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GUIDE TO LAW ON FINANCIAL RESTRUCTURING OF BUSINESSES IN UKRAINE

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Guide to Law on Financial Restructuring of Businesses in Ukraine

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Glossary

DGF	Deposit Guarantee Fund
EBRD	European Bank for Reconstruction and Development
FRFA	Financial Restructuring Framework Agreement
IBR	Independent Business Review
LFR	Law of Ukraine “on Financial Restructuring”
LICA	Law of Ukraine “on International Commercial Arbitration”
MEDT	Ministry of Economic Development and Trade
MOE	Municipality-Owned Enterprise
MOF	Ministry of Finance
MOJ	Ministry of Justice
NABU	Independent Association of Banks of Ukraine
NBU	National Bank of Ukraine
NPL	Non-performing loan
SOB	State-Owned Bank
SOE	State-Owned Enterprise
TC	Tax Code
UAH	Ukraine Hryvna

Foreword

There is growing recognition internationally of the need for effective debt restructuring tools to improve the opportunities for business recovery. These tools also are one of the means of tackling the systemic issue of nonperforming loans.

The Law of Ukraine "on Financial Restructuring" No. 1414-VIII, dated 14 June 2016 (the “Law” or “LFR”) became effective on 19 October 2016. The European Bank for Reconstruction and Development (EBRD) considers initiatives such as the Law to play an important role in debt restructuring and the development of a restructuring culture. Use of special representatives, such as arbitrators and independent experts can also provide more efficient methods of resolving disputes and ensuring integrity of the overall process, which are fundamental to the restructuring and turnaround of financially distressed businesses.

The EBRD in collaboration with the World Bank supported the development of the Law and, following its adoption, the EBRD launched a project in partnership with the Independent Association of Banks of Ukraine (NABU) to support the implementation of the Law and raise awareness of the benefits of restructuring under the Law within the banking and business communities. With the assistance of consultants EMA Global and Sayenko Kharenko, the project has achieved a number of key goals since its commencement, including: (i) development of core governance regulations for the overall process, design, funding and operationalizing the Secretariat for Financial Restructuring (the “Secretariat”), which administers proceedings; (ii) design and development of the extra-judicial arbitration procedure to resolve disputes overseen by a staffed arbitration committee (the “Arbitration Committee”) and trained arbitrators; and (iii) a full set of model forms to improve efficient administration of cases for main and arbitration proceedings.

EBRD and NABU, together with the Secretariat, have helped to raise the awareness of the Law and its process among potential participants, including banking, business and professional communities. Greater networks and communications have been built between NABU, the Secretariat, chambers of commerce that provide a vital link to local business communities, and other key stakeholders. In addition, we have continued to encourage further reforms to improve the existing legal and regulatory framework for restructuring in Ukraine, including for better tax treatment and complementary pre-insolvency

procedures. The purpose of this Guide is to make the LFR procedure accessible to all potential users and to highlight the principal features and benefits of the Law. We hope that you find the Guide to be a useful source of information on the LFR process and debt restructuring generally.

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Preface

The global financial crisis of 2008-09, followed by the political crisis and conflict in East Ukraine in early 2014, led to the perfect storm for one of the worst financial crises in history. Ukraine simultaneously experienced a banking crisis, currency crisis and sovereign debt crisis, with systemic repercussions across the banking and business sectors. This has been particularly evident in the escalating levels of non-performing loans ("NPLs"), contributing to the collapse or failure of nearly half of the banks in Ukraine. Growth of the overall economy shrank significantly as a result from 2014 to 2016.

The crisis was particularly acute in the first quarter of 2015 when real GDP declined by 17.2%. At the same time, the hryvna's value was halved leading to a currency crisis, sharp exchange rate depreciation and unexpected inflation, all of which have since stabilized. Bank failures increased from two, in early 2014, to approximately 90 banks as of the end of 2017, including the collapse and nationalization of the country's largest bank. In late 2015, official levels of corporate NPLs were approximately 29%, with only 8% of all corporate loans ranked as fully performing, while 45% were listed in the watch category.

Since then corporate loan portfolios have further deteriorated. Changes in the definition of NPLs introduced in 2017 revealed real corporate NPLs increased to 58% by October, with the total NPL stock amounting to approximately UAH 814 billion or 34% of the nation's GDP. About three quarters of the NPLs were in state hands with the Deposit Guarantee Fund (the "Fund") and with state banks. The Fund's portfolio had an NPL ratio of 90% and contains nearly 37% of the total NPLs in Ukraine. This is not surprising considering that the Fund portfolio includes all banks under temporary administration and liquidation. To compound matters, many viable corporate borrowers cease making payments on their loans when a bank is placed in resolution, even though many are able to repay their loans.

Against this backdrop, the Law was developed to help stabilize and support the recovery of the banking system, assist banks and borrowers in restructuring their debts, salvage and revitalize viable businesses, and preserve jobs – an essential first step in rebuilding the economy. The Law establishes an efficient framework to accelerate recovery in both financial and business sectors. The Law also enables businesses to access new financing with protections, while preserving all rights of secured creditors, and provides tax relief and other benefits to the parties. Where parties have disputes among themselves related

to their debts or disagreements on a restructuring plan, these disputes can be submitted for resolution by arbitration, rather than going through a longer, more costly court procedure. In short, debt restructuring under the Law affords participants better protections and more reliable outcomes than they would have by restructuring their debts outside the procedure.

The financial restructuring procedure became operational on 3 April 2017 when the Secretariat opened its doors to accept applications for restructuring. To date, all cases submitted have been approved in an efficient and timely manner, typically within the initial 90-day period, although a few restructurings have been completed in much less time. This demonstrates that the financial restructuring process can be an effective and efficient tool to help lenders, creditors and borrowers reach consensual solutions that benefit the parties involved.

Gordon W Johnson
President, EMA Global

I. INTRODUCTION

The Guide begins with a concise summary of key features and benefits of the Law in Section II, which are explained in more detail in the Sections that follows. Section III provides a broad overview of the Law's scope and objectives, supporting regulatory framework, and institutional and governance structure. It also identifies the key stakeholders and their roles in the process.

Section IV provides a step-by-step description of the course of LFR proceedings, identifying five primary stages including: (i) commencement, (ii) course of proceedings, (iii) independent business review, (iv) plan negotiations and approval, and (v) conclusion. This section also addresses some important considerations pertaining to rights of claimholders and claim disputes. Special attention is given to deadlines, model forms and other useful information set out in text boxes or charts. References to applicable articles of the Law are cross-referenced in the text or in footnotes, highlighting additional questions or issues where appropriate.

Section V describes some of the restructuring tools made available under the Law, such as standstill agreements, interim financing techniques, restructuring measures and techniques, and special plan considerations. These tools are well tested in other countries and can be helpful when applied in the context of restructurings under the Law.

Section VI contains information on special benefits that apply to financial restructuring transactions using the LFR procedure that are unavailable to parties that restructure their obligations outside the procedure. These include tax exceptions on restructured debt and asset sales, and special transaction safeguards to protect the parties against challenges after the restructuring agreement has been executed. The section also describes penalties that may apply when parties and non-parties violate the moratorium or other requirements of the Law.

Finally, Section VII describes relevant aspects of the arbitration procedure to resolve disputes, which enables parties to avoid the cost and delays associated with court procedures. The section gives an overview of the governance process, rules, types of disputes and fees involved for resolving disputes by arbitration. Disputes fall into two categories: general disputes (those typically related to commercial and contractual claims) and special disputes (those pertaining to approval of the restructuring plan). The section also explains the arbitration process from initiation to arbitral award.

For ease of reference, the Guide also contains a number of important references in the annexes, including the full text of the Law and Arbitration Rules, a list of model forms, a notional process schedule of events and deadlines in the proceeding, and the regulation outlining the requirements for preparation of the independent business review report.

II. KEY FEATURES AND BENEFITS OF THE LAW

ELIGIBLE PARTICIPANTS

- Any Ukrainian commercial undertaking (other than a bank or a financial institution) with outstanding financial indebtedness to at least one Ukrainian or foreign financial institution and whose business is deemed "financially distressed" but "viable" is eligible to participate as a debtor in a financial restructuring proceeding under the Law. There is no minimum threshold for the size of business which is eligible to participate.
- Several debtors within the same corporate group may participate in administratively "combined proceedings" if they have at least one common Involved Creditor[1] and a majority of Involved Creditors of each debtor consent to the combined proceedings.
- A debtor's business is presumed viable at the commencement of a proceeding, but its viability is verified by a subsequent review of the debtor's business and restructuring plan by an independent expert selected by the Involved Creditors.

ACCESS TO THE PROCESS

- To access the financial restructuring procedure, a debtor must obtain the consent of one or more financial institutions holding at least 50 percent in value of the debtor's financial institution debts, excluding any liabilities to the debtor's related parties. This requirement assures that a sufficiently significant proportion of the financial debts are restructured consistent with the goals of resolving NPLs and restoring businesses to viability.
- A debtor cannot be involved in an open bankruptcy or rehabilitation proceeding when it makes an application to the Secretariat to commence a LFR proceeding.
- While the Law is mainly oriented to financial institutions, other types of creditors, such as trade creditors, may also participate in the proceedings. Participating creditors are selected by the debtor and generally include

[1] An Involved Creditor is any creditor identified by the debtor whose claims can be restructured in accordance with the procedures envisaged by the Law and that consents to participate in the restructuring. See LFR Art. 1.1 paragraph 11), as further explained in Section III.D.2 below. Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Law, which is attached as Annex 1.

creditors whose debts must be restructured to restore viability to the business. Nevertheless, each creditor must be willing to join the proceeding. Creditors that are related to the debtor may participate but have no voting rights in the procedure.

THE PROCEDURE IS CONSENSUAL

- The LFR procedure is fully consensual. No party can be forced to participate; rather, each participant must sign a written consent to join the restructuring process. Parties that consent to the procedure are not obliged to vote in favor of a restructuring plan, however they must consent to arbitration for the resolution of any disputes pertaining to their claims or the plan.
- An exception exists for the tax authority, which can be designated as an Involved Creditor automatically if its claim(s) amount to less than one third of the total amount of claims of Involved Creditors (excluding related party claims) at the time of the application by the debtor for the opening of financial restructuring proceedings.

ADMINISTRATIVE (NON-COURT) PROCEDURE

- The LFR procedure is an extra-judicial procedure administered by the Secretariat. The Secretariat provides administrative support, ensuring that parties comply with the procedural requirements of the Law, and for providing notice to Involved Creditors and other parties at various stages of the proceedings. The Secretariat takes no part in restructuring negotiations or in resolving disputes between parties.
- An Arbitration Committee has been established to manage the process for resolving disputes arising in a LFR proceeding and appoints an independent, qualified arbitrator from an officially approved list to arbitrate any such disputes. The Secretariat and Arbitration Committee are independent bodies and are accountable to a supervisory board comprised of nine members from Government agencies and the private sector.[2]

THE PROCEDURE IS COOPERATIVE AND EFFICIENT

- The financial restructuring procedure relies on good faith, fair dealing and cooperation among all parties to achieve a consensual agreement. Intra-creditor cooperation is particularly important and requires the equal sharing of information among creditors, the establishment and operation of

[2] The composition of the Supervisory Board and its role is described in more detail in Section III.C.1.

creditors' committees and common decision-making on issues such as whether to sign a standstill agreement, extend the duration of the proceeding and vote in favor of the restructuring plan proposed by the debtor.

- A special inter-creditor agreement has been developed by NBU to facilitate cooperation among financial institutions on common issues that typically affect creditors in a restructuring context (e.g. creditor coordination, collateral protection, new financing, and resolving disputes). Signing the agreement is mandatory for state banks and the Fund and optional for all others.
- The LFR procedure is designed to be efficient, allowing parties 90 days (extendable by a maximum additional 90 days) to negotiate and approve a restructuring plan.

MORATORIUM ON ENFORCEMENT ACTIONS

- On commencement of a LFR proceeding, a moratorium is automatically imposed to protect the debtor's assets against enforcement actions taken by participating creditors and by actions of the debtor's related parties. It also prohibits non-participating creditors from enforcing against the debtor's unencumbered fixed assets (e.g. property, plants and equipment).
- Involved Creditors benefit from restrictions on the debtor's ability to sell or transfer assets without their prior approval. While Involved Creditors may not enforce their claims against the debtor's assets, they may pursue any ongoing legal proceedings to the point of judgment.
- During a LFR proceeding, no bankruptcy case may be opened against the debtor. Any bankruptcy petition filed against a debtor, where the bankruptcy is not yet opened, is automatically suspended until the restructuring process is completed.

RESTRUCTURING PLAN TERMS AND APPROVAL

- The Law supports the recovery of financially distressed businesses through the broadest range of measures, including, but not limited to, loan rescheduling, partial debt forgiveness, debt-to-equity conversions, new capital investment and asset sales/transfers.
- The restructuring plan should be approved by all Involved Creditors. In those cases where the plan is not fully consensual but has been approved by Involved Creditors holding more than two-thirds in the amount of claims, the plan will be submitted to an arbitrator for a final arbitral

decision to determine whether it should be approved or not. If approved, the plan becomes binding on all Involved Creditors, including those who dissented, with some restrictions that preclude dissenting creditors from being forced to extend new financing or to write-off any debt that is "secured" or give up some part of their collateral.

SPECIAL TAX ADVANTAGES

- The LFR procedure is supported by amendments to the Tax Code of Ukraine, which create incentives for parties that restructure their obligations under the Law. Such incentives include: (i) automatic write-off of tax debt with a maturity of more than three years and permitted reductions on tax debt with a maturity of less than three years, in each case with reference to the date of commencement of financial restructuring proceedings; (ii) an extended period of three years for a Debtor to recognize income derived from the cancellation of its indebtedness and for a financial institution to recognize income for reversed loan loss provisions; (iii) a bad debt exception for debts written off in connection with the financial restructuring; and (iv) a VAT exemption until 1 January 2020 on supply of goods by the Debtor where the proceeds of such goods are used to repay the Debtor's financial liabilities.

III. LFR FRAMEWORK OVERVIEW AND GOVERNANCE

A. Scope and objectives of the Law

The Law establishes a framework to support voluntary restructuring proceedings of a Debtor and applies to the Debtor's business and assets located within and outside of Ukraine, as well as all debts, including those governed by foreign law.[3] It serves as an important tool to help preserve financial system stability, stimulate the recovery of financially distressed businesses by financial and operational restructuring, and enables Debtors to access new financing and investment. Achieving these objectives should accelerate the normalization of access to credit and the preservation of jobs.[4] Following is a brief description of the goals of the Law:

- *Recovery of financially distressed businesses* is important to the overall economic recovery, as business growth creates jobs, generates revenues, supports a broader tax base, and contributes more to the overall economy. For this to occur, businesses must be properly restored to viability by restructuring indebtedness and avoiding the detrimental effects of bankruptcy or loss of assets through execution and enforcement procedures.

- *Financial system stability* depends on a well-capitalized banking system, which in turn relies on timely repayment of loans and credits by borrowers. Increasing defaults by borrowers erodes bank capital and ultimately leads to bank failures, with losses for bank depositors, bank shareholders, and other creditors of the banks. Bank failures create market instability by lost or delayed recovery of deposits and by increasing the cost of and restricting access to credit. The Law provides an efficient mechanism for debtors to restructure and repay their debts.

- *Access to new financing* depends on sound banks and creditworthy borrowers. Financially overleveraged and distressed businesses have difficulty accessing new credit as their existing default status represents an increased financial risk to lenders. By providing a means to reduce the over-indebtedness of companies and create sustainable debt servicing plans, businesses should become more creditworthy and

[3] LFR 1 and 2.2. References to particular articles in the Law are cited as "LFR __".
[4] LFR 2.1.

have easier access to new financing. The Law provides special safeguards and benefits for lenders of new financing.[5]

- *Other goals* supported by the Law include preservation of jobs, promoting efficient debt resolution, and providing for more transparent governance and management of businesses.

B. Legal and Regulatory Framework

The legal and regulatory framework governing LFR proceedings is comprised of the Law, subsidiary regulations, rules, guidelines and forms endorsed by the Supervisory Board, as described below.

1. Legal framework

The Law became effective on 19 October 2016 and remains in effect for three years, until 19 October 2019, unless extended. The Law is supported by amendments to the Tax Code introducing a special tax regime for restructurings under the Law, designed to encourage resolution of NPLs and effective debt restructuring. While in effect, the Law provides certain exceptions to the normal application of other laws as enumerated in the financial and transitory provisions of the Law, which should be consulted with reference to LFR proceedings.[6]

BOX 3.1 OTHER LAWS AFFECTED BY THE LFR PROCESS

- Civil Code of Ukraine (2003)
- Law of Ukraine "On International Commercial Arbitration" (1994)
- Law of Ukraine "On Banks and Banking" (2001)
- Law of Ukraine "On Financial Services and State Regulation of the Financial Services Market" (2015)
- Law of Ukraine "On Mortgage" (2003)
- Law of Ukraine "On Securing Creditor's Claims and Registration of the Encumbrances" (2004)
- Law of Ukraine "On Joint Stock Companies" (2008)
- Law of Ukraine "On Enforcement Proceedings" (2011)
- Law of Ukraine "On Restoring a Debtor's Solvency or Declaring a Debtor's Bankruptcy" (2012)
- Law of Ukraine "On Deposit Guarantee System for Natural Persons" (2012)

[5] See Sections V.B.2 and VI.C.1.
[6] LFR 31.

2. Implementing Regulations

Bodies responsible for supervision and administration of LFR proceedings derive their authority from the Law and implementing regulations that elaborate the powers, functions and governance of these bodies, or in the case of NABU by memorandum of understanding.

- The **Supervisory Board** is responsible to approve all aspects of implementation, and monitor the process once it becomes operational, which occurred on 3 April 2017.[7] The Supervisory Board meets monthly to review progress and address any issues under the LFR process.
- The **Secretariat** is responsible for day-to-day administrative processing of LFR cases and provides administrative support to the Arbitration Committee in case of claim disputes.[8] The Secretariat has no direct or active involvement in negotiations between parties. Rather, it ensures compliance with all procedural steps of the restructuring and notifies parties involved of upcoming deadlines and meetings.
- **NABU** serves as the operator of the Secretariat pursuant to a memorandum of understanding between the Supervisory Board and NABU, which establishes the terms and understandings of the Secretariat operations.[9]

3. Arbitration Rules

The Law requires that disputes between parties be resolved by means of arbitration, as opposed to court decisions, to ensure that the restructuring process is completed within the prescribed time limits. Arbitration relies on the recognition and enforceability of arbitral awards in Ukraine to create certainty with respect to dispute outcomes that are essential to ensuring implementation of a restructuring plan. While most disputes arising in a LFR proceeding may be

[7] Regulation on the Supervisory Board approved by decision of the Supervisory Board (Minutes No. 4 of the meeting dated 20 December 2016). The composition and functions of the Supervisory Board are discussed in Section III.C.1.

[8] Regulation on the Secretariat established to implement the Law of Ukraine "On Financial Restructuring", approved by Decision of the Supervisory Board (Minutes No. 6 of the meeting dated 20 December 2016) ("Secretariat Regulation").

[9] Memorandum on technical assistance/cooperation between the Supervisory Board established in pursuance of the Law of Ukraine "On Financial Restructuring" and Association "The Independent Association of the Banks of Ukraine", dated 20 December 2016 ("MOU").

similar to commercial disputes resolved under the Arbitration Law,[10] others are unique to the LFR process. To improve efficiency and certainty in the process, new Arbitration Rules[11] were developed that uniquely govern arbitration proceedings conducted in the context of LFR proceedings. The arbitration process is described in more detail in Section VII of the Guide.

