scheme of arrangement or, without the consent of the debtor, any liquidation of the estate may take place.

As last amended with effect from 12 April 2002

Article 13a(*2)

If the bankruptcy order is nullified, the termination of a contract of employment by a *curator* shall be governed retro-actively, notwithstanding article 13, first paragraph, by the statutory or agreed rules applicable outside bankruptcy provided that the periods referred to in article 683, first and second paragraphs of Book 7 of the Civil Code and in article 9, third paragraph of the *Buitengewoon Besluit Arbeidsverhoudingen* (Extraordinary Labour Relations Decree), shall commence at the time the bankruptcy is nullified.

In effect from 1 July 2002

Article 14

1 The bankruptcy order shall provide for the appointment of one of the members of the court as *rechter-commissaris* in the bankruptcy and the appointment of one or more *curators*. The court which issues the bankruptcy order shall in such order also instruct the *curator* to open letters and telegrams addressed to the bankrupt.

2 The clerk of the court shall forthwith notify the *PTT*, the postal administration, of the bankruptcy order. The instruction referred to in the preceding paragraph shall be referred to in the notice.

3 An extract from the bankruptcy order, listing the name, address or office and profession of the bankrupt, the name of the *rechter-commissaris*, the name and address or office of the *curator*, the date of the order, and the name, profession and address or office of each member of the provisional committee of creditors, if appointed, shall forthwith be published by the *curator* in the *Nederlandsche Staatscourant* (Government Gazette) and in one or more newspapers designated by the *rechter-commissaris*.

Article 15

1 As soon as a bankruptcy order has been nullified as the result of an action to set aside, appeal or cassation (*appeal to the Supreme Court*), and, in the first two cases, the time limit for appeal or cassation has expired without appeal, the clerk of the judicial body which ordered the nullification shall notify the *curator* and the postal administration (*PTT*) of such nullification. The *curator* shall publish the nullification in the newspapers referred to in article 14.

2 A similar notification shall be given to the clerk of the court which rendered the judgment if a bankruptcy order is nullified on appeal or cassation.

3 The court which ordered the nullification of a bankruptcy order shall also determine the amount of the costs of the bankruptcy and the fee of the *curator*. It shall charge this amount to the party who applied for the bankruptcy or to the debtor, or to both, in a proportion to be determined by the court. There shall be no right of appeal or remedy against this decision. An enforcement order shall be issued in this respect for the benefit of the *curator*.

Article 15a

If the bankruptcy order is made on appeal or cassation (*appeal to the Supreme Court*) nullifying the judgment by which the application or petition for a bankruptcy order was rejected, the clerk of the judicial body which ordered the bankruptcy shall notify the clerk of the court with which the application or petition was lodged.



Article 15b

1 If it cannot reasonably be held that the bankrupt, on account of circumstances attributable to him, did not lodge an application for implementation of a debt rescheduling scheme within the period referred to in article 3, first paragraph, or if the declaration of bankruptcy was made on the debtor's own application, the court may, on the application of the bankrupt, set aside his bankruptcy until the verification meeting has been held. If no application for the implementation of a debt rescheduling scheme was lodged within the period referred to in article 3, first paragraph, in circumstances not reasonably attributable to the bankrupt or if the declaration of bankruptcy was made on the debtor's own application, the court may, until the verification meeting has been held or, where no verification meeting will be held, until the *rechter-commissaris* has given the orders referred to in article 137a, first paragraph, set aside the bankruptcy on the application of the bankrupt with a simultaneous order for implementation of the debt rescheduling scheme referred to in Title III.

2 For such purpose the bankrupt shall apply to the court with which the declaration, application or petition for bankruptcy was lodged by a petition referred to in article 284. Article 284, third paragraph shall not apply.

3 The first paragraph shall not apply:

- a if the bankruptcy is declared while the debt rescheduling scheme was in effect with regard to the debtor;
- b if the debtor is bankrupt as a result of the termination of the implementation of the debt rescheduling scheme;
- c if the bankruptcy order was given pursuant to article 340, fourth paragraph.

4 Prior to its decision, the court may order a hearing of the bankrupt, the *rechter-commissaris* and the *curator*. Article 6, second paragraph shall apply.

5 When allowing the application the court shall order the definitive implementation of the debt rescheduling scheme.

6 In the notice required by article 293 the clerk of the court shall give notice that the bankruptcy has been set aside. If the time for the verification meeting in the bankruptcy was already set in accordance with article 108, such notice shall also mention that such verification meeting shall not be held.

As last amended with effect from 1 August 2002

Article 15c

1 Neither the creditors nor any other interested parties shall have any legal remedies against a judgment pronouncing the setting aside of the bankruptcy and implementation of the debt rescheduling scheme.

2 If implementation of the debt rescheduling scheme is not ordered, the bankrupt has a right of appeal within eight days after the date of the decision. Appeal shall be instituted by a petition lodged with the clerk of the court of appeal, which must be seized of the matter. The clerk of the court of appeal shall notify the clerk of the district court without delay that such petition has been lodged.

3 The presiding judge shall immediately set the date and hour for the hearing which must be held within twenty days of the date on which the petition was lodged. The decision shall be pronounced no later than on the eighth day after that of the court hearing of the petition. The clerk of the court of appeal shall notify the clerk of the district court without delay of the court of appeal's judgment.

4 If the court of appeal upholds the bankruptcy, the debtor may apply for cassation within eight days of the date of the decision. Cassation shall be instituted by a petition lodged with the clerk's office of the Supreme Court. The presiding judge shall immediately set the date and hour for the hearing. The clerk of the Supreme Court shall notify the clerk of the district court without delay of the cassation and of the Supreme Court's decision.

5 As long as no decision on the petition referred to in article 15b, second paragraph is made and, if a debt rescheduling scheme has not been pronounced, pending the appeal or cassation, no consultation on a scheme of arrangement in the bankruptcy may take place and no distribution to creditors may be made.

Article 15d

1 If the bankruptcy is set aside with a simultaneous order to implement a debt rescheduling scheme, the following shall apply:

- a transactions performed by the *curator* during the bankruptcy shall remain valid and binding;
- b debts of the estate which arose during the bankruptcy shall also be treated as debts of the estate in the debt rescheduling scheme;
- c claims filed in the bankruptcy shall be treated as filed in the debt rescheduling scheme.

2 The commencement of the time periods mentioned in articles 43 and 45 shall be calculated with effect from the date of declaration of the bankruptcy.

Article 16

1 If the available assets are not sufficient to pay the bankruptcy costs and other debts of the bankrupt estate and upon the proposal of the *rechter-commissaris* and after having heard the creditors' committee, if any, the court may order either that the bankruptcy proceedings shall be free of charges or, after having heard or duly summoned the bankrupt, that the bankruptcy be terminated. In the latter

case the order shall be pronounced in open court.

2 A court which orders the termination of the bankruptcy shall also determine the amount of the bankruptcy costs and, if there are grounds therefor, the fees of the *curator*. It shall charge these amounts to the debtor. They will have priority over all other debts.

3 No right of appeal or remedy shall lie against this determination. An enforcement order shall be issued in this respect for the benefit of the *curator*.

4 The provisions of the second paragraph notwithstanding, the cost of the publications ordered in this Title shall be charged to the State to the extent that these cannot be paid out of the estate. The clerk of the judicial body which ordered the termination of the bankruptcy shall procure the payment of the amount determined by the court to be charged to the State.

As last amended with effect from 1 August 2002

Article 17

An order that the bankruptcy proceedings are to be free of charge results in an exemption from court fees.

Article 18

The order for termination of the bankruptcy shall be published in the same way as the bankruptcy order and the debtor and creditors may appeal against this order in the same manner and within the same periods as provided for a judgment rejecting a bankruptcy order. If a new application or petition for a bankruptcy order is lodged (within three years after such termination) the debtor or the petitioner must demonstrate that there are sufficient assets to cover the costs of the bankruptcy.



Article 19

1 The clerk of each court shall keep a public register recording in respect of each bankruptcy in the following sequence and stating the date:

- (1) an extract from the court decisions by which the bankruptcy order was issued or terminated;
- (2) brief contents of and the sanctioning by the court of the scheme of arrangement;
- (3) the dissolution of the scheme of arrangement;
- (4) the amount of liquidation distributions;
- (5) the termination of the bankruptcy pursuant to article 15*b* or article 16;
- (6) the rehabilitation.

2 The form and content of the register shall be regulated by Us by Regulation.

3 The clerk of the court must permit public inspection of the register at no cost and provide an extract from the register against payment.

As last amended with effect from 1 September 2000

Chapter 2 Consequences of the Declaration of Bankruptcy

Article 20

The bankruptcy comprises the entire property, rights and interests and liabilities of the debtor at the time of the declaration of bankruptcy as well as anything he will acquire during the bankruptcy.

Article 21

Nevertheless the following remain outside the bankruptcy:

- (1) the things referred to in article 447, nrs. 1-3 of the Code of Civil Procedure, the kit of members of the Army in accordance with their service and rank and any copyright in the instances it is incapable of seizure and the items described in the first paragraph of article 448 of the said Code, unless creditors lodge claims in the bankruptcy referred to in the second paragraph of that article;
- (2) whatever the bankrupt will acquire during the bankruptcy through personal activities, remuneration for an office or calling or pay, wages, pension or benefit if and to the extent so specified by the *rechter-commissaris*;
- (3) moneys given to the bankrupt to enable him to comply with his statutory liability for maintenance;
- (4) an amount determined by the *rechter-commissaris* from the proceeds of the usufruct referred to in paragraphs 1 and 2 of article 253l of Book 1 of the Civil Code in order to meet the charges referred to in paragraph 3 in article 253l of Book 1 of the said Code and the costs for the care and upbringing of a child;
- (5) the amount tendered for payment and safekeeping pursuant to article 642c of the Code of Civil Procedure;
- (6) the things and choses in action referred to in the third paragraph of article 60a.

Article 21a

1 With regard to life assurance described in subparagraph *b* of article 1, first paragraph of the *Wet toezicht verzekeringsbedrijf 1993* (Insurance Business (Supervision) Act 1993), the following shall not constitute part of the bankrupt estate:

- a the right of redemption of life assurance insofar as the beneficiary or insured would be unreasonably prejudiced by redemption;
- b the right to change the designation of a beneficiary, unless such change is made on behalf of the estate and the beneficiary or insured will not be unreasonably prejudiced as a result thereof;
- c the right to borrow against the assurance.

2 For exercising the right of redemption and the right to change the designation of beneficiary, the *curator* shall require consent from the *rechter-commissaris*, who, if necessary, shall determine up to which amount such rights may be exercised. The *curator* may assign the assurance only with written consent of the insured.

3 If the *curator* has changed the designation of the beneficiary, such designation shall lapse on termination of the bankruptcy.

Article 22

The definition of 'bankrupt' in the preceding article also includes the spouse or registered partner of the bankrupt who is married, or registered as a partner, with any community of property.

**Article 23**

As a result of the declaration of bankruptcy the debtor loses the right to legally dispose of and administer property, rights and interests comprised in the bankruptcy with effect from and including the day on which the bankruptcy order is issued.

Article 24

The estate is only liable for the obligations of the debtor arising after the declaration of bankruptcy to the extent that the estate benefits therefrom.

Article 25

1 Legal proceedings concerning rights or obligations comprised in the bankrupt estate shall be instituted by as well as against the *curator*.

2 If proceedings initiated or pursued by or against the bankrupt result in a judgment against the bankrupt, such judgment will have no force in law as against the bankrupt estate.

Article 26

During the bankruptcy legal proceedings to procure the performance of an obligation from the estate, whether or not against the bankrupt, may be instituted in no other way than by submission for verification.

Article 27

1 If legal proceedings are pending at the time of the declaration of bankruptcy and were instituted by the bankrupt, the proceedings shall, at the request of the defendant, be stayed to permit him, within a period to be set by the court, to summon the *curator* to take over the proceedings.

2 If the latter does not respond to the summons, the defendant has the right to request that the proceedings be dismissed; failing such request the proceedings between the bankrupt and the defendant may be pursued without cost to the estate.

3 Whether or not he has been summoned the *curator* may take over the proceedings at any time and cause the bankrupt to be removed as a party to the proceedings.

Article 28

1 If legal proceedings instituted against the bankrupt are pending at the time of the declaration of bankruptcy, the claimant has the right to request a stay in the proceedings in order to summon the

curator to appear in the proceedings within a period to be set by the court.

2 By his appearance, the latter will take over the proceedings as a result of which the bankrupt is removed as a party to the proceedings by operation of law.

3 If the *curator* entering an appearance immediately consents to the claim, the costs of the proceedings of the opposing party shall not constitute a debt of the estate.

4 If the *curator* does not enter an appearance, the provision in the second paragraph of article 25 does not apply to a judgment to be obtained against the bankrupt.

Article 29

To the extent that legal proceedings to procure the performance of an obligation from the estate are pending at the time of the bankruptcy order, the proceedings shall be stayed after the bankruptcy order and will only continue if verification of the claim is disputed. In such case the person disputing the verification will become a party to the proceedings instead of the bankrupt.

Article 30

1 If prior to the bankruptcy order the pleadings and other statements in the proceedings have been submitted to the court for judgment, the second paragraph of article 25 and articles 27-29 are not applicable.

2 Articles 27-29 shall again apply if the proceedings pending before the court are continued as a result of its decision.

Article 31

If proceedings are continued by or against the *curator* or, in the case of article 29, against a creditor, the *curator* or such creditor may invoke the nullity of acts performed by the debtor in the proceedings before he was declared bankrupt, if it is proved that the debtor deliberately prejudiced the creditors by such acts and that this was known to the other party.

Article 32

Repealed

Article 33

1 The consequences of a bankruptcy order are that all judicial enforcement against any part of the property, rights and interests of the debtor commenced prior to the bankruptcy ends immediately and that, from that time, no judgment may be enforced by detention of the debtor.

2 Attachments made shall lapse; the registration of a statement to that effect from the *rechter-commissaris* authorises the keeper of the public registers to deregister the attachments. As soon as the bankruptcy ends as a result of the nullification or termination of the bankruptcy, the attachment revives provided that the property still forms part of the estate. If the registration of the attachment in the public registers has been deregistered, the revival will lapse unless a writ informing the debtor of such revival is recorded within fourteen days after the revival.

3 If the debtor is held in custody for non-payment of debt, and save as provided in article 87, he will be released as soon as the bankruptcy order has become final.

4 The provisions of this article do not apply to detention in custody in the case of judgments, orders and authentic deeds whereby the payment of maintenance due pursuant to Book 1 of the Civil Code is ordered or promised, including payments due for the care and upbringing of a minor and education of a person of age below the age of 21 years and orders whereby a payment order is made for amounts due by one partner to the other pursuant to article 85, paragraph 2 of Book 1 of the Civil Code and decisions based on Chapter VII of the *Algemene bijstandswet* (National Assistance Act).

As last amended with effect from 1 January 2002

Article 33a

Repealed

Article 34

If prior to the bankruptcy of the debtor the realisation by execution of his property is at such an advanced stage that the date of sale has already been set, the *curator* may pursue the sale for the account of the estate, upon authorisation by the *rechter-commissaris*.

Article 35

1 If on the date of the bankruptcy order not all acts required for delivery by the debtor have been performed, the delivery can no longer be made validly.

2 If prior to the date of the bankruptcy order the debtor has delivered a future chattel or chose in action in advance, this will belong to the estate if it was acquired by him only after the beginning of the date of the bankruptcy order, unless it consists of fruit or plants not yet harvested and to which the debtor was entitled before the bankruptcy order by virtue of a right *in rem* or a lease or an agricultural lease.

3 For the application of articles 86 and 238 of Book 3 of the Civil Code a person acquiring from the debtor is deemed to have been aware of the debtor's lack of legal capacity after the publication of the bankruptcy order referred to in the third paragraph of article 14.

Article 35a

If a stipulation referred to in article 252 of Book 6 of the Civil Code had not yet been entered in the public registers on the date of the bankruptcy order, the *curator* may sell the property in respect of which it was made in accordance with article 101 or 176 unencumbered by the stipulation.

Article 35b

A donee may not derive any rights against the estate from a gift made by the debtor under a condition precedent or a suspensive provision as to time not yet fulfilled or matured on the date of the bankruptcy order.

Article 36

1 If a prescription period in respect of legal proceedings referred to in article 26 would lapse during the bankruptcy or within six months from its end, the period shall continue until six months have elapsed after the end of the bankruptcy.

2 The first paragraph applies, *mutatis mutandis*, to absolute time limits which begin by operation of law.

Article 36a

If a time limit has been set for the debtor prior to the bankruptcy order pursuant to the second paragraph of article 55 of Book 3, or article 88 of Book 6 of the Civil Code, and has not yet expired at the time of the bankruptcy order, such time limit shall continue to the extent as it is reasonably

necessary to enable the *curator* to determine his position. The counterparty may set a new reasonable time limit for the *curator* for that purpose.

Article 37

1 If, at the time of the bankruptcy order, a mutual contract has not been performed at all or only partially by both the debtor and the counterparty and if the *curator* does not declare himself willing to be bound by the contract within the reasonable term set by the counterparty in writing, the *curator* will forfeit the right to demand performance of the contract.

2 If the *curator* declares himself willing to perform the contract, he must put up security for such performance on such declaration.

3 The preceding paragraphs do not apply to agreements under which the bankrupt accepted obligations which require his personal performance, alone.

Article 37a

The counterparty may lodge a claim as unsecured creditor in respect of claims he has against the bankrupt by virtue of the cancellation or nullification of an agreement concluded with the bankrupt before the bankruptcy order or in respect of claims for damages for a failure in performance of a claim obtained against the bankrupt prior to his bankruptcy order.

Article 38

If, in the case of article 37, delivery of goods traded in the commodity market is stipulated at a fixed time or within a certain period and if such time arises or such period expires after the bankruptcy order, the agreement will be cancelled by the bankruptcy order and the counterparty of the bankrupt, may, without more, lodge a claim for damages as an unsecured creditor. If the estate suffers a loss because of such cancellation, the counterparty must compensate such loss.

Article 38a

1 If the bankrupt is a purchaser under a hire-purchase contract, both the *curator* and the seller may repudiate the hire-purchase contract or any agreement for the hire-purchase of a ship.

2 Such a repudiation has the same consequences as the cancellation of a contract on the grounds of non-performance of a buyer's obligations.

3 The seller may lodge a claim for the amount due as an unsecured creditor.

Article 39

1 If the bankrupt is a tenant, both the *curator* and the landlord may terminate the lease before expiry, provided notice of termination is given, effective at a date which is in accordance with such agreements and local custom. Moreover, the agreed or customary notice periods must be observed, provided however that three months' notice will in any case be sufficient. If rent has been paid in advance, no notice of termination of the lease can be given to expire before the date on which the period paid for ends. The rent will be a debt of the estate as from the date of the bankruptcy order.

2 If the bankrupt is an agricultural lessee, the above applies *mutatis mutandis*.

Article 40

1 Employees in the service of a bankrupt may give notice to terminate their contract of employment and, reciprocally, notice to terminate their contract of employment may be given to them by the *curator*, subject to the agreed or statutory notice periods, provided that the contract of employment may always be terminated with six weeks' notice.

2 From the date of the bankruptcy order the wages and premiums relating to the employment

agreement are debts of the estate.

3 This article applies to agency contracts, *mutatis mutandis*.

Article 41

1 Inheritances to which the bankrupt becomes entitled during the bankruptcy shall only be accepted by the *curator* subject to his prior consideration of a detailed inventory of the inheritance.

2 The *curator* shall require authorisation of the *rechter-commissaris* in order to disclaim an inheritance.

Article 42

1 The *curator* may, for the benefit of the estate and by a statement not requiring legal formality, avoid each juridical (*legal*) act which the debtor performed without obligation prior to the bankruptcy order when he knew or ought to have known when performing the same that it would result in prejudice to the creditors. The second paragraph of article 50 of Book 3 of the Civil Code does not apply.

2 A juridical act, other than for no consideration, which is either multilateral or unilateral and which concerns one or more specific persons, may only be avoided on the grounds that it causes prejudice if the person, with or in respect of whom the debtor performed the juridical act, knew or ought to have known that it would result in prejudice to the creditors.

3 If a juridical act for no consideration is avoided on the grounds that it causes prejudice, such avoidance will have no effect in respect of a beneficiary who neither knew nor ought to have known that the juridical act could result in prejudice to the creditors, to the extent he shows that he had not benefited from the juridical act at the time of the bankruptcy order.

Article 43

1 If the juridical (*legal*) act which prejudices creditors was performed within one year prior to the bankruptcy order and if the debtor was not already legally bound thereto before the beginning of such period, the knowledge referred to at the end of the first sentence of article 42, first paragraph is presumed to exist on both sides, in the absence of evidence to the contrary:

- (1) in the case of contracts in which the value of the debtor's obligation considerably exceeds that of the obligation on the other part;
- (2) in the case of juridical acts constituting payment of, or security for, a debt not yet payable;
- (3) in the case of juridical acts performed by a debtor who is a natural person with or in respect of:
 - a his spouse, foster child or a relative by blood or marriage up to the third degree;
 - b a legal person in which he, his spouse, his foster child or a relative by blood or marriage up to the third degree, is a director or supervisory board member or in which such persons, severally or jointly, participate directly or indirectly as a shareholder with up to at least one half of the issued capital.
- (4) In the case of juridical acts performed by a debtor who is a legal person with or in respect of a natural person:
 - a who is a director or supervisory board member of the legal person, or with or in respect of such person's spouse, foster child or relative by blood or marriage up to the third degree;
 - b who, together or not with his spouse, foster children and relatives by blood or marriage up to the third degree, participates directly or indirectly as a shareholder with up to at least one half of the issued capital;
 - c

whose spouse, foster children or relatives by blood or marriage up to the third degree, severally or jointly, participate directly or indirectly as a shareholder with up to at least one half of the issued capital;

(5)

in the case of juridical acts performed by a debtor being a legal person with or in respect of another legal person, if:

a

one of such legal persons is a director of the other;

b

a director, who is a natural person, of one of such legal persons, or his spouse, foster child or relative by blood or marriage up to the third degree, is a director of the other;

c

a director, a natural person, or supervisory board member of one of such legal persons, or his spouse, foster child or relative by blood or marriage up to the third degree, severally or jointly participates directly or indirectly in the other as a shareholder with up to at least one half of the issued capital;

d

the same legal person or the same natural person, together or not with his spouse, foster children and relatives by blood or marriage up to the third degree, participates directly or indirectly in both legal persons with up to at least one half of the issued capital;

(6)

in case of juridical acts performed by a debtor which is a legal person with or in respect of a group company.

2 A spouse includes a registered partner or any other life partner.

3 A foster child means a child which is raised and brought up as an own child.

4 A director, supervisory board member or shareholder includes any person who was a director, supervisory board member or shareholder less than one year prior to the juridical act.

5 If the director of a legal person -director is itself a legal person, this legal person shall be treated as if it was the legal person-director.

6 The tenth paragraph of article 138 of Book 2 of the Civil Code applies if the debtor is a legal person.

Article 44

Repealed

Article 45

In the case of prejudice caused by a legal act performed by a debtor for no consideration within one year before the bankruptcy order, it will be presumed that he knew or ought to have known that the creditors would be prejudiced as a result of the legal act.

Article 46

Repealed

Article 47

Payment by the debtor of a claim which is due may only be avoided if it is proved either that the person receiving the payment knew that the bankruptcy of the debtor had already been applied for or that the payment was arranged between the debtor and the creditor with the intention of preferring that creditor over other creditors.

Article 48

1 By virtue of the preceding article no repayment may be claimed from a person who, as holder of a debt instrument issued to order or bearer, was obliged to accept the payment on account of his legal relationship with former holders.

2 In such case, the party in whose favour the debt instrument was issued, must repay the amount paid by the debtor to the estate if it is proved either that at the time the debt instrument was issued he had the knowledge referred to in the preceding article or that the issue resulted from the arrangement referred to in that article.

Article 49

1 Legal proceedings based on the provisions of articles 42 to 48 must be instituted by the *curator* .

2 Nevertheless the creditors may contest the admission of a claim on grounds derived from these provisions.

Article 50

Termination of the bankruptcy by means of the sanctioning of a scheme of arrangement shall result in the lapse of the legal proceedings referred to in the preceding article unless the scheme of arrangement provides for a renunciation of any claim against the estate, in which case the legal proceedings may be pursued or instituted by the liquidators for the benefit of the creditors.