4. Guidelines pertaining to Independent Experts and Business Review Reports

A meaningful restructuring requires **access to current, accurate and reliable information** on a Debtor's business, without which creditors cannot make informed decisions about the prospects for restructuring and solutions to restore business viability. Necessary information includes details and data on the company's assets, liabilities, business prospects, revenue projections, performance objectives, and potential risks that may impact the ability of a company to repay its debts under a restructuring plan. The Law ensures access to such data and information through appointment of an independent expert who conducts a proper due diligence review of essential business data and analyzes the restructuring plan to assess the debtor's viability. Special guidelines establish criteria for independent experts and requirements for preparing a business review report.[12] These criteria and requirements are explained in more detail in Section IV.C of the Guide.

5. Procedural Forms

To promote greater efficiency and continuity in processing of LFR cases, standardized model forms have been developed for use at key stages of the main and arbitration proceedings. Parties are encouraged to use the forms without (or with minimal) modification to avoid possible delays. The forms have been endorsed by the Supervisory Board for use in proceedings.[13]

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[10] Law of Ukraine "on International Commercial Arbitration" No 4002-XII dated 24 February 1994 (hereinafter, the "Arbitration Law" or "LICA").

[11] Arbitration Rules for the purposes of the Law of Ukraine on Financial Restructuring, approved by the decision of the Supervisory Board (Minutes No. 11 of the meeting dated 24 January 2017) (hereinafter, "Arbitration Rules"), attached as Annex 2.

[12] Qualifications Requirements to Independent Experts, which issue opinions on the prospects of operations of the borrower according to Article 11 of the Law, approved by decision of the Supervisory Board (Minutes No. 6 of the meeting dated 20 December 2016); and Requirements and Recommendations of the Report on the Review of Financial and Commercial Activity of the Debtor, approved by the decision of the Supervisory Board (Minutes No. 11 of the meeting dated 24 January 2017).

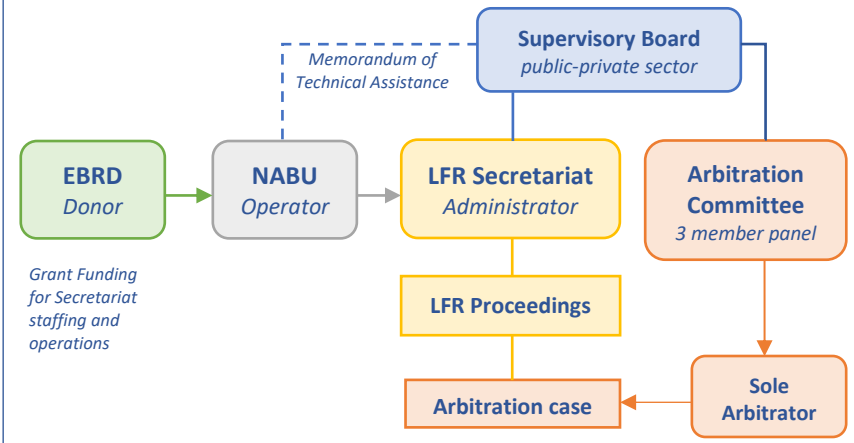
[13] A list of model forms available on the Secretariat's website (https://fr.org.ua) is included in Annex 3.

C. Institutional Structure and Governance

The organizational structure and governance of the LFR process, as depicted in the diagram below, is overseen by a Supervisory Board comprised of public and private sector representatives. As required by law, the Supervisory Board established the Secretariat to administer LFR proceedings and the Arbitration Committee to handle and oversee the arbitration of disputes. The Supervisory Board, Secretariat and Arbitration Committee do not have a legal personality and derive their administrative powers and authority from the Law.

The Supervisory Board selected NABU to handle logistics for the Secretariat's venue and operations, and to manage the financing of operations using donor funds.[14] The Secretariat and Arbitration Committee operate independently pursuant to their governing regulations and mandates. The Supervisory Board and NABU are not involved in decision-making or administration of the LFR process. The role and functions of the primary institutions are described in more detail below.

Chart 1 – LFR Governance Structure



[14] Donor funding is provided by EBRD pursuant to a grant agreement between EBRD and NABU.

1. Supervisory Board

The Supervisory Board is comprised of representatives from the public and private sector, including from NBU, Ministry of Economic Development and Trade, Ministry of Finance, Ministry of Justice, financial institutions and others.[15] The Supervisory Board is responsible for overall implementation and monitoring of the LFR procedure, and exercises oversight of both the Secretariat and Arbitration Committee, representatives of which were selected by the Supervisory Board following an open invitation process. The Supervisory Board operates pursuant the Supervisory Board Regulation and meets monthly to take decisions on and monitor progress of the LFR procedure.

2. Independent Association of Banks of Ukraine

NABU was selected as the operator of the Secretariat pursuant to a memorandum of technical assistance and cooperation with the Supervisory Board to perform certain functions and tasks in organizing the operation of the Secretariat, as described in the box below. NABU has no access to Secretariat premises or case files and is not involved in LFR proceedings or arbitration cases.

BOX 3.2 OPERATOR FUNCTIONS (NABU)

According to the Memorandum of technical assistance, NABU's functions include, among others:

- signing civil law contracts with Secretariat members;
- executing confidentiality agreements with the Secretariat members and other NABU staff;
- financing the operations of the Secretariat, including compensation of Secretariat members;
- providing premises for operation of, and all technical equipment needed by, the Secretariat;
- ensuring storage and protection of case files following termination of the Secretariat;
- setting up/managing bank accounts to process deposits/disbursements of arbitration fees;
- supporting the Secretariat through joint marketing efforts of the LFR process and convening workshops or events with potential users of the system (e.g., lenders and businesses).

[15] The Law provides for nine representatives to serve on the Supervisory Board, however, it has been operating with eight members following the resignation of one of the appointed members.

3. Secretariat for Financial Restructuring

The Secretariat was established pursuant to Article 15 of the Law and by Decision of the Supervisory Board.[16] It is the body responsible for administration of LFR proceedings under the Law, comprised of a Head, Deputy Head, and additional staff member(s) who are natural-person entrepreneurs contracted under civil law contracts with NABU. Although the Secretariat staff is contracted by NABU, the Secretariat is accountable exclusively to the Supervisory Board. The Secretariat is situated within the same premises where NABU maintains its principal offices, in a separate secure space that is accessible only to members of the Secretariat and Arbitration Committee. The Secretariat duties include providing informational, analytical, organizational and administrative support to proceedings under the Law, as listed below.[17] The Secretariat does not participate or play any role in negotiations between the parties in a LFR proceeding.[18]

BOX 3.3 SECRETARIAT FUNCTIONS[19]

According to the Secretariat Regulation, the Secretariat is responsible to:

- resolve all administrative and procedural issues;
- provide technical and administrative support of dispute resolution in the arbitration court based on Arbitration Rules;
- prepare and provide reports to the Supervisory Board on process and results;
- ensure storage of minutes of meetings for Supervisory Board and documents of the Supervisory Board, LFR proceedings, and cases and decisions of arbitration;
- file and distribute information to participants of the LFR proceedings;
- elaborate recommendations to carry out LFR procedures, including recommending documents for use in the process;
- develop and manage the official website of the Secretariat to maintain information required by Law, including a list of arbitrators;
- process all applications and other documents required by the process;
- maintain strict confidentiality of documents under its control.

4. Arbitration Committee and Arbitrators

Established pursuant to the Law, the Arbitration Committee supervises the arbitration process to resolve disputes and is accountable to the Supervisory

[16] Minutes No. 3 of the meeting dated 26 October 2016.
[17] LFR 15.1.
[18] LFR 15.4.
[19] Secretariat Regulation, Chapter 1.

Board.[20] It is composed of a head and two deputies, who must be independent of parties participating in the LFR proceedings. In case of conflict of interest, the Head of the Arbitration Committee and/or the Deputy Heads are required to refrain from taking part in the decision-making process. In respect of any conflict of interest, the Arbitration Committee must adhere to the Ethical Rules of Conduct contained in Schedule 3 to the Arbitration Rules.

The Arbitration Committee performs the functions set out in the Law and Arbitration Rules.[21] It exercises independent decision-making and functions separately from the Secretariat, while relying on the Secretariat to carry out administrative tasks, including receipt and processing of notices of disputes and other documents, giving notice and passing along communications to parties, and maintaining files for arbitration cases. Like the Secretariat, the Arbitration Committee has no legal status and thus relies on NABU for the management of bank accounts and the receipt, deposit and disbursement of fees paid in connection with arbitration proceedings.

The Arbitration Committee also exercises regulatory oversight of arbitrators and may propose additions or changes to the list of arbitrators. The initial selection of arbitrators was made by the Supervisory Board following a public solicitation of expressions of interest.[22] Arbitrators meeting specified requirements were initially selected for inclusion on the List of Arbitrators maintained by the Secretariat on its official website.[23] Arbitrators are divided into two groups handling either (1) general disputes or (2) special disputes. Specific functions of the Arbitration Committee and details of the process are described in Section VII.

5. Independent Experts

Independent experts have a unique role in the LFR process to conduct a business and financial review of the debtor's business based on business information provided, and to assess the viability of the debtor and prospects for a successful recovery under the proposed restructuring plan. The independent expert's findings and conclusions are set forth in a independent business review ("**IBR**") report to be provided to the Involved Creditors prior to voting on the debtor's proposed restructuring plan. An independent expert can be a natural person, natural person-entrepreneur or legal entity that is not related to the

[20] LFR 16.
[21] Arbitration Rules, Art. 5.1.
[22] Schedule 1 to the Arbitration Rules establishes the criteria for inclusion of arbitrators on the List of Arbitrators. See Annex 2.
[23] www.fr.org.ua

debtor or a creditor of the business and who takes its instructions from the Involved Creditors.[24] Qualifications for independent experts and the general requirements for the IBR report are elaborated by decisions of the Supervisory Board and described in more detail in Section IV.C. below.[25]

6. Other institutions

Other institutions may play a role in the LFR process, including the tax authorities as a creditor or pertaining to interpretation or assessments related tax exemptions under Article 28 of the Law, enforcement agencies pertaining to penalties imposed under Article 30 of the Law for breach of the Law, and the commercial courts where a stay of the commencement of a bankruptcy petition may be necessary. The NBU serves as the enforcement agent for penalties imposed on banks for violations of the Law.

D. Key stakeholders

The primary stakeholders that participate in the LFR procedure include the debtor, its creditors, prospective investors and related parties. Each of these categories may include subcategories or state entities that require special consideration, although the Law's intent is to treat all debtors and creditors similarly, with only a few exceptions created for practical purposes. As defined in the Law, these include:

1. Debtors

A debtor can be any legal entity that is a commercial undertaking which is indebted to at least one Financial Institution (unrelated to Debtor), including municipality-owned and state-owned enterprises (but excluding financial institutions and treasury enterprises).[26] State-owned and municipality-owned enterprises, as defined in the Law, include:

- **State-Owned Enterprise**: an enterprise operating on the basis of the state property, or an enterprise in which the state owns 50% or more of the charter capital.[27]

[24] LFR 1.1 (18).
[25] Supervisory Board Decision of 20 December 2016 approving the "Qualification Requirements to Independent Experts", and Decision of 24 January 2017 approving the "Requirements and Recommendations of the Report on the Review of Financial and Commercial Activity of the Debtor". See Annex 5.
[26] LFR 1.1 (5). A Debtor under the LFR procedure cannot include individuals or persons, although individuals may take part as creditors, investors, or as shareholders.
[27] LFR 1.1 (7).

- **Municipality-Owned Enterprise:** an enterprise operating on the basis of the municipal property of the territorial community or an enterprise in which the municipality owns 50% or more of the charter capital.[28]

2. Involved Creditors

An Involved Creditor is any creditor defined by the debtor whose debts are eligible to be restructured under the Law, and that signs a written consent to participate in a LFR proceeding, including the enforcement authority (if designated as an Involved Creditor by the debtor).[29] Involved Creditors should include the following entities, as designated:

- **Financial Institutions:** institutions regulated under the Law of Ukraine "on Financial Services and the State Regulation of Financial Services Markets", an international financial institution, and a foreign financial institution (as defined under the legislation of the countries of their incorporation) that provided a foreign currency credit or loan to a resident of Ukraine under a contract registered with the National Bank of Ukraine. This includes state banks, in which the state owns 100% of the authorized capital.[30]
- **Fund:** The Fund is authorized to participate in restructuring proceedings of debtors on behalf of all banks that have been placed under temporary administration or liquidation taking into account its duties and responsibilities under the Law of Ukraine "On System of Guarantee of Deposits of Individuals".[31]
- **Enforcement Authority:** a governmental body that implements and enforces State tax and customs policies and collects State taxes.[32]

3. Other Participants

Other creditors or entities may be important to the restructuring negotiations or have an economic interest in the outcome of the restructuring and should be invited to participate. Subject to some restrictions on participation of Related Parties, these creditors or entities will be allowed to participate, including among others the following:

[28] LFR 1.1 (14).
[29] LFR 1.1 (11).
[30] State banks include: Oshadbank, Ukreximbank, Ukrgasbank, and Privatbank.
[31] LFR 8.2.
[32] LFR 1.1 (19).

- **Creditor**: a natural person, entrepreneur, legal entity, or Enforcement Authority that has documented claims against the Debtor in respect of the Debtor's Monetary Obligations;
- **Secured Creditor:** a Creditor whose claims are secured by a pledge (including mortgage);
- **Investor**: a natural person or legal entity that wishes to take part in the procedure of financial restructuring of a Debtor and is interested in investing in the Debtor, its assets or the business; and
- **Related Party**: an entity that (i) has the same Ultimate Beneficial Owner(s) or Controller(s) as the Debtor; (ii) is significantly owned by the Debtor or owning significant holdings of the Debtor; (iii) has the same significant holding owner(s) with the Debtor; or (iv) owned or controlled by an associated individual of the Debtor's Ultimate Beneficial Owner (Controller) or owner(s) of a significant holding in the Debtor (the associated individual includes spouse, direct relatives); and (v) sureties.[33]

4. Creditor coordination and cooperation

Coordination among Financial Institutions and Framework Agreement. Creditor coordination begins prior to the commencement of a LFR proceeding among banks or financial institutions having claims against a common financially distressed debtor. In such cases, the financial creditors must communicate to determine whether they consider the debtor to be viable, and if so whether to attempt a restructuring of the debt independently or using the LFR procedure.

NBU has developed an inter-creditor contractual agreement called the Financial Restructuring Framework Agreement ("**FRFA**") to facilitate coordination among financial institutions prior to and during the LFR proceeding.[34] Originally intended to be broader in scope, the FRFA was reduced in scope as many of the inter-creditor agreement provisions were ultimately incorporated into the Law, giving them binding effect and providing greater

[33] As used in the Law, the term "significant holding" has the meaning defined in the Law of Ukraine "On Banks and Banking Activity" and the term "Ultimate Beneficial Owner (Controller)" has the meaning defined in the Law of Ukraine "On Prevention and Counteraction to Legalization (Money Laundering) of the Proceeds from Crime or Terrorism Financing and Financing of the Proliferation of Weapons of Mass Destruction".

[34] LFR 6.1. FRFA is available at: https://bank.gov.ua/control/uk/publish/article?art_id=38172544.

certainty in the restructuring process.[35] Signing of the agreement is mandatory for state banks and the Fund, but voluntary for private Financial Institutions.[36]

The final form of the FRFA establishes non-exhaustive principles for parties to coordinate with respect to efforts to reach a successful conclusion, exercise good faith in performance of actions agreed, exchange information, conduct regular meetings during the process, provide new financing, apply all necessary measures to safeguard and protect collateral, and to respect the priority of rights among creditors.[37] The agreement does not alter other agreements between the parties, nor restrict the rights of parties in any way.[38] As such, parties may freely take decisions on matters in the proceeding and vote on the plan as they choose. In matters of disagreement, parties agree to submit disputes to arbitration under the Arbitration Rules, similar to the written consent of Involved Creditors that participate in LFR proceedings.[39] The FRFA also provides for participating financial institutions to designate a lead institution to negotiate on behalf of and represent the others in the LFR proceeding.[40]

Participation of State entities. As noted above, the Fund, state banks and banks with state participation are obligated to sign the FRFA and are authorized (but not required) to participate in LFR proceedings.[41] The Law was explicit in its authorization that state entities could undertake all restructuring measures necessary to restore viability, precisely because of concerns by state representatives that certain actions (e.g., debt forgiveness) may be improperly construed as violations of Ukrainian law by wasting or giving away of state assets, which are subject to criminal penalties. The Law makes clear that State

[35] In the context of the Asian Financial Crisis and in Turkey, the inter-bank framework agreement was the primary governing document establishing principles and terms for cooperation among financial institutions in restructuring of financial debts. The process worked reasonably well because nearly all banks signed the framework agreement and were contractually bound to cooperate. In Ukraine, the Law was necessary to compensate for process constraints, such as the inability to enforce a contractual standstill.

[36] LFR 8.1.

[37] FRFA paras. 4 and 5.

[38] FRFA para. 2.

[39] *See* FRFA para. 6; LFR 18.2; and LFR Form 2. In the LFR proceeding, the FRFA may require arbitration of disputes between parties to the FRFA on claims or issues involving a common debtor where even where only one of the FRFA parties has consented to the LFR proceeding. This could be a more efficient outcome for resolving disputes among FRFA parties, where the dispute could potentially hold up the restructuring process.

[40] LFR 7.1.

[41] LFR 8.1.

entities enjoy all the rights, benefits and protections of private creditors; they can:

> *approve a Restructuring Plan, sign the Standstill Agreement, conduct restructuring of their claims and monetary obligation of the Debtor in a manner envisaged by [the] Law, which may in particular involve changing the currency of the obligation, changing of the interest rate (including by setting it lower than the cost at which the funds are raised by the banks, including State-Owned Banks and Banks with the State Participation), a full termination of the accrual of the interest, partial debt forgiveness and other measures envisaged by the restructuring plan*.

An exception to voluntary participation for state entities has been made in the case of the Enforcement Authority that has claims against the debtor that amount to *less than one third* of the debtor's total monetary obligations to Involved Creditors (excluding the debtor's related parties). Under these circumstances, the Enforcement Authority can be automatically included in a LFR proceeding without giving written consent, and can be bound to a plan without being allowed to vote on it.[42] Where the authority's claim exceeds one third of total debt of Involved Creditors (excluding debtor's related parties), it is entitled to the same rights as any other creditor involved in the process, must give written consent to participate in a LFR proceeding and be allowed to vote on the restructuring plan.[43]

Creditors' Committees. Creditors' committees are commonly used in restructurings and insolvency proceedings as a more efficient way to represent a much larger group of similarly situated creditors, by having a few designated creditors represent the interests of the group. The Law provides for two types of committees, as follows:

- *Coordination Committee.* At least two financial institutions may form a Coordination Committee to exchange information, conduct negotiations on behalf of other Financial Institutions and for other matters related to the Financial Restructuring Proceeding.[44]

[42] LFR 5.4 and 25.4 subparagraph three.
[43] LFR 5.5. The rationale for this approach is to allow the enforcement authority to participate fully only where it can influence the outcome of the two-third's majority approval vote requirement on the restructuring plan.
[44] LFR 9.1.

- *Creditors' Committee*. Other non-financial institution creditors participating in a proceeding may form a Creditors' Committee to represent the interests of non-financial institution Involved Creditors, including to exchange information and appoint members to negotiate on behalf of the others. Negotiating creditors must meet regularly with other creditors.[45]

[45] LFR 9.2 and 9.3.

IV. FINANCIAL RESTRUCTURING PROCEDURE

There are five primary stages to the LFR procedure set out in Articles 17-27 of the Law, with some overlaps, including:

- commencement;
- creditor negotiations (course of proceedings);
- business due diligence;
- plan preparation and approval; and
- conclusion and implementation.

The LFR procedure contains a number of strict deadlines to which the parties must adhere, including the holding of the initial meeting of involved creditors within 10 days of the commencement date and approval of a restructuring plan within 90 days of the commencement date, which can be extended for up to an additional 90 days by agreement of financial institutions (excluding related parties) holding two-thirds in amount of the claims against the Debtor.[46] The entire process may not exceed 180 days. The parties may benefit by use of LFR Secretariat Form No. 9 to establish a process schedule for key deadlines in the LFR proceeding.[47]

A. Commencement stage

1. Application process and requirements

Eligibility of applicants. Eligible debtors include any Ukrainian commercial undertaking (other a banks or financial institution) with outstanding financial indebtedness to at least one Ukrainian or foreign financial institution, excluding related parties, including state- and municipality-owned enterprises.[48] There is no minimum threshold for the size of business that is eligible to participate, however, the debtor must be in a state of "financial distress" and considered to be "viable".[49] A debtor is in financial distress if it is unable to pay its monetary obligations as they come due.[50] The Debtor's business is presumed viable at the

[46] LFR 23.3, subparagraph four. Involved Creditors do not have to agree to a full 90-day extension. They can agree to a shorter period (e.g., 30 days), or have several extensions (e.g., 45 days plus 45 days), provided the total procedure does not extend beyond 180 days.

[47] See LFR Form No. 9, attached as Annex 4 hereto or available on the Secretariat website: www.fr.org.ua.

[48] LFR 1.5.

[49] LFR 4.1

[50] LFR 1.16. The test for financial distress is based on a liquidity test, as opposed to a balance sheet insolvency test. The liquidity test is a more flexible text that does not

commencement of the proceeding if Involved Creditors engage in the process, but it's viability ultimately must be verified by a subsequent review of the debtor's business and restructuring plan by an independent expert in the IBR report.

Several debtors within the same corporate group may participate in "combined proceedings" if they have at least one common creditor that is a financial institution. A majority of the Involved Creditors of each debtor to be involved in the group proceeding must consent to the combined proceedings.[51] It is important to note that a joint proceeding in no way alters the legal integrity of each debtor or the rights and obligations between parties in each proceeding. In effect, each debtor in the group should be given a separate LFR proceeding case number, prepare separate plans, and allow votes for each plan.

For administrative ease, individual debtor plans can be incorporated into a single document covering the group. Typically, meetings and deadlines will be combined on the same date to facilitate negotiations and coordination of the group restructuring, but there could be separate meetings where the issues are unique to a separate group of Involved Creditors.

A debtor is ineligible for a LFR proceeding if a bankruptcy or rehabilitation proceeding has been opened against the debtor prior to the LFR application, or if the LFR application is filed within 18 months of a prior LFR proceeding, including one that was terminated unsuccessfully.[52] A debtor is not disqualified if a petition for insolvency has been filed against the debtor but no case has been opened. Where the bankruptcy case is not yet opened prior to commencement of the LFR proceeding, the debtor must notify the commercial court of the opening of the LFR proceeding, which suspends the commercial court from taking a decision on the bankruptcy petition until the LFR proceeding is concluded or terminated.[53]

The application must be supported by one or more financial institutions holding at least 50% of the total claims of financial institutions against the debtor, excluding liabilities to related parties. The 50% requirement supports the Law's goals of reducing NPLs by assuring that a majority of debts owed to

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require or imply a state of insolvency, which might create additional liabilities and obligations on the debtor's management and owners.

[51] LFR 4.3.

[52] LFR 4.2 and 18.1. LFR Form No. 1 contains a disclosure acknowledging the debtor's compliance with these conditions. An exception is made where the Debtor terminates within 30 days of the application date.

[53] LFR 20.

financial institutions are covered by the restructuring and can lead to restoration of the debtor's business.

The Law only requires one financial institution to consent to the process, so long as the majority of Financial Institution debt (excluding related parties) is to be restructured. This provides meaningful opportunities for both financial institutions and businesses to take advantage of the restructuring procedure.

Parties can include other necessary non-financial institution creditors in the restructuring proceeding. While a debtor can negotiate and restructure its debts with a single financial institution on a bilateral basis, such a restructuring would not be afforded the benefits under the Law, such as the moratorium, prevention of bankruptcy proceedings, disclosure obligations, new financing protections, tax benefits and transaction safeguards.

BOX 4.1 APPLICATION REQUIREMENTS

LFR Form No. 1 - Application

- Requirement of involvement of at least one Financial Institution
- Written consents of Debtor to submit Disputes to Arbitration & Creditors (Form No. 2)
- Confirmation of no open bankruptcy proceeding against Debtor

Required attachments to the Application

1. Restructuring consent(s) of Involved Creditor(s) – LFR Form No. 2
2. List of Involved Creditors, including Related Parties, mailing addresses, email and amount of monetary obligations to such creditors – the list is used by the Secretariat to identify involved parties that should receive notices of deadlines, meetings, and documents.
3. List of Secured Creditors (including non-Involved Creditors) and mailing addresses
4. List of Debtor's Related Parties (including non-Involved Creditors) and mailing addresses
5. List of any pending court and enforcement proceedings – including identification of parties, case number, name of the court, and brief description of the nature of the proceeding; this inform parties about possible enforcement actions that could affect property or assets of the Debtor and that may be affected by the moratorium.

2. Acceptance of application and commencement

Upon receipt of an application, the Secretariat registers the application and decides on commencement of the proceeding by the next business day.[54] This is

[54] LFR 19.1

done after verifying that the application complies with the requirements of Article 18 of the Law. If the application satisfies the requirements for commencement, the Secretariat will commence the proceeding. Within one business day of commencement, the Secretariat must publish notice of the commencement on its website and notify creditors of the commencement and the date, time and place of holding the first meeting of Involved Creditors.[55] Following commencement, the debtor may add other creditors to the proceeding by submitting a notice of the amended list of Involved Creditors. As with all parties, any new creditors added to the proceeding must give their consent to participate.

If the application fails to meet the requirements of Article 18 or to attach all necessary documents, the application will be returned to the applicant using LFR Form No. 4, stating the reason for the return of the application, and the procedure will not be commenced. The debtor is permitted to correct any defects and resubmit the application for consideration.

BOX 4.2 COMMENCEMENT FORMS

Additional forms used at the commencement stage include:

- Notice of Commencement of Proceeding and First Meeting (LFR Form No. 3a – if date, time and place of First Meeting is identified in the application)
- Notice of First Meeting of Involved Creditors (LFR Form No. 3b – if date, time and place of First Meeting is not known at time of application)
- Notice of Return of Application (LFR Form No. 4)
- Debtor's Notice of Amended List of Involved Creditors (LFR Form No. 6)
- Notice of Amendment to List of Involved Creditors (LFR Form No. 7)

3. Legal effects of commencement of a proceeding

There are two primary legal effects resulting from the commencement of a proceeding:

Stay of insolvency. During the LFR proceeding, no bankruptcy proceeding may be opened against the Debtor. If a bankruptcy petition has been filed against a Debtor, but not yet opened at the time the restructuring proceeding is commenced, the bankruptcy petition is to be suspended until the restructuring process is completed.[56] The commercial court must grant a stay of the bankruptcy proceeding upon receiving evidence of registration by the Secretariat of the application for restructuring. The stay on the bankruptcy proceeding continues in effect until the conclusion of the restructuring

[55] LFR 19.3.
[56] LFR 20.1.

proceeding under Article 27 of the Law,[57] and should be dismissed in the event a restructuring plan is approved, assuming the restructuring plan properly addresses the claims of any creditor that submitted the petition for the bankruptcy.[58] LFR Form No. 8 is designed for use in seeking a stay of the bankruptcy proceeding.[59]

Moratorium. A moratorium automatically imposed on commencement of the LFR proceeding prevents Involved Creditors from enforcement against the debtor's assets, and prohibits non-Involved Creditors from enforcement against unencumbered fixed assets (e.g. property, plants and equipment).[60] While Involved Creditors may not enforce their claims against the debtor's assets, they may pursue any ongoing legal proceedings to the point of obtaining a judgment, but could not enforce the judgment.[61]

The moratorium also prevents the debtor from taking actions to dispose of or transfer assets without the approval of Involved Creditors. The moratorium remains in effect for the duration of the LFR proceeding, unless terminated by decision of the Involved Creditors. The scope of the moratorium prohibits certain actions by creditors and the debtor as described in the table below.

ACTIONS BLOCKED FOR INVOLVED CREDITORS	ACTIONS BLOCKED FOR THE DEBTOR
▪ Paying claims without Involved Creditors and debtor's consent; ▪ Enforcement against debtor's assets or third party pledged assets, or alienation of assets; ▪ Entry into pledge or mortgage agreements, except for new financing; ▪ Steps to gain control over debtor's assets; ▪ Set-off of counterclaims; and ▪ Alienation, sell, enforcement against fixed unencumbered assets (also applies to non-Involved Creditors).	▪ Disposing of its assets other than in the usual course of business without approval of Involved Creditors; ▪ Taking decisions on a reorganization, including merger, acquisition, spin-off or transformation.

[57] A financial restructuring proceeding is completed when: 1) a restructuring plan is executed; 2) the independent expert report fails to confirm positive prospects for the debtor; 3) the debtor withdraws its written application within 30 days of submission; 4) Involved Creditors agree to terminate; or 5) the official period to reach agreement on a restructuring plan has expired (90 days, unless extended up to 180 days). LFR 27.1.

[58] LFR 20.2.

[59] LFR Secretariat website: www.fr.org.ua.

[60] LFR 21.

[61] LFR 21.4.

B. Course of Proceedings

The course and handling of proceedings is flexible to accommodate the needs of the parties and complexity of different cases. The entire process could be completed in less than a month, or in more complex cases may require the fully extended term of 180 days.

The Law does not define the manner of conducting the process other than establishing requirements for the first meeting of Involved Creditors (hereinafter, "**First Meeting**"), and deadlines for delivering notices and documents to allow sufficient time for parties to be properly informed. Creditors decide how the process and negotiations should be conducted, whether by a lead financial institution on behalf of other financial institutions, through a Coordination Committee, or with involvement of a Creditors' Committee.

1. First Meeting of Creditors

Time and place of First Meeting. The First Meeting of Involved Creditors must take place between 7-10 working days after the commencement of the LFR proceeding.[62] The date, time and place of the meeting is determined by the debtor and Involved Creditors and, if known at the time of the application, details should be included in the application so that the Secretariat can provide notice of such details within the notice of commencement.[63]

If details are not agreed in advance, the Secretariat will follow-up immediately after commencement to determine the date, time and place so that it can give notice to creditors entitled to attend the meeting.[64] Typically, the meeting will take place at the premises of one of the Involved Creditors, although the Secretariat can also schedule a conference room for the meeting on its own premises at NABU or at a different location, as requested by the parties.

Decisions to be made at first meeting. A number of important matters must be addressed by Involved Creditors at the First Meeting for the proceeding to progress efficiently. If more than one legal entity in the corporate group is

[62] LFR 19.1, para. 4.

[63] LFR Form No. 3a. Pursuant to LFR 19.3, notice is given to the debtor, Involved Creditors, debtor's related parties that are involved, secured creditors (non-involved), and a Creditors' Committee representative and investors, if any. The model form includes a list of parties to receive notice pursuant to the Law.

[64] LFR Form No. 3b. Notice is given to the same group as notice of commencement in LFR Form 3a.

involved in the restructuring, the Involved Creditors may also decide on a joint administration of the proceedings. Box 4.3 below contains a non-exhaustive list of items for discussion and decision at the First Meeting of Involved Creditors.

BOX 4.3 DECISIONS AT FIRST MEETING OF INVOLVED CREDITORS

Key Decisions to be made by the Involved Creditors, include:

(1) Termination or extension of the moratorium
(2) Appointment of Independent Expert and other specialists
(3) Approval of Joint LFR proceedings with multiple related debtors
(4) Formation of a Coordination Committee
(5) Formation of a Creditors' Committee
(6) Entry into a standstill agreement
(7) Process and timeline of negotiations with the Debtor (LFR Form No. 9)
(8) Quality and sufficiency of Debtor's business information
(9) Financing of the Debtor's operations
(10) Participation of other stakeholders or investors
(11) Resolution of any pending disputes

Decision-making and votes. Decisions on items referenced in points 1) to 7) of Article 23.1 of the Law require a two-thirds majority vote determined according to the procedure described in Article 5 of the Law.[65] Article 5 computes claims based on a *pro rata* share of a creditor's claims relative to the total monetary obligations of the Involved Creditors, excluding claims of the debtor's related parties and those of the enforcement authority when such claims amount to less than one-third of the total amount of Involved Creditor claims.[66] The claim amount is measured by including only principal and interest, and excludes amounts attributable to fines, penalties, sanctions and other specified amounts. Claims in a foreign currency must be converted to Hryvna applying the official exchange rate on the date of submission of the Debtor's application to the Secretariat.[67]

[65] LFR 23.2.

[66] LFR 5.2. The enforcement authority is a silent participant with no voting rights if the claim is less than one third of Debtor's monetary obligations to the Involved Creditors, excluding related Parties (LFR 5.4), but becomes a voting participant where its claims exceed one third of the total Involved Creditor claims (LFR 5.5).

[67] LFR 5.2.

Decisions are to be made in writing and signed by authorized representatives of the parties that participated in the vote.[68] Box 4.4 contains some additional qualifications and rules pertaining to voting decisions.

BOX 4.4 ADDITIONAL RULES ON VOTING DECISIONS

(1) Only Financial Institutions that are Involved Creditors vote on joint administration of debtor proceedings and on the Coordination Committee;
(2) Only non-financial institution creditors vote on formation of the Creditors' Committee;
(3) Involved Creditors vote on all other matters, subject to the rule on exclusion of debtor's related parties and the enforcement authority holding a claim of less than one-third of the total amount of Involved Creditor claims;[69]
(4) The restructuring plan is approved if all Involved Creditors vote in favor of it, but will be submitted to arbitration if Involved Creditors holding more than two-thirds of claims of Involved Creditors vote in favor of it;[70]
(5) Decisions to extend the LFR proceeding beyond the initial 90-day period require a two-thirds vote of Involved Creditors, excluding related parties;
(6) Decisions to terminate the proceedings can be made by initiating creditors holding more than 50% of the amount of the Involved Creditor claims.[71]

Debtor's disclosure obligations. The Law obligates the debtor to provide Involved Creditors with required business disclosures and information at least seven (7) days prior to the First Meeting.[72] As a practical matter, the required information will need to be sent to the Involved Creditors almost immediately after the LFR proceeding is commenced so that they receive it timely. In most cases, the First Meeting likely will be set on the 10th day after commencement to ensure that the debtor's business information is timely received. The timeframe could be shortened to seven days if the information was distributed with the application or provided at the time of the notice of commencement of the LFR proceeding.

[68] LFR 23.2, part 3. The authorized signature of the Debtor is only needed on decisions in which the Debtor participates. The written decision memorializes decisions so that the Secretariat can maintain a proper record.
[69] LFR 23.2.
[70] LFR 25.4.
[71] LFR 27.1 point 4. A lower threshold is needed to terminate the proceeding because the proceeding requires participation of Financial Institutions holding more than 50% of Financial Institution debt, which means the Debtor would no longer meet the conditions for commencement of a proceeding.
[72] LFR 19.2.

This preliminary business disclosure is necessary for the case to proceed swiftly, and enables Involved Creditors to make initial assessments about the following:

- whether additional creditors are indispensable to the restructuring and should be invited to participate;
- the overall level of assets and liabilities of the debtor and for restructuring;
- availability and conditions of collateral and potential unencumbered assets that can be used or sold to raise new financing for the business;
- the debtor's expectations about its short term (one year) forecasts for business revenue and performance indicators; and
- status of pending legal proceedings that could pose problems for an eventual restructuring.

Providing such information also demonstrates the debtor's good faith and willingness to cooperate with Involved Creditors. The debtor must compile the data before the start of proceeding. Box. 4.5 contains a list of disclosures required by LFR Form No. 5.

BOX 4.5 INFORMATION ON DEBTOR'S CURRENT BUSINESS STATUS

Pursuant to LFR Art. 19.2, the Debtor must provide the following data and information to Involved Creditors prior to their First Meeting, as set out in LFR Form No. 5:

A – Rationale and justification for restructuring of the Debtor's liabilities;
B – Creditors' claims, including the claims of (i) Financial Institutions; (ii) Debtor's Related Parties; (iii) Creditors that are related to the Debtor (if any); (iv) Secured Creditors (including a description of collateral and type of collateral); and (v) other creditors;
C – Past due indebtedness under valid contracts, rights to accelerate obligations under such contracts, and violations of any security;
D – Availability and condition of security of the Debtor and any property sureties;
E – Debtor's expectations regarding key operating and financial indicators over the next 12 months following from the date hereof; and
F – Pending court, administrative, enforcement, execution and foreclosure proceedings against the Debtor.

2. Additional meetings of creditors and record of decisions

Additional meetings. After the First Meeting of Creditors, either the debtor or Involved Creditors may call additional meetings of the Involved Creditors

upon five days' notice, by filing a notice with the Secretariat indicating the date, time and place of the meeting.[73] The meeting of creditors to vote on the restructuring plan requires at least ten (10) days' notice prior to the meeting, which is sent by the Secretariat together with a copy of the restructuring plan.[74]

Recording decisions. Decisions taken at the First Meeting and subsequent meetings should be memorialized in written minutes, signed by the authorized representatives of the debtor and the Involved Creditors that participated in voting. A copy of the decision(s) (or minutes) must be delivered to the Secretariat and placed into the debtor's LFR proceeding file.[75]

3. Establishing a process timeline

The initial restructuring period is 90 days and can be extended for up to an additional 90 days, but may not exceed 180 days in total. If an extension of the initial period is required, parties should take a decision and inform the Secretariat before the expiration of the initial 90-day period.

The initial period of 90 days should be sufficient in less complex cases to allow for due diligence of the business, negotiations and voting on the plan. Keep in mind that the independent expert is only approved at the First Meeting on day 10 of the proceeding, and may require up to 45 days to conduct due diligence and prepare the IBR report. This leaves only 25 days for a plan to be prepared and distributed for review by Involved Creditors, if they wait for the IBR report. If the plan is not prepared, the independent expert will need to conduct a further review of the plan on completion to make a viability determination.

Given the relatively short timeframe, parties should start negotiations before completing the business due diligence and receiving the expert's IBR report. Parties may even commence preliminary discussions before applying to the LFR proceeding. Typically, they meet on multiple occasions to discuss or negotiate challenging issues and can expect multiple drafts of a proposed plan to be distributed and discussed before the final plan is prepared and voted. To assist in managing the process, LFR Form No. 9 (Process Schedule) can assist parties to identify key issues, stages and deadlines to carefully track the progress of the proceeding.[76]

[73] LFR 23.3.
[74] Ibid.
[75] LFR 23.2.
[76] LFR Form No. 9 is attached as Annex 4.

C. Independent business review

1. Debtor's Disclosure Obligations

Creditors require accurate, current and reliable data and information on a debtor's business to properly evaluate and make informed decisions about the reasonableness and likely success of financial restructuring proposals. In many cases, a debtor's business operations and basic business model for sustained growth and performance need to be reviewed to ensure that the business can generate a profit to repay the debts. To support informed decision-making, the Law requires debtors to disclose relevant information on the business, as identified in the following box.

BOX 4.6 DEBTOR'S DISCLOSURE OBLIGATIONS

(1) timely access to data and information;
(2) financial statements for the past 3 years complying with IFRS or national accounting regulations;
(3) full cooperation to any Creditors' Committees and the Independent Expert for timely evaluation of business data and to ensure "viability" of the Debtor's business;
(4) relevant information to evaluate competitive business value; and
(5) any further disclosures required by the Law.[77]

2. Independent Experts and Business Review

Independent Experts. The Law also requires the appointment of an independent expert to review the Debtor's financial and business activities, conditions of collateral, forecasts of operations and financial indicators.[78] The independent expert, selected and engaged by Involved Creditors at the First Meeting of creditors, must meet qualification requirements adopted by the Supervisory Board.[79]

Selection of the Independent Expert may be done on a competitive basis if a lender or borrower choose to submit a list of potential candidates. Upon

[77] LFR 10.