Article 51

1 If a legal act which is avoided has caused property of the debtor to be removed, such property must be returned to the *curator* by the persons against whom the avoidance operates in accordance with Chapter 2 of Title 4 of Book 6 of the Civil Code.

2 Rights to the property to be returned acquired by third parties in good faith otherwise than for no consideration shall be honoured. Any acquisition by a third party in good faith for no consideration shall not be reclaimed, insofar as he proves that at the time of the declaration of bankruptcy he has not benefited from the legal act.

3 Any receipt by the debtor under the avoided legal act or the value thereof shall be returned by the *curator* insofar as this benefits the estate. The person against whom the avoidance operates may file a claim for any shortfall as an unsecured creditor.

Article 52

1 Payment to the bankrupt after the declaration of bankruptcy but before its publication in the performance of obligations owed to the bankrupt and arising before the declaration of bankruptcy will discharge the payor as against the estate provided it is not proved that he knew of the declaration of bankruptcy.

2 A payment referred to in the preceding paragraph made to the bankrupt after publication of the declaration of bankruptcy will only discharge the payor as against the estate if he proves that the declaration of bankruptcy could not have been known at the time by legal publication in his place of residence, subject to the right of the *curator* to prove that it was known to him nevertheless.

3 Payment to the bankrupt will in any case discharge the debtor from liability to the estate insofar as his payment accrues to the estate.

Article 53

1 A person who is both a debtor and a creditor of the bankrupt may set-off his debt against his claim against the bankrupt provided each arose before the declaration of bankruptcy, or if they resulted from legal acts entered into with the bankrupt before the declaration of bankruptcy.

2 Claims against the bankrupt will, if necessary, be calculated in accordance with the rules set out in articles 130 and 131.

3 The *curator* may not invoke article 136 of Book 6 of the Civil Code.

Article 54

1 Nevertheless, a person who has assumed a debt owed to, or acquired a claim against, the bankrupt from a third party before the declaration of bankruptcy, may not effect a set-off if he has not acted in good faith with respect to such assumption or acquisition.

2 Set-off is never permitted for claims or debts assigned or assumed after the declaration of bankruptcy.

Article 55

A debtor of the bankrupt who wishes to set off his debt against a claim to order or bearer, must prove that he was already the owner in good faith of the debt instrument at the time of the declaration of bankruptcy.

Article 56

A person who owns property jointly with the bankrupt, the joint ownership of which is divided during the bankruptcy, may require application of article 184, first paragraph of Book 3 of the Civil Code, even if the debt of the bankrupt to the joint owners is a debt subject to a suspensive condition (*condition precedent*) which has not yet been fulfilled. Articles 130 and 131 shall apply.

Article 57

1 Pledges and mortgagees may exercise their rights as if there were no bankruptcy.

2 On the allocation of assets persons with lower ranking rights which vested prior to the declaration of bankruptcy but expired on foreclosure by a pledgee or mortgagee, may, on their own behalf, file claims for indemnification as referred to in article 282 of Book 3 of the Civil Code.

3 On the allocation of proceeds the *curator* shall, on behalf of the estate, also exercise the rights conferred by law on attachors of the property. He is bound to protect the interests of preferred creditors who rank ahead of the aforesaid pledgees, mortgagees and persons with lower ranking rights.

4 If a determination of the order of preference is necessary, an application therefor may be made to the interim provisions judge of the court of which the *rechter-commissaris* is a member. The allocation shall be made before the *rechter-commissaris* in the manner prescribed in the Code of Civil Procedure.

As last amended with effect from 1 January 2002

Article 58

1 The *curator* may determine a reasonable period within which the pledgees and mortgagees referred to in the preceding article may exercise their rights in accordance with the preceding article. If the pledgee or mortgagee has not sold the collateral within this period, the *curator* may claim the property and sell it pursuant to article 101 or 176, without prejudice to the right of the pledgees or mortgagees to the proceeds. The *rechter-commissaris* may extend the period once or more on the application of the pledgee or mortgagee.

2 The *curator* may, until the time of sale, redeem the pledged or mortgaged property against payment of the amount for which the pledge or mortgage serves as security and the foreclosure costs already incurred.

Article 59

If the proceeds are insufficient to pay the pledgee or mortgagee or any person whose lower ranking right has expired as a result of the foreclosure, he may file his claim for the shortfall as unsecured creditor of the estate.

Article 59a

1 Articles 57 - 59 shall not apply to a mortgage on an aircraft registered in the register referred to in article 1302 of Book 8 of the Civil Code or in a Convention Register referred to in subparagraph *d* of article 1300 of Book 8 of the Civil Code.

2 Mortgagees with rights on an aircraft referred to in the preceding paragraph and other creditors with a preferential right to the aircraft pursuant to article 1317 of Book 8 of the Civil Code may exercise their rights as if there was no bankruptcy. Article 57, paragraphs 2 and 3 shall apply *mutatis mutandis*.

3 The *curator* may set a reasonable time period for these creditors to exercise their rights in accordance with the preceding paragraph. If the creditor has not sold the aircraft within this period the *curator* may sell the aircraft. Upon application of the creditor the *rechter-commissaris* has the right to extend the period once or more.

4 Articles 584*d* and 584*f*-584*q* of the Code of Civil Procedure shall apply, *mutatis mutandis*, to the sale by the *curator* provided that the *curator* shall be considered as an attachor whose claim is not given preferential ranking and that the judgment declaring the bankruptcy shall be dealt with as provided for an official record of attachment.

5 The *rechter-commissaris* in the bankruptcy may in that case order that part of the general costs of the bankruptcy to be determined by him shall constitute costs of foreclosure within the meaning of article 584*n* of the Code of Civil Procedure.

6 The *curator* may redeem the aircraft until the time of sale against payment of what is due in respect thereof, including the costs of foreclosure already incurred.

7 Article 59 shall apply *mutatis mutandis*.

Article 60

1 A creditor having a lien over a thing belonging to the debtor does not lose this right as a result of the declaration of bankruptcy.

2 The thing may be claimed by the *curator* and sold in accordance with article 101 or 176, without prejudice to the preferential right conferred on the creditor in article 292 of Book 3 of the Civil Code. Insofar as this is in the interest of the estate, the *curator* may also recover the thing for the estate by payment of the debt, in respect of which the lien may be exercised.

3 The creditor may set a reasonable period within which the *curator* may apply the preceding paragraph. If the *curator* has not sold the thing within this period, the creditor may sell it applying, *mutatis mutandis*, the provisions on summary foreclosure by a pledgee or, in the case of registered property, the provisions on summary foreclosure by a mortgagee. The *rechter-commissaris* may extend the period once or more on the application of the *curator*.

4 In the case of registered property the creditor must, within fourteen days of expiration of the period referred to in the preceding paragraph, failing which he shall forfeit his right of summary foreclosure, serve a writ on the *curator* notifying him that he will proceed to foreclosure and lodge this writ for registration in the public registers.

Article 60a

1 If the property, rights and interests include property under administration (*bewind*) and creditors who may dispose of such property unencumbered by the administration have filed a claim for verification, the *curator* shall claim such property from the administrator (*bewindvoerder*), take control thereof and realise the property insofar as this is necessary for payment of such creditors out of the proceeds. The administration of the property shall end upon the *curator* claiming it. The proceeds shall be allocated amongst these creditors in accordance with this Act, insofar as they have been verified. The *curator* shall transfer the balance of the proceeds after such allocation to the administrator, unless the other creditors may dispose of the property subject to the required terms of the administration, in which case the balance shall be allocated amongst such creditors in accordance with this Act.

2 If only creditors who may dispose of property subject to the required terms of the administration have filed a claim for verification, such property shall be sold by the *curator* subject to the required terms of administration in accordance with article 101 or 176.

3 Save in the instances referred to in the preceding paragraphs, the property under administration shall remain outside the bankruptcy and only the net proceeds yielded by the property shall be distributed to the *curator*.

4 The administrator must account to the *curator* whenever the latter so requires.

Article 60b

1 If, pursuant to the preceding article, property remains outside the bankruptcy and the administrator has ceased to pay the creditors who may dispose of such property unencumbered by the administration, the court which issued the bankruptcy order may instruct the *curator*, on the application of each of such creditors who cannot file a claim in the bankruptcy, to assume control of such property and to procure its realisation on their behalf.

2 The provisions concerning a declaration of bankruptcy apply *mutatis mutandis*.

Article 61

1 The spouse or registered partner of the bankrupt shall recover all property belonging to him or her which is not part of the matrimonial community of property or the community of property of the registered partnership.

2 The ownership of rights issued to bearer and things which do not constitute registered property remaining outside the community of property by an ante-nuptial contract or registered partnership contract may, as regards third parties, only be proved as provided under article 130 of Book 1 of the Civil Code.

3 The ownership acquired by the spouse or registered partner of the bankrupt of rights issued to bearer and of things which do not constitute registered property in respect of which it is provided in the last will of the testator or on a gift that they fall outside the community of property, must, on a dispute, be established by a description or records. The same applies to such rights and things in respect of which ownership has been vested in the spouse or registered partner by inheritance, legacy or gift in the course of the marriage or registered partnership, which, pursuant to the ante-nuptial contract or a registered partnership contract, as the case may be, fall outside the community of property.

4 Goods acquired from investment or re-investment of monies which belong to the spouse or registered partner of the bankrupt and fall outside the community of property, shall likewise be recovered by such spouse or registered partner, as the case may be, provided that, on a dispute, the investment or re-investment is proved by adequate records to the satisfaction of the court.

5 If goods belonging to the spouse or registered partner of the bankrupt have been disposed of by the bankrupt, but the purchase price has not yet been paid or the proceeds of sale have been kept separate from the bankrupt estate, the spouse or registered partner, as the case may be, may exercise the right to recover out of the purchase price or available proceeds of sale.

6 The spouse or registered partner of the bankrupt is a creditor for personal claims.

Article 62

Repealed

As last amended with effect from 1 January 2003

Article 63

1 The bankruptcy of a person married under any community of property or who entered into a registered partnership under any community of property, shall be treated as a bankruptcy of such community of property. It will include all property comprised in the community of property, save for property excluded under article 21, and shall benefit all creditors entitled to recourse against the property of the community of property. Recourse to property of the bankrupt, which is not part of the community of property, extends only to the satisfaction of debts which could have been settled out of the same if no community of property had existed at all.

2 If the bankrupt is married or entered into a registered partnership subject to a community of property, the provisions of this Act in respect of acts of the bankrupt shall apply to transactions which legally bind the community of property, regardless of which spouse or registered partner, as the case may be, performed the same.

Article 63a

1 On the application of each interested party or on his own motion, the *rechter-commissaris* may issue a written order stipulating that, for a period of one month at most, each right of third parties to recourse against property belonging to the estate or to claim property under the control of the bankrupt or the *curator* may only be exercised with his authorisation. The *rechter-commissaris* may extend this period once for no more than one month.

2 The *rechter-commissaris* may restrict his order to certain third parties and attach conditions both to

his order and to the authorisation of a third party to exercise a right to which the third party is entitled.

3 During the periods referred to in the first paragraph any time period to which third parties are subject in respect of the exercise of their authorisation shall continue, insofar as this is reasonably necessary to enable the third party or the *curator* to determine his position after expiry of the period. The party who sets the time period may set another reasonable time period anew.

4 The decision referred to in the first sentence of the first paragraph may also be rendered by the court issuing the bankruptcy order on the application of the party who applied for the bankruptcy or of the debtor.

Chapter 3 Administration of the Bankrupt Estate

§ 1 The *rechter-commissaris*^(*3)

Article 64

The *rechter-commissaris* is charged with the supervision of the administration and liquidation of the bankrupt estate.

Article 65

Before issuing a decision on any matter in respect of the administration or liquidation of the bankrupt estate, the court is obliged to hear the *rechter-commissaris*.

Article 66

1 The *rechter-commissaris* may hear witnesses or order an expert's investigation in order to clarify all circumstances relating to the bankruptcy.

2 The witnesses are summoned on behalf of the *rechter-commissaris*. Article 177 of the Code of Civil Procedure applies, *mutatis mutandis*.

3 Articles 171, 172, and the first sentence of paragraph 1, paragraphs 2 and 3 of article 173, articles 174 and 175 of the Code of Civil Procedure apply on non-appearance or refusal to take the oath or to testify.

4 The spouse or former spouse of the bankrupt or the person with whom the bankrupt has or had a registered partnership, the children and more remote descendants and the parents and grandparents of the bankrupt may invoke their right to refuse to testify.

As last amended with effect from 1 January 2002

Article 67

1 Appeal may be instituted before the district court against any order of the *rechter-commissaris* within five days from the date on which the order is given. The court will decide after hearing the interested parties or after they have been duly summoned. Nevertheless no appeal lies against the orders referred to in articles 21 (2) and (4), 34, 58, first paragraph, 59a, third paragraph, 60, third paragraph, 73a, second paragraph, 79, 93a, 94, 98, 100, 102, 125, 127, fourth paragraph, 137a, first paragraph, 174, 175, second paragraph, 176 first and second paragraphs, 177, 179 and 180.

2 Notwithstanding the first paragraph, the five day period shall commence, in the case of an appeal against an authorisation of the *rechter-commissaris* to the *curator* for the termination of a contract of employment, on the date on which the employee instituting the appeal could have become aware of the authorisation. The *curator* shall draw the employee's attention to the possibility of appeal on termination and the period for such an appeal, in order to be valid. An appeal for nullification must be made by an extra-judicial statement to the *curator* within fourteen days from the date as of which the

contract of employment was terminated.

As last amended with effect from 1 August 2002

§ 2 The *curator*

Article 68

1 The *curator* is charged with the administration and liquidation of the bankrupt estate.

2 Except for verification disputes and the matters referred to in articles 37, 39, 40 and 58, second paragraph, 60, second and third paragraphs and 60a, first paragraph, the *curator* requires the approval of the *rechter-commissaris* before appearing in court.

Article 69

1 Each of the creditors, the appointed creditors committee and also the bankrupt, may file a petition with the *rechter-commissaris* to object against any act of the *curator* or to procure that the *rechter-commissaris* orders the *curator* to perform or refrain from performing any intended act.

2 The *rechter-commissaris* must issue his decision within three days after hearing the *curator*.

Article 70

1 If more than one *curator* has been appointed, the consent of the majority or, in the event of a tie, a decision of the *rechter-commissaris*, is required in order to make their acts legally binding.

2 A *curator* given a specific role under the bankruptcy order has the power to act independently within the limits thereof.

Article 71

1 Without prejudice to the provisions of article 15, third paragraph, the remuneration of the *curator* is determined by the court in each bankruptcy.

2 In the case of a scheme of arrangement, the remuneration is determined in the judgment in which the scheme of arrangement is sanctioned.

Article 72^(*4)

1 Absence of authorisation by the *rechter-commissaris* where this is required or non-observance of the provisions of articles 78 and 79 does not affect the validity of the act performed by the *curator* as regards third parties. In such event, the *curator* is only liable as regards the bankrupt and the creditors.

2 Notwithstanding the first paragraph, termination of a contract of employment by the *curator* without the authorisation of the *rechter-commissaris* referred to in article 68, second paragraph may be nullified. In addition, the *curator* shall be liable as against the bankrupt and the employee. The claim that the termination is null may be made by extra-judicial statement to the *curator* within five days as of the date on which the contract of employment was terminated.

As last amended with effect from 1 July 2002

Article 73

1 The court may dismiss the *curator* at any time after he has been heard or duly summoned and replace him by someone else or appoint one or more *co-curators*, in each case either on the recommendation of the *rechter-commissaris* or upon the reasoned petition of one or more of the creditors, the creditors' committee or the bankrupt.

2 The dismissed *curator* must account for his administration to the *curator* who replaces him.

Article 73a

1 At the end of each three month period, the *curator* must report on the state of affairs of the bankrupt estate. The *curator* must lodge his report with the clerk of the court where it shall be available for public inspection free of charge. There is no charge for the lodging of the *curator's* report.

2 The period referred to in the preceding paragraph may be extended by the *rechter-commissaris*.

§ 3 The Creditors' Committee

Article 74

1 If justified by the importance or the nature of the estate and as long as no decision has been made in respect of the appointment of the committee referred to in the following article, the court may, in the declaration of bankruptcy or in a later order, appoint from the known creditors a provisional committee of between one and three creditors in order to advise the *curator*.

2 If a member of this provisional committee does not accept his appointment, resigns or dies, the court will fill the vacancy by choosing one of two candidates recommended by the *rechter-commissaris*.

Article 75

1 Whether or not a provisional creditors' committee has been appointed, the *rechter-commissaris* must consult the creditors on the appointment of a definitive committee at the verification meeting after completion of the verification. If the meeting considers this desirable, the *rechter-commissaris* shall proceed with the appointment immediately. This committee shall also consist of one to three members.

2 A report of the proceedings on this issue shall be included in the minutes of the meeting.

3 If a member of the definitive committee does not accept his appointment, resigns or dies, the *rechter-commissaris* shall fill the vacancy thereby arising.

Article 76

The committee may demand inspection of the books, records and other data base relating to the bankruptcy at any time. The *rechter-commissaris* must provide the committee with all information required from him.

Article 77

In order to obtain the advice of the committee, the *curator* shall meet with the committee as often as he thinks fit. He shall chair, and prepare the minutes of, these meetings.

Article 78

1 The *curator* must obtain the advice of the committee before instituting or pursuing any legal proceedings or defending any proceedings, whether already instituted or pending, except in the case of verification disputes. He must also obtain the advice of the committee on whether or not to continue the business of the bankrupt and also in the cases referred to in articles 37, 39, 40, 58, second paragraph, 73, second paragraph 100, 101, 175, last paragraph and 177, and, generally, in respect of the manner of

the liquidation and realisation of the estate and the time and amount of the distributions to be made to creditors.

2 This advice is not required if the *curator* has called a meeting of the committee giving proper notice in order to obtain such advice and no advice was given.

Article 79

The *curator* is not bound to accept the advice of the committee. If he does not agree with it, he shall notify the committee immediately which may then request the *rechter-commissaris* to make a decision. If it declares that it will do so, the *curator* must suspend performance of any intended transaction against the advice of the committee for three days.

§ 4 Creditors' Meetings

Article 80

1 The *rechter-commissaris* shall chair the creditors' meetings.

2 The *curator* or a substitute approved by the *rechter-commissaris* must attend.

Article 81

1 At creditors' meetings decisions are made with an absolute majority of votes of the creditors present. Each creditor may cast one vote per € 45. One vote is also cast for claims or fractions of claims of less than € 45.

2 Division of a claim after the declaration of bankruptcy does not give the right to more than one vote.

As last amended with effect from 1 January 2002

Article 82

Creditors whose claims have been recognised and creditors conditionally admitted and bearers of verified claims endorsed 'to bearer' are entitled to vote.

Article 83

1 The creditors may appear at the meeting in person, by written proxy or by a member of the local Bar.

2 As regards creditors represented at the meeting, all notices convening later meetings shall be addressed to the representatives, unless the creditors request the *curator* in writing that notices of meetings and other notifications be forwarded to themselves or to another representative.

Article 84

1 Except for the meetings required under this Act, a meeting of creditors shall be held whenever the *rechter-commissaris* considers it necessary, or whenever he receives a reasoned request for such a meeting from the creditors' committee or from at least five creditors representing one-fifth of the claims recognised and conditionally admitted.

2 In each instance the *rechter-commissaris* shall determine the date, hour and place of the meeting, to

which the creditors with a right to vote will be invited, with at least ten days' notice in the newspaper or newspapers referred to in article 14 and by letters, each setting out the agenda of the meeting.

§ 5 Court Orders

Article 85

All orders in matters relating to the administration or liquidation of the bankrupt estate shall be made by the court by way of final judgment, except in the cases where it is otherwise provided by law.

Article 86

All orders in matters relating to the administration or liquidation of the bankrupt estate, including those not made by the court, shall be enforceable notwithstanding appeal or an action to set aside and on the original of the order, unless otherwise provided by law.

Chapter 4 Provisions after the Declaration of Bankruptcy. The Administration by the Curator

Article 87

1 Upon the bankruptcy order or at any time thereafter, but in the latter case only on the recommendation of the *rechter-commissaris* or on application by the *curator* or by one or more of the creditors, after having heard the *rechter-commissaris*, the court may order the bankrupt to be committed to custody, either in a detention centre or in his own home under the supervision of a public servant appointed to conduct police duties or another public servant falling within a category designated by Our Minister of Justice on account of the non-performance of statutory obligations in connection with his bankruptcy or on account of a well-founded fear that such obligations will not be performed.

2 This order shall be executed by the Public Prosecution Service.

3 The order will be valid for not more than thirty days calculated from the day on which it was executed. At the end of this period the court may extend the order for no more than thirty days on the recommendation of the *rechter-commissaris* or on an application and after having heard the *rechter-commissaris* as referred to in the first paragraph. Thereafter further extensions may be granted in the same way each time for no more than thirty days.

4 The public servant designated by the Public Prosecution Service to assist in the enforcement of the order shall be empowered to enter any place to the extent that this is reasonably necessary for the performance of his duties.

As last amended with effect from 1 January 2002

Article 88

1 On the recommendation of the *rechter-commissaris* or at the request of the bankrupt, the court has the power to release the bankrupt from custody, with or without requiring provision of bail for his summary appearance at all times.

2 The amount of the bail shall be determined by the court and, in the event of non-appearance of the bankrupt, this amount will accrue to the bankrupt estate.

Article 89

Repealed

As last amended with effect from 1 January 2002

Article 90

1 In any cases where the presence of the bankrupt is required in connection with a particular activity relating to the estate, he shall, if he is in custody, on the instructions of the *rechter-commissaris* be brought from the place where he is detained.

2 This instruction shall be executed by the Public Prosecution Service.

Article 91

During the bankruptcy the bankrupt may not leave his residence without the consent of the *rechter-commissaris*.

Article 92

Immediately after the *curator* has accepted his appointment he shall take all necessary and proper steps to safeguard the bankrupt estate. He shall immediately take possession of and give a receipt for any records and other data carriers, moneys, valuables, securities and other valuable instruments. He is entitled to tender payment and make a deposit with the appropriate authority according to the law.

Article 93

1 If the *curator* or the *rechter-commissaris* deems this desirable, the *curator* may immediately have the estate put under seal by a notary.

2 The goods referred to in articles 21(1), and 92 and also the objects required for the business of the bankrupt, if such business is to be continued, shall not be put under seal but shall be briefly listed in the protocol.

Article 93a

The *curator* is empowered to enter any place to the extent that this is reasonably necessary for the performance of his duties. The *rechter-commissaris* may give an authorisation referred to in article 2 of the *Algemene wet op het binnentreden* (General Act on Entry).

Article 94

1 As soon as possible the *curator* shall prepare an inventory of the estate.

2 The inventory of the estate may be recorded in a signed instrument and the assessment of the value may be made by the *curator*, subject to the approval of the *rechter-commissaris*.

3 The members of the provisional committee of creditors are entitled to attend the preparation of the inventory.

Article 95

A list of the goods referred to in article 21(1) shall be attached to the inventory; those referred to in article 92 shall be included in the inventory.

Article 96

Immediately after the inventory has been prepared, the *curator* shall prepare a statement listing the nature and amount of the assets and liabilities of the estate, the names and addresses of the creditors and the amount of the claims of each of them.

Article 97

1 Copies of the inventory and the statement referred to in the preceding article certified by the *curator* shall be made available for public inspection, free of charge, at the office of the clerk of the court in the district in whose jurisdiction the address or office or place of abode of the bankrupt is situated, depending on whether the court which made the bankruptcy order is that of the address, office or place of abode of the bankrupt.

2 The lodging is free of charge.

As last amended with effect from 1 January 2002

Article 98

The *curator* may continue the business of the bankrupt. If a creditors' committee has not been appointed, authorisation therefor is required from the *rechter-commissaris*.

Article 99

1 In accordance with the mandate referred to in article 14, the *curator* shall open letters and telegrams addressed to the bankrupt. He shall forthwith pass on to the bankrupt those which do not relate to the estate. Upon receipt of a notification from the clerk of the court and until either released from this obligation by the *curator* or the *rechter-commissaris* or receipt of the notification referred to in article 15, the postal administration must deliver to the *curator* letters and telegrams addressed to the bankrupt. The mandate of the court for the *curator* to open letters and telegrams shall cease to be valid at the time referred to in the preceding sentence when the postal administration's obligation to deliver the letters and telegrams to the *curator* has ceased.

2 Demands, writs, statements and notices in respect of the estate must be made by and to the *curator*.

Article 100

The *curator* may, according to the circumstances, distribute a sum to be set by the *rechter-commissaris* for the maintenance of the bankrupt and his family.

Article 101

1 The *curator* may dispose of goods belonging to the estate if and to the extent necessary to cover the costs of the bankruptcy or if and to the extent that the goods could not be retained without loss to the estate.

2 The provisions of article 176 shall apply.

Article 102

1 The *curator* shall take direct custody of all moneys, valuables, securities and other valuable instruments, unless some other means of custody has been determined by the *rechter-commissaris*.

2 Cash not required for the administration shall be invested by the *curator* in the name of the estate in a way approved by the *rechter-commissaris*.

Article 103

The *curator* may dispose of neither moneys, valuables, securities and other valuable instruments which, on the instruction of the *rechter-commissaris* are held in custody by a third party, nor moneys invested, other than by means of documents certified by the *rechter-commissaris*.

Article 104

Following the advice of the creditors' committee, if any, and with the approval of the *rechter-commissaris*, the *curator* has the power to enter into settlement agreements or compromises.

Article 105

1 Whenever he is called upon to appear, the bankrupt must appear before the *rechter-commissaris*, the *curator* or the creditors' committee and provide them with all information.

2 On the bankruptcy of a person married under a community of property or who has entered into a registered partnership, the obligation to provide information rests upon each spouse or registered partner, in as far he or she has acted.

Article 106

On the bankruptcy of a legal person, the provisions of articles 87-91 apply to the directors and the provisions of article 105, first paragraph apply to directors and supervisory board members.

Article 107

1 The clerk of the court must hand to each creditor, at his request and for his account, a copy of the documents lodged or held at the office of the clerk of the court under any provision of this Act.

2 The clerk of the court must also provide anyone, at his request and for his account, with a copy of the documents available for inspection at the office of the clerk of the court under any provision of this Act.

Chapter 5 Verification of Claims

Article 108

1 Within no more than fourteen days after the bankruptcy judgment has become final the *rechter-commissaris* shall determine:

- (1) the latest possible date for the submission of claims;
- (2) the date, hour and place for the verification meeting;

2 There must be at least fourteen days between the dates referred to in (1) and (2) above.

Article 109

The *curator* shall notify all known creditors of such decisions immediately by letter and publish a notice thereof in the newspaper or newspapers referred to in article 14.

Article 110

1 Claims must be lodged with the *curator* in the form of an invoice or other written statement listing the

nature and amount of the claim with documentary evidence or copies thereof and a statement as to whether or not a right of preference, pledge, mortgage or lien is claimed.

2 Creditors may require a receipt from the *curator*.

Article 111

The *curator* shall compare the invoices submitted with the books, records and statements of the bankrupt; if he disputes the admission of a claim, he shall contact the creditor involved, and may require the submission of any missing documentation and the inspection of books, records and supporting documents.

Article 112

The *curator* shall prepare a list of provisionally admitted claims which he has approved and a separate list of disputed claims with mention of the grounds on which these are contested.

Article 113

In the lists referred to in the preceding article each claim shall be described together with an indication whether or not the *curator* considers the claim to be preferred or secured by a mortgage or pledge or whether or not a lien may be exercised in respect of the claim. If the *curator* only disputes the right of preference or the lien, the claim shall be included on the list of provisionally admitted claims noting that it is disputed and the grounds therefor.

Article 114

1 The *curator* shall lodge a copy of each of the lists referred to in article 112 at the offices of the clerk of the court, in order that these may be available for public inspection without charge during the seven days which precede the verification meeting.

2 No charge will be made for the lodging thereof.

As last amended with effect from 1 January 2002

Article 115

The *curator* shall notify all known creditors in writing of the lodging of the lists as provided in article 114. This notice shall also contain an invitation to the verification meeting and will indicate whether or not a proposed scheme of arrangement has been lodged by the bankrupt at the office of the clerk of the court.

Article 116

The bankrupt shall attend the verification meeting in person in order to provide all information with regard to the causes of the bankruptcy and the state of affairs of the estate as requested by the *rechter-commissaris*. The creditors may request the *rechter-commissaris* to ask for information from the

bankrupt in respect of specific issues indicated by them. The questions put to the bankrupt and the answers given by him shall be minuted in the official record of the verification meeting.

Article 117

On the bankruptcy of a legal person, the obligation imposed on the bankrupt under the preceding article is imposed on its directors.

Article 118

Repealed

Article 119

1 At the meeting the *rechter-commissaris* shall read out the list of the provisionally admitted claims and the list of the claims disputed by the *curator*. Each creditor whose name appears on these lists may ask for information from the *curator* with regard to each claim and its inclusion on one of the lists, or dispute the accuracy, the alleged priority ranking or the alleged lien of a claim, or declare that he concurs that it is contested by the *curator*.

2 The *curator* may retract a provisional admission or dispute, or require a creditor, whose claim is not disputed either by the *curator* or by any of the creditors, to affirm under oath that it is sound; if the original creditor has died, the persons entitled must state under oath that they believe in good faith that the claim exists and has not yet been settled.

3 If it is necessary to adjourn the meeting, the meeting shall be resumed within eight days at a time fixed by the *rechter-commissaris* without further notice.

Article 120

1 The affirmation under oath referred to in the second paragraph of the preceding article shall be made in person or through a specially authorised representative before the *rechter-commissaris* either immediately at the meeting or at a later date specified by the *rechter-commissaris*. The power of representation may be granted by private instrument.

2 If the creditor who must affirm his claim under oath is not present at the meeting, the clerk of the court shall notify him immediately of the required affirmation under oath and the day set for the making of such affirmation under oath.

3 The *rechter-commissaris* shall provide the creditor with a statement of his affirmation under oath, unless the affirmation under oath is made in the course of a creditors' meeting, in which case the affirmation shall be minuted in the official record of such meeting.

Article 121

1 Undisputed claims shall be entered on a list of creditors whose claims have been admitted in the official record of the meeting. The *curator* shall make a note of the admission on any negotiable instruments endorsed either to order or to bearer.

2 The claims for which the *curator* has required affirmation under oath shall be conditionally admitted until the date referred to in the first paragraph of article 120 when a final decision shall be made on their admission, depending on whether or not the affirmation under oath took place.

3 The official record of the meeting shall be signed by the *rechter-commissaris* and the clerk of the court.

4 The admission of a claim recorded in the official record of the meeting shall be final and binding in the bankruptcy. The *curator* may only demand avoidance thereof in the case of fraud.

Article 122

1 If a claim is disputed and the *rechter-commissaris* is unable to reconcile the parties and the dispute is not already the subject of proceedings, the *rechter-commissaris* shall refer the matter to a session of the court determined by him and no writ of summons is required to be served.

2 The local members of the Bar representing the parties shall make a statement to that effect when the case is called at the hearing.

3 If the creditor requesting verification does not appear at the hearing so determined, his request is deemed to have been withdrawn; if the person who has disputed the claim does not appear, he is deemed to have withdrawn his dispute and, in such case, the court shall admit the claim.

4 Any creditor who fails to dispute a claim at the verification meeting may not join or intervene in the proceedings.

Article 122a

1 If a claim is disputed by the *curator*, the proceedings shall be adjourned by operation of law when a scheme of arrangement becomes final and binding on its sanction by the court, unless pleadings in the matter have already been submitted for judgment, in which case the claim, if admitted, shall be deemed as admitted in the bankruptcy and the bankrupt shall be substituted for the *curator* as regards the decision on the costs of the proceedings.

2 The proceedings shall be resumed in the stage at which they were at the time of their suspension by the filing, with the concurrence of the other party, of a pleading by one of the parties at a cause-list hearing for that purpose or by a statement made by writ that the proceedings are resumed.

3 The party making the statement in the writ referred to in paragraph 2 that the proceedings are resumed shall give the other party notice to appear at the cause-list hearing on the date on which it wishes the matter to be called. The notice periods required for service of a writ of summons must be observed when notice to appear is served. The parties must again be represented by a member of the local Bar.

4 If a claim is disputed by another creditor, the proceedings may be pursued by the parties after the sanction of a scheme of arrangement in the bankruptcy has become final and binding only in order to obtain a decision of the court on the costs of the proceedings.

As last amended with effect from 1 January 2002

Article 123

A creditor whose claim is disputed is not obliged to produce further supporting evidence than he would have to produce to the bankrupt.

Article 124

1 If a creditor whose claim is disputed is not present at the meeting, the clerk of the court shall immediately notify him of the dispute and of the matter being referred to the Court.

2 In the proceedings the creditor may not plead lack of notification.

Article 125

Claims which are disputed may be conditionally admitted by the *rechter-commissaris* up to an amount determined by him. If the priority ranking of a claim is disputed, the *rechter-commissaris* may conditionally admit it.

Article 126

1 The bankrupt may also dispute the admission of a claim, either in whole or in part, or the admission of any alleged priority ranking, briefly setting out his grounds therefor. In such event the dispute and its grounds shall be minuted in the official record without the parties being referred to the court and without preventing admission of the claim in the bankruptcy.

2 Any dispute which is not supported by a statement of grounds or which does not include the whole claim but does not specifically indicate which part is admitted and which is disputed, will not be considered as under dispute.

Article 127

1 Claims which are submitted to the *curator* after expiry of the period referred to in article 108(1) but no less than two days prior to the date of the verification meeting, shall be admitted at the meeting upon request, unless the *curator* or any of the creditors present objects.

2 Claims submitted after this date will not be admitted.

3 The provisions of the two preceding paragraphs do not apply if the creditor lives outside the Kingdom in Europe and thus is unable to submit his claim earlier.

4 If objection is raised under the first paragraph or if there is dispute as to whether there is such inability as referred to in the third paragraph, the *rechter-commissaris* shall decide after consulting the meeting.

Article 128

Interest accruing after the declaration of bankruptcy may not be admitted unless secured by a pledge or mortgage. In that event, interest will be admitted *pro memoria*. To the extent that the interest is not covered by the proceeds of the security the creditor may not derive any rights from the admission.

Article 129

A claim subject to a resolutive condition (*condition subsequent*) shall be admitted for the total amount, without prejudice to the effect of the condition when it is fulfilled.

Article 130

1 A claim subject to a suspensive condition (*condition precedent*) may be admitted for its value at the time of the declaration of bankruptcy.

2 If the *curator* and the creditors are unable to reach agreement on such manner of admission, the claim shall be conditionally admitted for the full amount.

Article 131

1 A claim with an uncertain due date or which entitles the claimant to periodic payments shall be

admitted for its value at the date of the declaration of bankruptcy.

2 Claims which become payable within one year after the commencement of the bankruptcy shall be considered exigible (*due and payable*) at that time. Claims which become payable one year thereafter shall be admitted for their value one year from the date of the commencement of the bankruptcy.

3 Only the time and method of instalment payments, any profit opportunity and, if the claim bears interest, the agreed rate of the interest shall be taken into account for the calculation.

Article 132

1 Creditors whose claims are secured by a mortgage or pledge or lien or who have a priority interest in an object and who can prove that it is likely that a part of their claim will not be recovered for the sum admitted from the proceeds of the goods subject to the security interest, may require that the rights of an unsecured creditor are conferred on them for that part, while they retain priority to the extent of their security interest.

2 The admitted amount which mortgagees or pledgees may be able to recover from the proceeds shall be determined pursuant to article 483e of the Code of Civil Procedure, provided that the time on which the statement is prepared shall be substituted by that of the date of the commencement of the bankruptcy.

Article 133

Claims having an indeterminate or uncertain value or whose value is not expressed in Dutch currency or not expressed in money at all, shall be admitted for their estimated value in Dutch currency.

Article 134

Claims endorsed to bearer may be admitted in the name 'bearer'. Each admitted claim endorsed to bearer shall be considered as a claim of a separate creditor.

Article 135

Repealed

Article 136

1 If one or more solidarily (*jointly and severally*) liable debtors has/have been declared bankrupt, the creditor may claim against each of the estates of the debtors for the total amount due to him at the time of the declaration of bankruptcy until his claim has been settled in full.

2 A solidarily liable debtor may, if necessary conditionally, be admitted for the amounts for which he has or will have a claim against the bankrupt pursuant to their mutual legal relationship as joint and several co-debtor. The admission may be made only:

- a to the extent that the creditor may not submit a claim or does not submit a claim, even though entitled to do so;
- b in the event that the creditor is paid during the bankruptcy for the total amount of his submitted claim;
- c to the extent that, for any other reason, the admission does not prejudice the unsecured creditors in respect of the percentages to be distributed to them.

Article 137

1 After verification the *curator* shall submit a report on the state of affairs of the estate and provide all information required by the creditors in respect thereof. The report and the official record of the

verification meeting shall be lodged after the end of the meeting at the office of the clerk of the court and shall be available for public inspection free of charge. The lodging is also free of charge.

2 After the official record has been lodged the *curator* and also the creditors and the bankrupt may request the court to correct the official record if the documents show that the official record contains a mistake.

Chapter 5A Simplified Winding up of a Bankruptcy

Article 137a

1 If it is prima facie established that the assets out of which non-preferential claims may be paid in full or in part will not be sufficient, the *rechter-commissaris* may order, upon the request of the *curator* or *ex officio*, that the unsecured claims need not be processed and that no meeting for verification of their claims shall be held.

2 The *curator* shall immediately notify all of the known creditors in writing of the order referred to in the first paragraph and shall procure that publication is made in the newspaper or newspapers referred to in article 14.

3 If the order referred to in the first paragraph is given, this Chapter shall apply. Chapter 5 shall not apply to unsecured claims. Articles 128 to 136, inclusive, of Chapter 5 shall apply in respect of unsecured claims, *mutatis mutandis*. Chapters 6 and 7 shall not apply except as otherwise provided hereinafter.

In effect from 1 August 2002

Article 137b

1 The *curator* shall check which claims are privileged or secured by a right of pledge, hypothec (*mortgage*) or lien.

2 If the *curator* contests a claim or the prior ranking connected with a claim, he shall so notify the creditor involved and shall confer with him for the purpose of settling this dispute.

3 If the *curator* and the creditor referred to in the preceding paragraph do not reach agreement, the *curator* shall submit the dispute to the *rechter-commissaris*. Article 122, paragraphs 1, 2 and 3 shall apply *mutatis mutandis*.

4 The bankrupt may notify the *curator* of his objections against the claim or against the ranking connected with a claim, which the *curator* shall submit to the *rechter-commissaris* unless he is able to remove such objection. Article 126 shall apply *mutatis mutandis*.

In effect from 1 August 2002

Article 137c

1 The *curator* shall proceed with the realisation of the bankrupt estate. Articles 175, second paragraph, 176 and 177 shall apply *mutatis mutandis*.

2 The *curator* shall draw up a distribution plan, which shall include a list of the receipts and expenditure (including the salary of the *curator*), the names of the creditors with a privileged claim, a claim secured by a right of pledge, hypothec (*mortgage*) or lien, the amount of the claim of each of them and the distributions to be received thereon.

3 In respect of claims where a dispute referred to in article 122 is pending, the *curator* shall make a reserve in the plan for percentages over the full amount and the percentages for the costs still to be made in connection therewith. Article 194 shall apply *mutatis mutandis*.

In effect from 1 August 2002

Article 137d

1 The *curator* shall submit the distribution plan for approval to the *rechter-commissaris*.

2 The *curator* shall lodge a copy of the plan approved by the *rechter-commissaris* and a report on the condition of the estate at the office of the clerk of the court where it shall be available for public inspection, free of charge, for a period of ten days.

3 The *curator* shall ensure publication of the lodging in the newspaper or newspapers referred to in article 14, third paragraph.

4 The *curator* shall notify all known creditors thereof in writing while informing them that the planned distribution does not relate to unsecured claims.

5 Article 182 shall apply *mutatis mutandis*.

In effect from 1 August 2002

Article 137e

1 During the period mentioned in article 137d, second paragraph, each creditor may oppose the plan of distribution lodged at the office of the clerk of the court by submitting a petition stating his reasoned objections to the office of the clerk of the court who shall issue a receipt to him.

2 The petition stating the objections shall be attached to the plan of distribution.

3 An unsecured creditor may not base his opposition only on the non-listing of his claim on the plan of distribution lodged at the office of the clerk of the court.

4 Articles 185 and 187 shall apply *mutatis mutandis*.

In effect from 1 August 2002

Article 137f

1 After expiry of the period mentioned in article 137d, second paragraph, or, if opposition is made, after the order in respect of the opposition has become final and binding, the *curator* shall proceed to make the fixed distribution.

2 Articles 188, 189, 190, 192 and 193 shall apply *mutatis mutandis*.

In effect from 1 August 2002

Article 137g

1 If, during the liquidation, there appear to be assets of such magnitude that unsecured claims can also be paid out of the proceeds thereof, in full or in part, the *rechter-commissaris* shall order a verification meeting and, for such purpose, shall set the date, hour and place and the latest possible date for the submission of claims. Article 108, second paragraph shall apply.

2 The *curator* shall immediately notify all known creditors of the order mentioned in the preceding paragraph and publish notice thereof in the newspaper or newspapers referred to in article 14, third paragraph.

3 Chapters 5, 6 and 7 shall apply.

In effect from 1 August 2002

Chapter 6 Scheme of Arrangement

Article 138

The bankrupt may offer a scheme of arrangement to his joint creditors.

Article 139

1 If the bankrupt has lodged a proposed scheme of arrangement for public inspection free of charge at the office of the clerk of the court, not less than eight days prior to the meeting for the verification of claims, this will be discussed and a decision will be reached on it in such meeting immediately after the verification has been made, subject always to the provisions of article 141.

2 A copy of the proposed scheme of arrangement must be sent to the *curator* and each of the members of the provisional committee of creditors at the same time as it is lodged at the office of the clerk of the court.

As last amended with effect from 1 January 2002

Article 140

Each of the *curator* and the creditors' committee must submit a written opinion on the proposed scheme of arrangement.

Article 141

The discussion and the decision will be adjourned for a further meeting which must take place within three weeks on a date to be set by the *rechter-commissaris*:

- (1) if, during the meeting, a definitive committee of creditors is appointed which does not consist of the same persons as the provisional committee and the majority of the creditors present at the meeting requires from this committee a written opinion on the proposed scheme of arrangement;
- (2) if the proposed scheme of arrangement was not lodged in time and the majority of the creditors present at the meeting expresses itself in favour of an adjournment.

Article 142

If the discussion and vote in respect of the scheme of arrangement are adjourned under the provisions of the preceding article, the *curator* shall without delay inform any creditor whose claim has been verified or conditionally admitted and who was not present at the meeting by means of a letter containing a summary of the scheme of arrangement.

Article 143

1 Preferred creditors, including those creditors whose priority ranking is disputed, are excluded from voting on the scheme of arrangement unless they have waived their priority interest in favour of the bankrupt estate prior to the vote.

2 By this waiver they become unsecured creditors even if the scheme of arrangement is not accepted.

Article 144

The bankrupt is entitled to be heard in support of the scheme of arrangement and to amend the scheme of arrangement during the meeting.

Article 145

In order to be accepted, the scheme of arrangement must be approved by two-thirds of the unsecured creditors with admitted and conditionally admitted claims representing three-quarters of the total amount of the admitted or conditionally admitted prior ranking secured claims.

Article 146

If two-thirds of the creditors present at the meeting and representing more than half of the total amount of claims with voting rights consent to the scheme of arrangement, a second ballot will be taken within eight days without further notification being required. In the second ballot no one is bound by his first vote.

Article 147

Any later changes in the number of creditors or the amount of the claims will not affect the validity of the acceptance or rejection of the scheme of arrangement.

Article 148

1 The official record of the meeting shall set out the contents of the scheme of arrangement, the names of the voting creditors present at the meeting, the vote cast by each of them, the outcome of the ballot and any further proceedings of the meeting. It shall be signed by the *rechter-commissaris* and the clerk of the court.

2 The official record shall be available for public inspection free of charge at the office of the clerk of the court for a period of eight days.

Article 149

If the documents show that the *rechter-commissaris* wrongly considered the scheme of arrangement rejected, the creditors who voted in favour of the scheme of arrangement and the bankrupt may, within eight days of the meeting, apply to the court to correct the official record.

Article 150

1 If the scheme of arrangement is accepted, the *rechter-commissaris* shall, before the meeting is closed, set the date on which the court shall consider sanctioning the scheme of arrangement.

2 If article 149 applies, the court shall determine the hearing in its order. The *curator* shall notify the creditors in writing of the order.

3 The hearing shall be held no less than eight and no more than fourteen days after the ballot on the scheme of arrangement or, if article 149 applies, after the order of the court.

Article 151

During this period the creditors may advise the *rechter-commissaris* in writing why they consider refusal of the sanction desirable.

Article 152

1 On the day set the *rechter-commissaris* shall report in writing at the public hearing and each creditor may, either in person by written proxy or through a member of the local Bar, explain the reasons why he is either for or against the sanction.

2 The bankrupt may also be heard in support of his interests.

Article 153

1 The court shall issue its reasoned decision on that same date or otherwise as soon as possible thereafter.

2 It shall refuse its sanction:

- (1) if the assets of the estate considerably exceed the sum stipulated in the scheme of arrangement;
- (2) if performance of the scheme of arrangement is insufficiently secured;
- (3) if the scheme of arrangement was realised by fraudulent acts or undue preference of one or more creditors or other unfair means, regardless of whether the bankrupt or any other party co-operated therein.

3 It may also refuse its sanction on other grounds and on its own motion.

Article 154

If the sanction is refused, the creditors who voted in favour of the scheme of arrangement and also the bankrupt may file an appeal against the order within eight days after the court's order; the same applies to the creditors who voted against or who were not present at the ballot if the sanction is granted. In the latter case the creditors who voted in favour have this same right, but only based on the discovery by them after the sanction of acts set out in article 153(3).

Article 155

1 Appeal shall be instituted by submitting a petition to the office of the clerk of the court of appeal which must hear the matter. The presiding judge shall at once set the date and time of the hearing which must take place within twenty days. The clerk of the court before which the appeal proceedings were instituted shall without delay notify the clerk of the court which issued the order relating to the sanction.

2 Article 152 and article 153, first paragraph apply to the appeal proceedings, with the exception of the provisions relating to the *rechter-commissaris*.

Article 156

Cassation (*appeal to the Supreme Court*) must be initiated and heard within the same periods and in the same manner.

Article 157

A scheme of arrangement which has been sanctioned shall be binding on all unsecured creditors without exception, regardless whether or not they have filed their claim in the bankruptcy.

Article 158

After rejection or refusal of the sanction of a scheme of arrangement, the bankrupt may not propose another scheme of arrangement in the same bankruptcy.

Article 159

The order whereby the sanction is made shall, when it has become final and binding, constitute together with the official record of the verification, an enforceable judgment against the debtor and any guarantors who are parties to the scheme of arrangement for those creditors whose claims have been admitted and not disputed by the bankrupt under article 126.

Article 160

Notwithstanding the scheme of arrangement, the creditors shall retain all their rights against any guarantors and other co-debtors of the debtor. Any rights which they may have in respect of goods of third parties shall continue as if no scheme of arrangement had been made.

Article 161

As soon as the sanction of the scheme of arrangement has become final, the bankruptcy shall end. The *curator* shall ensure publication thereof in the papers referred to in the third paragraph of article 14.

Article 162

1 After the sanction of the scheme of arrangement has become final and binding, the *curator* must account to the debtor before the *rechter-commissaris*.

2 Unless the scheme of arrangement provides otherwise, the *curator* shall, against a proper receipt, release to the debtor all goods, moneys, books and documents belonging to the bankrupt estate.

Article 163

1 Any amount which may be claimed by admitted creditors under an admitted priority interest and the costs of the bankruptcy, must be paid to the *curator*, unless the debtor has provided security therefor. As long as this has not been fulfilled, the *curator* must retain all moneys and goods belonging to the bankrupt estate, until this amount and the costs referred to have been paid to the appropriate parties.

2 If, after one month following the judgment of sanction becoming final and binding, no such payment has been made by or on behalf of the debtor, the *curator* shall so proceed from the available assets of the estate.

3 If necessary, the amount referred to in the first paragraph and the parts of it imputed to each creditor under his priority ranking interest will be estimated by the *rechter-commissaris*.