[78] LFR 11.1.

[79] Supervisory Board Decision of 20 December 2016 approving the "Qualification Requirements to Independent Experts" (Minutes No. 6). While the Law indicates that the Independent Expert is selected or engaged at the First Meeting of Creditors, the possibility exists agree on an independent expert prior to the commencement of proceedings to commence work on the business review or to support parties in connection with restructuring negotiations, subject to post-commencement engagement, provided selection criteria are satisfied.

selection, the Involved Creditors and the Debtor must agree on the scope of the review, timeline and other details of the expert's services, which should be paid by the Debtor, unless otherwise agreed.[80] For example, if the Debtor or Involved Creditors request services not ordinarily required by the Law, such as financial modeling, the parties should agree on how the additional services shall be covered.

BOX 4.7 QUALIFICATION REQUIREMENTS FOR INDEPENDENT EXPERTS

Independent Experts must meet the following criteria:

(1) an individual, individual entrepreneur or a legal entity, which is not connected with a borrower and/or a lender;[81]
(2) possess such knowledge and degree, professional skills, duty-specific competence and expertise as required to properly act as the Independent Expert, specifically to have a college/university degree, at least 5-year expertise for the most recent period in corporate accounting, audit, corporate finances, corporate economics, management, law, as engineer, banking, credit analysis, credit risk management, non-performing loan restructuring;
(3) be fluent in the national language;
(4) have impeccable business reputation, including audit, consulting services, legal expertise;
(5) be impartial and independent-minded; and
(6) have no connections or conflicts of interest with the borrower and his lenders.

An individual or individual entrepreneur should "possess a scientific degree, certificate of a licensed appraiser, certificate authorizing to audit corporate operations" and "fluency in English" is an advantage.

For legal entities, requirements include:

(1) having the following capabilities within the firm: law, audit, consulting, business-modeling;
(2) having at least 5 qualified specialists in finances, tax, corporate economics, banking, credit analysis, credit risk management, non-performing loan restructuring, law, who comply with the qualification requirements established for the individuals as Independent Experts;
(3) providing details of an individual expert or a group of individual experts who will be actually engaged in audit of financial and economic operations of the borrower;
(4) possessing an impeccable business reputation;
(5) not being connected or having a conflict of interest with the borrower and his lenders.

[80] LFR 11.2.
[81] LFR 1.18.

IBR Report and Guidelines. The IBR report must follow specific requirements and guidelines ("IBR Guidelines") adopted by the Supervisory Board.[82] The IBR Guidelines include seven primary areas in which the independent expert must examine relevant data and information on the business, with the level of review tailored to the specific needs and complexity of each case, as follows:[83]

BOX 4.8 BUSINESS AREAS EXAMINED IN THE IBR REPORT

(1) overview of the business and management;
(2) analysis of historical and current financial reporting for the last 3 years;
(3) market analysis;
(4) operational and financial projections of the Debtor/Debtor Group;
(5) legal assessment;
(6) collateral review; and
(7) conclusions and recommendations.

3. Restructuring plan review and viability assessment

As part of the overall IBR, the independent expert must also review the restructuring plan and determine whether the debtor reasonably can be expected to sustainably repay its debts under the plan and whether the business will be restored to profitability. The expert report should contain an opinion on the prospects of economic activity of the debtor, the key risks and conditions for such prospects, conclusions regarding the likelihood of a positive impact of the restructuring plan to restore the business of the Debtor (or Debtor Group) to viability if implemented, and recommendations based on the work and goals of the activity. In some cases, recommendations may lead to changes in the restructuring plan based on existing assumptions, while in other instances incorrect or unrealistic assumptions about market conditions or the debtor's prospects based on historical performance may require that assumptions and plan repayment terms be adjusted to ensure that the plan is sustainable.

A plan cannot be approved if the independent expert does not find that there will be "positive prospects" for the business under the plan.[84] Lack of a

[82] Supervisory Board Decision of 24 January 2017 approving the "Requirements and Recommendations of the Report on the Review of Financial and Commercial Activity of the Debtor" (Minutes No. 11).
[83] The IBR Guidelines are attached as Annex 5.
[84] The term "positive prospects" test is vague and arguably a weaker standard than "viability". However, the IBR Guidelines impose a more rigorous independent review consistent with a proper viability assessment.

viability determination is a ground to terminate the procedure. Thus, even if the plan has 100% approval from Involved Creditors, it could potentially fail and the LFR proceeding would be terminated because the plan fails to restore the debtor's business. This outcome supports the Law's objectives to help recovery of viable businesses.

4. Exchange of information and confidentiality

Exchange of information. The Law expressly authorizes the Debtor and Involved Creditors to exchange information relating to claims and the security of such claims for creditors.[85] This potentially protects parties against restrictions in other applicable law that may preclude the sharing of such information. Involved Creditors that are Financial Institutions may share restricted information (including bank secrecy) to Involved Creditors and the Arbitration Committee, as necessary.[86]

Confidentiality. All parties and institutional bodies (e.g., Secretariat, Arbitration Committee and arbitrators) involved in the LFR procedure are "obligated" to maintain confidentiality of any data, information, documents and reports designated as confidential.[87] Confidentiality obligations are imposed on parties under the Law, Arbitration Rules, procedures engaging arbitrators, and the operational plan between NABU and the Secretariat, which prohibit NABU staff from accessing Secretariat premises and documentation.

D. Plan negotiations and approval

1. Negotiations and Preparing the Restructuring Plan

The Law does not impose requirements on parties for negotiations, but rather provides mechanisms to simplify the process (e.g., by means of Coordination and Creditors' Committees) and to efficiently resolve disputes (e.g., by arbitration).

The debtor or Involved Creditors can call meetings on five days' notice to the Secretariat, to address any matters pertaining to the LFR proceeding or for negotiations.[88] Although not stated in the Law, parties should be able to carry over a meeting to the following day or a date of mutual convenience when the particular subject matter has not been fully addressed or resolved, without having to notify the Secretariat or trigger an additional 5-day notice period.

[85] LFR 12.1.
[86] LFR 12.2.
[87] LFR 12.3.
[88] LFR 23.3.

Parties should be duly informed about a continuation of any meeting. The purpose of the notice is to give a fair opportunity to participate to all parties so entitled.

The debtor should discuss a restructuring plan concept with Involved Creditors at the earliest opportunity, including as early as the First Meeting. Involved Creditors may prefer to engage an independent expert and other advisors before such meeting to discuss a plan concept, so that the advisors can also participate in discussions on the plan concept. Involved Creditors also may have ideas about a plan concept which can be discussed among themselves before presentation to the debtor. Once negotiations have begun, the main drivers for reaching a consensus will be determined by access to data and information on the business, the debtor's realistic prospects, and any limits, restrictions or constraints of particular creditors.

2. Restructuring Plan criteria

Mandatory criteria. The debtor is responsible to prepare the restructuring plan in cooperation with the Involved Creditors.[89] The Law establishes a flexible framework that enables parties to agree on a plan to accomplish any repayment structure desired by the parties, provided the plan is feasible and restores viability of the debtor. Every plan must contain basic information to ensure that parties are properly informed about the terms, conditions and risks of repayment, as described below.

BOX 4.9 MANDATORY CRITERIA FOR RESTRUCTURING PLANS

(1) amounts and terms for repayment by the Debtor of the claims of Involved Creditors;
(2) amounts and terms for repayment by the Debtor of the claims of Related Parties of the Debtor (if any);
(3) amounts and terms of repayment by the Debtor of its liabilities for taxes, duties and other mandatory payments that shall be made according to the conditions set forth in Article 28 of this Law (if any);
(4) conditions of participation of investors in the Restructuring Plan (if any);
(5) conditions of opening a bank account by the Debtor where proceeds of the sale of the Debtor's assets are to be transferred exclusively for the repayment of debts to the Involved Creditors;
(6) information on the conditions for repayment by the Debtor of its liabilities to other Creditors, which do not participate in the Financial Restructuring

[89] LFR 25.1.

Proceeding;
(7) conditions for the Debtor to obtain financing, if required;
(8) restructuring procedure, including list of contracts to be signed and/or amended as part of the restructuring, and the applicable timeframe for signing of such contracts;
(9) procedure of control over implementation of the Restructuring Plan;
(10) conditions and consequences of termination of the Restructuring Plan; and
(11) other conditions.

Optional provisions. The Law also outlines non-exhaustive optional measures that parties may adopt and incorporate into the plan, as enumerated in the box below. Measures adopted will vary from case to case depending on the circumstances of the debtor's business.

BOX 4.10 OPTIONAL MEASURES FOR RESTRUCTURING PLANS

(1) repayment in installments, amendment of maturity periods, currency of the obligations, interest rates, including their setting at a level below the cost of the funds raised and full stopping of the interest accrual, or other conditions associated with a loan or with securities securing a loan;
(2) modification of other concluded agreements, of the conditions of debt liabilities or changing their form;
(3) providing new funding to the Debtor with the Creditor's obligation to provide the new funding solely with the consent of such Creditor;
(4) disposal of the Debtor's/Pledger's/Mortgager's assets with or without continuation of mortgage, pledge or other security interests on such property. The proceeds from the alienation of the pledged/mortgaged assets shall be used to satisfy the claims of the Pledgee/Mortgagee of such assets within the claims secured by such mortgage;
(5) transfer of ownership of the Debtor's property to the Creditor in full or partial satisfaction of claims; in the case of partial satisfaction of the Creditor's claims with pledged property, the right of further claim continues to exist. The transfer of ownership of the Debtor's property to the Creditor for full or partial satisfaction of claims shall be possible only with the consent of such Creditor;
(6) disposal of the Debtor's assets that have not been pledged or mortgaged;
(7) partial debt forgiveness;
(8) termination or amendment of contracts;
(9) enforcement against the collateral, modification of mortgage and pledge agreement or waiver of security interests;
(10) provision of additional collateral by the Debtor or third parties, including guarantees and sureties;

(11) conversion of debt to equity;
(12) obtaining new investment in the capital of the Debtor;
(13) settlement of claims;
(14) issuance of securities;
(15) reorganization (merger, acquisition, division, spin-off, transformation) of the Debtor;
(16) changes of members of the management and control bodies of the Debtor to persons identified by the Involved Creditors which are Financial Institutions;
(17) changes to corporate governance of the Debtor; and
(18) any other measures relating to the financial restructuring.

Where the plan envisages a corporate reorganization of the legal entity (e.g., merger, acquisition, division, spin-off, or transformation), Involved Creditors may not demand from the debtor early performance of the obligations or securing of obligations. Details regarding the corporate reorganization and repayment terms in such contexts should be clearly explained in the plan.

The Law also permits the debtor to divide Involved Creditors into classes of creditors for repayment and voting purposes, which may be more important in larger cases with numerous creditors holding different types of claims. Classes should contain creditors holding the same types of claims (e.g., unsecured trade claims or secured mortgage claims) where the proposed treatment for repayment of the claims will be class-specific. In so doing, the conditions to repay claims of related parties to the debtor cannot be better than those for repayment of Involved Creditors.[90] Most restructuring plans will involve fewer Involved Creditors due to the consensual nature of the LFR process. Broader solutions may be required to bind non-Involved Creditors, as described in Section V.E.3, below.[91]

3. Meeting to vote on Restructuring Plan

When the plan is finalized, it is submitted to the Secretariat with a sufficient number of copies for all Involved Creditors, and the Secretariat distributes the plan together with a notice of meeting for creditors to vote on the plan, along with any other documents that form part of the restructuring plan package.[92] The restructuring plan and notice must be distributed at least ten (10) days prior

[90] LFR 25.3.
[91] For example, parties may incorporate the restructuring plan into a pre-packaged rehabilitation plan pursuant to under Article 6 of the Bankruptcy Law, once the proposed amendments are adopted.
[92] LFR 23.3 subparagraph 2.

to the scheduled meeting to vote on the plan. Some model forms may be used in connection with the meeting to vote on the plan, as indicated below.

BOX 4.11 FORMS USED FOR VOTING ON THE RESTRUCTURING PLAN

LFR Form 11b – Notice of Meeting on Restructuring Plan (date, time, place)
LFR Form 11c – Attendance Roster - Persons Voting on Debtor's Restructuring Plan
LFR Form 11d – Voting Notice (by Assembly or by Mail)
LFR Form 11e – Voting Proxy (in case the creditor is represented by another person)
LFR Form 11f – Voting Ballot
LFR Form 11g – Notice of Approval and Signing of the Restructuring Plan

Model forms are designed to simplify and standardize voting procedures. The Secretariat will prepare and send the notice of the meeting (Form No. 11b), together with other forms that may be requested by the debtor. Alternatively, Involved Creditors may wish to adapt the appropriate forms from the Secretariat website. Where there are only a small number of Involved Creditors, the forms may be unnecessary, although some may still add value (e.g., Attendance Roster, Voting Ballot, and Notice of Approval and Signing of the Restructuring Plan).

The restructuring plan (including any disclosure document containing relevant information on the business) and the IBR report should be distributed to the Involved Creditors at least 10 days prior to a vote on the plan. At the meeting, Involved Creditors discuss any open issues prior to voting on the plan. If the plan and treatment of claims of creditors is clear, the Involved Creditors may then proceed to vote on the plan.

4. Approval of the Restructuring Plan

The restructuring plan is approved either by *full consensus* (all Involved Creditors approve it) or by *arbitral award*. The Debtor's related parties that are Involved Creditors and enforcement bodies (holding less than one-third of the total amount of claims) are not allowed to participate in the voting for approval of the restructuring plan, and their claims shall not be included when counting the total number of votes and total amount of Involved Creditors' claims. Upon approval, the Involved Creditors must submit notice of the approval to the Secretariat.[93] The plan is considered effective upon signing by the Debtor and the Creditors that voted for it. Because the plan is considered effective upon signing, parties should ensure that it properly addresses the requirements for

[93] LFR 25.4, and LFR Form No. 11g.

documenting amendments or new contractual agreements and securities between the parties, including what happens if the parties fail to reach agreement on key provisions of such documents.

If the plan is approved by Involved Creditors holding *less than 100% but at least two-thirds in amount of total involved claims*, then the decision on whether to approve the plan will be submitted to the Arbitration Committee for final decision by an arbitrator in accordance with the procedure outlined in Article 16 of the Law and the Arbitration Rules (described in Section VII.A. below). In such cases, the plan is deemed approved by all Involved Creditors upon rendering of an arbitral award approving the restructuring plan. The following box contains some examples of voting outcomes based on a slight change in the variables pertaining to claim amounts of different Involved Creditors.

BOX 4.12 PLAN VOTING EXAMPLES

Example 1:

(1) 3 Involved Creditors (FIs) – claims of 300 million (each having 100 million)
(2) Enforcement authority – claims of 100 million (ineligible to vote as claims are less than 1/3rd)
(3) Debtor's Related Parties – claims of 400 million (ineligible to vote as a related party)

If the 3 Involved Creditors vote to approve the plan, it is deemed approved by 100% (fully consensual). If 2 of the 3 approve the plan, it is submitted to arbitration for final decision. If only 1 approves the plan, it fails.

Example 2:

(1) 2 Involved Creditors – claims of 300 million (each having 150 million).
(2) Enforcement Authority claim is 150 million (eligible to vote as claim is 1/3rd or more).

If the 2 Involved Creditors vote to approve the plan, and Enforcement Authority opposes the plan, it is submitted to arbitration for approval.[94]

[94] In example 2, the decision only goes to arbitration if the Enforcement Authority claim is exactly 1/3rd of total claims. If it is more than 1/3rd, then the plan fails as it requires 2/3rd approval for arbitration. In such cases, however, the Enforcement Authority would also have to consent to participate in the LFR proceeding under LFR Art. 5.5 and could potentially block the plan if it voted to reject it, since the plan can only be submitted to arbitration with approval of creditors holding more than 2/3rd in amount of the claims.

BOX 4.13 ADDITIONAL CONSIDERATIONS FOR VOTING AND PLAN EFFECTS

The Law contains the following additional rules that may impact voting and the effect of the plan:

(1) Involved Creditors under separate inter-creditor agreements – where a majority decision under such agreements controls decisions to approve restructuring plans – are given effect under the Law.
(2) The plan is binding on all Involved Creditors, including those that voted against it.
(3) Involved Creditors voting against the plan cannot be treated worse than those that approved the plan.
(4) Plan approval cannot create grounds for a default under any agreement between the debtor and any Creditor not involved in the LFR proceeding.

The Law also provides special protections for Involved Creditors that voted against the plan, but that may be bound to accept the plan under the FRFA, an inter-creditor agreement or by arbitral award. In such cases, a creditor ***cannot be bound*** to the following treatment under the plan ***unless it expressly consents***:

(1) provision of new financing to the debtor;
(2) forgiveness of partial debt secured by collateral or a mortgage;
(3) full suspension of accrual of interest;
(4) use of proceeds from a creditors collateral to satisfy another creditor's claims, except where the proceeds of the collateral exceed the non-approving creditor's claims; or
(5) acceptance of an interest in the debtor's property (including equity interests) in exchange for full or partial debt forgiveness.

E. Claims Considerations

1. Special claim issues and considerations

Financial Institutions access thresholds. To access the LFR procedure, the debtor must obtain consent to participate in the proceeding from financial institutions holding at least fifty percent (50%) of the total amount of claims of financial institutions.[95] Total amount of claims is determined as of the filing date and includes outstanding principal and interest, as well as "penalty (fines, late payment penalties) and other property or financial sanctions".[96] Notably, the formula for calculating a creditors claim is different than the formula used for

[95] LFR 18.4.
[96] LFR 1.6.

voting, which includes only principal and interest.[97] In most cases, it will be clear that the debtor meets the access requirements as it will either have only one financial institution as a creditor or one financial institution will typically have a larger claim.

Transfer of claims during the restructuring period. The Law recognizes that creditors may assign or transfer their claims during the LFR proceeding.[98] If this occurs, the party acquiring the claim (the new creditor) is subrogated to the same legal position of the previous creditor, succeeding to all legal rights and restrictions of the claim at the time of transfer. As a result, actions taken by the previous creditor during the LFR proceeding are fully binding on the new creditor, including obligations or commitments under inter-creditor agreements, financing, and arbitral awards. Thus, if the new creditor decided to terminate its participation in some aspect of the process, this could give rise to a breach of agreement for which the consequences would need to be determined under law.[99]

Secured claims - mortgages and pledges. The rights of a secured creditor in its collateral are fully protected during the LFR proceeding and cannot be modified, altered or removed without the secured creditor's consent. Even if other secured creditors holding a majority position choose to alter or restrict their own collateral rights, they cannot impose the same outcome on another secured creditor. Article 26 of the Law makes clear that the effect of approving the plan will not constitute a *novation* or result in termination of mortgage, pledge or encumbrance agreements without agreement of the parties.[100] If the restructuring plan clearly provides for a modification of the mortgage, pledge or encumbrance, the secured creditor and the debtor are required to amend the relevant agreements and take steps to register the new documents in the appropriate registry within ten (10) business days of executing the restructuring plan.[101] Where there are potentially numerous documents, parties should anticipate this in their planning in regard to the execution of the plan.[102]

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[97] LFR 5.2.

[98] LFR 24.1.

[99] The one exception to this may be obligations arising under the FRFA. If the new creditor is not a party to the FRFA, it would not have the same obligations merely because the previous creditor (a State Bank or DGF) had obligations under the FRFA.

[100] LFR 26.1.

[101] LFR 26.2.