Article 164

In the case of claims where the priority ranking interest has been conditionally admitted, the obligation of the debtor referred to in the preceding article shall be limited to the provision of security; in the absence thereof, the *curator* must only reserve from the assets of the estate the amount to which the priority ranking interest relates.

Article 165

1 Any creditor who the debtor fails to satisfy under the scheme of arrangement may demand that the scheme of arrangement as sanctioned be set aside.

2 The debtor must prove that the scheme of arrangement has been performed.

3 The court may even, on its own motion, grant an extension of no more than one month to the debtor to perform his obligations.

Article 166

Any claim to set the scheme of arrangement aside must be instituted and determined in the same way as provided in articles 4, 6-9 and 12 in respect of a bankruptcy petition.

Article 167

1 A judgment by which a scheme of arrangement is set aside shall also contain an order to re-open the bankruptcy and to appoint a *rechter-commissaris* and a *curator* together with a creditors' committee, if one had already existed in the bankruptcy.

2 Preferably, the same persons shall be appointed who occupied these positions earlier in the bankruptcy.

3 The *curator* shall ensure publication of the judgment as provided under article 14, third paragraph.

Article 168

1 Articles 13, first paragraph, 15-18 and those contained in Chapters 2, 3 and 4 of this Title, shall apply if the bankruptcy is re-opened.

2 The provisions of the Chapter on the admission of claims apply likewise, save that the verification is limited to claims which had not been admitted before.

3 Nevertheless, the creditors whose claims have already been admitted shall also be invited to attend the verification meeting and they shall have the right to dispute any claims for which admission is sought.

Article 169

Any acts performed by the debtor in the period between the sanction of the scheme of arrangement and the re-opening of the bankruptcy shall be binding on the estate, subject to the application of article 42 and following articles, if there are grounds therefor.

Article 170

1 When a bankruptcy has been re-opened, no further scheme of arrangement may be proposed.

2 The *curator* shall forthwith proceed with the liquidation.

Article 171

1 If, on the re-opening, the scheme of arrangement has been performed in whole or in part as against some creditors, on apportionment, an advance payment of the percentages promised under the scheme of arrangement shall be made to the new creditors and to those of the old creditors who had not yet received payment and to those creditors who had received partial payment an advance payment shall be made of the outstanding balance of the promised amount.

2 Any surplus shall be divided equally amongst all creditors, old and new.

Article 172

The preceding article shall also apply if the estate of the debtor is declared bankrupt again before the debtor has performed the scheme of arrangement in full.

Chapter 7 Liquidation of the Estate

Article 173

1 If no scheme of arrangement has been proposed at the verification meeting or if the proposed scheme of arrangement has been rejected or its sanction has been finally refused by the court, the estate shall be insolvent at law.

2 Articles 98 and 100 will cease to apply when it has been established in accordance with the following articles that the business of the bankrupt will not be continued or when the business is ceased after having been continued.

Article 173a

1 If no scheme of arrangement has been proposed at the verification meeting or if the proposed scheme of arrangement has been rejected, the *curator* or a creditor present at the meeting may propose that the business of the bankrupt be continued.

2 The creditors' committee, if any, and the *curator* in the event that the proposal has been made by a creditor, shall advise on this proposal.

3 At the demand of the *curator* or of any of the creditors present, the *rechter-commissaris* shall adjourn the discussion and the decision on the proposal until a meeting which must take place within fourteen days.

4 The *curator* shall without delay notify the creditors who were not present at the meeting of such later meeting by letter setting out the proposal and drawing their attention to article 114.

5 During this meeting the claims which were submitted after the time provided in article 108(1), and which have not already been admitted under article 127, shall be admitted. The *curator* shall act in respect of these claims in accordance with the provisions of articles 111-114.

Article 173b

1 The proposal will be accepted if creditors representing more than half of the admitted and conditionally admitted creditors whose claims are not secured by a pledge, mortgage or lien declare themselves in favour of the proposal.

2 In such event, and if there is no creditors' committee, article 75 shall apply, *mutatis mutandis*.

3 The official record of the meeting shall list the names of the creditors present, the vote cast by each of them, the outcome of the ballot and any further proceedings of the meeting.

4 The official record shall be available for public inspection free of charge at the office of the clerk of the court for eight days.

Article 173c

1 If, within eight days after sanction of the scheme of arrangement has been finally refused by the court, the *curator* or a creditor submits a proposal to the *rechter-commissaris* to continue the business of the bankrupt, the *rechter-commissaris* shall immediately order a creditors' meeting at a date, time and place set by him in order to discuss and decide on the proposal.

2 The *curator* shall notify the creditors no less than ten days prior to the meeting by letter, setting out the proposal and drawing their attention to article 114. He shall also make a similar announcement in the newspaper or newspapers referred to in article 14.

3 Article 173a, paragraphs 2 and 5 and article 173b shall apply.

Article 173d

The *curator* and the creditors may request the court within eight days after the end of the meeting to declare that the proposal has been accepted or rejected if the documents show that the *rechter-commissaris* wrongly considered the proposal rejected or accepted.

Article 174

1 At the request of a creditor or the *curator*, the *rechter-commissaris* may order the continuation of the business to cease. The creditors' committee, if any, and the *curator*, if the request was not made by him, shall be heard in respect of such request.

2 The *rechter-commissaris* may also hear each creditor and the debtor.

Article 175

1 If a proposal to continue the business is not made or is not made in time or if it is rejected, or if the business ceases after having been continued, the *curator* shall proceed with the liquidation and realisation of all assets of the estate immediately without requiring the consent or cooperation of the bankrupt.

2 The bankrupt may keep such household effects as specified by the *rechter-commissaris*.

3 Even if the business is continued, assets of the estate which are not necessary for the continuation of the business may be realised.

Article 176

1 The goods shall be sold either in a public sale or, with the consent of the *rechter-commissaris*, in a private sale.

2 The *curator* shall dispose of assets not capable of liquidation quickly or at all in a manner approved by the *rechter-commissaris*.

Article 177

The *curator* may make use of the services of the bankrupt in the liquidation at a level of remuneration to be set by the *rechter-commissaris*.

Article 178

After the estate has become insolvent, the *rechter-commissaris* may order a creditors' meeting at a date, time and place set by him in order to discuss with them, if necessary, the manner of liquidation of the estate and the admission of any claims submitted after the time referred to in article 108(1) and not yet admitted in accordance with article 127. In respect of these claims the *curator* shall act in accordance with the provisions of articles 111-114. No less than ten days prior to the meeting he will send a letter to the creditors summoning them to the meeting and setting out the issues of the meeting and drawing their attention to article 114. He shall also make a similar announcement in the newspaper or newspapers referred to in article 14.

Article 179

Whenever the *rechter-commissaris* considers that there are sufficient funds available he shall order a distribution to the admitted creditors.

Article 180

1 The *curator* shall each time prepare a distribution plan and submit this to the *rechter-commissaris* for his approval. The plan will contain an account of the revenue and expenditure (including the fee of the *curator*), the names of the creditors and the admitted amount of each claim together with the distribution to be received thereon.

2 The percentage distributions determined by the *rechter-commissaris* for the unsecured creditors shall be specified. For preferred creditors who have not been paid in accordance with the provisions of article 57 or 60, paragraph 3, and regardless of whether their priority ranking is disputed, the amount shall be reserved for which they are secured from the proceeds of sale of the goods to which their priority ranking relates. Where this is less than the total amount of their claims, the shortfall or, if the goods to which their claim relates have not yet been sold, the amount of their total claim shall be reserved, in the same percentage distribution as for the unsecured creditors.

Article 181

In the distribution plan the percentage distribution to be reserved for conditionally admitted claims shall be calculated by reference to the total amount of the claims.

Article 182

1 The general bankruptcy costs shall be apportioned over each part of the estate with the exception of any part which, after foreclosure in accordance with articles 57 or the second sentence of article 60, third paragraph accrues to creditors secured by a pledge or mortgage or lien or to persons with limited real rights, tenants and agricultural lessees whose right has expired or been lost because of the foreclosure, but including the amount paid to the *curator* pursuant to such a foreclosure for the benefit of a creditor who ranked ahead of one or more of the abovementioned creditors.

2 The exception referred to in the preceding paragraph shall also apply to aircraft sold by a creditor himself in accordance with the provisions of article 59a.

Article 183

1 The distribution plan approved by the *rechter-commissaris* shall be available for inspection by the creditors free of charge at the office of the clerk of the court for a period of ten days.

2 The *curator* shall ensure publication of the lodging in the newspaper or newspapers referred to in article 14 and also notify in writing each of the creditors whose claim has been admitted or conditionally admitted specifying the amount reserved for him.

As last amended with effect from 1 January 2002

Article 184

1 During the period referred to in the preceding article each creditor may oppose the distribution plan by submitting a petition of his reasoned objections to the office of the clerk of the court who shall issue a receipt to him.

2 The petition of objections shall be attached to the plan.

Article 185

1 If opposition is made, the *rechter-commissaris* shall set the date on which it shall be heard in open court immediately after the expiry of the inspection period. The order to this effect shall be available for public inspection free of charge at the office of the clerk of the court. The clerk of the court shall also give written notice thereof to the petitioners and to the *curator*. The day set for the hearing may be no more than fourteen days after expiry of the period referred to in article 183.

2 On the set day the *rechter-commissaris* shall report in writing in open court and the *curator* and each of the creditors, either in person or by written proxy or represented by a member of the local Bar, may submit grounds in support of or against the distribution plan.

3 The court shall issue its reasoned order on the same day or otherwise as soon as possible thereafter.

Article 186

1 A creditor whose claim has not been admitted and a creditor whose claim has been admitted for an insufficient amount, albeit in accordance with his own statement, may also file a petition in opposition, provided always that he submits his claim or the unadmitted part thereof to the *curator* no less than two days prior to the day on which the opposition shall be heard in open court and attaches a copy thereof to the petition and also requests in the petition that his claim be admitted.

2 Admission as provided under articles 119 and following shall then take place in the open court where the petition in opposition is heard and before it commences.

3 If the only purpose of the petition in opposition is the admission of a claim and if no one else has lodged a petition in opposition, the costs of the proceedings shall be borne by the creditor in default.

Article 187

1 Within eight days after the court has made its order the *curator* and each creditor may apply for cassation (*appeal to the Supreme Court*).

2 The cassation must be made by a petition lodged at the office of the clerk of the Supreme Court. The presiding judge shall immediately set the date and time of the hearing which must take place within

twenty days. The clerk of the Supreme Court shall notify the clerk of the court which issued the order in opposition of the opposition without delay.

3 The cassation shall be heard in open court. The *curator* and all creditors may attend the hearing.

4 The distribution plan shall become binding upon expiry of the period provided under article 183 or, if it has been opposed, upon the order relating to it becoming final and binding.

Article 188

1 Upon transfer following a sale by the *curator* and payment of the purchase price all mortgages on the property sold shall terminate and the limited real rights which may not be invoked against all admitted creditors shall expire.

2 Upon request the *rechter-commissaris* shall issue to the buyer a certificate of such termination and expiry. This certificate may be recorded in the registers at the time of or after the transfer. It shall then authorise the keeper of the registers to deregister the relevant registrations.

3 Article 575 of the Code of Civil Procedure shall apply to sales by the *curator* of any ships which belong to the estate.

Article 189

1 The amount reserved for a creditor whose claim has been conditionally admitted shall not be distributed as long as no decision has been made in respect of his claim. If the final result is that he has nothing to claim or that his claim is reduced, the moneys which have been reserved for him shall be applied, either in whole or in part, for the benefit of the other creditors.

2 Distributions reserved for claims where the prior ranking is disputed and, to the extent that these exceed the percentage distributions on unsecured claims, shall be retained until a decision on the priority has been made.

Article 190

If any property subject to a creditor's priority interest is sold after a distribution has been made to him pursuant to article 179 in connection with the last part of article 180, the amount in respect of which he has been admitted as having priority over the proceeds of sale of the property shall only be distributed to him after deduction of the percentage distribution which he has already received on such amount.

Article 191

1 Creditors whose claims are only admitted after distributions have been made due to their default in lodging their claims shall receive an amount in advance from the assets which are still available in proportion to the amounts already received by the other admitted creditors.

2 If they have a prior ranking interest, this shall be forfeited by them insofar as the proceeds of the thing in which the priority interest vested has, in an earlier distribution plan, already been allocated to other creditors with a priority right.

Article 192

After expiry of the inspection period referred to in article 183, or after pronouncement of the judgment on the opposition the *curator* must proceed with the determined distribution without delay. Any

amounts not distributed within one month thereafter or reserved pursuant to article 189 shall be deposited in the manner required by law.

Article 193

1 As soon as the admitted creditors have received the full amount of their claims or as soon as the final distribution plan has become binding, the bankruptcy shall end, save as provided in article 194. This shall be announced by the *curator* in accordance with article 14.

2 After expiry of one month the *curator* shall account for his administration to the *rechter-commissaris*.

3 Any books and documents which the *curator* found in the estate shall be surrendered by him to the debtor against proper receipt.

Article 194

If, after the final distribution pursuant to article 189, amounts reserved are returned to the estate or if it appears that there are still assets of the estate present which were not known at the time of the liquidation, the court shall order the *curator* to proceed with the liquidation and distribution thereof on the basis of the preceding plans of distribution.

Chapter 8 Legal Position of the Debtor after Termination of the Liquidation

Article 195

After the final plan of distribution has become binding, the creditors' rights of foreclosure on the goods of the debtor are restored to them to the extent that their claims remain unpaid.

Article 196

Admission of a claim in accordance with the fourth paragraph of article 121 shall be binding on the debtor; the official record of the verification meeting constitutes an enforceable right as regards the admitted claims against the debtor mentioned therein.

Article 197

The provisions of the preceding article shall not apply if and to the extent that a claim has been disputed by the bankrupt in accordance with article 126.

Chapter 9 Repealed

Article 198-202

Repealed

As last amended with effect from 1 January 2003

Chapter 10 Provisions of International Law

Article 203

A creditor who after the declaration of bankruptcy has recovered his claim separately, either in whole or in part, from goods situated abroad of a debtor declared bankrupt in the Netherlands, which are not subject to a priority right in his favour, must pay the amount so recovered into the estate.

Article 204

1 A creditor who assigns his claim against the bankrupt, either in whole or in part, to a third party in order to enable the third party to recover the claim, either in whole or in part, separately or with priority, from goods of the bankrupt situated abroad, must pay the amount so recovered into the estate.

2 Unless proved to the contrary, the assignment is deemed to have been effected with this purpose if it was known to the parties that an application for bankruptcy had been made or would be made.

Article 205

1 A creditor who assigns his claim or his debt, either in whole or in part, to a third party thereby enabling him to effect a set-off abroad not allowed by this Act shall be subject to a similar obligation to the estate to make such payment.

2 The second paragraph of the preceding article shall apply.

Chapter 11 Rehabilitation**Article 206**

After the bankruptcy has ended in accordance with article 161 or 193, the debtor, or his heirs, may submit a petition for rehabilitation to the court which adjudicated on the bankruptcy.

As last amended with effect from 1 January 2003

Article 207

There shall be no *locus standi* for such a petition of the debtor or his heirs unless proof is submitted with the petition that all admitted creditors have been paid to the satisfaction of each of them.

Article 208

The petition shall be published in the *Nederlandsche Staatscourant* (Government Gazette) and in one or more newspapers designated by the court.

Article 209

1 Each admitted creditor may oppose the petition within two months after the required publication by means of a reasoned notice of objection lodged with the office of the clerk of the court; the clerk of the court shall issue a receipt to him.

2 The only possible grounds for opposition is that article 207 has not been duly performed by the petitioner.

Article 210

After expiry of this period of two months, having heard the Public Prosecution Service and regardless of whether or not opposition has been made, the court shall either allow or reject the petition.

Article 211

No further appeal or cassation (*appeal to the Supreme Court*) lies against the decision of the court.

Article 212

The judgment allowing the rehabilitation shall be pronounced in open court and shall also be recorded in the register referred to in article 19.

Chapter 11A Bankruptcy of Credit Institutions, Financial Institutions, Securities Firms or Other Institutions mentioned in Article 212a, subparagraph a.^{(*)5}

Article 212a

For the purpose of this Chapter

a

"institution" shall mean:

(1)

a credit institution as defined in subparagraph *a* of article 1, first paragraph of the *Wet toezicht kredietwezen* 1992 (Credit System (Supervision) Act) 1992;

(2)

a financial institution as defined in subparagraph *c* of article 1, first paragraph of the *Wet toezicht kredietwezen* 1992;

(3)

a securities institution as defined in subparagraph *d* of article 1 of the *Wet toezicht effectenverkeer* (Securities Markets (Supervision) Act) 1995);

(4)

a central counterparty, which obtains a credit balance in securities as a result of transfer orders within the framework of its participation in the system;

(5)

public authorities or publicly guaranteed undertakings;

(6)

an undertaking or institution established in a non member state of the European Union, which conducts the business of a credit institution or securities firm through a branch office in the Netherlands;

b

"system" shall mean:

(1)

a system designated by the Minister of Finance by virtue of article 212d;

(2)

a formal agreement governed by the law of a member state of the European Union and registered in another member state of the European Union with the Commission of the European Communities as a system as defined in Directive No. 98/26/EC of the European Parliament and of the Council of the European Union of 19 May 1998 (*OJEC* L 166);

c

"central counterparty" shall mean: an entity interposed between the institutions which participate in a system, which acts as the exclusive counterparty of these institutions with regard to their transfer orders;

d

"settlement agent" shall mean: an entity which places settlement accounts at the disposal of institutions or central counterparties participating in a settlement system through which transfer orders within such systems are settled;

e

"clearing house" shall mean: an entity responsible for the netting of positions of institutions, a possible central counterparty or a possible settlement agent;

- f "participant" shall mean: an institution, a central counterparty, a settlement agent or a clearing house;
- g "indirect participant" shall mean: a credit institution as defined in subparagraph *a* of article 1, first paragraph of the *Wet toezicht kredietwezen 1992* (Credit System (Supervision) Act) 1992 or a financial institution as defined in subparagraph *c* of article 1, first paragraph of the *Wet toezicht kredietwezen 1992*, which may place money at the disposal of a recipient under a contract with an institution which participates in a system by a book entry via such system on the accounts of a credit institution, a financial institution, a central bank or a settlement agent;
- h "central bank" shall mean: a central bank of a member state of the European Union, the central bank of another state which is a party to the Agreement on the European Economic Area or the European Central Bank;
- i "branch office" shall mean: one or more divisions without legal personality of an institution established in a state other than that within which such institution is established;
- j "securities" shall mean: securities as defined in sub-paragraph *a* of article 1 of the *Wet toezicht effectenverkeer 1995*;
- k "transfer order" shall mean: any order by a participant to place an amount of money at the disposal of a recipient by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or any order which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or an order by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;
- l "insolvency proceedings" shall mean: any collective measure provided for in the law of a member state or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers and payments;
- m "netting" shall mean: the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation owed;
- n "settlement account" shall mean: an account with a central bank, a settlement agent or a central counterparty used to hold funds and securities and to settle transactions between participants in a system.

Article 212b

1 Articles 23 and 35 notwithstanding, a declaration of bankruptcy of an institution shall not have retroactive effect to the commencement of the day on which it is pronounced in respect of transfer orders issued prior to the time of declaration of bankruptcy of such institution, or in respect of any settlement orders or any payment which results from such order, delivery, settlement or any other legal act required for complete execution of the order in the system.

2 Articles 23, 24, 35, 53, first paragraph, and 54, second paragraph, of this Act, and article 72, introduction and subparagraph *a*, of Book 3 of the Civil Code, shall not affect third parties with regard to any transfer orders, netting orders or any payment which results from such orders, transfer, netting or any other legal act required fully to execute such orders issued by an institution after the time of declaration of bankruptcy of such institution, if the orders are executed in the system on the date of declaration of bankruptcy and the central counterparty, the settlement agent or the clearing house can prove that they were not aware, nor should have been aware, of the declaration of bankruptcy at the time of execution of the order.

3 The first and second paragraphs shall apply, *mutatis mutandis*, to collateral security provided by an

institution in connection with its participation in the system in favour of a central bank or in favour of any other institution which participates in the system.

4 The court shall mention the time of the declaration of bankruptcy, precisely as to the exact minute, on the judgment.

Article 212c

1 The clerk of the court shall notify De Nederlandsche Bank N.V. immediately of the declaration of bankruptcy.

2 De Nederlandsche Bank N.V. shall immediately thereafter notify the systems designated by the Minister of Finance pursuant to article 212d and the competent authorities of the other member states of the European Union and of the other states which are parties to the Agreement on the European Economic Area of the declaration of bankruptcy.

Article 212d

1 The Minister of Finance, having heard De Nederlandsche Bank N.V., may designate as a system a formal agreement between three or more participants, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standard procedures for the execution of transfer orders between the participants governed by the law of a member state of the European Union elected by the participants in which at least one of the participants has its principal establishment.

2 If this is necessary, having regard to avoidance of risks in the system, the Minister of Finance, having heard De Nederlandsche Bank N.V., may designate as a system a formal agreement between two participants, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standard procedures for the execution of transfer orders between the participants governed by the law of a member state elected by the participants in which at least one of the participants has its principal establishment.

3 In the Order the Minister of Finance may provide for regulations which shall apply to the designation of a system.

4 The system shall notify the Minister of Finance of the institutions which participate, directly or indirectly, in the system and of any commencement or termination of participation by an institution in the system.

5 A notice shall be published in the *Staatscourant* (Government Gazette) of an order referred to in the first paragraph.

6 The Minister of Finance shall report the designated systems to the Commission of the European Communities.

Article 212e

If an insolvency procedure is commenced against an institution, its rights and obligations arising from or in connection with its participation in that system shall be determined under the law governing such system.

Article 212f

If, in connection with participation in the system, any collateral security interest is established in title to securities and or in rights in respect of securities in connection with participation in the system in favour of a participant or a central bank or in favour of a third party acting on behalf of a participant or a central bank and where such securities or rights in respect of securities are entered on a register, account or centralised securities deposit in a member state of the European Union or in any other state which is party to the Agreement on the European Economic Area, the determination of the rights of

such persons as holders of collateral security interests with regard to such securities shall be governed by the law of that member state or that other member state, respectively.

Title II Suspension of payments

Chapter 1 Grant of Suspension of Payments and its Consequences

Article 213

1 A debtor who foresees that he will be unable to continue to pay his debts as they fall due may apply for suspension of payments.

2 No suspension of payments shall be granted to a natural person who does not conduct an independent profession or business.

Article 214

1 To do so, he must submit to the court referred to in article 2 or 3 a petition accompanied by a statement in the form referred to in article 96 which is supported by the appropriate records and is signed by himself and the member of the local Bar acting for him.

2 A proposed scheme of arrangement may be lodged together with the petition for a suspension of payments.

Article 215

1 The petition together with the relevant documents shall be lodged at the office of the clerk of the court for public inspection free of charge.

2 The court shall immediately provisionally allow the suspension of payments requested and appoint one or more administrators who, together with the debtor, shall administer his affairs. The court shall also order the known creditors and the debtor to be summoned by the clerk of the court by means of a letter at a date in the short-term specified by the court in order to be heard on the petition before the court shall definitively decide to grant the requested suspension of payments. As well as the date, the time and place of the hearing shall be mentioned and whether a proposed scheme of arrangement was lodged with the petition.

Article 216

A notice shall be published in the *Nederlandsche Staatscourant* (Government Gazette) and in one or more newspapers specified by the court, the lodging of the petition, the provisional grant of the suspension of payments, the name of the *rechter-commissaris*, if appointed, the names and addresses of the administrators appointed and the date set in accordance with the second paragraph of the preceding article. If a proposed scheme of arrangement was lodged with the petition, this shall be mentioned in the announcement.

Article 217

The suspension of payments is deemed to have commenced at the start of the day on which it was provisionally granted.

Article 218

1 On the set date the court in chambers shall hear the debtor, the *rechter-commissaris*, if appointed, the administrators and the creditors present either in person or by written proxy or represented by a member of the local Bar. A creditor is allowed to attend the hearing even if he has not been summoned to it.

2 The court may grant the debtor a definitive suspension of payments unless opposed either by creditors holding not less than one-quarter of the total amount of the claims represented at the hearing and referred to in article 233 or by more than one-third of the creditors holding such claims.

3 The court shall decide who is eligible to vote in the event of a dispute.

4 A definitive suspension of payments may never be granted if there are good grounds for suspecting that the debtor will try to prejudice the creditors during the suspension of payments or if it is not anticipated that the debtor will be able to settle with his creditors in due course.

5 If the court disallows the petition it may declare the debtor bankrupt by the same order. If bankruptcy is not ordered, the provisional suspension of payments shall be maintained until the court order has become final and binding.

6 If petitions for a declaration of bankruptcy and for a suspension of payments are simultaneously pending, the latter shall be heard first.

7 The order issued on the application shall be fully reasoned and pronounced in open court.

Article 219

1 If the application is disallowed, the debtor may appeal within eight days following the date of the judgment or if the suspension of payments is granted, each creditor who has not declared himself in favour of the petition, may appeal within eight days following the date of the judgment.

2 The appeal shall be instituted by a petition lodged with the office of the clerk of the court of appeal which must be seized of the matter. The presiding judge shall set the date and time of the hearing immediately.

3 If the appeal is instituted by a creditor he shall, no later than the fourth day following the lodging of his petition, notify, by means of a bailiff's writ, the member of the local Bar who lodged the petition for suspension of payments of the appeal and of the time set for the hearing. This notification constitutes a summons on the debtor to appear.

4 The clerk of the court of appeal shall ensure publication of the appeal and the time set for the hearing in the newspapers in which the application for suspension of payments was published under article 216. He shall also notify the appeal to the office of the clerk of the court, collect from him the documents referred to in article 214 and make these available for public inspection in his office free of charge.

Article 220

1 At the appeal hearing the application shall not be re-submitted to the vote but each creditor may participate, either in person or by written proxy or through a member of the local Bar, in opposing or supporting the judgment under appeal.

2 The hearing shall take place in chambers. The judgment shall be pronounced in open court.

Article 221

1 If the suspension of payments is rejected, the debtor may apply for cassation (*appeal to the Supreme Court*) from the judgment rendered by the court of appeal or, if suspension of payment has been granted, each creditor who has not declared himself in favour thereof may apply for cassation, both within eight days following the date of the judgment.

2 Cassation shall be instituted by a petition lodged with the office of the clerk of the Supreme Court. The President shall set the date and time of the hearing immediately.

3 The clerk of the Supreme Court shall ensure publication of the application for cassation and the time set for the hearing in the newspapers in which the application for suspension of payments was published pursuant to article 216. He shall also notify the clerk of the court of appeal of the cassation

instituted and collect from him the documents referred to in article 214 and make these available in his office for public inspection free of charge.

4 The provisions of the third paragraph of article 219 and of the second paragraph of article 220 apply *mutatis mutandis*.

Article 222

1 The order by which suspension of payments is definitively granted shall be directly enforceable notwithstanding any appeal or remedy sought against it.

2 It shall be announced in the manner provided in article 216.

Article 222a

1 The clerk of each court shall keep a public register recording in respect of each suspension of payments and stating the date of each entry:

- (1) an extract from the court decisions by which provisional or definitive suspension of payments was granted or extending or withdrawing a suspension of payments;
- (2) the appointment of a *rechter-commissaris*;
- (3) brief contents of the scheme of arrangement and its sanction;
- (4) the dissolution of the scheme of arrangement.

2 The form and content of the register shall be regulated by Regulation.

3 The clerk of the court shall keep the register available for public inspection free of charge and provide extracts from the register against payment.

Article 223

1 When a suspension of payments is definitively granted, the court shall set its duration at one and a half years at most. If the suspension of payments has ended on expiry of the period for which it was granted, the administrators shall ensure its publication in the newspapers referred to in article 216.

2 Prior to the end of the suspension of payments the debtor may, once or more, apply for its extension for no more than one and a half years. The application shall be heard in the same manner as an application for a suspension of payments. If on the expiry of a suspension of payments no decision is made on an application for extension, the suspension of payments shall be maintained. The order issued by the court shall be published in the manner provided in the first paragraph.

Article 223a

On a provisional grant of a suspension of payments or on a later order the court may appoint one of its members as *rechter-commissaris* to advise the administrators at their request.

Article 223b

1 At the request of the administrators the *rechter-commissaris* may hear witnesses or order an experts' investigation to clarify the circumstances concerning the suspension of payments. The witnesses shall be summoned by writ on behalf of the *rechter-commissaris*. Article 177 of the Code of Civil Procedure shall apply *mutatis mutandis*.

2 On non-appearance or refusal to take the oath or to testify, articles 171, 172, and the first sentence of paragraph 1, and paragraphs 2 and 3 of article 173, articles 174 and 175 of the Code of Civil Procedure shall apply.

3 The spouse or former spouse of the debtor or the person with whom the debtor has or had entered into a registered partnership, the children and further descendants and the parents and grandparents of the debtor may excuse themselves from giving testimony.

As last amended with effect from 1 January 2002

Article 224

1 If more than one administrator has been appointed, the consent of a majority or, in the event of a tie, a decision of the *rechter-commissaris*, if appointed, or failing which, of the interim provisions judge of the court, is required in order to make their acts legally binding. The second paragraph of article 70 shall apply *mutatis mutandis*.

2 The court may dismiss an administrator at any time after he has been heard or properly summoned and replace him by someone else or appoint one or more additional administrators, either on his own request or on the request of the other administrators or of one or more creditors or on recommendation of the *rechter-commissaris* or on the court's own motion.

As last amended with effect from 1 January 2002

Article 225

1 On the provisional grant of the suspension of payments the court shall make such provisions as it will consider necessary to safeguard the interests of the creditors.

2 The court may also act in this way during the suspension of payments on the recommendation of the *rechter-commissaris*, if appointed, or at the request of the administrators or of one or more creditors or on the court's own motion.

Article 226

1 On a provisional grant of the suspension of payments, the court may appoint one or more experts to investigate the state of affairs of the estate and to submit a reasoned report of their findings within a period to be specified by it which may, if necessary, be extended. The last paragraph of article 225 shall apply *mutatis mutandis*.

2 The experts' report shall contain a fully reasoned opinion on the reliability of the statement and documents submitted by the debtor and whether it is to be anticipated that the debtor will be able to settle with his creditors in due course. The report shall indicate, if possible, the measures which must be taken to achieve such settlement.

3 The experts shall lodge their report with the office of the clerk of the court for public inspection free of charge. No charge shall be made for the lodging of the report.

4 The final paragraph of article 224 shall apply, *mutatis mutandis*, with regard to the experts.

Article 227

1 After of each period of three months, the administrators shall report on the state of affairs of the estate. This report shall be dealt with as provided in the third paragraph of article 226.

2 The period referred to in the preceding paragraph may be extended by the *rechter-commissaris*, if appointed, failing which, by the court.

Article 228

1 During the suspension of payments the debtor may not perform any act of administration or disposal relating to the estate without the cooperation, authorisation or assistance of the administrators. If the debtor is in breach thereof, the administrators shall be empowered to do whatever is necessary to

ensure that the estate will not suffer any loss on account thereof.

2 The estate shall not be liable for obligations contracted by the debtor after commencement of the suspension of payments and without the cooperation, authorisation or assistance of the administrators, save to the extent that it benefits therefrom.

Article 229

1 If a debtor is married under any community of property or has entered into a registered partnership under any community of property, the assets and liabilities of such community shall constitute part of the estate.

2 Article 61 shall apply *mutatis mutandis*.

As last amended with effect from 1 January 2003

Article 230

1 During the suspension of payments the debtor may not be compelled to pay the debts referred to in article 233 and any foreclosure actions commenced to recover such debts shall be suspended.

2 Unless so ordered by the court at an earlier date on the request of the administrators, any attachments made shall be lifted and a debtor held in custody shall be released as soon as the order granting the definitive suspension of payments or sanctioning the scheme of arrangement has become final and binding. The registration of a certificate to this effect issued by the *rechter-commissaris* or otherwise by the interim provisions judge of the court if no *rechter-commissaris* has been appointed on the request of the administrators, shall authorise the keeper of the public registers to deregister the attachments.

3 The provisions of the preceding paragraphs do not apply to foreclosures and attachments commenced in connection with claims secured by a priority right over certain goods insofar as the goods are subject to the priority right.

4 In respect of debts to which the first paragraph shall apply, article 36 shall apply, *mutatis mutandis*.

As last amended with effect from 1 January 2002

Article 231

1 Suspension of payments shall not stay any pending proceedings nor does it prevent the institution of new proceedings.

2 If however the proceedings merely concern a claim for payment of a debt acknowledged by the debtor and the claimant does not require a judgment in order to assert rights against third parties, the court may, after officially recording the acknowledgement of the claim, postpone judgment until the suspension of payments has ended.

3 Without the cooperation of the administrators the debtor may not act in court either as claimant or as defendant in legal proceedings relating to rights and obligations of the estate.

Article 232

1 Suspension of payments does not take effect in respect of:

- (1) claims with a priority right, except insofar as they cannot be recovered from the goods subject to the priority right;
- (2) claims for maintenance, care or upbringing costs constituting legal obligations determined by an agreement or by a judgment, unless accrued due prior to the commencement of the

- suspension of payments where the court determined the amount subject to the suspension of payments;
- (3) instalments due under hire-purchase contracts and hire-purchase contracts relating to ships.

Article 233

Payment of all other debts existing prior to the commencement of the suspension of payments may, during the suspension of payments, only be made to all joint creditors in proportion to their claims.

Article 234

1 A person who is both a debtor and a creditor of the estate may apply a set-off if the claim and the debt both arose prior to the commencement of the suspension of payments or resulted from a transaction with the debtor performed prior to the commencement of the suspension of payments.

2 If necessary, a claim against the debtor shall be calculated in accordance with the rules laid down in articles 261 and 262.

3 The estate may not invoke article 136 of Book 6 of the Civil Code.

Article 235

1 Nevertheless, a person who has assumed a debt owed to, or has taken over a claim against, the estate from a third party before the commencement of the suspension of payments may not apply a set-off if he has not acted in good faith with respect to such assumption or take-over.

2 Set-off is not permitted for claims or debts after commencement of the suspension of payments.

3 Articles 55 and 56 shall apply *mutatis mutandis*.

Article 236

1 If at the commencement of the suspension of payments a reciprocal contract either has not been performed or has been performed only in part by both the debtor and the other party and the debtor and the administrators have not declared within a reasonable period set by the other party in writing whether they wish to continue the contract, they shall lose their right to claim performance of the contract.

2 If the debtor and the administrators declare themselves willing to perform the contract, they must, if so required, provide security for the proper performance of the contract.

3 The preceding paragraphs do not apply to contracts in which the debtor only assumed obligations which require him to perform acts personally.

Article 236a

Claims acquired by the other party against the debtor pursuant to a setting aside or avoidance of a contract made with the debtor prior to the commencement of the suspension of payments or claims which give rights to indemnification in respect of a failure to perform an obligation against the debtor prior to the commencement of the suspension of payments, may be lodged as provided in article 233.

Article 237

If, in the case of article 236, it is stipulated that the delivery of goods traded on a commodities exchange will be made at a fixed time or within a determinate period and either the time occurs or the period expires after commencement of the suspension of payments, the contract shall be dissolved upon the provisional suspension of payments and the other party contracting with the debtor may submit a claim for damages in accordance with article 233. If the estate suffers loss as a result of the dissolution, the other party shall compensate this loss.

Article 237a

1 As soon as the suspension of payments has commenced, a debtor who is a hire-purchaser or the seller under a hire-purchase contract, may declare the hire-purchase contract to be rescinded, including any hire-purchase contract for a ship.

2 This rescission shall have the same consequences as the dissolution of a contract as a result of the non-performance by the buyer of his obligations.

3 The seller may submit a claim for the amount due to him in accordance with article 233.

Article 238

1 As soon as the suspension of payments has commenced, a debtor who is a tenant may terminate the tenancy before its expiry in accordance with article 228, provided notice of termination is given as at a time at which such agreement would end in accordance with local custom. The agreed or customary notice period must be observed, provided however that, in any event, a period of three months shall be sufficient. If the rent has been paid in advance, the tenancy may only be terminated on the date on which the period covered by the advance payment will end.

2 The rent is a debt of the estate as from the commencement of the suspension of payments.

3 If the debtor is an agricultural tenant, the above shall apply, *mutatis mutandis*.

Article 239

1 As soon as the suspension of payments has commenced, the debtor may terminate the employment contracts with his employees with due regard to the provisions of article 228 and the contractual or legal notice period, provided however that the employment may always be terminated on six weeks' notice or, if the notice period set out in article 672, second paragraph, of Book 7 of the Civil Code is more than six weeks, then in accordance with such notice period.

2 As soon as the suspension of payments has commenced, a debtor's employees need not apply the provisions of article 672, paragraph 3, of Book 7 of the Civil Code, when giving notice terminating their employment contracts.

3 As from the commencement of the suspension of payments the salary and the benefit premiums relating to the employment contract shall be debts of the estate.

4 This article shall apply, *mutatis mutandis*, to mercantile agency agreements.

As last amended with effect from 1 January 2002

Article 240

1 Payment to the debtor after the suspension of payments has been provisionally granted but before the publication thereof, in performance of obligations owed to him and which arose previously, shall release or discharge the payor as against the estate so long as it is not proved that he knew of the provisional grant of the suspension of payments.

2 The payment referred to in the preceding paragraph made to the debtor after the publication of the

suspension of payments shall only release or discharge the payor as against the estate if he proves that the provisional grant of the suspension of payments could not then have been known as a result of the statutory publication, subject to the right of the administrators to prove that it was nevertheless known to him.

3 Payment to the debtor will in any event discharge the payor from liability to the estate to the extent that the funds paid by him accrued to the benefit of the estate.

Article 241

Suspension of payments does not take effect in favour of guarantors and other co-debtors.

Article 241a

1 At the request of the debtor or the administrator the court may order that each right of third parties to obtain recourse against goods belonging to the estate or for claiming goods in the control of the debtor or the administrators, may not be foreclosed for a period not exceeding one month, except with the authorisation of the court or, if appointed, of the *rechter-commissaris*. The court may extend this period once for no more than one month.

2 The court may limit its order to certain third parties and attach conditions thereto. The court and the *rechter-commissaris* may attach conditions to their authorisation of a third party to execute a right to which the third party is entitled.

3 During the periods referred to in the first paragraph, any time periods imposed upon or by such third parties in respect of their rights will continue, insofar as this is reasonably necessary to enable the third party or the debtor and the administrator to determine their position on expiry of the period. The other party may again set another reasonable term for them.

Article 242

1 After the grant of the suspension of payments, it may be withdrawn either upon recommendation of the *rechter-commissaris*, if appointed, or on the application of the administrators or of one or more of the creditors or on the court's own motion:

- (1) if the debtor has acted in bad faith in administering the estate during the suspension of payments;
- (2) if he attempts to prejudice his creditors;
- (3) if he acts in breach of article 228, first paragraph;
- (4) if he fails to do those things required of him by the court on the grant of the suspension of payments, or at a later date, or which the administrators require him to do in the interests of the estate;
- (5) if, pending the suspension of payments, the state of affairs of the estate appears to be such that it is no longer desirable to maintain the suspension of payments or if it is not anticipated that the debtor will be able to settle with his creditors in due course.

2 In the cases referred to in (1) and (5) the administrators must apply for withdrawal of the suspension of payments.

3 The petitioner, the debtor and the administrators shall be heard or duly summoned. The summons shall be made by the clerk of the court on a date to be set by the court. The order must state its reasons.

4 If suspension of payments is withdrawn under this article, the bankruptcy of the debtor may be declared in the same order. If bankruptcy is not declared, the suspension of payments shall be maintained until the order of the court has become final and binding.

Article 243

1 During eight days following the date of the order, if the suspension of payments is withdrawn, the debtor and, if the withdrawal of the suspension of payment is refused, the party who made the application to withdraw the suspension of payments may appeal against the order of the court.

2 The appeal shall be instituted by a petition lodged with the office of the clerk of the court of appeal which must be seized of the matter. The clerk of the court of appeal shall notify the clerk of the court which issued the order immediately.

3 The presiding judge of the court of appeal shall specify the date and time for the hearing of the petition immediately. As soon as possible the clerk of the court of appeal shall, by letter, summon the parties who requested the withdrawal, the debtor and the administrators to appear on the specified date.

4 The clerk of the court of appeal shall notify the clerk of the court of the order issued by the court of appeal immediately.

Article 244

1 During eight days following the date of the order of the court of appeal the unsuccessful party may apply for cassation (*appeal to the Supreme Court*).

2 Cassation shall be instituted by a petition submitted to the office of the clerk of the Supreme Court. The clerk of the Supreme Court shall immediately notify the clerk of the court of appeal of the cassation.

3 The President of the Supreme Court shall specify the date and time of the hearing of the petition immediately. As soon as possible the clerk of the court of appeal shall, by letter, summon the parties involved to appear at the hearing on the specified date. The clerk of the Supreme Court shall immediately notify the clerk of the district court of the order issued by the Supreme Court.

Article 245

As soon as an order withdrawing the suspension of payments has become final and binding, this will be published as provided under article 216.

Article 246

1 If the court considers that the hearing of the application to withdraw the suspension of payments will not have been completed before the date on which the creditors are to be heard as provided in article 215, second paragraph, the court shall order the clerk of the court to inform the creditors, by letter, that their hearing will not be held on that day.

2 If necessary the court shall subsequently set another date for this hearing; the creditors shall be summoned, by letter, by the clerk of the court.

Article 247

1 The debtor may always request the court to withdraw the suspension of payments on the grounds that the condition of the estate allows him to resume payment. The administrators and, in the case of a definitive grant of suspension of payments, the creditors, shall be heard or duly summoned.

2 The summons shall be issued, by letter, in writing by the clerk of the court to appear on a date to be set by the court.

Article 247a

1 No later than on the eighth day preceding the date set in accordance with article 215, second paragraph and, in any case, no later than two months after the day on which the suspension is provisionally granted, the court may, on the application of a debtor who is a natural person, withdraw the suspension provisionally granted to him with a simultaneous order for the implementation of the debt rescheduling scheme referred to in Title III.

2 For such purpose the debtor shall apply to the court which provisionally granted the suspension by a petition referred to in article 284.

3 Prior to its decision, the court may summon a hearing of the debtor, the *rechter-commissaris* and the administrator.

4 Article 6, second paragraph shall apply.

5 In allowing the application the court shall order the definitive implementation of the debt rescheduling scheme.

6 In the announcement required by article 293 the clerk of the court shall give notice of the withdrawal of the provisionally granted suspension. Such announcement shall also state that the hearing of creditors in accordance with article 215, second paragraph will not be held. If, on the basis of article 255 or 264, a time was already set for consultation and voting in respect of a scheme of arrangement, such announcement shall mention that no such consultation and voting shall take place.

Article 247b

1 Neither the creditors nor any other interested parties shall have any legal remedies against a judgment pronouncing the withdrawal of a provisionally granted suspension and the implementation of the debt rescheduling scheme.

2 If the application for implementation of a debt rescheduling plan is rejected, the debtor has a right of appeal for eight days after the date of the decision. Appeal shall be instituted by a petition lodged with the clerk of the court of appeal which must be seized of the matter. The clerk of the court of appeal shall notify the clerk of the district court without delay that such petition has been lodged.

3 The presiding judge shall immediately set the date and hour for the hearing which must be held within twenty days of the date on which the petition was lodged. The decision shall be pronounced no later than on the eighth day after that of the court hearing of the petition. The clerk of the district court shall be notified without delay by the clerk of the judgment of the court of appeal.

4 The debtor may apply for cassation (*appeal to the Supreme Court*) from the decision of the court of appeal to the Supreme Court within eight days of the date of the decision. Cassation to the Supreme Court shall be instituted by a petition lodged at the clerk's office of the Supreme Court. The presiding judge shall immediately set the date and hour for the hearing. The clerk of the Supreme Court shall notify the clerk of the district court without delay of the cassation and of the Supreme Court's decision.

5 As long as no decision on the petition referred to in article 247a, second paragraph is made and, if a debt rescheduling scheme has not been pronounced, pending the appeal or cassation, no definitive suspension of payments may be granted and no consultation on a scheme of arrangement may take place.

Article 247c

1 If a suspension of payments is withdrawn with a simultaneous order to implement a debt rescheduling scheme, the following shall apply:

a

the administrator of the debt rescheduling scheme shall exercise the powers conferred on the administrator in a suspension of payments in the second sentence of article 228, first paragraph;

b

debts of the estate which arose during the implementation of a suspension shall also be treated as debts of the estate in the implementation of a debt rescheduling scheme.

c

claims filed in the suspension shall be treated as filed in the debt rescheduling scheme.

2 Article 249, first paragraph (1) and (4) shall apply *mutatis mutandis*.

Article 248

1 During a suspension of payments a declaration of bankruptcy may not be demanded without proper notice.

2 If a bankruptcy is declared pursuant to the provisions of this Title, article 14 will apply *mutatis mutandis*; if the bankruptcy is annulled under such provisions, articles 13 and 15 will apply *mutatis mutandis*.

Article 249

1 If bankruptcy is declared pursuant to the provisions of this Title, or within one month after the end of a suspension of payments, the following provisions will apply:

(1)

for the purposes of the periods referred to in articles 43 and 45 of this Act and in articles 138, sixth paragraph, and 248, sixth paragraph, of Book 2 of the Civil Code, time shall run from the commencement of the suspension of payments;

(2)

the *curator* shall exercise the powers conferred on the administrators in the first paragraph of article 228;

(3)

transactions performed by the debtor with the cooperation, authorisation or assistance of the administrators shall be deemed to be transactions of the *curator* and debts of the estate incurred during the suspension of payments shall be deemed to be debts of the estate in the bankruptcy;

(4)

the estate shall not be liable for obligations of the debtor arising during the suspension without the cooperation, authorisation or assistance of the administrators, save to the extent that the estate benefits as a result thereof.

2 If an application is made for a new suspension within one month after expiry of an earlier suspension, the provisions of the first paragraph shall also apply in respect of the period of the next following suspension of payments.

Article 250

1 The administrators' remuneration and the remuneration of experts appointed pursuant to the provisions of article 226 shall be determined by the court and paid with priority.

2 The latter also applies to their disbursements and to the fees of the clerk incurred in accordance with this Title.

Article 250a

1 If an undertaking or institution not registered pursuant to subparagraphs *a*, *b* or *c* of article 52, second paragraph of the *Wet toezicht kredietwezen* 1992 (Credit System (Supervision) Act 1992) (*Staatsblad* (Bulletin of Acts and Orders - Official Gazette) 1992, 722) and in respect of which De Nederlandsche

Bank N.V. has made inquiries under that Act, is unable, in the opinion of De Nederlandsche Bank N.V., to continue to pay its debts when due, De Nederlandsche Bank N.V. may, with the authorisation of the interim provisions judge of the competent court, apply for a suspension of payments for such undertaking or institution as provided in article 214, first paragraph.

2 As soon as possible the interim provisions judge of the court shall decide on the application for authorisation referred to in the first paragraph, but not without first having given the undertaking or institution an opportunity to state its views thereon to him.

3 In the case referred to in the first paragraph no definitive suspension of payments will be granted if the undertaking or institution objects thereto.

4 Articles 215-250 and 251 shall apply *mutatis mutandis*.

5 If the application is disallowed otherwise than on the basis of the third paragraph, De Nederlandsche Bank N.V. may appeal and may apply for cassation (*appeal to the Supreme Court*) in accordance with the provisions of articles 219 and 221. Both on appeal and on cassation De Nederlandsche Bank N.V. may participate in the hearing of the appeal.

As last amended with effect from 1 January 2002

Article 251

The provisions of international law in articles 203 - 205 apply, *mutatis mutandis*, in the event of a suspension of payments.

Chapter 2 Scheme of Arrangement

Article 252

Upon submitting an application for suspension of payments, or at any later date, the debtor may propose a scheme of arrangement to those with claims against him who are affected by the suspension of payments.

Article 253

1 If the proposed scheme of arrangement has not already been lodged at the office of the clerk of the court under article 215, it shall be made available there for public inspection free of charge.

2 The administrators and experts must be sent a copy as soon as possible.

Article 254

The proposed scheme of arrangement shall lapse if a court decision relating to the termination of the suspension of payments becomes final and binding before the judgment sanctioning the scheme of arrangement has become final and binding.