[102] Execution of the plan occurs when the plan is signed together with any underlying agreements required to be executed, amended or issued by the plan. This could be

A novation occurs where the former debt is replaced by a new debt, such as through a refinancing or a debt-to-debt exchange. If the previous debt was secured, and the same collateral is provided as security for the new debt, the security interests are deemed to be created at the time of the new debt. This could have the unintended consequence of altering a first-priority security interest and rendering it subordinate to the interests of any other secured creditors holding a mortgage or pledge on the same property. To avoid this outcome, the Law states that "*agreements on security, including mortgages or pledges of the Debtor's assets, shall remain valid and shall not change the priority of encumbrances, unless the Restructuring Plan provides otherwise, subject to the consent of the Secured Creditor holding such security*."[103]

Related Party claims. Related party creditors are allowed to participate in the restructuring and may be necessary parties. They too should provide a consent to participate in the LFR proceeding. If a related party holds collateral, it will be entitled to the same protections as other secured creditors with respect to its collateral. To avoid the prospect of insider control and manipulation of the restructuring process, however, related parties are not permitted to vote in matters of key decisions or on the restructuring plan. This means that claims of such parties can be bound to the terms of the restructuring plan without consent, subject to the rules on binding non-consenting creditors to affirmative actions under the plan (see above).[104] In most cases, this should not be a problem, as related parties can choose not to participate, or there may be an alignment of interests for the debtor and the debtor's related parties under the plan. Alternatively, if the Involved Creditors consider related parties essential to the process and such parties choose not to participate, the Involved Creditors may vote to terminate the proceeding.

Impact of moratorium on enforcement actions. The moratorium restricts enforcement actions by Involved Creditors, and related parties with respect to enforcement and execution against the debtor's assets and non-Involved Creditors with respect to unencumbered fixed assets. Involved Creditors can level the playing field vis-à-vis non-Involved Creditors by voting to terminate the moratorium and replace it with a standstill agreement that is more agreeable. The moratorium is limited in duration and scope, allowing Involved Creditors to continue any legal actions to the point of judgment, while preventing enforcement, so that valuable time for creditors in pursuing their legal rights is

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accomplished on a single closing date, however, in more complex cases, parties should be mindful of the 10-business day deadline, which is relatively short.

[103] LFR 26.1 sub-para. one.

[104] LFR 25.4.

not lost during the negotiations on the plan. The primary risk to the restructuring under a moratorium is that non-Involved Creditors that are secured retain their full rights to execute and foreclose on their collateral.

2. Claim disputes and arbitration

Arbitration of claim disputes. A wide range of claim disputes can exist or arise in the context of restructuring. Ordinarily these claims would be resolved by the parties consensually, or one party will petition for a decision by the commercial court, or the dispute may be submitted to arbitration where the parties have included an arbitration clause in their agreement. In a bankruptcy proceeding, claims disputes are resolved by the trustee or by the court pursuant to claim resolution procedures. Most court procedures are time consuming and costly. To improve the prospects for restructuring, where parties are unable to reach agreement on their claims, the Law provides for arbitration. The arbitral award under the LFR proceeding should have equal force and effect as any other arbitral award rendered pursuant to the Arbitration Law or other applicable Ukrainian law.

Arbitration of plan approval. The other type of dispute relates to the special situation where the plan has been approved by Involved Creditors holding at least two-thirds of the voting claims, in which case the decision on approval of the plan is submitted to arbitration. These kinds of disputes are distinctly different from typical commercial law disputes, and require that the arbitrator have special skills and knowledge of the restructuring plan process to decide whether the restructuring plan is: (i) in the best interests of the parties; (ii) fair and equitable for all creditors with respect to the treatment of claims; and (iii) consistent with requirements of the Law and not otherwise contrary to the laws of Ukraine. The process is described in more detail in Section VII below.

3. Dealing with holdout creditors

The Law addresses the procedure for consenting parties. With few exceptions (e.g., the stay of actions by non-Involved Creditors to execute on unencumbered assets, and the role and involvement of related parties), the Law does not address claims of non-Involved Creditors. While the claims of some non-Involved Creditors may be similar those of Involved Creditors, there is no way to force these so-called “holdout creditors” to participate in a LFR proceeding. Perhaps they want to avoid being forced to accept the same treatment as other creditors, or there may be institutional constraints on their ability to accept a proposed treatment of their claims.

The Law does not prevent the debtor and Involved Creditors from engaging holdout creditors in separate discussions about treatment of their claims,

provided Involved Creditors are properly informed and aware of discussions with holdouts. Involved parties have several options. Either they can work on parallel negotiations to achieve a separate acceptable bilateral agreement with the holdout(s), or they can work around the holdout(s) to achieve a viable outcome and agree on a strategy to treat the holdout claims. A third solution would be to explore options for a broader majority approved restructuring plan that has the ability to bind the holdout creditors.[105] Note that non-Involved Creditors under bilateral agreements may not benefit from the special protections afforded under the Law, since they are not technically a party to the procedure.

F. Concluding the procedure

1. Process conclusion or termination

A LFR proceeding can either be terminated without restructuring or concluded upon approval and execution of the restructuring plan. On termination, all parties are free to pursue all legal actions. If a bankruptcy proceeding was suspended, the commercial court must be notified of the termination of the LFR proceeding, so that the decision on bankruptcy petition can proceed. Decisions and actions taken during the proceeding prior to termination (e.g., new financing) are not nullified.

Where the plan is approved, the parties proceed to execution of the plan and conclude the LFR proceeding. Following execution, the rights of the parties are governed by terms of the restructuring plan. Specific events for conclusion or termination are identified in the following box.

[105] Recently proposed amendments to Article 6 of the Bankruptcy Law, if adopted, may provide a suitable alternative for a broader rehabilitation that binds minority and holdout creditors.

BOX 4.14 GROUNDS FOR CONCLUSION AND TERMINATION

Grounds for conclusion

Execution of the Restructuring Plan and notice to the Secretariat of the plan's execution and conclusion of the procedure.

Grounds for Termination

(1) Withdrawal of Debtor's application within 30 calendar days (in which case, the Debtor could reapply to the LFR proceeding at any time);
(2) Written statement submitted to the Secretariat by Initiating Creditors holding more than 50% of claims (excluding Related Parties) seeking to terminate the proceeding;
(3) Expiration of the period for restructuring under part 3 of Article 23 without approving a plan (90 days or any extended period up to 180 days);
(4) The Independent Expert report does not confirm positive business prospects (i.e., viability) of the business, in which case the Restructuring Plan cannot be approved even if all Involved Creditors vote to approve the plan;[106]
(5) Bad faith conduct during the proceeding, and violations of prohibitions in law (moratorium), Standstill Agreement, or non-fulfillment of arbitral decisions.[107]

2. Notices of termination

Within one business day of the occurrence of an event of conclusion or termination, the debtor must notify the Secretariat of the event, so that the Secretariat can take appropriate steps to give notice of the conclusion or termination of the proceeding. If the debtor fails to timely notify the Secretariat, any Involved Creditor can notify the Secretariat, which must register the notification or written statement within one business day and publish it on the Secretariat website.[108] Notice will typically be given to the Secretariat using LFR Form No. 12.

A flow chart depicting the LFR process is contained in Chart 2 below.

[106] This option raises an interesting question as to whether the plan approval can be submitted to arbitration with a challenge of the independent expert report on its viability conclusions.
[107] LFR 27.1, and 27.3.
[108] LFR 27.2

Chart 2 – LFR Process Flow Chart

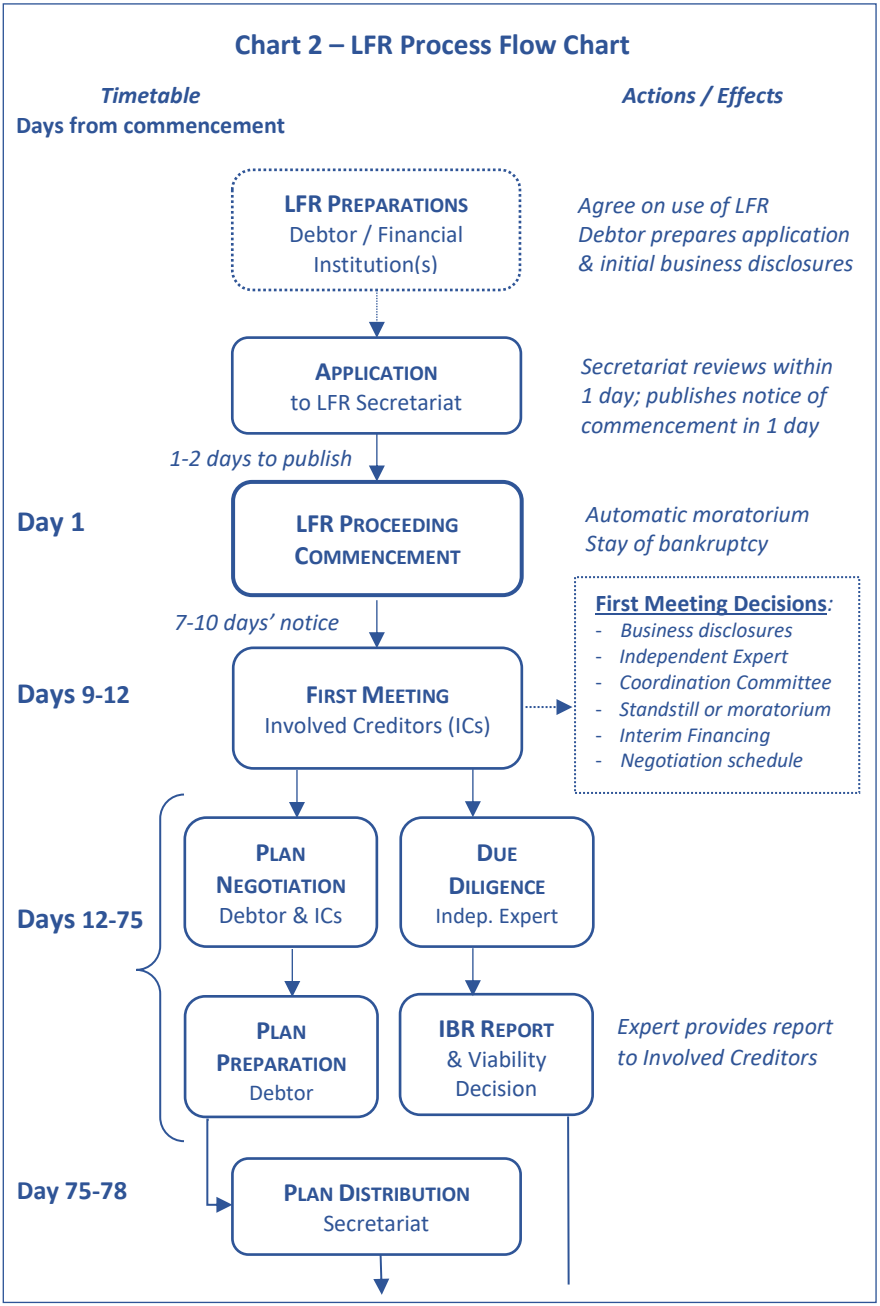
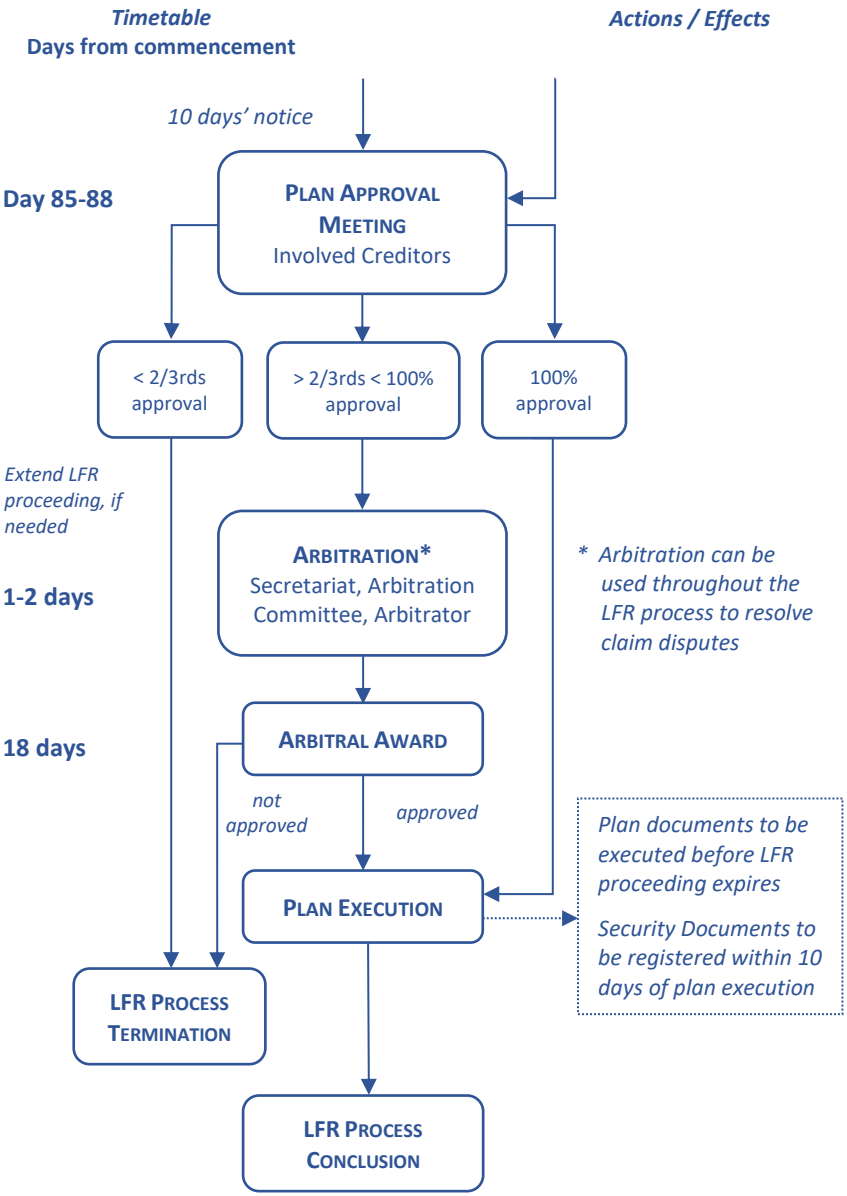


Chart 2 – LFR Process Flow Chart (*cont'd*)



V. RESTRUCTURING TOOLS

A. Standstill agreements

The Law permits Involved Creditors the option of maintaining the moratorium under Article 21 or entering into a standstill agreement under Article 22.[109] A standstill is a contractual agreement between parties to suspend or refrain from taking further legal, enforcement or other actions that threaten the business. By permitting and recognizing standstill agreements, the Law ensures that a contractual forbearance agreed to between parties in a LFR proceeding will be enforceable under the Law, whereas under current practice, there such provisions have been held to be unenforceable.

Standstills are designed to maintain the *status quo* for a brief period of time (usually 30-45 days, extendable) to gather and analyze business information and make a preliminary assessment about the debtor's viability and restructuring prospects. While this is usually needed in a purely informal restructuring context, the Law anticipates the need for such information and decision-making and requires that the debtor to provide this immediately after commencement of the proceeding for review at the First Meeting of Involved Creditors. Based on information received, the creditors can then determine how they wish to proceed, whether to continue negotiating under the moratorium, to terminate the moratorium in favor of the standstill, or to terminate the proceeding altogether.

1. Standstill vs. moratorium

As between parties, the standstill has the same effect as the moratorium, except that the standstill can be specifically tailored to the needs of the parties and can address treatment of particular contracts and assets of the business. It can be broader in scope or narrower in scope than the moratorium. One advantage of the moratorium is that it is effective immediately so that parties need not spend time negotiating the standstill agreement, which can take weeks.

The moratorium also extends to enforcement actions by non-Involved Creditors on the debtor's unencumbered fixed assets, which is not possible to do under a standstill agreement, which only binds the parties that sign it. Thus, if there are concerns among the Involved Creditors that any non-Involved Creditors may threaten to take actions against the Debtor's fixed assets, then

[109] LFR 21.1 subparagraph four, and LFR 22.1.

the moratorium is better left in place. Similarly, if there are concerns that some Involved Creditors may not sign the standstill, allowing them to pursue their own enforcement rights, it may be best to operate under the moratorium. The Law provides an option and allows parties to use standstills to address the unique needs of each case. Even with a moratorium, parties can still negotiate other protective agreements (e.g., protocols) governing particular aspects of the proceeding, such as use and protection of collateral, new financing, cash management arrangements and budgets.

2. Mandatory and optional provisions for standstills

At a minimum, the parties must specify the dates when the standstill enters into force, dates and terms for termination, and the term and scope of the forbearance. The standstill cannot extend beyond the date that the restructuring plan comes into effect or the conclusion or termination of the LFR proceeding. The Law also elaborates some optional provisions for a standstill (Box 5.1) consistent with good practice for standstill arrangements (Box 5.2).

BOX 5.1 STANDSTILL AGREEMENTS – OPTIONAL PROVISIONS

Optional provisions that can be included into a standstill agreement include:

(1) Additional information about the existence of security;
(2) Restrictions on the debtor's use of cash revenues, including making payments, using funds in bank account (accounts), settling liabilities, obtaining financing, disposing of assets, as well as requirements for obtaining the prior permission for taking the above actions by the debtor;[110]
(3) Affirmative obligations for the debtor to establish new bank accounts (e.g., lock box account) at a bank designated by the parties to which funds of the debtor shall be transferred. Funds subject to security, other property rights in favor of creditors or other encumbrances established under law or contract may be transferred to such accounts with written consent of creditors holding property rights in such funds;
(4) Restrictions on claim transfers by Involved Creditors;[111]
(5) Provisions for liability of parties for breach of the standstill;
(6) Procedures for exchanging information between parties to the standstill; and
(7) Terms for extending the standstill.

[110] When the moratorium is terminated, it is also terminated for the debtor, making these provisions necessary.

[111] Although Art. 26 of the Law permits transfer of claims, parties may determine that the transfer of certain claims before the plan approval could adversely impact negotiations and prospects for a restructuring.

BOX 5.2 STANDSTILL AGREEMENTS – COMMON RESTRICTIONS

As a matter of good practice, during the standstill period:

Participating creditors should not:

- amend any outstanding credit facility;
- take additional security or guarantees;
- make demand or accelerate facilities;
- charge default interest;
- commence collection or bankruptcy proceedings; or
- enforce security except for set-off rights.

Debtors should not without consent of all participating creditors:

- incur any expenses outside the ordinary course of their businesses;
- dispose of any assets outside the ordinary course of their businesses;
- lend money;
- enter into any transactions with related parties other than in the ordinary course of business and in such a manner that would be conducted with an unrelated party;
- create any additional security interests;
- make any preferential payments; or
- enter into any foreign exchange, swap, or derivative transactions except in the ordinary course of their business to cover existing commercial exposures.

B. Interim financing, budgets and cash management

Workout financing is generally needed during a standstill period allowing the business to operate pending agreement on a more comprehensive restructuring solution. Careful consideration should be given to the effect of new financing on pre-existing collateral rights, especially where parties providing new financing insist on having new or additional security for the financing. The debtor's need for adequate financing to succeed, as well as the interests of creditors to maximize recovery and mitigate losses, present competing interests that require cooperation to reach balanced solutions for an eventual successful outcome for all parties. The Law contains specific rules to support access to new financing, while safeguarding the rights of parties who engage in such transactions.[112]

[112] Good faith transactions entered during the LFR proceeding and as part of the Restructuring Plan cannot be invalidated by a commercial court in the event of a bankruptcy proceeding. LFR 29.