Article 255

1 If the proposed scheme of arrangement was lodged at the office of the clerk of the court at the same time as the petition for the grant of the suspension of payments, the court may, after hearing the *rechter-commissaris*, if appointed, and the administrators, order that the hearing on the application referred to in article 218 shall not take place, in which case the court shall also specify:

(1)

the latest date on which the claims affected by the suspension of payments must be submitted to the administrators;

(2)

the date and time on which the proposed scheme of arrangement will be discussed and determined either before the *rechter-commissaris* or in chambers, if no such *rechter-commissaris* has been appointed.

2 There must be at least 14 days between the dates referred in (1) and (2).

3 If the court does not exercise this power, or if the proposed scheme of arrangement was not lodged at the same time as the petition, the court will, after hearing the *rechter-commissaris*, if appointed, and the administrators, specify the dates and times referred to in the first paragraph as soon as the order granting the definitive suspension of payments has become final or, if the proposed scheme of arrangement was lodged at a later date, immediately after it has been lodged.

Article 256

1 The administrators shall publish the order referred to in the preceding article immediately, together with the lodging of the proposed scheme of arrangement at the office of the clerk of the court - unless this has already been published in accordance with article 216 - in the *Nederlandsche Staatscourant* (Government Gazette) and in the newspapers specified by the court under article 216.

2 The administrators shall also notify all known creditors thereof by letter. This notice shall refer to the provisions of article 257, second paragraph.

3 The creditors may appear either in person or by written proxy or through a member of the local Bar.

4 The administrators may require the debtor to provide them in advance with an amount specified by them to cover the costs of these publications and notifications.

Article 257

1 The claims must be submitted to the administrators by presentation of an invoice or other written statement specifying the nature and the amount of the claim with supporting evidence or a copy thereof.

2 Claims not affected by the suspension of payments may not be submitted. If they are nevertheless submitted, the suspension of payments shall then also affect these claims, and any priority right, lien, pledge or mortgage relating to such claims shall be forfeited. This does not apply if the claim is withdrawn before a ballot is taken on it.

3 The creditors may require a receipt from the administrators.

Article 258

The administrators shall compare the invoices submitted with the books, records and statements of the debtor; they shall consult the creditor if they object to the admission of a claim; they may require any missing documents to be submitted by him and also that they are given an opportunity to examine the creditor's books and records and supporting documents.

Article 259

The administrators shall prepare a list of the claims submitted, listing the names and addresses of the creditors, the amount and description of the claims and whether and to what extent the claims are admitted or disputed by the administrators.

Article 260

1 If the list contains an interest-bearing claim, interest shall be included until the commencement of the suspension of payments.

2 Articles 129, 133-135 and 136, first and second paragraphs, shall apply *mutatis mutandis*.

Article 261

1 A claim subject to a suspensive condition (*condition precedent*) may be included in the list for its value at the commencement of the suspension of payments.

2 If the administrators and the creditors do not agree on the determination of this value, the claim shall be conditionally admitted for the full amount.

Article 262

1 A claim of uncertain due date or which entitles the claimant to periodical payments shall be included in the list for its value at the commencement of the suspension of payments.

2 All claims which become due within one year following the commencement of the suspension of payments shall be deemed to be due at that time. All claims which become due after one year shall be included in the list for their value after expiry of one year after that time.

3 In the calculation only the time and method of payment, the profit opportunity, if any, and, if the claim is interest-bearing, the agreed rate of interest, shall be taken into account.

Article 263

1 At the office of the clerk of the court the administrators shall lodge a copy of the list referred to in article 259 for public inspection free of charge during the seven days preceding the meeting referred to in article 255.

2 No charge will be made in respect of this lodging.

Article 264

1 The *rechter-commissaris*, if appointed, or if not, the court may, on the application of the administrators, or on its own motion, postpone to a later date the discussion and ballot on the scheme of arrangement.

2 In such case article 256 shall apply *mutatis mutandis*.

Article 265

1 At the meeting, the administrators and any experts shall submit a written report concerning the proposed scheme of arrangement. Article 144 shall apply *mutatis mutandis*.

2 Claims which are submitted to the administrators after expiry of the period referred to in article 255 (1) but no later than two days before the day of the meeting, shall be included in the list if so requested at the meeting and if neither the administrators nor any of the creditors present object.

3 Claims submitted thereafter shall not be included in the list.

4 The provisions of the two preceding paragraphs do not apply to creditors living outside the Kingdom in Europe and thus unable to submit their claim earlier.

5 If the objection referred to in the second paragraph is raised or if there is dispute as to whether there is inability to file claims as referred to in the fourth paragraph, the *rechter-commissaris*, if appointed, or otherwise the court, shall decide the matter, after consulting the meeting.

Article 266

1 At the meeting the administrators may withdraw any prior admission or dispute of a claim.

2 The debtor, and also each creditor present, may dispute a claim which is acknowledged by the administrators, either in whole or in part.

3 Disputes or admissions made during the meeting shall be annotated on the list.

Article 267

The *rechter-commissaris*, if appointed, or, if not, the court, shall decide whether, and if so, for what amount the creditors whose claims are disputed will be allowed to vote.

Article 268

1 In order to be adopted the scheme of agreement must be approved by two-thirds of the recognised and of the admitted creditors representing three-quarters of the amount of the recognised and of the admitted claims. The approval of a recognised or admitted creditor whose claim is based on a forfeited penalty is not required.

2 Articles 146 and 147 shall apply *mutatis mutandis*.

Article 269

1 The official record of the meeting must contain the contents of the scheme of arrangement, the names of the creditors present entitled to vote, a record of the votes cast by each of them, the outcome of the ballot and a record of all further proceedings. The list of creditors as prepared by the administrators and as supplemented or amended during the meeting shall be certified by the *rechter-commissaris*, if appointed, or, if not, by the interim provisions judge and the clerk of the court and shall be attached to the official record of the meeting.

2 A copy shall be available for public inspection free of charge at the office of the clerk of the court during eight days.

As last amended with effect from 1 January 2002

Article 269a

If the discussion and the decision took place before a *rechter-commissaris* and the scheme of arrangement is rejected, the *rechter-commissaris* shall forthwith notify the court of the rejection by sending a copy of the proposed scheme of arrangement and the official record referred to in article 269. The creditors who voted in favour and also the debtor, may within eight days following the meeting apply to the court to correct the official record, if it appears from the documents that the *rechter-commissaris* wrongly considered the scheme of arrangement rejected.

Article 269b

1 If the scheme of arrangement is adopted, the *rechter-commissaris* shall, before closing the meeting, set the date when the court shall consider sanctioning the scheme of arrangement.

2 If article 269a applies, the court shall determine the date for the hearing in its order. The administrators shall notify the creditors in writing of the order.

3 The hearing shall be held no less than eight and no more than fourteen days after the ballot on the scheme of arrangement, or, if article 269a applies, after the order of the court.

4 During this period the creditors may advise the *rechter-commissaris* in writing why they consider refusal of the sanction desirable.

Article 270

1 If the discussion of and the decision on the scheme of arrangement took place in chambers and if it appears from the documents that the court incorrectly considered the scheme of arrangement rejected, the creditors who voted in favour of the scheme of arrangement and also the debtor, may, within eight days following the ballot, apply to the court of appeal to correct the official record

2 If the court of appeal corrects the official record, it shall, in the same order, specify the date on which the court shall consider the sanction. This date shall be no earlier than eight and no later than fourteen days following the order. The administrators shall notify the creditors of the order in writing. This order implies that any bankruptcy declared under article 277 shall be null and void at law.

Article 271

1 If the scheme of arrangement is adopted, the *rechter-commissaris*, if appointed, shall submit a written report on the date set for the public hearing and the administrators and each creditor, may submit grounds in support of or contesting the sanction. Article 152, second paragraph, shall apply *mutatis mutandis*.

2 The court may determine that the sanction hearing shall take place at a later date, and, if so, this date shall be specified immediately.

Article 272

1 The court shall issue its reasoned order as soon as possible.

2 It shall refuse sanction:

- (1) if the assets of the estate exceed the amount stipulated in the scheme of arrangement;
- (2) if performance of the scheme of arrangement is insufficiently secured;
- (3) if the scheme of arrangement was realised by fraudulent acts or undue preference of one or more creditors or other unfair means, regardless of whether the debtor or any other party co-operated therein;
- (4) if the remuneration and disbursements of the experts and the administrators have not been paid to the administrators or if no security has been provided therefor.

3 It may also refuse sanction on other grounds or on its own motion.

4 In refusing its sanction the court may, in the same order, declare the bankruptcy of the debtor. If bankruptcy is not declared, the suspension of payments will end as soon as the order refusing the sanction has become final and binding. The administrators shall ensure publication of the termination in the papers referred to in article 216.

5 Articles 154-156 and 160 shall apply *mutatis mutandis*.

Article 273

A scheme of arrangement which has been sanctioned shall be binding on all creditors for whom the suspension of payments was effective.

Article 274

The final and binding judgment giving sanction together with the official record as referred to in article 269, constitute an enforceable right against the debtor and any guarantors who became a party to the scheme of arrangement for creditors whose claims were not disputed by the debtor.

Article 275

As long as no final decision has been made in respect of a proposed scheme of arrangement, the suspension of payments shall not end by the expiry of the period for which it was granted.

Article 276

The suspension of payments shall end as soon as the sanction becomes final and binding. The administrators shall ensure publication of the termination in the newspapers referred to in article 216.

Article 277

If a scheme of arrangement is not adopted, the court may by its judgment declare the debtor bankrupt. If bankruptcy is not declared, the suspension of payments shall end upon expiry of the period remaining and referred to either in article 269a or article 270, or when correction of the official records is refused. The administrators shall ensure publication of the termination in the papers referred to in article 216.

Article 278

1 If the court has declared the debtor bankrupt, the debtor may appeal from the declaration of bankruptcy within eight days following expiry of the period remaining and referred to either in article 269a or in article 270, or when correction of the official records is refused.

2 Appeal shall be instituted by a petition lodged with the office of the clerk of the court of appeal seized with the matter. The presiding judge shall immediately set the date and time of the hearing.

3 The clerk of the court of appeal shall ensure publication of the appeal and the date and time of the hearing in the newspapers in which the application for suspension of payments was published in accordance with article 216. Each creditor may take part in the hearing.

Article 279

1 If the court of appeal confirms the declaration of bankruptcy the debtor and, if the court of appeal sets the declaration of bankruptcy aside, each creditor taking part in the appeal proceedings may apply for cassation (*appeal to the Supreme Court*).

2 Cassation must be instituted and heard within the same period and in the same manner as the appeal, save that the publication in the newspapers shall be substituted by a writ which must be served upon the other party within four days after the cassation has been lodged.

Article 280

1 As regards any dissolution of the scheme of arrangement, articles 165 and 166 shall apply *mutatis mutandis*.

2 In the judgment ordering the dissolution of the scheme of arrangement, the debtor shall also be declared bankrupt.

Article 281

If a bankruptcy is declared as provided in articles 272, 277 or 280, a scheme of arrangement may not be offered.

Chapter 2A Special Provisions

Article 281a

1 If there are over 10,000 creditors, the list to be submitted by the debtor with his application under article 214 need not contain the names and addresses of the creditors nor the amount of the individual claims; it will suffice for the list to refer to the different groups of creditors classified according to the nature of their claims, and the overall number and overall amount of the aggregate claims of each group.

2 If the number of creditors is less than 10,000 but over 5,000, the court may permit the debtor to submit a list in accordance with the preceding paragraph.

Article 281b

1 If the number of creditors appears to be over 5,000, the court may, at the request of the administrators, make the arrangements described in articles 281c-281f.

2 The arrangements made under articles 281d and e may only be made in combination.

Article 281c

The court may determine that the notices to creditors referred to in articles 215, second paragraph, 256, second paragraph and 264, second paragraph shall not be given by letter but by publication in the newspapers specified by the court. In that event the court shall also specify the latest date on which such publication must be made and which items must be included in the published notice.

Article 281d

The court may determine that certain types of claims or claims below a certain amount, which may however not exceed € 450, need not be included in the list referred to in article 259.

As last amended with effect from 1 January 2002

Article 281e

1 The court may appoint a representative committee, consisting of not less than 9 members. This committee must consist of persons considered to represent the major groups of creditors.

2 Only the members of the committee are entitled to vote in the ballots referred to in articles 218 and 268.

3 A definitive suspension of payments may not be granted, if more than one-quarter of the members of the committee present at the meeting held to determine the matter have voted against the suspension.

4 Adoption of a scheme of arrangement shall be subject to the consent of three-quarters of the members of the committee present at the meeting held to determine the matter. If at least two-thirds of the members have not appeared at the meeting, a ballot on the scheme of arrangement shall be postponed until a later date. A further notice to creditors shall not be required but the members of the committee shall be summoned by letter from the administrators to attend the next meeting. At this meeting a ballot shall be taken notwithstanding the number of committee members present.

5 On application of articles 269, first paragraph, first sentence, 270 and 272, and on corresponding application of article 154, the words 'members of the committee' should be substituted for 'creditors' and on application of article 271 the words 'each creditor and each committee member' shall be substituted for 'each creditor'.

Article 281f

If more than one distribution to creditors is anticipated, the court may, in giving sanction of the scheme of arrangement, determine that one or more instruments endorsed to bearer shall be issued to creditors with the first distribution and that payment of the following distributions may be claimed only through presentation of such instruments.

Chapter 2B Grant of Suspension of Payments to a Credit Institution which is not considered as a Credit Institution under the *Wet toezicht kredietwezen* 1992 (Credit System (Supervision) Act 1992), a Financial Institution, a Securities Firm or Another Institution mentioned in Article 281g.

Article 281g

This Chapter shall apply to:

- a a credit institution with an exemption from the Minister of Finance pursuant to article 6, second paragraph of the *Wet toezicht kredietwezen* 1992 (Credit System (Supervision) Act 1992) from the prohibition in article 6, first paragraph of that Act;
- b a credit institution with an exemption from the Ministry of Finance pursuant to article 31, paragraph 4 of the *Wet toezicht kredietwezen* 1992 from the prohibition in article 31, paragraph 1 of that Act ;
- c a credit institution with an exemption from the Ministry of Finance pursuant to article 38, paragraph 3 of the *Wet toezicht kredietwezen* 1992 from the prohibition in article 38, paragraph 1 of that Act;
- d a credit institution with a dispensation from De Nederlandsche Bank N.V. pursuant to article 6, paragraph 3 of the *Wet toezicht kredietwezen* 1992 from the prohibition in article 6, paragraph 1 of that Act;
- e a credit institution with a dispensation from De Nederlandsche Bank N.V. pursuant to article 31, paragraph 5 of the *Wet toezicht kredietwezen* 1992 from the prohibition in article 31, paragraph 1 of that Act;
- f a credit institution with a dispensation from De Nederlandsche Bank N.V. pursuant to article 38, paragraph 4 of the *Wet toezicht kredietwezen* 1992 from the prohibition in article 38, paragraph 1 of that Act.
- g a financial institution as defined in subparagraph *b* of article 1, first paragraph of the *Wet toezicht kredietwezen* 1992;
- h a securities firm as defined in subparagraph *d* of article 1 of the *Wet toezicht effectenverkeer* 1995 (Securities Markets (Supervision) Act) 1995);

i

a central counterparty which obtains balances in securities within the framework of its participation in the system on account of transfer orders;

j

public authorities or publicly guaranteed undertakings;

k

an undertaking or institution established in a state which is not a member state of the European Union, which conducts the business of a securities firm through a branch office in the Netherlands.

As last amended with effect from 1 July 2002

Article 281h

Subparagraphs *b* to *f*, inclusive, of article 212*a* and articles 212*b* to 212*f*, inclusive, shall apply, *mutatis mutandis*, to the grant of a suspension of payments, provided that:

- "article 23" should be read as: article 217;

- "article 24" should be read as: article 228, second paragraph;

- "article 53, first paragraph" should be read as: article 234, first paragraph;

- "article 54, second paragraph" should be read as: article 235, second paragraph.

Chapter 3 Final Provisions

Article 282

No appeal lies against decisions of the court made under the provisions of this Title, except where the contrary has been provided and save for the possibility of cassation (*appeal to the Supreme Court*) in the interest of the law.

Article 283

1 Applications submitted under articles 219, 223, 225, 242, 243, 247, 247*b*, second paragraph, 270, 272, final paragraph, 278 and 280, first paragraph, must be signed by a local member of the Bar except when the application is made by the administrators.

2 For cassation (*appeal to the Supreme Court*) the assistance is required of an attorney at law accredited to the Supreme Court.

Title III Debt rescheduling scheme for natural persons

Chapter 1 Orders for Implementation of a Debt Rescheduling Scheme

Article 284

1 A natural person may apply for an order for the implementation of a debt rescheduling scheme, if it is reasonably foreseeable that he will be unable to pay his debts as they fall due or if he is in a situation in which he has ceased to pay his debts as they fall due.

2 For such purpose he shall apply by a petition, signed by him or by a person so authorised, to the court specified in article 2. If the authorised person is not registered as an advocate or member of the local

Bar, a document evidencing the power of attorney must be lodged with the petition.

3 A married debtor or a debtor who has entered into a registered partnership may only file a petition with the cooperation of his spouse or registered partner, as the case may be, unless any form of community of property is excluded between the spouses, or registered partners, as the case may be.

4 A petition referred to in the first paragraph may also be made on behalf of a natural person by the burgomaster and aldermen of the municipality where such person has his residence or place of abode.

Article 285

1 The petition, or an annex appended thereto, shall include:

- a a statement referred to in article 96;
- b an itemised statement of the income of the debtor, howsoever described and irrespective of the legal basis on which the debtor acquired, is accustomed to, or may generate, such income;
- c an itemised statement of the fixed expenses of the debtor;
- d if the debtor is married or has entered into a registered partnership, a statement of the information referred to in subparagraphs *b* and *c* with regard to the spouse or registered partner, as the case may be;
- e a reasoned statement issued by the executive body of the burgomaster and aldermen of the municipality of the residence or place of abode of the debtor, explaining why there is no realistic possibility of an extra-judicial debt rescheduling and the extent to which the applicant is able to settle his debts. The executive body of the burgomaster and aldermen may delegate this power to a credit bank referred to in the *Wet op het consumentenkrediet* (Consumer Credit Act) or to natural or legal persons, or categories thereof, pursuant to subparagraph *d* of article 48, first paragraph of the *Wet op het consumentenkrediet*.

2 There shall be included in the petition or an annex appended thereto or a document deposited at the clerk's office within a period to be set by the court in the judgment referred to in article 287, first or fourth paragraph, but no later than on the fifteenth day preceding the day on which the verification meeting shall be held:

- a a draft rescheduling plan;
- b a recent statement of reasonably foreseeable changes in the income referred to in subparagraph *b* of the first paragraph over a five-year period, calculated from the date the application for an order for implementation of a debt rescheduling scheme was lodged;
- c a list of the property of the debtor, mentioning any rights of pledge and mortgage and any liens thereon which may be exercised in respect thereof;
- d a list of the nature and amount of the claims in respect of which the debtor has committed himself as a surety or otherwise as co-debtor;
- e if the debtor has offered his creditors an extra-judicial scheme of arrangement which has not been accepted, the contents of the draft scheme of arrangement, the reason for non-acceptance of the scheme of arrangement and, if the scheme of arrangement were accepted, the means with which creditors could be satisfied;
- f if the debtor is married or has entered into a registered partnership, a statement with the information referred to in subparagraph *b* in respect of the spouse or registered partner, as the case may be;
- g

a statement of other information of importance to the adoption of a rescheduling plan by the court.

3 The debtor's proposals for the arrangements to be included by the court in the rescheduling plan shall be included in the draft rescheduling plan.

4 The executive bodies of the burgomaster and aldermen or a delegated credit bank must cooperate in the issue of statements referred to in subparagraph *e* of the first paragraph.

Article 286

The petition with ancillary documents and those referred to in article 285, second paragraph shall be lodged at the clerk's office of the court and shall be available for public inspection at no charge from the decision until implementation of the debt rescheduling scheme. No charge shall be made for the lodging of the documents.

Article 287

1 With the utmost expedition the court shall pronounce a decision on the petition. It may order a provisional implementation of the debt rescheduling scheme. The decision shall be made by judgment. The implementation of the debt rescheduling scheme shall be deemed effective from the commencement of the day on which the court ordered such implementation.

2 If no information referred to in article 285, first paragraph is given in or as part of the petition, the court may only declare the debt rescheduling scheme provisionally applicable, in which case it shall allow the debtor no more than twenty-one days to provide the missing information.

3 The judgment referred to in the first paragraph shall include the appointment of one of the members of the court as *rechter-commissaris* and the appointment of an administrator.

4 If the court has declared a debt rescheduling scheme provisionally applicable, it shall decide within twenty-eight days of the date of such order whether the definitive implementation of the debt rescheduling scheme will be ordered. It may, prior to its decision, order a hearing of the debtor, the *rechter-commissaris*, the administrator and one or more creditors. Article 6, second paragraph shall apply.

5 The court shall not order a definitive implementation if the debtor has not submitted the missing information within the period referred to in the second or eighth paragraph. The court may order the definitive implementation if there is no statement referred to in subparagraph *e* of article 285, first paragraph due to the refusal or failure of the municipality or the credit bank delegated by it to issue the statement and the court holds that the issue of the statement requested by the debtor ought not reasonably to have been refused.

6 If no definitive implementation of a debt rescheduling scheme is ordered, the provisional implementation shall lapse only with effect from the day on which the order pursuant to which a definitive implementation was rejected became final and binding.

7 If a petition based on article 284, fourth paragraph was lodged by the burgomaster and aldermen, the court may declare the debt rescheduling scheme only provisionally applicable and shall then order the debtor to appear at a hearing referred to in the fourth paragraph, second sentence.

8 If the seventh paragraph applies and information referred to in article 285, first paragraph is missing in the petition or in any annex appended thereto, the court shall allow the debtor an opportunity to provide the missing information within twenty-one days.

9 In its judgment referred to in the first paragraph the court shall order the administrator to open letters and telegrams addressed to the debtor.

Article 288

1 The application shall be rejected if:

- a the debtor is considered able to pay his debts as and when they fall due;
- b there is cause for concern that during the implementation of the debt rescheduling scheme the debtor will attempt to prejudice his creditors or not properly perform obligations arising from the debt rescheduling scheme;
- c a debt rescheduling scheme already applies to the debtor.

2 The application may be rejected if:

- a less than ten years prior to the date on which the petition was lodged the debtor has been bankrupt pursuant to an order that has become final and binding or a debt rescheduling scheme has been applicable to him;
- b it is likely that the debtor has not been in good faith in respect of the creation of the debts or in their non-payment.

3 An order for implementation of a debt rescheduling scheme may not be refused only on the grounds that there is no or insufficient prospect that the creditors' claims will be paid in full or in part.

4 If the implementation is rejected, the debtor may not be declared bankrupt *ex officio*.

Article 289

1 A judgment pursuant to which the definitive implementation of a debt rescheduling scheme is ordered may also specify the date, hour and venue of the verification meeting. At the verification meeting the draft rescheduling plan and, if lodged by the debtor, the draft scheme of arrangement, shall also be considered.

2 If the date, hour and venue of the verification meeting have not been specified in the judgment referred to in the first paragraph, they may be specified by the court later, *ex officio* or upon the proposal of the *rechter-commissaris*, on request of the debtor or administrator. As long as no verification meeting has been set, the court may adopt a rescheduling plan at any time *ex officio*, upon a proposal of the *rechter-commissaris* or on a request of the debtor or administrator.

3 If the court sets the verification meeting, it shall also specify by which date at the latest claims must be lodged with the administrator.

4 There must be at least fourteen days between the date referred to in the third paragraph and the date of the verification meeting.

5 A verification meeting shall not be held within two months of the date of the order for the definitive implementation of the debt rescheduling scheme.

Article 290

1 The court which orders the implementation of the debt rescheduling scheme may include in its order provisions which it considers necessary to safeguard the interests of creditors.

2 The court may also do so while the debt rescheduling scheme is applicable upon a proposal of the *rechter-commissaris*, on a request of the administrator, one or more creditors or *ex officio*.

Article 291

1 The court may, in its decisions for the implementation of the debt rescheduling scheme, appoint one

or more experts who shall examine the state of the assets and liabilities within a period to be set by it, which, where necessary, may be extended, and who shall issue a reasoned report on their findings. The second paragraph of article 290 shall apply, *mutatis mutandis*.

2 The report shall contain a reasoned opinion on the reliability of the statement and records submitted by the debtor and, if so requested by the court, a proposal on arrangements to be included by the court in the rescheduling plan.

Article 292

1 No action to set aside or appeal or apply for cassation (*appeal to the Supreme Court*) may be instituted against an order for a provisional or definitive implementation of a debt rescheduling scheme by either creditors or other interested parties.

2 If the application is rejected, the debtor has the right of appeal within eight days from the date of the order. Appeal shall be instituted by a petition lodged at the clerk's office of the court of appeal that must be seized of the matter.

3 The presiding judge shall immediately set the date and hour for the hearing which must take place within twenty days of the date on which the petition was lodged. The order shall be given no later than on the eighth day after that of the court hearing in respect of the petition.

4 The debtor may apply for cassation from the judgment of the court of appeal pursuant to which his application was rejected within eight days of the date of the decision. Cassation shall be instituted by a petition lodged at the clerk's office of the Supreme Court.

5 If the debt rescheduling scheme has been declared provisionally applicable and appeal or cassation is instituted against the rejection of a definitive implementation of such scheme, the clerk of the court of appeal or, as the case may be, of the Supreme Court, shall notify the clerk of the district court without delay that the petition has been lodged and of the judgment of the court of appeal or, as the case may be, of the Supreme Court.

6 Only on appeal or on cassation may the debt rescheduling scheme be declared definitively applicable.

7 If the application of the debtor is rejected on appeal or on cassation, the debtor may not be declared bankrupt *ex officio*.

8 If implementation of the debt rescheduling scheme is ordered only on appeal or on cassation, the clerk of the judicial body shall, without delay, so notify the clerk of the district court at which the debtor filed his application. Immediately after such notification the district court shall appoint a *rechter-commissaris* and an administrator.

Article 293

1 The clerk of the district court shall, without delay, publish the order for the implementation of the debt rescheduling scheme, the name, address and profession of the debtor, the name of the *rechter-commissaris*, the name and address of, or that of the office of, the administrator and the dates, hour and venue referred to in article 289 in the *Staatscourant* (Government Gazette) and in one or more newspapers to be specified by the *rechter-commissaris*.

2 The clerk of the district court shall, without delay, notify the postal administration of the granting of the debt rescheduling. The notice shall mention the order referred to in article 287, ninth paragraph.

Article 294

1 A public register shall be kept by the clerk of each district court in which, for each debt rescheduling scheme declared applicable, a separate, several and consecutive record is made, mentioning the date of:

a

the extract from the judicial decisions for the provisional and definitive implementation of the debt rescheduling scheme and its termination;

- b the termination and the revival of the implementation of the debt rescheduling, referred to in article 312;
- c a summary and the sanction of the scheme of arrangement;
- d the setting aside of the scheme of arrangement;
- e a summary of the adopted and amended rescheduling scheme;
- f the amount of the distributions;
- g a summary of the decision referred to in article 354;
- h the date on which the debt scheduling scheme ended pursuant to the provisions of article 356, second paragraph.

2 By Regulation the form and contents of the register shall be regulated further.

3 The clerk of the court shall make the register available for public inspection free of charge and issue extracts therefrom against payment.

Chapter 2 Consequences of Implementation of a Debt Rescheduling Scheme

Article 295

1 The estate shall be comprised of the property of the debtor at the time of the order for implementation of the debt rescheduling scheme and the property he will acquire during the implementation of such scheme.

2 From the income and periodic distributions, howsoever described, which the debtor will acquire, an amount equal to that part which is exempt from attachment and referred to in article 475d of the Code of Civil Procedure shall, without prejudice to the third paragraph, remain outside the estate.

3 Until the adoption of the rescheduling plan the *rechter-commissaris* may, on the request of the debtor, the administrator or *ex officio*, increase the amount referred to in the second paragraph by a written order by a specified amount set in that order. The *rechter-commissaris* may issue his order subject to conditions. An increase may also be determined by the court in the decision for the provisional or definitive implementation of the debt rescheduling scheme.

4 There shall also remain outside the estate:

- a property which the debtor will acquire otherwise than gratuitously pursuant to a contract made during the implementation of the debt rescheduling scheme, if the performance of the debtor related to such acquisition does not burden the estate;
- b household effects insofar as not excessive and referred to in article 5 of Book 3 of the Civil Code;
- c that which is mentioned in article 21(1) (3) (5) and (6);
- d the amount determined by the court or, until the rescheduling plan has been adopted, by the *rechter-commissaris*, in accordance with article 21 (4).

5 Property referred to in subparagraph *a* of the fourth paragraph shall nevertheless form part of the estate if the value of such property considerably exceeds the value attributed to the performance of the debtor related to the acquisition. If such property is sold on the basis of article 347 and, insofar as the

proceeds thereof are sufficient, the debtor shall, in that case, receive from the estate the value of his performance related to the acquisition of such property, payable prior to any payments from the estate to creditors.

6 With regard to the second paragraph and subparagraphs *c* and *d* of the fourth paragraph, article 22 shall apply *mutatis mutandis*.

Article 295a

1 With regard to life assurance described in subparagraph *b* of article 1, first paragraph of the *Wet toezicht verzekeringsbedrijf 1993* (Insurance Business (Supervision) Act 1993), the following shall also not constitute part of the estate:

- a the right of redemption of life assurance insofar as the beneficiary or insured would be unreasonably prejudiced by redemption;
- b the right to change the designation of a beneficiary, unless such change is made on behalf of the estate and the beneficiary or insured will not be unreasonably prejudiced as a result thereof;
- c the right to borrow against the assurance.

2 For exercising a right of redemption and a right to change the designation of beneficiary, the administrator shall require consent from the *rechter-commissaris*, who, if necessary, shall determine up to which amount such rights may be exercised. The administrator may assign the assurance only with written consent of the insured.

3 If the administrator has changed the designation of the beneficiary, such designation shall lapse on termination of the debt rescheduling scheme.

Article 296

1 As a result of the order for implementation of the debt rescheduling scheme the debtor shall lose by law:

- a the right to dispose of property belonging to the estate;
- b the right to perform and permit transactions with regard to such property.

2 On the request of the administrator the debtor must deliver to him all property belonging to the estate.

3 The *rechter-commissaris* may, on the request of the debtor or administrator or *ex officio*, determine, by written order, that the debtor shall administer certain property specified for such purpose.

Article 297

1 The provision in article 296 notwithstanding, the debtor may perform juridical (*legal*) acts independently.

2 Nevertheless, the debtor shall require the consent of the administrator for the following juridical acts:

- a entry into a credit transaction referred to in article 1 of the *Wet op het consumentenkrediet* (Consumer Credit Act) (*Staatsblad* (Bulletin of Acts and Orders - Official Gazette) 1990, 395);
- b contracts pursuant to which he commits himself as surety or otherwise as co-debtor, gives a guarantee on behalf of a third party or covenants to provide collateral for the debt of a third party;

c

gifts, with the exception of usual gifts, insofar as not excessive.

3 A juridical act performed in breach of the second paragraph may be avoided. Only the administrator may invoke such grounds for avoidance.

Article 298

The estate shall not be liable for obligations of the debtor which arise after the order for implementation of the debt rescheduling scheme, except insofar as the estate benefits as a result thereof.

Article 299

1 A debt rescheduling scheme shall have effect with regard to:

a

claims against the debtor existing at the time of the order for implementation of the debt rescheduling scheme;

b

claims against the debtor which arise after the order for implementation of the debt rescheduling scheme on account of the nullification or avoidance of a contract entered into with the debtor prior to such order;

c

claims for damages on account of failure in the performance of a claim acquired against the debtor prior to the order for implementation of the debt rescheduling scheme;

d

claims against the debtor which arise after the order for implementation of the debt rescheduling scheme as a result of the fulfilment of a resolutive condition (*condition subsequent*) agreed prior to such order;

e

claims against the debtor which arise pursuant to article 10 of Book 6 of the Civil Code on account of a juridical (*legal*) relationship existing at the time of the order for implementation of the debt rescheduling scheme.

2 During the implementation of the debt rescheduling scheme legal actions for the purpose of settlement of a claim from the estate may not be instituted against the debtor otherwise than by filing a claim for verification.

3 Articles 57 to 59, inclusive, shall apply *mutatis mutandis*.

Article 299a

1 A debt rescheduling scheme shall not apply to claims for debts for studies to which Chapter 6 of the *Wet studiefinanciering 2000* (Studies Financing Act 2000) applies, save for claims relating to arrears, referred to in article 6.8 of that Act, existing at the time of the order for implementation of the debt rescheduling scheme.

2 As long as a debt rescheduling scheme applies, the redemption phase referred to in article 6.7 of the *Wet studiefinanciering 2000* shall be suspended. During this period no interest shall accrue on debts for studies.

As last amended with effect from 1 September 2000

Article 299b

1 A creditor who has a lien on a thing belonging to the debtor shall not lose such right by implementation of the debt rescheduling scheme being declared.

2 Insofar as this is in the interest of the estate, the administrator may recover the thing for the estate by settlement of the claim in respect of which the lien may be exercised.

3 The creditor may allow the administrator a reasonable period to apply the provision of the second paragraph. If the administrator has not recovered the thing for the estate within such period, the creditor may sell it with corresponding application of the provisions relating to summary foreclosure by a pledgee or, if it relates to registered property, those relating to summary foreclosure by a mortgagee. On a request of the administrator the *rechter-commissaris* may extend the period one or more times.

4 In the case of registered property, the creditor must, in order not to forfeit the right of summary foreclosure, within fourteen days of expiry of the period referred to in the third paragraph serve notice by writ on the administrator that he will proceed to foreclosure and cause such writ to be recorded in the public registers.

5 The administrator may set a reasonable period within which the creditor may exercise the right of summary foreclosure in accordance with the third paragraph. If the creditor has not sold the thing within this period, the administrator may demand and sell it pursuant to article 326 or 347, second paragraph, notwithstanding the priority conferred on the creditor in article 292 of Book 3 of the Civil Code. On the request of the creditor the *rechter-commissaris* may extend the period one or more times.

Article 300

The debt rescheduling scheme shall not apply for the benefit of sureties and other co-debtors.

Article 301

1 A claim of the collector, referred to in article 19 of the *Invorderingswet 1990* (Tax Collection Act 1990) (*Staatsblad* (Bulletin of Acts and Orders - Official Gazette) 221), is not permitted.

2 All foreclosure proceedings instituted at the time of the order for implementation of the debt rescheduling scheme to obtain recourse for his debts shall be suspended.

3 Any attachment made shall lapse as soon as the order for adoption of the rescheduling plan has become final and binding, unless the court, upon the proposal of the *rechter-commissaris* or on the request of the administrator or debtor, has already set an earlier time for such purpose. The registration of such a declaration issued by the *rechter-commissaris* upon the request of the administrator shall authorise the keeper of the public registers to deregister.

4 An attachment which has lapsed shall revive as soon as the implementation of the debt rescheduling scheme ends pursuant to the provision in subparagraph *b* of article 350, third paragraph, provided the property then still belongs to the estate. If registration of the attachment in the public registers has been deregistered, the revival shall lapse if no writ for notification of the debtor of the revival has been recorded within fourteen days of such revival.

5 The second, third and fourth paragraphs shall also apply with regard to a foreclosure which has been commenced and an attachment for claims secured by a pledge or mortgage, insofar as such foreclosure was not commenced or such attachment was not made on property which constituted special collateral for such claims.

Article 302

If the debtor is committed to custody, he shall be dismissed by law by an order for definitive

implementation of a debt rescheduling scheme, unless the custody takes place otherwise than on account of a claim in respect of which the debt rescheduling scheme applies.

Article 303

1 With effect from the date of the order for the implementation of a debt rescheduling scheme, no statutory or contracted interest shall be due by the debtor on claims in respect of which the debt rescheduling scheme applies.

2 The provision in the first paragraph shall not apply if:

- a a definitive implementation of the debt rescheduling scheme is not ordered;
- b the debtor is declared bankrupt during the implementation of the debt rescheduling scheme by an order that has become final and binding or will become bankrupt on termination of the implementation of the debt rescheduling scheme.

Article 304

1 A counterparty may not suspend performance of his obligation towards the debtor arising from a contract for the regular supply of gas, water, electricity or heating required for the basic necessities of life on account of non-performance by the debtor of an obligation to pay a sum of money which arose prior to the order for implementation of the debt rescheduling scheme.

2 A failure in the performance by the debtor referred to in the first paragraph which occurred prior to the order for implementation of the debt rescheduling scheme shall not constitute grounds for nullification of a contract referred to in the first paragraph.

3 Only with the consent of the administrator may the counterparty invoke a stipulation that an order for implementation of the debt rescheduling scheme shall constitute grounds for nullification of a contract referred to in the first paragraph or that such contract shall be nullified as a result thereof by law.

Article 305

1 If the debtor is a tenant he may, with the authorisation of the administrator and, if the debt rescheduling scheme has been declared definitively applicable, the administrator may cause the tenancy to be terminated prematurely, provided notice of termination is given with effect from the date such contracts terminate according to local custom. Moreover, the agreed or customary notice period must be observed in respect of such notice provided, however, that a three-month notice period will be sufficient in each case. If rent has been prepaid, no notice of the tenancy may be given to take effect earlier than the date up to which the prepayment was made.

2 The landlord may terminate the tenancy prematurely if the debtor does not perform an obligation to the landlord arising after the order for implementation of the debt rescheduling scheme, provided notice of termination is given with effect from the date such contracts terminate according to local custom. The second and third sentences of the first paragraph shall apply.

3 If the debtor is an agricultural tenant, the first and second paragraphs shall apply *mutatis mutandis*.

Article 306

A payment made from property of the debtor which does not form part of the estate for claims to which the debt rescheduling plan applies shall be null and void.

Article 307

1 A person who is both debtor and creditor of a person in respect of whom the debt rescheduling scheme is ordered may only compensate (*set off*) his debt against a claim to which the debt rescheduling scheme applies if both arose prior to the order for the implementation of the debt rescheduling scheme.

2 Article 53, second and third paragraphs shall apply *mutatis mutandis*.

Article 308

A payment made by the debtor otherwise than out of the estate shall not be imputed to a claim to which the debt rescheduling scheme applies.

Article 309

1 Upon request of any interested party or *ex officio*, the *rechter-commissaris* may determine by written order that any right of third parties to obtain recourse against property comprised in the estate or to claim possession of property in the control of the debtor or the administrator may not be exercised for a period of one month at most, except with authorisation of the *rechter-commissaris*.

2 The *rechter-commissaris* may extend the period by consecutive one month periods, provided the period terminates in any event, at the time on which the order for adoption of the rescheduling scheme becomes final and binding.

3 The *rechter-commissaris* may restrict the order to specific third parties and impose conditions, both on the order and on the authorisation of a third party to exercise a power to which the latter is entitled.

4 During the periods referred to in the first and second paragraphs the time periods set for or by third parties in respect of their rights shall continue insofar as reasonably necessary to enable the third party or the administrator to determine his position upon expiry of the period. The person who has set the time period may set a further reasonable period.

5 The decision referred to in the first sentence of the first paragraph may also be made on the request of the debtor or *ex officio* by the court which ordered the implementation of a debt rescheduling scheme.

Article 310

1 Upon the request of the administrator, the debtor or *ex officio* the *rechter-commissaris* may determine, by written order, that payment must be made to the administrator on account of claims of the debtor for the payment of a sum of money not comprised in the estate. The *rechter-commissaris* may restrict the order to a specified period and to specified claims.

2 The administrator shall notify the relevant debtors of the order referred to in the first paragraph by letter.

3 Monies received by the administrator pursuant to the first paragraph shall not be comprised in the estate. The administrator shall keep a separate account in respect thereof.

4 Claims to which the debt rescheduling scheme does not apply and which have been designated by the *rechter-commissaris* for settlement, shall be settled for and on behalf of the debtor by the administrator from the funds received by him pursuant to the first paragraph.

Article 311

1 Upon the request of the administrator, the debtor or *ex officio*, the *rechter-commissaris* may

determine, by written order, that the debtor may, over a period to be set in that order, continue the conduct of his independent profession or business on behalf of the estate. The *rechter-commissaris* may extend a period from time to time and impose conditions on the order.

2 It shall follow from an order referred to in the first paragraph that the debtor may perform all transactions for which the administrator has given consent and which are necessary for the normal conduct of the profession or business.

3 Claims arising from a continuation of the conduct of a profession or business for which the debtor is authorised pursuant to this article, including rent due, insofar as imputed to such a continuation, are debts of the estate.

Article 312

1 During the implementation of a debt rescheduling scheme the debtor may be declared bankrupt in respect of claims to which the debt rescheduling scheme does not apply.

2 By the declaration of bankruptcy of the debtor the implementation of the debt rescheduling scheme shall terminate by law. The *curator* shall publish the termination in the publication referred to in article 14, third paragraph.

3 If, as a result of an action to set aside, appeal or cassation (*appeal to the Supreme Court*), the declaration of bankruptcy is set aside, the implementation of the debt rescheduling scheme shall revive by law. This shall be notified in the publication referred to in article 15, first paragraph, second sentence. Article 15*d*, first paragraph shall apply *mutatis mutandis*.

Article 313

Articles 25, 27 to 31, inclusive, 34 to 38*a*, inclusive, 40 to 52, inclusive, 54 to 56, inclusive, and 60*a* to 63, inclusive, shall apply *mutatis mutandis*.

Chapter 3 Management of the Estate

Article 314

1 The *rechter-commissaris* shall supervise the implementation of the duties to be performed by the administrator pursuant to this Title.

2 Articles 55 and 66 shall apply *mutatis mutandis*.

Article 315

1 There shall be a right of appeal to the district court from all orders of the *rechter-commissaris* for five days. The court shall decide after hearing or properly summoning the interested parties.

2 Nevertheless, no appeal may be instituted against orders made in accordance with articles 21 (4), 34, 58, , first paragraph, 59*a*, third paragraph, 94, second paragraph, 102, second paragraph, 125, 127, fourth paragraph, 176, second paragraph and the orders referred to in articles 295, third paragraph, 296, third paragraph, article 299*b*, third and fifth paragraphs, 310, first paragraph, 311, first paragraph, 316, second paragraph, 318, second paragraph, 324, third paragraph, 326, second paragraph, 332, fourth paragraph and 347, second paragraph.

Article 316

1 The administrator shall be charged with:

- a supervision of the debtor's compliance with his obligations arising from the debt rescheduling scheme;
- b

- administration and liquidation of the estate;
- c implementation of the rescheduling plan.

2 Before taking action at law, except where it relates to disputes at verification, and in the instances of articles 37, 40, 58, second paragraph, 59a, sixth paragraph, 305, 326, first paragraph and 349 first paragraph, the administrator shall require authorisation from the *rechter-commissaris*. Article 72 shall apply *mutatis mutandis*.

Article 317

1 Each of the creditors with claims to which the debt rescheduling scheme applies and the debtor may, by petition, raise objections with the *rechter-commissaris* against any act of the administrator or initiate an order from him that the administrator shall perform a specified act or will refrain from an intended act.

2 The *rechter-commissaris* shall decide within three days after having heard the administrator.

Article 318

1 No later than ten days prior to the date on which the verification meeting is to be held, the administrator shall report on the condition of the estate and, subsequently, after every six months, on the implementation of the rescheduling plan. The administrator shall lodge his report with the clerk's office of the district court for inspection at no charge by creditors. The lodging shall be made without charge.

2 The six-month period referred to in the first paragraph may be extended by the *rechter-commissaris* upon request of the administrator or *ex officio*.

Article 319

1 The court may remove the administrator after having heard or summoned him to be heard and replace him by someone else, either on the proposal of the *rechter-commissaris* or at the reasoned request of the administrator, one or more creditors or the debtor.

2 An administrator who has been removed shall account to the administrator who is appointed in his stead.

Article 320

1 The court shall set the salary of the administrator in the judgment referred to in article 354, first paragraph.

2 Upon the request of the administrator the court may, during the implementation of the debt rescheduling scheme, grant an advance payment of the salary from time to time for a period to be set by the court.

3 If the implementation of the debt rescheduling scheme is terminated on the basis of article 338, fourth paragraph or article 350, the court shall also determine the salary.

4 If the implementation of the debt rescheduling scheme ends on account of the provision in article 312, second paragraph, the court shall determine the salary as soon as the decision on the declaration of bankruptcy has become final and binding.

5 In the case of a scheme of arrangement the salary shall be determined in the judgment sanctioning the scheme.

6 The salary of the administrator shall be determined according to rules to be set by *Algemene Maatregel van Bestuur* (Regulation).

7 The salary of the administrator shall be a debt of the estate and will be paid in priority to and before any other debts and over and before a payment referred to in article 295, fifth paragraph. The provision in the preceding sentence shall also apply to the disbursements and the publication required pursuant to this Title.

8 The cost of publications required pursuant to this Title which cannot be paid from the estate and the fee of the experts shall be borne by the State. The clerk of the court with which the debtor lodged his petition for an order for the implementation of a debt rescheduling scheme shall ensure payment of the amount to be specified by the court that shall be borne by the State.

Article 321

Articles 85 and 86 shall apply *mutatis mutandis*.

Chapter 4 Provisions after an Order for Implementation of a Debt Rescheduling Scheme and the Responsibilities of the Administrator

Article 322

The administrator shall notify all known creditors without delay by letter of the dates, hour and venue referred to in article 289 and, in the notification shall state that a draft rescheduling plan is available for inspection at the clerk's office over the fourteen days period prior to the verification meeting. If the debtor has lodged a draft scheme of arrangement at the office of the clerk of the court, this shall also be stated.

Article 323

Immediately upon his appointment the administrator shall ensure the safekeeping of the estate by all necessary and appropriate means. Unless the *rechter-commissaris* otherwise provides, the administrator shall take possession of the records pertaining to the estate and other database, monies, valuables, securities and other instruments of value against a receipt, save insofar as the debtor is entitled to their administration on the basis of a decision referred to in article 296, third paragraph.

Article 324

1 Article 94, first and second paragraphs shall apply *mutatis mutandis*.

2 A list of the property referred to in article 295, fourth paragraph shall be appended to the inventory.

3 The *rechter-commissaris* may determine that the administrator shall prepare a statement referred to in article 96 in lieu of the statement referred to in subparagraph *a* of article 285, first paragraph.

Article 325

A copy of the inventory of the estate and, if article 324, third paragraph has been applied, the statement referred to in that paragraph of the article shall be lodged for public inspection at no charge at the office of the clerk of the court which ordered implementation of the debt rescheduling scheme. The lodging shall be made at no charge.

Article 326

1 Until the order for adoption of the rescheduling plan has become final and binding the administrator may dispose of the property comprised in the estate insofar as such disposition is necessary to cover the cost of the debt rescheduling scheme or if the property cannot be kept otherwise than to the detriment of the estate.

2 The property shall be sold by private sale unless the *rechter-commissaris* shall order a public sale thereof.

Article 327

Articles 99 and 102 to 105, inclusive, and 107 shall apply *mutatis mutandis*.

Chapter 5 Verification of Claims, Hearing in Respect of a Draft Scheme of Arrangement and Consultation on Continuation of the Implementation of a Debt Rescheduling Scheme and a Draft Rescheduling Plan

§ 1 Verification of Claims

Article 328

1 Articles 110 to 116 inclusive, 119 to 127 inclusive, in which latter article 108 (1) should be read as: article 289 and 129 to 137, inclusive, shall apply *mutatis mutandis* to the verification of claims.

2 Current interest after the order for the implementation of the debt rescheduling scheme with regard to claims secured by a pledge or mortgage shall be verified *pro memoria*. Insofar as no interest on the proceeds is included as a credit item on verification, the creditor may not base any rights on such verification.

§ 2 Draft Scheme of Arrangement

Article 329

1 In respect of claims to which a debt rescheduling scheme applies, the debtor may offer a scheme of arrangement to the creditors of such claim.

2 The draft scheme of arrangement shall be lodged at the clerk's office of the court for public inspection at no charge. The lodging shall be made at no charge.

3 An offer of a scheme of arrangement may also be made after adoption of a rescheduling plan if, prior to such adoption, a scheme of arrangement was rejected or its sanction was refused. The right referred to in the preceding sentence may be exercised once.

4 Prior to adoption of a rescheduling plan an offer of a scheme of arrangement may be made only if the draft scheme of arrangement is lodged at the clerk's office no later than fifteen days before the date on which the verification meeting is to be held.

5 If a draft scheme of arrangement is appended to the petition for an order for implementation of a debt rescheduling scheme, the clerk shall state this in the notice referred to in article 293.