3. Interim and new financing

The Law permits a Debtor to obtain financing to continue operation of its business from any source not prohibited by law before the approval of the restructuring plan.[113] If security is required to obtain such financing, the Law requires that the debtor first use unencumbered assets for security, with the consent of Involved Creditors (except Related Parties).[114] If unencumbered assets are inadequate, the debtor may use already secured assets provided it first obtains approval of any creditor having a prior security interest (pledge or mortgage) in such assets, even if the new financing is to be secured by a junior or subordinate security interest on the assets.

New financing may be negotiated with Involved Creditors, or with other financial institutions or credit providers that have no prior connection to the debtor. When former lenders are involved, a frequent question is whether all such lenders should be required to share equally in the burden of new financing, or whether this should be optional. This is particularly true when the lenders are part of a syndicated loan. These issues typically would be addressed by lenders in an inter-creditor agreement, although they can also be addressed after the commencement of a proceeding.[115] Where only some of the Involved Creditors opt to participate, or an outside lender is involved, the lenders of new financing will almost certainly require a priority in the repayment of the new financing, and may also insist on concessions related to existing collateral or the grant of new collateral to adequately protect the new money lender against the risk of default.

Another option for interim financing may be to obtain financing from an investor with a particular interest in lending to financially distressed businesses or that has an interest to acquire a stake in the business. Such financing may come with options or rights to convert the debt into equity or priority shares, or with other priorities in repayment, and will typically require the new lender be given a voice in the restructuring negotiations.

4. Measures for use and protection of cash collateral

Current creditors (including lenders) may have security interests in assets that generate proceeds, profits, rents or other forms of cash. Frequently, a

[113] LFR 13.1.

[114] LFR 13.2.

[115] Notably, the FRFA requires parties to cooperate in respect of new financing while excluding the DGF from participation, as DGF acting on behalf of failed banks has no funds to extend new financing.

secured creditor's collateral encompasses both the collateral and any cash proceeds generated from the use or sale of the collateral (e.g., rents or sales proceeds).[116] Creditors who permit the debtor to continue to use assets generating cash, as well as the cash arising from such assets, will want assurance that their collateral position is protected against deterioration by the debtor's continued use of the collateral or the cash, such as where property is used without proper maintenance or the cash proceeds are used to repay other creditors. Agreements between creditors and the debtor pertaining to uses of cash collateral can give the creditor the assurance needed to carefully monitor the debtor's use of its collateral.

Multiple secured creditors might also improve on any uncertainties in their legal contracts or under law by entering into interim agreements or standstills that clearly specify the terms on which their collateral can be used and preserving their legal rights with respect to the collateral and cash proceeds from the collateral. For example, where multiple secured creditors have competing claims, issues as to the relative priority of security interests can be addressed, preserved and resolved. As with interim financing, secured creditors also can insist on measures to protect their collateral, such as (i) restricting use of the collateral, (ii) requiring segregation or separate accounts for deposit of cash proceeds, (iii) requiring regular monitoring and reporting or access to collateral; and (iv) imposing conditions on which enforcement and return of collateral can be achieved consensually without the need of going to court.

5. Sale of assets

New money might also be raised through the sale of assets, or by means of a sale-leaseback of the debtor's assets. The latter option is particularly useful where the debtor has already pledged most of its assets and needs the assets in question for the operation of the business. Selling the assets (e.g., real estate) enables the debtor to immediately realize the proceeds from the assets, while leasing the assets back allows it to continue to use the property, while providing the creditor/purchaser with regular payments similar to credit financing. The debtor may even retain a right of repurchase of the assets at an agreed price. Notably, the Tax Code was amended to provide an exemption from VAT on sale of assets under a restructuring plan to support the repayment of claims.[117]

[116] Specific rights in cash proceeds are determined by laws governing the security interests.

[117] See discussion in Section VI.A.3 below.

6. Cash management systems and budgets

Given problems with cash management, Creditors typically insist on approving the debtor's expenditures. A cash management procedure ensures that all cash generated from the business is properly accounted for and used for the most critical needs of the business pending a restructuring solution. This may require setting up new bank accounts in which all cash is transferred into a centralized account located at a branch under the control one of the Involved Creditors. A strict budget is often negotiated to ensure that all expenditures are disclosed and approved by Involved Creditors (or new lenders) for the specific purposes agreed.

C. Restructuring measures and techniques

The Law provides maximum flexibility for parties to develop a restructuring plan that best fits the needs of the business and the creditors. Restructurings typically fall into two categories – financial and operational restructuring. Financial restructurings concentrate mainly on debt restructuring and reductions, while operational restructurings focus on improving the business model, reducing expenses, and increasing profitability. In practice, elements of both types of restructuring may be needed to restore viability. Some of these measures are described briefly below.

1. Financial restructuring

A financial restructuring deals mainly with the debt side of a company's balance sheet, by restructuring or reducing debt obligations through rescheduling, debt forgiveness, debt-equity conversions, or asset sales to paydown debt obligations. Each of these measures should lead to a sustainable repayment plan in which the restructured debts can be serviced by existing and expected revenues of the business.

- *Debt rescheduling* – is the most common form of restructuring usually accompanied by a deferral of certain installments, a possible grace period during which interest only payments are made, extension of the maturity date, with or without adjustments to interest rates.[118] An extensive debt rescheduling may be treated as a novation that gives rise to completely new debt, which as described above can have

[118] Extending the repayment period by some years and lowering the interest rate has the same effect as a debt write-off, but is frequently easier to support from a lender's perspective, especially for state-owned banks. The downside of this approach, as noted, is that it leaves the company burdened with too much debt.

implications on collateral priority.[119] Debt rescheduling is a proper solution when the business is fundamentally sound and the debt to asset ratio is in balance.[120] When a company is "over-leveraged" with debt, more drastic measures may be needed to restore viability and to attract new financing or investors.

- *Debt roll-over* – is one of the least intrusive forms of debt rescheduling that merely modifies maturity dates, usually on identical terms.

- *Debt forgiveness* – is applied to restore viability to an over-leveraged business so that it can repay remaining obligations in the future and better attract new financing or investment. Most lenders are willing to consider partial debt write-offs of penalties and interest, but have a harder time to write off the principal, as this creates a loss of capital and cancelled debt is treated as income to the debtor, creating a claim for the tax authorities. Some countries will exempt tax income on debt forgiveness in the context of restructuring or insolvency proceedings. In Ukraine, recent amendments to the Tax Code recognize the income but allow the debtor to pay the taxes over a period of years when debt is forgiven under a restructuring plan approved under the Law. See Section VI.A below.

- *Debt-to-debt exchanges* – are used to convert one form of debt into another form of debt, technically a novation. This may be used if converting a loan denominated in a foreign currency to a loan in the local currency. Provided there are no collateral issues, a new debt may be viewed more favorably from a lender's perspective if it enables reclassification of the debt as performing, whereas restructurings under banking regulations may result in a partial upgrade in classification after a period of performance. Convertible debt instruments may also provide an option for creditors to obtain preferential repayment either as debt or equity.

- *Debt-to-equity exchanges* – are used to remove debt from the company balance sheet and convert that debt into equity in the

[119] The Law makes clear that a novation must be expressly intended and written into the restructuring plan.

[120] A debt to asset ratio measures total debt (short and long term) against the value of total assets. A debt to asset ratio is often an indicator of the financial soundness of a business. A debt ratio above 1 indicates a high level of growth through borrowing, while a ratio below 1 indicates that the company has grown by equity. Companies with a high debt ratio may be a possible indicator of financial distress or insolvency.

company. This approach is designed to deleverage the company's debt and restore a proper debt-to-asset ratio making the company more credit-worthy for lenders and more attractive for investors. It also requires a sacrifice by owners and shareholders whose interests in the business are diluted, and who may be required to share control over the business. Most creditors are generally not interested in owning equity in a company and may have difficulty monetizing or selling the interests, if the company is not publicly traded.

- *Structured financing* – is typically used for more complex businesses that have unique or highly specified needs that cannot be addressed by typical loans. Structured financing or securitizations may be used where certain assets generating a predictable income can be packaged in a manner that monetizes the assets better, while providing security in the underlying portfolio. Examples include collateralized debt or mortgage obligations, credit default swaps and hybrid securities.

- *Bonds and indentures* – are issued by a debtor (effectively as a loan) with an obligation to pay periodic interest and repay the principal at a maturity date. These debt securities are generally negotiable and more widely held and traded than loans, creating greater challenges to reach a consensus with bondholders, especially in the absence of collective action clauses, although typically the indenture trustee will represent the interests of the bondholders in the restructuring. These debts are frequently unsecured and may be issued as either senior or subordinated debts to other debt securities with respect to repayment rights. They can be restructured utilizing the full range of measures by rescheduling, discounting, exchanging or converting the debts.

2. Operational restructurings

An operational restructuring is needed when aspects of the business are unprofitable, inefficient or obsolete and the business can only be restored to viability by improving overall operational performance. For example, a business that manufactures outmoded products will need to develop newer products or expand its line of products. If products are less efficiently manufactured due to outmoded equipment, an upgrade in equipment may be required.

Methods of delivering the services may need realignment with the current realities of the business, such as an airline that uses large aircraft to shuttle only a few passengers to destinations that are no longer attractive, in which case smaller aircraft may be needed or the routes may need to be cancelled. Equipment upgrades may require worker transitions and retraining.

In operational restructurings, creditors may insist that the debtor retain a turnaround specialist to evaluate, remodel and assist in the operational restructuring of the business, as a condition to developing and implementing the restructuring plan.

3. Sale of assets or business components

Asset sales can be one method to raise cash quickly for the business, provided the assets being sold are not essential to the core operations of the business. Potential assets to be sold could include a business component or separate operating unit of the business that can be sold without compromising the viability and profitability of the remaining business units.

Assets to be sold in the context of the plan should clearly specify all terms pertaining to the asset sales, including how the proceeds of the sale are to be distributed in repayment of the claims (based on relative collateral rights and priorities) or used in the operation of the business. As noted above, a useful tool in restructuring can be the sale-leaseback of assets to generate value, while reducing and satisfying some of the claims, which deleverages the debt of the business and renders the borrower more creditworthy. As described below, tax incentives on asset sales encourage parties to utilize meaningful techniques, including asset sales, to support a restructuring plan.

4. Investors and strategic partners

Investors and strategic partners provide a source of new money or capital for the business and may bring additional skills, technology and increased regional or global market access for the products of a business. The evolution of distressed investors, private equity funds, hedge funds, and other stakeholders interested in distressed situations may offer unique opportunities for struggling and financially distressed businesses to attract investment in high risk situations, where financing or investment is otherwise unavailable in the market.

In a restructuring context, the choice ultimately will be whether a prospective investor can add more value to the ultimate recovery in a manner that supports a restoration to viability and enables repayment of claims on acceptable terms. The Law encourages and supports investor participation in multiple forms by allowing early participation, possible new financing, and even acquisition of claims.

D. Plan considerations

The restructuring plan is a multifaceted document that potentially addresses the restructuring of claims of numerous, diverse creditors. There are some basic rules that should be followed:

- *Adequate disclosure* – is essential for creditors to make an informed decision about the prospects for repayment of their claims under the restructuring plan and should therefore be incorporated into a separate disclosure document or made part of the plan. The independent expert report may also contain the necessary disclosures for the plan.

- *Plan assumptions* – should be checked by the independent expert to make sure that the plan is both reasonable and achievable, based on realistic business and market assumptions, and not created based on imaginary scenarios or wishful thinking.

- *Relevant risks (e.g., financial, legal, regulatory, market, etc.)* – as with business and market assumptions, must be carefully and accurately considered for parties to fully appreciate potential risks to repayment of claims or to business performance. Risks may arise from conditions in the plan (e.g., requirements for regulatory approvals) or the business nature.

- *Clear expression of claims treatment* – is fundamental and the plan should contain all relevant information and coverage of repayment terms. The plan should also show the overall debt service for and indicate how and whether claims of non-Involved Creditors are to be paid.

- *Classification of claims* – should be proper and fair in those situations where numerous similar claims are to be treated on similar terms. Classification adds complexity to the plan in that it should typically require a majority approval by each class of creditors. What would be the outcome where a two-thirds majority approval is reached, but a class of creditors has not accepted the plan or has not accepted with the same two-thirds majority.[121]

- *Separate restructuring agreement and individual claim documentation* – will be needed in most cases to properly document the agreement of

[121] See discussion in Section VII.B.4. below.

the parties and individual contractual rights. Where tax authorities are involved, plan approval should be deemed sufficient under the Law for treatment of tax authority claims that fall under Article 5.4 of the Law, but consideration should be given to a proper documentation of all claims.

- *Default and breach of agreement provisions* – should be clearly defined in both the plan provisions and the underlying implementation documents, so that parties have a clear roadmap to implement the plan, and understand options for modifying claims, modifying the plan, or seeking resolution (e.g., by means of the LFR arbitration procedure).

- *LFR to pre-insolvency rehabilitation* – subject to adoption of proper amendments to both the Bankruptcy Law and the LFR, a restructuring plan might be approved using Article 6 of the Bankruptcy Law, in which case involved parties must work on two tracks simultaneously to prepare and negotiate a restructuring plan: first, under the Law by addressing only claims of Involved Creditors, and second, under the Bankruptcy Law to meet all criteria for approving a plan under the Article 6 procedure.

VI. TAX BENEFITS, SAFEGUARDS, OTHER CONSIDERATIONS

A. Tax benefits for business entities

1. Restructuring of tax claims

Within the financial restructuring procedure, a debtor may seek to restructure its tax liabilities (except liabilities for the personal income tax and unified social security contribution)[122] in the same way as its contractual or other monetary obligations. When tax claims represent less than a third of the total amount of participating creditors' claims within the financial restructuring procedure, tax authorities shall mandatorily join the restructuring. When the tax claims amount to a third or more of total claims of participating creditors, the tax authorities' consent for participation is required.

Tax claims may be restructured by way of write-off (forgiveness), paying in instalments, and deferral.[123] In addition, after the restructuring plan is approved, debtor's assets shall be released from any tax liens and arrests.

- *Write-off (forgiveness).* Tax authorities shall forgive debtor's tax debt *pro rata* to the debts forgiven by other participating creditors. Nevertheless, within the financial restructuring procedure some categories of a debtor's current tax debt are *automatically* recognised as uncollectible and must be forgiven in any event. Those include:
  - tax debts that arose more than three years prior to the commencement of the LFR proceeding;
  - fines and late payment penalties imposed on a debtor, which had been disputed by the debtor, and those disputes have not been resolved by the time of commencement of the LFR proceeding.
- *Paying in instalments or tax deferral.* Terms and conditions of instalment payments or deferral of debtor's tax liabilities should be set out in the restructuring plan and must not be worse than similar terms for other participating creditors. The instalments and deferral in

[122] Debtor's tax liabilities for such taxes may not be restructured. Any fines or late payment penalties imposed on a debtor in connection with failure of payment of such taxes may still be restructured.

[123] The last two instruments are in principle available to any taxpayer outside of the financial restructuring procedure. When those instruments are provided to a debtor under the restructuring plan, however, the debtor should not go through the standard procedure of entering into a separate agreement with the tax office, which would apply otherwise.

respect of taxes may be given for as maximum as three years after the plan is approved. If a debtor fails to pay an instalment or pay the amount of the deferred tax, the respective tax claims become due and payable by a debtor in a usual course.

2. Debt forgiveness income exception

Income to be recognised in a debtor's financial accounting due to write-off of tax debt as well as cancellation (forgiveness) and/or instalment (deferral) of liabilities should not be taken into account for corporate profit tax purposes (meaning that such income should simply not be included in the company's corporate profit taxable base). Due to unclear wording of the respective legislative provisions, it is uncertain whether this exception applies to all claims or only tax claims. The State Fiscal Service of Ukraine has taken the position that only income recognised from restructuring tax claims qualifies for this relief, while income from restructuring of non-tax claims still increases taxable base. In addition, restructuring transactions are excluded from the transfer pricing control in Ukraine, even if they satisfy the criteria and meet thresholds that would make it subject to such control in usual circumstances.

3. Asset sales and VAT exemption

A VAT exemption is provided for the debtor's supplies of goods carried out to settle creditors' claims under the restructuring plan. Moreover, although the supplies are tax-exempt, a debtor may still enjoy its right to VAT-credit recognised upon acquisition of such goods.[124] The exemption is effective until 1 January 2020.

B. Tax benefits for banks and creditors

1. Bad debt write-off exception

In the procedure of financial restructuring, banks and financial institutions that wrote off (forgave) a debt pursuant to the terms of the restructuring plan covered by the loan loss provision shall not have to recognise income for tax purposes if the respective debt does not qualify as "bad debt" under the Tax Code.

[124] In standard circumstances, if an item of goods is acquired by a company in a transaction subject to VAT and then utilized by that company in non-VAT related operations (for example, supplied to another person in a VAT-exempted transaction), a debtor may not credit VAT input from the acquisition against its VAT obligations.

2. Income tax exception on restructuring

Banks and financial institutions that reversed loan loss provisions based on financial restructuring will recognise taxable income from such reversal during three consecutive years following the year when the plan was approved, instead of recognising the entire amount of the income immediately.

3. Asset sales and VAT exemption

Operations of banks and financial institutions on further supply of assets acquired by foreclosure (including sale-leaseback) are VAT exempt. If under the terms of the restructuring plan, the assets were not the subject of a mortgage, further supply of such assets will be subject to VAT.

C. Other considerations

1. Transaction safeguards

The Law specifically protects transactions entered into during the LFR proceeding and under the restructuring plan against invalidation in a subsequent bankruptcy proceeding under Article 20 of the Bankruptcy Law. Pursuant to Article 20, transactions entered into within one year of the bankruptcy filing may be subject to invalidation and any payments or transfers by the debtor could be clawed-back where the transaction resulted in an unfair exchange of value or gave a preferential repayment to particular creditors.[125] This provision of the Law only applies to transactions entered into as part of the restructuring by the participating parties, and would not extend to parties not participating in the LFR proceeding, even if they negotiated a bilateral agreement with the debtor that was contemporaneous with the plan.

2. Penalties and investigations

The Law imposes a number of penalties and fines on parties acting in violation of the Law. Violations for the Debtor include a failure to comply with disclosure obligations, improper disposal of assets during the proceeding, violations of the moratorium, and engaging in certain transactions without approval of Involved Creditors, where such approval is required by the Law.[126] Similarly, Involved Creditors may be held accountable for failure to carry through with obligations under the restructuring plan, violations of the

[125] LFR 29; and BL 20 (Invalidation of Transactions (Agreements) and Rejection of a Debtor's Property Actions).
[126] LFR 30.1.

moratorium or a breach of a standstill agreement.[127] Finally, any party that fails to honor an arbitral award is subject to a fine.[128]

[127] LFR 30.2.
[128] LFR 30.3.

VII. ARBITRATION PROCEEDINGS AND DISPUTE RESOLUTION

A. Overview and introduction

1. Governance of the Arbitration Proceedings

The following organs carry out the governance of the Arbitration Proceedings: the Arbitration Committee, the Secretariat and the Sole Arbitrator.

The Arbitration Committee

Status. The Arbitration Committee is an organ established pursuant to Article 16 of the Law. It is composed of the President and two Vice-Presidents, appointed by the Supervisory Board,[129] and is officially seated in the same premises as the Secretariat. It has no separate legal standing.[130] Unlike the Secretariat staff, the Arbitration Committee members are not contracted, but receive compensation for individual assignments and tasks when a dispute is submitted for arbitration.

Role. The main role of the Arbitration Committee is to appoint a Sole Arbitrator and decide the key issues that arise in course of the Arbitration Proceedings. The role of the Arbitration Committee is not considered full-time and most of the business of the Arbitration Committee is expected to be handled offsite by email or telephone as between the Arbitration Committee members.

Functions. The Arbitration Committee performs a number of important functions defined by the Arbitration Rules, both prior to and after commencement of the arbitration proceeding.[131] Duties also include maintaining the Arbitration Rules and the List of Arbitrators.

[129] LFR 16.1.

[130] The Arbitration Committee relies on NABU for the management of bank accounts and any receipt, deposit and disbursement of fees paid in connection with Arbitration Proceedings.

[131] Arbitration Rules, Article 5 (4).

BOX 7.1 ARBITRATION COMMITTEE FUNCTIONS

Before commencement of the Arbitration Proceedings

- conducts high-level analysis of the Notice of Arbitration, which is the document initiating the Arbitration Proceedings under the Rules, and determines whether the Arbitration Rules apply to a particular dispute and whether arbitration should be commenced;[132]
- defines the amount of the fees payable by the party who wishes to resolve dispute by arbitration under the Arbitration Rules;
- appoints the Sole Arbitrator for each case.

After commencement of the Arbitration Proceedings

- decides on whether to extend the time limits fixed by the Arbitration Rules;
- decides on the issues of challenge, release and substitution of the Sole Arbitrator;
- scrutinizes and approves draft of an Award before it is rendered by the Sole Arbitrators;
- approves the corrections by the Sole Arbitrator on its own initiative to the rendered Awards.

Maintenance of the Arbitration Rules

- interprets the Arbitration Rules;
- proposes the Supervisory Board to make amendments to the Arbitration Rules, which the Arbitration Committee deems necessary.

Management of the Arbitrators' Lists

- Puts proposals to the Supervisory Board on candidates to serve as arbitrators to be included or excluded from the list of arbitrators for the purposes of arbitration under the Law.

The Secretariat

Status. The Secretariat was established pursuant to Article 15 of the Law and by Decision of the Supervisory Board and is the body responsible for administration of financial restructuring procedure and the dispute resolution procedure under the Law.[133] The Secretariat is bound in the course of its operation by the Law, the Arbitration Rules, other legal acts of Ukraine in force and the Secretariat Regulation.

[132] Arbitration Rules, Article 8 (1). Arbitration under these Rules shall commence on the date of the receipt of the Notice of Arbitration by the Arbitration Committee unless the Arbitration Committee finds that the dispute referred to in the Notice of Arbitration is clearly not eligible for arbitration pursuant to Article 1 of these Rules.

[133] Minutes No. 3 of the Meeting dated 26 October 2016.

Role. In terms of the Arbitration Proceedings, the main role of the Secretariat is to handle administrative, organizational and technical issues that arise in course of the dispute resolution procedure in the arbitration carried out under the Law and the Arbitration Rules.

Functions. The Secretariat performs a number of important functions during arbitration under the Arbitration Rules.[134] These include overall administrative and logistical support pertaining to the process and for individual arbitration disputes during a restructuring proceeding.

BOX 7.2 SECRETARIAT FUNCTIONS IN ARBITRATION PROCEEDINGS

Overall administrative and technical support of the Arbitration Proceedings

- ensures storage of information and documents obtained in the course of the Arbitration Proceedings in hard copies and electronically through the electronic document processing and storage system;
- manages its own website where it posts information required by the Law, including the List of Arbitrators;
- provides all necessary logistical and administrative assistance to the Arbitration Committee and the Sole Arbitrator.

In course of the Arbitration Proceedings

- registers and forwards to the Arbitration Committee the Notice of Arbitration;
- provides the Parties with request for payment of the fees for the arbitration under the Arbitration Rules according to the instructions of the Arbitration Committee;
- assists in finding premises for the hearing, as well as provides other logistical and administrative arrangements necessary for the conduct of the hearing;
- ensures dispatch of the originals of the Awards and orders rendered by the Sole Arbitrator.

The Sole Arbitrator

Status. The Sole Arbitrator is a person included into the List of Arbitrators and appointed by the Arbitration Committee for hearing a particular case. Inclusion into the List of Arbitrators requires that a person meet the requirements set out in Schedule 1 of the Arbitration Rules.[135]

Role. The main role of the Sole Arbitrator is to consider the case on the merits and render the final arbitral award.

[134] Arbitration Rules, Article 6.
[135] Arbitration Rules, Schedule 1 (3-4).

Functions. The Sole Arbitrator performs a number of key functions in course of the Arbitration Proceedings, including the following:

- *decides on jurisdiction* – whether there is a valid arbitration agreement between the parties so that the dispute may be resolved under the Arbitration Rules; in contrast to the Arbitration Committee which only establishes the *prima facie* application of the Arbitration Rules, the Sole Arbitrator looks into the details of the case file before ruling on the jurisdiction;
- *ensures compliance of sub*missions – after receiving the case file, the Sole Arbitrator reviews all submissions filed by parties (e.g. answer to notice of arbitration, counterclaim etc.) for compliance with formal requirements set by the Arbitration Rules.
- *adopts procedural decisions* – upon analysis of written submissions by parties decides on procedural issues, including whether to request the Arbitration Committee to extend time limits mandated by the Arbitration Rules, and is competent to decide whether the Arbitration Proceedings should be closed or terminated.
- *renders awards* – following review of all submissions. decides on the merits of disputes and prepares the text of the award, including on the allocation of costs between the parties, and notifies the parties of the award. The Sole Arbitrator has discretion to correct the award or render an additional award.

2. The Legal Framework and Arbitration Rules

The legal and regulatory framework governing arbitration proceedings is comprised of the Law, the Arbitration Law, the Arbitration Rules, and the Guidelines on Conflicts of interest.[136] The Arbitration Rules were developed specifically to govern the Arbitration Proceedings for resolving disputes arising out of the financial restructuring proceedings under the Law.[137]

Scope of Application. The Arbitration Rules apply to the resolution by arbitration of any disputes listed in the Law (the "**Dispute**") in cases where the

[136] International Bar Association Guidelines on Conflicts of Interest in International Arbitration (hereinafter, the "**IBA Guidelines"**).

[137] Arbitration Rules for the purposes of the Law of Ukraine on Financial Restructuring, approved by the decision of the Supervisory Board (Minutes No. 11 of the meeting dated 24 January 2017). For ease of reference, the full text of the Arbitration Rules is attached as Annex 2.

Arbitration Agreement in whatsoever manner provides for arbitration under the Law, the Arbitration Rules, or in other manner with reference to the Law.[138]

BOX 7.3 LIST OF DISPUTES THAT MAY BE RESOLVED BY THE ARBITRATION RULES

The disputes that may be decided under the Arbitration Rules are those listed in the Law, inter alia:

1. a controversy or disagreement between the Involved Creditors or between the Involved Creditors and the Debtor in relation to priority and amount of Creditors' claims;
2. disagreements between the Involved Creditors with respect to approval and/or amending of approved Restructuring Plan by the requisite threshold of votes
3. any other disputes arising out of the Framework Agreement; and during the financial restructuring proceedings.

The Arbitration Agreement. To submit a Dispute for arbitration under the Arbitration Rules, the parties must conclude the Arbitration Agreement in one of the following forms:

- an arbitration clause in the Framework Agreement;
- a written consent of the Debtor in the application for restructuring;
- an arbitration clause in the Creditor's consent for restructuring;
- an arbitration agreement in the contracts concluded in course of the financial restructuring proceedings.[139]

For convenience of the parties, the Arbitration Rules also provide for model arbitration clauses.

Main features of the Arbitration Rules. The Arbitration Rules have specific peculiarities, which distinguish the dispute resolution mechanism under the Law from other institutional arbitration rules, as follows:

- different procedures apply to different types of disputes, depending on the subject matter of each dispute (general procedure; procedure for approval of a restructuring plan);
- by default, an entirely document-based Arbitration Proceedings;
- the case is considered exclusively by a Sole Arbitrator, appointed by the Arbitration Committee;

[138] LFR 1.1(25).
[139] LFR 16.2.

- the case file is transferred to the Sole Arbitrator only after full payment of all arbitration-related fees (registration, arbitration and administrative fees);
- the draft award is scrutinized by the Arbitration Committee for consistency on form and substance with the Arbitration Rules prior to the Sole Arbitrator renders such award.

Expediency of the Arbitration Proceedings under the Arbitration Rules. Importantly, the arbitration under the Arbitration Rules is expedited. This is achieved due to the following:

- dispatch and receipt of all documents electronically;
- time limit on the overall duration of the Arbitration Proceedings (general procedure – 15 days; procedure for approval of a restructuring plan – 18 days);
- establishing fixed time limits for the principal procedural steps;
- extension of procedural time limits in exceptional cases only;
- an oral hearing is held in exceptional cases only.

Confidentiality. The Arbitration Rules mirror the strict standard of confidentiality prescribed by the Law for all the participants involved in the Arbitration Proceedings, including the Sole Arbitrator, the Arbitration Committee, the Secretariat as well as the parties. More particularly, the access to any documents and confidential information provided to the Secretariat or the Sole Arbitrator by the parties in the course of the arbitration shall be fully prohibited for: (i) the Supervisory Board except for cases stipulated by the Law when it is necessary for the performance of the functions of the Supervisory Board; (ii) the executive body of NABU and employees of internal departments of NABU and its branches; (iii) other persons who have legal grounds to access to such information and/or are directly responsible for the handling of such information. [140]

3. Types of Arbitration Procedures

Depending on the subject matter of the dispute, the Arbitration Rules distinguish two types of arbitration procedures:

General procedure. This procedure governs arbitration of disputes between the parties in relation to priority and amount of creditors' claims, as well as any other disputes arising during the course of financial restructuring proceedings.

[140] Arbitration Rules, Article 50.

The features and course of the general procedure under the Arbitration Rules are outlined in Section VII.B.4. below.

Procedure on approval of a restructuring plan (Special Procedure). This procedure applies to disagreements between involved creditors with respect to approval and/or amending of an approved restructuring plan. The features and course of the procedure on approval of restructuring plan under the Arbitration Rules are outlined in Section VII.B.4. below.

4. Arbitration Forms

During the Arbitration Proceedings, the Secretariat, Arbitration Committee and Sole Arbitrator are expected to use template-based forms for Arbitration Proceedings.[141] There are a total of 30 template-based forms designed to facilitate the efficient processing of Arbitration Proceedings. Each of the forms corresponds to consecutive procedural steps taken by the Secretariat, the Arbitration Committee and the Sole Arbitrator, respectively, and provide guidance as to the structure and the intended recipients of each outgoing procedural documents. This enables the acting authority to include only those details relevant to each individual case. The templates also assist in formulating decisions, notices and requests by the acting authority, thereby reducing the time spent on administrative work related to drafting their decisions.

5. Arbitration fees

The arbitration fees under the Arbitration Rules consist of a combination of the following fees assessed based on the type of dispute:

- *Registration fee* – a non-refundable amount of USD 500, payable before commencement of the Arbitration Proceedings to cover expenses of the Secretariat and the fees of the Arbitration Committee *only* for appointment of the Sole Arbitrator;
- *Administration fee* – a partially refundable amount, calculated by the Arbitration Committee based on a fixed schedule of fees for a particular dispute, to cover the expenses of the Arbitration Committee and the Secretariat, which ensue in course of the Arbitration Proceedings under the Arbitration Rules;[142] and
- *Arbitration fee* – a partially refundable amount, calculated by the Arbitration Committee based on a fixed schedule of fees

[141] The list of the arbitration template-based forms can be found in Annex 3.B.
[142] Arbitration Rules, Schedule 2 (Section II).

assessed for a particular dispute, to cover the expenses of the Sole Arbitrator hearing and deciding a particular dispute.[143]

The administration and arbitration fees may be refunded in cases, when no final award on the merits is rendered. All arbitration fees on deposit for each case are payable according to instructions from the Arbitration Committee.

BOX 7.4 REIMBURSEMENT OF ARBITRATION FEES AND COSTS[144]

Reimbursement of Administration Fee

- If the arbitration has been terminated with no award on the merits of the Dispute, 50% of the paid administration fee is reimbursed by the Secretariat to the Party that made a payment.
- If the Dispute is settled by the Parties "amicably" during the arbitration, no administration fee shall be reimbursed by the Secretariat.

Reimbursement of Arbitration Fee

- If a Notice of Arbitration is withdrawn prior to the submission of the Answer to Notice of Arbitration or, in case of counterclaim, a counterclaim is withdrawn prior to the submission of the reply to counterclaim in the General Procedure, or if a Notice of Arbitration is withdrawn prior to submission of the Comments to the Notice of Arbitration in the Procedure for Approval of Restructuring Plan, 90% of the paid arbitration fee shall be reimbursed to the Party that made a payment.
- If the Notice of Arbitration or counterclaim is withdrawn after closing of the Arbitration Proceedings in accordance with Article 30 of the Rules, 25% of the paid arbitration fee shall be reimbursed to the Party that made a payment.
- If the Parties settle the Dispute "amicably" during the arbitration, no arbitration fee shall be reimbursed.

B. Arbitration Proceedings

1. Commencement of Arbitration

To commence arbitration under the Arbitration Rules, a Claimant has to submit a Notice of Arbitration, which meets the requirements of the Arbitration Rules as to its form and contents, to the Secretariat in the manner prescribed by

[143] Arbitration Rules, Schedule 2 (Section III).
[144] Arbitration Rules, Schedule 2 (Section IV).

the Arbitration Rules.[145] Upon receipt of the Notice of Arbitration, the Secretariat shall forward a copy of the Notice of Arbitration to the Arbitration Committee by email. The Arbitration Proceedings commence on the date when the Arbitration Committee receives the Notice of Arbitration from the Secretariat.[146]

BOX 7.5 CONTENTS OF NOTICE OF ARBITRATION

The Notice of Arbitration shall contain:

(i) a date of submission of the Notice of Arbitration;
(ii) full names, telephone numbers, postal and e-mail addresses of the parties and their representatives;
(iii) documentary proof of powers of a person who signed the Notice of Arbitration;
(iv) arbitration agreement or a reference thereto;
(v) summary of the Dispute, statement of claim and relief sought as well as monetary value of the claim where applicable;
(vi) factual circumstances, and substantiation of legal grounds supporting the claim and the relief sought;
(vii) any documents and evidence the Claimant relies on;
(viii) confirmation of payment of the registration fee;
(ix) documentary proof of dispatch of the copy of the Notice of Arbitration together with all the enclosures to the Respondent(s)

After receipt of the Notice of Arbitration, the Arbitration Committee verifies that the Notice of Arbitration: (1) relates to the Dispute, which is eligible for arbitration in accordance with the Arbitration Rules and the Law, and (2) the Notice of Arbitration complies with the requirements set out in the Arbitration Rules.[147]

If the dispute is ineligible for arbitration under the Arbitration Rules, the Arbitration Committee notifies the Claimant by email on return of the Notice of Arbitration without commencement of the Arbitration Proceedings under the Arbitration Rules.[148]

If the Notice of Arbitration does not comply with the requirements set out by the Arbitration Rules, then the Arbitration Committee starts the procedure for remedying the defects in the Notice of Arbitration by the Claimant within a

[145] Arbitration Rules, Article 7.
[146] Arbitration Rules, Article 8.
[147] Arbitration Rules, Article 8 (2).
[148] Arbitration Rules, Article 8 (5).

fixed period of time.[149] If the Claimant fails to remedy the Notice of Arbitration within the time set by the Arbitration Committee, then Arbitration Committee sends the Claimants by email a Notice of Rejection.

2. Formation of the Arbitral Tribunal

Appointment of the Sole Arbitrator. Every dispute under the Arbitration Rules is decided by only one arbitrator, a Sole Arbitrator. The parties may not derogate from this rule even if they agree on arbitration by an arbitral tribunal composed of more than one arbitrator.[150]

The Sole Arbitrator may be appointed only if the Notice of Arbitration complies with the requirements set out by Arbitration Rules.[151] After determining that the Notice of Arbitration complies with the requirements, the Arbitration Committee appoints a Sole Arbitrator from the List of Arbitrators, taking into account the subject matter of the Dispute (i.e. whether the Dispute will be decided in the General Procedure or in the Special Procedure).[152]

Upon acceptance of appointment, the Sole Arbitrator shall sign the Statement of Acceptance and Appointment, Availability, Impartiality and Independence and provide its copies to the Arbitration Committee and the Secretariat.[153]

Once the Secretariat becomes sure that the registration, administrative and arbitration fees are paid, the Secretariat refers the case file to the Sole Arbitrator and the time limits of the General / Special Procedures start running.[154]

3. Challenges and Release of the Sole Arbitrator

Challenge Procedure. Any circumstance, which gives rise to justifiable doubts in relation to impartiality and independence of the Sole Arbitrator, may constitute a ground for challenge under the Arbitration Rules.[155] The Sole Arbitrator has an ongoing duty of disclosure, and should continue to be independent and impartial during Arbitration Proceedings in accordance with

[149] Arbitration Rules, Article 8 (3).
[150] Arbitration Rules, Article 9 (2).
[151] Arbitration Rules, Article 10 (1).
[152] List of Arbitrators may be found at: https://fr.org.ua/en/arbitri.html
[153] Arbitration Rules, Article 11 (3).
[154] Arbitration Rules, Article 15 (2).
[155] Arbitration Rules, Articles 11 and 12.

the Ethical Rules of Conduct, which are an integral part of the Arbitration Rules, and the IBA Guidelines.[156]

After becoming aware of circumstances for challenge of an arbitrator, a party to the Dispute may initiate a challenge procedure by filing a Notice of Challenge with the Secretariat.

BOX 7.6 TIME LIMITS FOR CHALLENGE OF A SOLE ARBITRATOR

A Party to the Dispute may challenge a Sole Arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence by filing a Notice of Challenge to the Secretariat:

- within three (3) business days from the date when the circumstances giving rise to the challenge became known to that Party;
- if known by the Party prior to appointment of the Sole Arbitrator, within three (3) business days from the date when the relevant Party was informed of the appointment of the Sole Arbitrator.

Upon receipt of the Notice of Challenge, the Secretariat transmits an electronic copy of the Notice of Challenge to the Sole Arbitrator and other parties to the dispute, giving them opportunity to comment on the challenge.

BOX 7.7 SCENARIOS OF THE CHALLENGE PROCEDURE UNDER THE ARBITRATION RULES

The challenge procedure under the Arbitration Rules may end with the following results:

- All parties agree that grounds for challenge exist and the Sole Arbitrator immediately resigns;[157]
- The Sole Arbitrator voluntarily withdraws from his/her appointment as the arbitrator;[158]
- In all other cases, the Arbitration Committee decides on the challenge.[159]

Release of a Sole Arbitrator. Release of a Sole Arbitrator takes place at any stage of the Arbitration Proceedings if the Sole Arbitrator fails to fulfil his/her duties as an arbitrator or has become *de jure* or *de facto* unable to fulfill such duties.[160] The Arbitration Committee takes the final decision after giving the Sole Arbitrator and the parties to the Dispute to comment on the possible

[156] Arbitration Rules, Schedule 3.
[157] Arbitration Rules, Article 12 (4).
[158] Arbitration Rules, Article 12 (5).
[159] Arbitration Rules, Article 12 (4).
[160] Arbitration Rules, Article 13 (1).

release. The Sole Arbitrator may also voluntarily step down from his/her appointment, on which Arbitration Committee takes respective decision.[161]

4. General Procedure

Subject Matter, Main Stages and Duration. The General Procedure governs arbitration of the Disputes between the parties in relation to priority and amount of creditors' claims, as well as any other disputes arising during the course of financial restructuring proceedings.

The General Procedure shall be completed within 15 days (starting from the date when the Sole Arbitrator receives the case file and until the date of the final award).[162] All procedural steps in the General Procedure may be virtually divided into two stages – the stage prior to commencement of the 15-day time limit and the main stage.

BOX 7.8 STAGES OF THE ARBITRATION PROCEEDINGS IN THE GENERAL PROCEDURE

Initial Stage (prior to commencement of the 15-day time limit)

1. Submission of the Notice of Arbitration in accordance with Article 7 of the Arbitration Rules;
2. The Arbitration Committee establishes the *prima facie* application of the Arbitration Rules to the Dispute;
3. Appointment of the Sole Arbitrator;
4. Payment of Arbitration Fee and Administration Fee.