6 If a draft scheme of arrangement is lodged after the lodging of the petition for an order for the implementation of a debt rescheduling scheme, the administrator shall give notice thereof without delay in the *Staatscourant* (Government Gazette) and in the newspapers designated by the *rechter-commissaris* pursuant to article 293. The administrator shall also notify all known creditors without delay by letter of the lodging unless this was already stated in the notice referred to in article 322.

Article 330

The draft scheme of arrangement shall lapse if:

a

no order for the definitive implementation of a debt rescheduling scheme is made;

b

prior to the judgment for the sanction of the scheme of arrangement becoming final and binding, a judicial order for termination of the implementation of the debt rescheduling scheme becomes final and binding;

c

implementation of the debt rescheduling scheme ends pursuant to the provision in article 312, second paragraph.

Article 331

1 If the draft scheme of arrangement has been lodged in accordance with article 329, fourth paragraph, consultation shall take place and a decision shall be made in respect thereof at the meeting immediately after verification has ended.

2 If the draft scheme of arrangement has been lodged after adoption of a rescheduling plan, the *rechter-commissaris* shall immediately set the date, hour and venue for consultation before the *rechter-commissaris* on the proposed scheme of arrangement when a decision shall be made.

3 On implementation of the second paragraph the administrator shall ensure that a notice of the date, hour and venue shall be published without delay in the *Staatscourant* (Government Gazette) and in the newspapers designated by the *rechter-commissaris* pursuant to article 293. The administrator shall also notify all known creditors without delay by letter.

Article 332

1 At the meeting the debtor may comment on and defend the scheme of arrangement and change it during the consultation.

2 Creditors of claims to which the debt rescheduling scheme applies may vote on the scheme of arrangement. Pledgees, mortgagees and creditors referred to in article 299b have the right to vote if, prior to commencement of the voting, they waive their right of summary foreclosure. Such right does not revive, irrespective of whether the scheme of arrangement is accepted, rejected or adopted in accordance with the fourth paragraph.

3 Acceptance of the scheme of arrangement shall require:

a

consent of a simple majority of the recognised and conditionally admitted creditors who appeared at the meeting, having claims with a priority ranking and jointly representing not less than half of the total amount of their claims; and

b

the consent of a simple majority of the recognised and conditionally admitted non-preferential creditors who appeared at the meeting and who jointly represent not less than half of the total amount of their claims.

4 Notwithstanding the third paragraph, the *rechter-commissaris* may, on the request of the debtor or administrator, adopt a proposed scheme of arrangement by a reasoned order as if the same had been accepted, if:

a

three-quarters of the creditors having claims with a priority ranking and three-quarters of the non-preferential creditors voted in favour of the scheme of arrangement; and

b

a rejection of the scheme of arrangement resulted from one or more creditors having voted against who could not reasonably have decided to cast their vote in this way, taking into account all circumstances and, in particular, the percentage which, if implementation of the debt rescheduling scheme had continued, those creditors could be expected to receive in payment of their claims.

5 The official record of the meeting shall mention the contents of the scheme of arrangement, the names of creditors entitled to vote who appeared, the vote cast by each, the outcome of the vote and, if the fourth paragraph was applied, the order of the *rechter-commissaris*.

6 Article 149 shall apply *mutatis mutandis*.

Article 333

If a vote has been taken on the scheme of arrangement in a meeting referred to in article 331, second paragraph, articles 335, first paragraph, introduction and subparagraphs *a* and *b* and second paragraph, 336, 337, first and second paragraphs, introduction and subparagraph *a*, and third paragraph, 338, first, second and third paragraphs, 339, first, second, third and fourth paragraphs, first sentence and 340 shall apply *mutatis mutandis*.

§ 3 Consultation on Continuation of a Debt Rescheduling Scheme and a Draft Rescheduling Plan

Article 334

1 At the verification meeting the *rechter-commissaris* shall give each appearing creditor with one or more claims to which the debt rescheduling scheme applies an opportunity to state his view in respect of whether or not the implementation of the debt rescheduling scheme should be continued and on the draft rescheduling plan.

2 The debtor may defend a continuation of the implementation of the debt rescheduling scheme and comment on and defend the draft rescheduling plan. He may amend the draft during the meeting.

3 No decision shall be made by ballot by creditors who appeared at the meeting on a continuation of the implementation of a debt rescheduling scheme and on the draft rescheduling plan.

4 The official record of the verification meeting shall state the views of the creditors referred to in the first paragraph.

Article 335

1 Prior to closing the verification meeting the *rechter-commissaris* shall set the date of the court hearing at which the court will subsequently deal with:

- a any submitted petition on the basis of article 149;
- b the sanction of the scheme of arrangement if a scheme of arrangement has been agreed or adopted;
- c continuation of the implementation of the debt rescheduling scheme;
- d the draft rescheduling plan lodged by the debtor.

2 A court hearing shall be held not less than eight and not more than fourteen days after the date on which the verification meeting took place. Article 151 shall apply *mutatis mutandis*.

Article 336

1 The official record of the verification meeting shall be signed by the *rechter-commissaris* and the clerk of the court. The draft rescheduling plan and, if applicable, the scheme of arrangement shall be appended to the official record.

2 The documents referred to in the first paragraph shall be available for eight days for public inspection at the clerk's office without charge.

Chapter 6 Court Hearing

Article 337

1 The *rechter-commissaris* shall report at the public hearing to be held under article 335, first paragraph.

2 Each of the creditors to whose claims the debt rescheduling scheme applies may, in person, represented by written proxy or by a member of the local Bar, state:

- a the grounds why he supports or opposes the sanction of the scheme of arrangement;
- b the grounds why he supports or opposes continuation of the implementation of the debt rescheduling scheme;
- c his views with regard to the draft rescheduling plan.

3 The debtor has the right to defend his interests.

Article 338

1 At the date of the court hearing referred to in article 337 or otherwise within eight days thereafter the court shall pronounce its decision.

2 Insofar as applicable it shall first pronounce a reasoned decision on petitions referred to in article 149, the sanction of the scheme of arrangement or the refusal thereof. Article 153, second and third paragraphs shall apply *mutatis mutandis*.

3 If sanction is refused, the court may not adjudicate the debtor bankrupt.

4 If the debtor has not offered a scheme of arrangement or the sanction is refused, the court shall determine whether implementation of the debt rescheduling scheme shall be continued or its implementation shall be terminated. Article 350, third paragraph shall apply. The decision shall be pronounced in the form of a judgment.

5 In the decision to continue the implementation of the debt rescheduling scheme a rescheduling plan shall also be adopted.

6 If implementation of the debt rescheduling scheme is terminated, the implementation shall lapse only as from the day on which the decision concerned becomes final and binding. Article 350, fifth and sixth paragraphs shall apply.

Article 339

1 With regard to a decision to refuse or to grant sanction, articles 154, 155, first paragraph and 156 shall apply, *mutatis mutandis*, provided that only creditors who appeared at the court hearing referred to in article 337 shall have a right of appeal and of cassation (*appeal to the Supreme Court*).

2 Articles 137, second paragraph, introduction and subparagraph *a*, and third paragraph and 338, first paragraph shall apply, *mutatis mutandis*, to the hearing on appeal.

3 If the sanction is granted on appeal or on cassation (*appeal to the Supreme Court*), a rescheduling plan adopted by the court shall by law become inoperative as soon as the decision to grant sanction becomes final and binding.

4 If the sanction is annulled on appeal or on cassation (*appeal to the Supreme Court*), the clerk of the judicial body shall notify the clerk of the district court thereof without delay. As soon as the decision for the annulment has become final and binding, the district court shall give an order referred to in article 338, fourth paragraph.

Article 340

1 The implementation of a debt rescheduling scheme shall end by law as soon as the sanction has become final and binding. The administrator shall announce the termination in the *Staatscourant* (Government Gazette) and in the newspapers designated by the *rechter-commissaris* pursuant to article 293.

2 A sanctioned scheme of arrangement shall be binding on all creditors with regard to whose claims the debt rescheduling scheme applies irrespective of whether or not they filed a claim in respect of the debt rescheduling scheme.

3 Articles 159, 160 and 162 to 166, inclusive, shall apply *mutatis mutandis*.

4 A judgment pursuant to which a scheme of arrangement is set aside shall also adjudicate the debtor bankrupt.

5 In a bankruptcy adjudicated in accordance with paragraph 4 no scheme of arrangement may be proposed.

Article 341

1 Within eight days after the date of the decision the debtor may appeal from the judgment pursuant to which implementation of the debt rescheduling scheme is terminated.

2 The appeal shall be instituted by petition lodged with the clerk's office of the court of appeal which must be seized of the matter. The clerk of the court of appeal shall notify the clerk of the district court of the lodging without delay.

3 The presiding judge shall immediately set the date and hour for the hearing which must be held within twenty days of the day on which the petition was lodged.

4 The clerk of the court of appeal shall ensure publication of the appeal and the day and hour set for the hearing in the *Staatscourant* (Government Gazette) and in the newspapers in which the order for the implementation of the debt rescheduling scheme was announced.

5 Article 337, second paragraph, introduction and subparagraphs *b* and *c* shall apply to the hearing on appeal.

6 A decision shall not be rendered later than on the eighth day after that of the hearing of the petition at a court hearing. The clerk of the court of appeal shall notify the clerk of the district court of the judgment of the court of appeal without delay.

7 The creditors who, on the basis of the fifth paragraph, appeared at the hearing of the appeal and the debtor may, within eight days after the day of the decision, apply for cassation (*appeal to the Supreme Court*) from the judgment. The cassation shall be instituted by petition lodged at the office of the clerk of the Supreme Court. The clerk of the Supreme Court shall notify the clerk of the district court of the lodging and the judgment of the Supreme Court without delay.

Article 342

1 Creditors who appeared at the hearing referred to in article 337 may, within eight days after the day of the decision, appeal from a judgment pursuant to which an order for the continuation of the implementation of the debt rescheduling scheme and the adoption of a rescheduling plan was made. The debtor has the same right insofar as adoption of the rescheduling plan is concerned.

2 Article 341, second, third and sixth paragraphs shall apply.

3 Within eight days after the judgment of the court of appeal the losing party may apply for cassation (*appeal to the Supreme Court*). The cassation shall be instituted by petition lodged at the clerk's office of the Supreme Court. The clerk of the Supreme Court shall notify the clerk of the district court of such lodging and of the judgment of the Supreme Court without delay.

Chapter 7 The Rescheduling Plan

Article 343

1 The district court is entitled to include provisions in the rescheduling plan which, taking all circumstances into account, appear reasonable and fair.

2 In a rescheduling plan the court shall, in any event, set the period during which implementation of the debt rescheduling scheme shall apply, which period may not exceed three years calculated from and including the date of the decision for implementation of the debt rescheduling scheme.

Notwithstanding the first sentence, the period may be set at no more than five years if, for the entire period from adoption of a rescheduling plan, a specified amount has been set in that plan as referred to in article 295, third paragraph.

3 In a rescheduling plan the court may *inter alia*:

- a set a specified amount referred to in article 295, third paragraph;
- b determine, with regard to property of the estate which is not pledged, mortgaged or subject to a lien, that it shall not, or for a period to be set therefor, be included in the liquidation and realisation;
- c determine, with regard to property referred to in subparagraph *b*, that the debtor shall conduct the administration;
- d set an amount referred to in article 21 (4).

4 A decision for the adoption of a rescheduling plan given on the basis of articles 21 (4), 295, third paragraph and 296, third paragraph shall become inoperative as soon as the decision on the adoption of the rescheduling plan has become final and binding.

Article 344

A rescheduling plan adopted by the court shall be binding on all creditors with claims to which the debt rescheduling scheme applies without any exception and irrespective of whether they filed a claim in the debt rescheduling scheme.

Article 345

1 Upon a proposal of the *rechter-commissaris*, on the request of the administrator, the debtor or one or more creditors, the court may amend a rescheduling plan on account of unforeseen circumstances of such nature that, according to standards of reasonableness and fairness, the plan cannot remain unamended. The decision shall be made in the form of a judgment.

2 Prior to its decision the court shall set the day and hour for the court hearing at which the case shall be heard and may also order that the creditors to whose claims the debt rescheduling scheme applies shall receive notice to appear.

3 The administrator shall, without delay, ensure publication of the date, hour and venue in the *Staatscourant* (Government Gazette) and in the newspapers specified by the *rechter-commissaris* pursuant to article 293. The administrator shall also notify all known creditors by letter. Article 337, second paragraph, introduction and subparagraph *c*, and third paragraph shall apply *mutatis mutandis*.

4 Creditors who appeared at the hearing of the matter and the debtor may appeal against the judgment referred to in the first paragraph within eight days after the date of the decision. Articles 341, second, third and sixth paragraphs and 342, third paragraph shall apply.

Article 346

By law the rescheduling plan shall become inoperative on termination of the implementation of the debt rescheduling scheme.

Chapter 8 Liquidation of the Estate

Article 347

1 As soon as a decision whereby the rescheduling plan is adopted has become final and binding the estate shall by law be in a state of insolvency so that the administrator shall proceed to the liquidation and realisation of property comprised in the estate, insofar as not otherwise determined in the rescheduling plan, without consent or cooperation of the debtor being required for such purpose.

2 The property shall be sold by a private sale unless the *rechter-commissaris* orders a public sale.

3 Article 176, second paragraph shall apply *mutatis mutandis*.

Article 348

The *rechter-commissaris* may call a meeting of creditors on a date and hour and at a venue set by him for their consultation, where necessary, on the manner of the liquidation of the estate and, where necessary, for a verification of claims lodged after expiry of the period set pursuant to article 289, third paragraph, which were not already admitted in accordance with article 127. The administrator shall act with regard to such claims in accordance with the provisions of articles 111 to 114, inclusive. He shall give notice of the meeting to the creditors by letter at least ten days prior to that of the meeting in which letter the object of the meeting shall be stated and a reminder of the provisions of article 114 shall be given. Moreover, he shall ensure that an identical notice shall be published in the newspapers specified by the *rechter-commissaris* pursuant to article 293.

Article 349

1 Whenever there is sufficient cash in hand the administrator shall make a distribution to the verified creditors. Nevertheless, no distribution shall be made if property is encumbered by a pledge or mortgage, must still be sold or where there is a right of priority ranking with regard to such property as referred to in article 292 of Book 3 of the Civil Code or if a priority attaches to that specified property. If property referred to in the preceding sentence is comprised in the estate after a distribution is made, this will not affect the validity of such distribution.

2 The distribution shall be made *pro rata* to each creditor's claim provided that, as long as claims subject to a priority ranking have not been satisfied in full, the percentage paid thereon shall be twice that payable on the non-preferential claims.

3 For the purpose of implementation of the second paragraph, claims of creditors with a priority ranking, whether or not this is contested, and which have not already been satisfied in accordance with article 57 or 299b, third paragraph, shall be fixed at the amount for which they may be credited on verification on the proceeds of the property to which the priority ranking relates. If this is less than the entire amount of their claims, they shall be treated as non-preferential creditors in respect of any shortfall.

4 The administrator shall draw up a distribution list from time to time. The list shall include a statement of receipts and expenditure, the names of the creditors, the admitted amount of each creditor's claim and the distribution to be received thereon.

5 Articles 181, 182 (in which article 60, third paragraph, second sentence should be read: 299b, third paragraph, second sentence), 183 to 189, inclusive, 191 and 192 shall apply *mutatis mutandis*.

Chapter 9 Termination of the Implementation of a Debt Rescheduling Scheme

Article 350

1 Upon a proposal of the *rechter-commissaris* or on the request of the administrator, the debtor or one or more creditors the district court may terminate the implementation of a debt rescheduling scheme. It may also do so *ex officio*.

2 Prior to its decision the court shall call the debtor to be heard by it. It may also call creditors for such purpose.

3 Termination, as referred to in the first paragraph, may be made if:

- a the claims to which the debt rescheduling scheme applies have been satisfied;
- b the debtor is in a position to resume his payments;
- c the debtor does not properly perform one or more obligations arising from the debt rescheduling scheme;
- d the debtor causes or tolerates excessive debts to be incurred;
- e the debtor endeavours to prejudice his creditors.

4 The decision shall be pronounced in the form of a judgment. The implementation of the debt rescheduling scheme shall lapse only as from the day on which the judgment for termination has become final and binding.

5 If termination is ordered on account of the provision in subparagraphs *c*, *d* or *e* of the third paragraph, the debtor shall by law be in a state of bankruptcy as soon as the decision has become final and binding. The court shall at once appoint a *rechter-commissaris* and a *curator*.

6 The administrator shall ensure publication of the termination in the *Staatscourant* (State Gazette) and in the newspapers specified by the *rechter-commissaris* pursuant to article 293 or, if the fifth paragraph applies, the *curator* shall do so in the publication referred to in article 14, third paragraph.

Article 351

1 In the event of termination of the implementation of a debt rescheduling scheme the debtor has the right to appeal or, where termination of the implementation of a debt rescheduling scheme is refused, the applicant for such termination may appeal from the judgment referred to in article 350 within eight days after the date of that decision.

2 Articles 341, second, third and sixth paragraphs and 342, third paragraph shall apply.

Article 352

1 If the implementation of the debt rescheduling scheme has not already ended, the court shall, upon a proposal of the *rechter-commissaris*, on the request of the administrator or the debtor or *ex officio*, set a date no later than one month prior to the end of the period referred to in the second paragraph of article 343 and the hour and venue for the hearing, at which termination of the implementation of the debt rescheduling scheme shall be considered.

2 If no date for a verification meeting has yet been set and one year has elapsed since the order for the definitive implementation of a debt rescheduling scheme, the court may, upon a proposal of the *rechter-commissaris*, or on the request of the administrator or the debtor, set a date for the court hearing which shall consider the termination of the implementation of a debt rescheduling scheme. The court shall set such hearing only if, with the proposal or request, a statement is lodged by the administrator explaining why it is not reasonably foreseeable that the debtor will be able to meet his obligations in full or in part.

3 The hearing referred to in the first and second paragraphs shall be held no earlier than fourteen and no later than twenty-one days after the order of the court referred to in the first paragraph.

4 Without delay the administrator shall ensure publication of the date, hour and venue in the *Staatscourant* (Government Gazette) and in the newspapers designated by the *rechter-commissaris* pursuant to article 293. By letter the administrator shall also give notice to all known creditors.

Article 353

1 At a court hearing set pursuant to article 352 the administrator shall issue a written report. The debtor shall attend the hearing in person.

2 The court may give each creditor who appeared in person, by written proxy or through a member of the local Bar an opportunity to address the court.

Article 354

1 On the day of the court hearing or otherwise no later than on the eighth day thereafter, the court shall pronounce its decision in the form of a judgment whether the debtor failed to perform one or more obligations arising from the debt rescheduling scheme and, if there is such a failure, whether it is attributable to the debtor.

2 In the case of an attributable failure, the court may determine that, in view of its particular nature or insignificance, such failure shall not be taken into consideration.

3 If a court hearing has been set pursuant to article 352, second paragraph, the court shall terminate the debt rescheduling only if it is not reasonably foreseeable that the debtor will be able to meet his obligations in full or in part and there have appeared to be no circumstances referred to in subparagraphs *c*, *d* or *e* of article 350, third paragraph. The court may adjourn its decision once or more, either for a further examination or if it appears from the administrator's report that the debtor will, at a later date, be able to meet his obligations in full or in part. The court shall set the date on which the debt rescheduling scheme shall end in accordance with the period referred to in article 343,

second paragraph.

4 If the court rejects the proposal or request for termination of the debt rescheduling scheme and does not apply article 350, fifth paragraph, the court shall still set a verification meeting. There must be at least fourteen days between the decision and the verification meeting.

Article 355

1 Creditors who appeared at the hearing of the matter on the basis of article 353, second paragraph and the debtor may appeal from the judgment referred to in article 354 within eight days after the date of the decision.

2 Articles 341, second, third and sixth paragraphs and 342, third paragraph shall apply.

Article 356

1 As soon as a decision referred to in article 354 has become final and binding the administrator shall proceed to the drawing up of a final distribution list without delay.

2 The implementation of a debt rescheduling scheme is terminated by law as soon as the final distribution list has become binding. The administrator shall ensure publication thereof in the *Staatscourant* (Government Gazette) and in the newspapers specified by the *rechter-commissaris* pursuant to article 293.

3 Upon expiry of one month after termination the administrator shall account for his administration to the *rechter-commissaris*.

Article 357

If, after the final distribution, any reserved distribution payments revert to the estate pursuant to article 189 or it should appear that there are still assets of the estate which were not known at the time of liquidation, the administrator shall, upon an order of the court, proceed to a liquidation and distribution thereof on the basis of the earlier distribution lists.

Article 358

1 By the termination of the implementation of a debt rescheduling scheme on the basis of article 356, second paragraph, a claim to which the debt rescheduling scheme applies shall, insofar as this has not been satisfied, no longer be enforceable, irrespective of whether or not the creditor entered a claim in the debt rescheduling scheme and whether or not the claim was admitted.

2 The first paragraph shall not apply if, in the judgment referred to in article 354, the court held that there was a failure attributable to the debtor and the court did not apply the second paragraph of article 354.

Chapter 10 Special Provisions

Article 358a

1 If it appears that, after termination of the implementation of the debt rescheduling scheme as a result of which the legal effect referred to in article 358, first paragraph became operative, there have been facts or circumstances before such time which would have given grounds for termination of the

implementation of the debt rescheduling scheme on the basis of subparagraph *e* of article 350, third paragraph, the court may, on the request of any interested party, determine that article 358, first paragraph shall no longer apply.

2 Prior to its decision the court shall summon the debtor to be heard by it.

3 Appeal may be instituted against the judgment within eight days after the decision. The appeal shall be instituted by petition lodged at the clerk's office of the court of appeal which must be seized of the matter.

4 Within eight days after the judgment of the court of appeal, appeal or cassation (*appeal to the Supreme Court*) may be instituted. The cassation shall be instituted by petition lodged at the clerk's office of the Supreme Court.

5 As soon as the decision referred to in the first paragraph has become final and binding, the clerk of the judicial body that gave such order shall announce it in the *Staatscourant* (Government Gazette) without delay.

Article 359

1 If the debtor is adjudicated bankrupt during implementation of the debt rescheduling scheme or if the debtor, as a result of termination of the implementation of the debt rescheduling scheme, becomes bankrupt, the following rules shall apply:

- a acts performed by the administrator during the implementation of the debt rescheduling scheme shall remain valid and binding;
- b debts of the estate which arose during the implementation of the debt rescheduling scheme shall be deemed debts of the bankrupt estate;
- c claims submitted in the debt rescheduling scheme shall be deemed to have been submitted in the bankruptcy.

2 The *curator* shall exercise the powers conferred on the administrator in article 297, third paragraph.

3 The commencement of the time periods mentioned in articles 43 and 45 shall be calculated with effect from the date of the decision to implement the debt rescheduling scheme.

Chapter 11 Final Provisions

Article 360

No appeal shall lie against decisions of the court pursuant to the provisions of this Title, except as otherwise provided and save for the possibility of cassation (*appeal to the Supreme Court*) in the interest of the law.

Article 361

1 Petitions made pursuant to articles 292, second paragraph, 315, first paragraph, 341, first paragraph, 342, first paragraph, 345, fourth paragraph, 350, first paragraph, 351, first paragraph, 355, first paragraph and 358*a*, first paragraph must be signed by a member of the local Bar, except when a request is made by the administrator or in the case of a request by the debtor pursuant to article 350, first paragraph.

2 For the institution of cassation (*appeal to the Supreme Court*) the assistance of an advocate accredited to the Supreme Court shall always be required.

Article 362

1 The *Algemene Termijnenwet* (Computation of Time Periods (General) Act) is not applicable to the time limits laid down in articles 39, 40, 238, 239 and 305.

2 Title 3 of Book 1 of the Code of Civil Procedure shall not apply to applications pursuant to this Act.

As last amended with effect from 1 January 2002

Footnotes

1 [\[Back\]](#) The amendment does not apply to a bankruptcy declared prior to 1 July 2002.

2 [\[Back\]](#) This provision does not apply to a bankruptcy declared prior to 1 July 2002.

3 [\[Back\]](#) Judge charged with the supervision of the bankruptcy.

4 [\[Back\]](#) The amendment does not apply to a bankruptcy declared prior to 1 July 2002.

5 [\[Back\]](#) This Chapter (*Staatsblad* 1998-714) entered into force on 1 January 1999.