Main Stage (15-day time limit with possible extensions by the decision of the Arbitration Committee)

1. Referral of the case file to the Sole Arbitrator;
2. Submission of Answer to Notice of Arbitration consistent with requirements of Article 18 of the Arbitration Rules;
3. (*Optional*) Reply to the counterclaim / additional written submissions / experts / hearings/ joinder/ remedying defective written submissions;
4. Preparation of draft award, consistent with requirements of Article 40 of the Arbitration Rules / scrutiny of the award / making the award and notification of award.

Conduct of the Arbitration Proceedings. The Sole Arbitrator is responsible for conduct of the Arbitration Proceedings in an impartial, expedient and efficient manner, making sure that each party has equal and reasonable opportunity to perform its case in accordance with the Arbitration Rules and any agreements of the parties.

[161] Arbitration Rules, Article 13 (4).
[162] Arbitration Rules, Article 3 (1).

Answer to Notice of Arbitration. The Respondent may comment on the Notice of Arbitration and provide its response in an Answer to Notice of Arbitration, which has to be submitted to the Sole Arbitrator within four (4) business days following the date of the receipt by the Respondent of a copy of the Notice of Arbitration. [163]

Counterclaim. Together with its Answer to Notice of Arbitration, the Respondent may also file a counterclaim in relation to the claims raised by the Claimant in the Notice of Arbitration.[164] The following rules should be kept in mind:

- A counterclaim must be related to the original claim as outlined in Notice of Arbitration;
- For counterclaim, the Respondent shall pay registration fee, as well as administration fee and arbitration fee, as calculated by the Arbitration Committee;
- The Claimant has four business days to file a reply to counterclaim, which must comply with the requirements for an Answer to Notice of Arbitration.

Joinder. The Arbitration Rules give the parties an opportunity to join one or more additional parties to the Arbitration Proceedings on the side of the Claimant or the Respondent.[165] Joinder may take place under following terms:

- in relation to any person participating in financial restructuring proceedings in respect of the same Debtor under the Law;
- after appointment of a Sole Arbitrator, but not later than 2 business days after submission of an Answer to Notice of Arbitration;
- on the basis of an Arbitration Agreement within the meaning of the Law, or upon consent of all parties, including the additional party to be joined, to the joinder of the additional party.
- the Sole Arbitrator decides to grant any such joinder, after considering the views of all parties and having regard to the circumstances of the case.

Additional written submissions. If any of the Parties so requests, and the Sole Arbitrator considers the reasons compelling, the Sole Arbitrator may allow

[163] Arbitration Rules, Article 18 (1) and (2).
[164] Arbitration Rules, Article 19.
[165] Arbitration Rules, Article 29.

the Parties to make one supplementary written submission in addition to the Notice of Arbitration and the Answer to Notice of Arbitration.[166]

Experts. For resolving specific issues, which require special knowledge, a Sole Arbitrator may appoint an expert, if a Sole Arbitrator considers it necessary or if a party so requests. [167] In case of appointment of the expert, the Sole Arbitrator notifies the Arbitration Committee on extension of original time limits (15 days) and expected fees and expenses of the expert, which the Parties have to cover.[168] Notwithstanding the above, each party may also submit to the Sole Arbitrator an expert report, which had been prepared by a party-instructed expert.

Evidence. The Arbitration Rules do not set any limits on use of any means of evidence. In any event, it is for the Sole Arbitrator to determine the admissibility, relevance, materiality and weight of any evidence.[169] The Sole Arbitrator may also order a Party to produce any document, which may be relevant to the case and material to its outcome. After the hearing, if any, the Sole Arbitrator may accept new evidence upon the request of a party and only to the extent necessary to the resolution of the dispute.

Hearing. As mentioned above, the general feature of the Arbitration Rules is that Arbitration Proceedings are entirely document-based. [170] Respectively, the oral hearing may be held only in limited circumstances at the request of a Party and if the Sole Arbitrator considers reasons for such request compelling.[171] The Sole Arbitrator shall decide on date and time of such hearing and the Secretariat shall make logistical and administrative arrangements necessary for the conduct of the hearing.[172]

Closing and Termination of the Arbitration Proceedings. Closing of the Arbitration Proceedings is the final stage of arbitration prior to rendering of the award. The Sole Arbitrator declares the Arbitration Proceedings closed after all written submissions are filed and the Sole Arbitrator is satisfied that the Parties have had a reasonable and equal opportunity to present their cases.[173]

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[166] Arbitration Rules, Article 22.
[167] Arbitration Rules, Article 28 (1).
[168] Arbitration Rules, Article 28 (3).
[169] Arbitration Rules, Article 24 (1).
[170] Arbitration Rules, Article 25 (1).
[171] Arbitration Rules, Article 25 (2).
[172] Arbitration Rules, Article 6 (1) (viii).
[173] Arbitration Rules, Article 30.

Termination of the Arbitration Proceedings (in both the General Procedure and the Procedure for approval of restructuring plan) may take place in one of the following cases:

- the arbitration has been abandoned by the Parties;
- the Parties have withdrawn all claims and counterclaims;
- the Claimant failed to remedy or supplement the Notice of Arbitration within the deadline set by the Arbitration Committee;
- the Claimant failed to pay the full amount of the arbitration and administrative fees within the time limits in the General Procedure;
- the Debtor failed to pay the full amount of registration, arbitration and administrative fees within the time limits set in the Procedure for approval of restructuring plan;
- the Debtor failed to provide documents in the Procedure for approval of restructuring plan.

5. Special Procedure for Approval of a Restructuring Plan

Subject Matter, Main Stages and Duration. As mentioned above, the Procedure for approval of a restructuring plan (Special Procedure) applies to disagreements between involved creditors with respect to approval and/or amending of an approved restructuring plan. The duration of the Special Procedure is 18 days from the date of referral of the case to the Sole Arbitrator until the date of final award.[174] All procedural steps in the Special Procedure may be divided into two stages – the stage prior to commencement of the 18-day time limit and the main stage.

BOX 7.9 STAGES OF THE ARBITRATION PROCEEDINGS IN SPECIAL PROCEDURE

Initial Stage (prior to commencement of the 18-day time limit)

1. Submission of the Notice of Arbitration in accordance with Article 33 of the Arbitration Rules;
2. The Arbitration Committee establishes the *prima facie* application of the Arbitration Rules to the Dispute;
3. Appointment of the Sole Arbitrator;
4. Payment of Arbitration Fee and Administration Fee by the Debtor or Involved Creditor.

[174] Arbitration Rules, Article 3 (2).

Main Stage (18-day time limit with potential extensions upon decision of the Arbitration Committee)

1. Referral of the case file to the Sole Arbitrator;
2. Comments of other Involved Creditors in accordance with Article 38 of the Rules;
3. (*Optional*) Reply to the counterclaim / additional written submissions / experts / hearings/ joinder/ remedying defective written submissions;
4. Preparation of draft award, consistent with requirements of Article 40 of the Rules / scrutiny of the award / making the award and notification of award.

Principal Differences between the General Procedure and the Special Procedure. There are several key features that distinguish the proceedings in the Procedure for approval of the restructuring plan from the General Procedure as follows.[175]

General Procedure	Special Procedure
Time limits for Arbitration Proceedings	
15 days from date of referral of case file to Sole Arbitration until the date of the award	18 days from date of referral of case file to Sole Arbitration until the date of the award
The Arbitration Proceedings could be initiated by	
Any person participating in the financial restructuring proceedings	Involved Creditor
Parties	
Claimant and Respondent	Debtor and Involved Creditors
Main procedural documents	
Notice of Arbitration and Answer to Notice of Arbitration	Notice of Arbitration and Comments of the Involved Creditors
Allocation of Costs	
Party which is not successful in its claims	Debtor or Involved Creditor

Obligations of the Debtor in Special Procedure. While the Special Procedure is initiated by an Involved Creditor, the Arbitration Rules outline distinctive duties of the Debtor in Special Procedures:

- to pay registration, administrative and arbitration fees. In case of non-payment of the listed fees by the debtor, an Involved Creditor, who submitted the Notice of Arbitration, may pay the unpaid registration,

[175] Arbitration Rules, Article 32.

administrative and arbitration fees to proceed with the Special Procedure under the Arbitration Rules;[176]

- to provide the Sole Arbitrator a set of documents, including originals of the Restructuring Plan, copies of documents containing information on voting results in relation to the approval of the Restructuring Plan;[177]
- to provide a certified copy of the report of the independent expert on the financial and commercial activities of the debtor.[178]

Functions and Duties of the Sole Arbitrator in the Special Procedure. In the Special Procedure the Sole Arbitrator, similarly to the General Procedure, shall ensure conduct of the arbitration in an impartial, expedient and efficient manner. Main duties of the Sole Arbitrator include the following:

- to verify the conformity of the content of the restructuring plan with the requirements set forth in the Law;[179]
- to examine compliance of the procedure of the approval of the restructuring plan with the relevant procedural rules and requirements set forth in the Law;[180]
- to examine position of those Involved Creditors that did not participate in voting or voted against approval of the restructuring plan based on the comments submitted by such Involved Creditors in the Arbitration Proceedings.[181]

6. Arbitral Awards

Form and content of the Arbitral Award. The Arbitral Award must be in writing, bear signature of the Sole Arbitrator, and attach originals of the Restructuring Plan signed by the Sole Arbitrator (only in Special Procedure). The Arbitral Award must contain the following information:[182]

[176] Arbitration Rules, Article 36 (3).
[177] Arbitration Rules, Article 35 (2)(ii).
[178] Arbitration Rules, Article 35 (2)(iii).
[179] Arbitration Rules, Schedule 4, Article 2.
[180] Arbitration Rules, Schedule 4, Article 3.
[181] Arbitration Rules, Schedule 4, Article 4.
[182] Arbitration Rules, Article 40.

- reasons, on which it is based;
- case number and date of the award, place of arbitration;
- full name of an arbitrator, names of the Parties to the dispute and other persons, participating in the Arbitration Proceedings;
- reference to an Arbitration Agreement of the parties, subject matter of the Dispute and a summary of the circumstances of the case.

Principal Steps for Making an Award under the Arbitration Rules. The Arbitration Rules provide for the following principal steps for making an Award under the Arbitration Rules:

- Sole Arbitrator prepares a draft of Award, which meets the requirements of Article 40 of the Arbitration Rules in relation to the form and contents;
- Arbitration Committee scrutinizes the draft of Award in accordance with Article 41 of the Arbitration Rules;
- Sole Arbitrator renders the Award;
- Sole Arbitrator notifies the Award to the Parties in accordance with Article 42 of the Arbitration Rules.

Scrutiny of the Award. One of the features of the Arbitration Rules is scrutiny of the Award, which means that the Sole Arbitrator shall send the draft of the Award to the Arbitration Committee for its approval before rendering the Award and its notification to the parties.[183] After scrutiny of the Award by the Arbitration Committee, the Sole Arbitrator incorporates comments of the Arbitration Committee, if any, renders the Award and notifies the Award to the parties. Scrutiny of the Award under the Arbitration Rules is conducted as follows:

- The scrutiny of the Award is carried out by the Arbitration Committee;
- It is carried out in relation to every draft award prepared under the Arbitration Rules;
- The Arbitration Committee may provide comments only as to the form of the Award and may focus attention of the Sole Arbitrator to points on substance, without prejudice to the Sole Arbitrator's liberty of decision.

Notification of the Award to the Parties. In the General Procedure, the Award is sent to each party of the Arbitration Proceedings, the Secretariat and

[183] Arbitration Rules, Article 41.

the Arbitration Committee.[184] In the procedure for approval of the restructuring plan, the debtor and the Involved Creditors receive the Award together with the restructuring plan, signed by the Sole Arbitrator, while the Secretariat and the Arbitration Committee receive only the copy of the Award without attached originals of the restructuring plan.[185]

Correction of the Award and Additional Award. The correction of the already rendered and notified Award is aimed to correct typographical errors, clerical mistakes, misspellings or other similar errors in the Award.[186] Correction of the Award may be initiated by the Sole Arbitrator, the parties or the Arbitration Committee.

An Additional Award may be rendered if a Party finds that the Award omits certain claims properly presented in the Arbitration Proceedings. In this case, a Party may request the Sole Arbitrator to consider making an additional award. Notably, in case an Additional Award is rendered, it shall constitute an integral part of the original Award and shall comply with all requirements applicable to the form and contents of the Award under the Arbitration Rules. The following limitations apply to additional awards under the Arbitration Rules:

- Additional Award may be rendered only in the General Procedure;
- Additional Award may be rendered only in relation to the claims, that were completely omitted from the Award.

Challenge of the Award. The Award rendered under the Arbitration Rules, may be challenged before the Ukrainian courts in accordance with general procedure governing challenge of arbitral awards, rendered in the territory of Ukraine in accordance with Article 34 of the Law of Ukraine "On International Commercial Arbitration".[187]

[184] Arbitration Rules, Article 42(1).
[185] Arbitration Rules, Article 42 (2).
[186] Arbitration Rules, Article 43 (1).
[187] LICA, Article 34.

ANNEXES

ANNEX 1 – LAW ON FINANCIAL RESTRUCTURING

Law of Ukraine on Financial Restructuring

(On October 19, 2019 this law will expire, except for changes to paragraph four of article 559 of the Civil Code of Ukraine, Laws of Ukraine "On banks and banking activity", "On Mortgage", " On Securing Creditor Claims and Registration of Encumbrances " in accordance with the Law of Ukraine on June 14, 2016 N 1414-VIII)

This Law stipulates terms and order of conducting voluntary restructuring proceedings of the Debtor using the measures envisaged by this Law.

Article 1. Definitions

1. For the purposes of this Law, the following terms shall have the following meanings:

1) **Arbitrator** - an individual, carrying out professional activity in the area of public services provision, and appointed by the Arbitration Committee to resolve Disputes arising in the course of procedure of financial restructuring;

2) **Arbitration Agreement** - an agreement by the parties to submit to arbitration under the Arbitration Rules Disputes arising in the course of procedure of financial restructuring;

3) **Arbitration Rules** – document setting out the procedure and rules for resolution of Disputes arising in the course of the procedure of financial restructuring, the procedure for the conduct of arbitration, the procedure of formation of the list of arbitrators, arbitrators' qualification requirements, the schedule of arbitration costs and fees, as well as other questions related to the resolution of Disputes in the course of the procedure of financial restructuring;

4) **Bank with the State Participation** - a bank in which the state owns not less than 100 percent of the authorized capital

5) **Debtor** - a legal entity – commercial undertaking that is indebted to at least one Financial Institution, which is not a Debtor's related party, and commences a Financial Restructuring Proceeding under this Law, including Municipality-Owned and State-Owned Enterprises, except financial institutions and, treasury enterprises.

6) **Monetary Obligation** - obligation of the Debtor to pay to the Creditor a certain sum of money pursuant to a civil contract (transaction) or based on other grounds set forth by the legislation of Ukraine. Monetary obligations also

include obligations to pay taxes, duties (mandatory payments), except insurance contributions for the general mandatory pension and other social insurance; and obligations which occur due to the impossibility to fulfill obligations under supply, safekeeping, works, lease (rental), etc. contracts and which must be expressed in monetary terms.

Debtor's monetary obligations include penalty (fines, late payment penalties) and other property or financial sanctions.

Monetary obligations of a debtor shall not include obligations to the founders (participants) of a debtor – legal person that arising from such participation, arrears in salaries of debtors' employees.

The composition and amount of monetary obligation shall be determined as at the day when the debtor files a written restructuring request with the secretariat.

7) **State owned enterprise** – an enterprise operating on the basis of the state property, or - an enterprise in the charter capital of which the state owns 50% and more;

8) **State Bank** – a bank in which the state owns 100 percent of the authorized capital

9) **Standstill Agreement** – an agreement between the Debtor, Involved Creditors and Sureties (if any) on the period and conditions for forbearance by the Creditors from taking steps to enforce the collection of Debts from the Debtor and/or Sureties and foreclose the pledge (mortgage) by way of court or out-of-court proceeding;

10) **Secured Creditor** – a Creditor whose claims are secured by pledge (including mortgage);

11) **Involved Creditors** – creditors, defined by the Debtor, whose claims can be restructured in accordance with the procedures, envisaged by this Law, and who signed an agreement for restructuring, as well as enforcement authority (in case the Debtor defines it as Involved creditor in the application for restructuring), takes part in the financial restructuring proceedings in the order stipulated by this Law

12) **Restructuring Consent** – a written agreement between the Debtor and Involved Creditor, which constitutes a ground for commencement of the Financial Restructuring Proceeding and contains arbitration clause.

13) **Investor** – a natural and/or legal person that wishes to take part in the procedure of financial restructuring of a Debtor.

14) **Municipality-Owned Enterprise** - – an enterprise operating on the basis if the municipal property of the territorial community or an enterprise the share of municipal property in the charter capital of which is 50 percent and more;

15) **Creditor** - a natural person, private entrepreneur a legal entity, enforcement authorities that has documented claims to the Debtor in respect the Debtor's Monetary Obligations;

16) **Financial Distress** - situation when a Debtor recognizes inability to fulfil its Monetary Obligations to the Creditors as they come due

17) **Moratorium** – suspension of the performance by the Debtors of the Involved Creditors' and Related Parties' claims and suspension of the measures aimed at performance of such claims, including suspension of the period of asserting the claims to sureties;

18) **Independent Expert** - natural person, natural person-entrepreneur or legal entity that is not related to the Debtor or Creditor, complies with the requirements set by the Steering Committee, selected by the Creditors' meeting, and that conducts financial and business review of the Debtor's finances and business and prepares the finance and business review report of the Debtor's business;

19) **Enforcement Authorities** – the central body of executive power that implements the state tax policy, the state customs policy, the state tax, customs law enforcement policy, as well as its territorial bodies authorized to take actions in order to collect tax indebtedness within the scope of their powers, central executive body that implements state treasury policy for public funds, accounting in the budget execution, executive authority ensuring implementation of the state policy in court and other bodies' (officials') decisions enforcement.

20) **Restructuring Plan** – agreement in accordance with which the monetary obligation and\or economic activities of the Debtor are restructured within the financial restructuring proceedings, concluded in the order stipulated by this Law between the Debtor, the Involved Creditors and the Investors (if any), as well as other entities entrusted with responsibilities in accordance with restructuring plan.

21) **Notice of dispute** – a document on the basis of which arbitration starts reviewing the dispute;

22) **Related Party** - an entity that has the same as the Debtor Ultimate Beneficial Owner(s) (Controller (s)); (ii) the Debtor owns a significant holding in the entity; (iii) the entity owns a significant holding in the Debtor; (iv) the entity

which beside with the Debtor have the same significant holding owner(s); or (v) the entity is owned or controlled by an associated individual of the Debtor's Ultimate Beneficial Owner (Controller) or owner(s) of a significant holding in the Debtor (the associated individual includes spouse, direct relatives (father, mother, children, siblings, grandparents, grandchildren), direct relatives of a spouse, spouse of a direct relative), is a surety (property surety) provider for such Debtor liabilities.

State banks, banks with State participation, other State-Owned Enterprises, or any state authorities for the purposes of this Law shall not be deemed to be Related Parties in respect of Debtors that are State-Owned Enterprises.

23) **Financial Restructuring Proceeding** – set of measures pursuant to which Debtor's monetary obligations and/or business is restructured under the conditions and in the order set by this Law

24) **Financial Restructuring Framework Agreement (Framework Agreement)** - an agreement between the Financial Institutions with respect to coordination of their actions in the course of the Financial Restructuring Proceeding of Debtor.

25) **Dispute** - a controversy or disagreement between the Involved Creditors or between the Involved Creditors and the Debtor in relation to: (i) priority and amount of Creditors' claims; (ii) disagreements between the Involved Creditors with respect to approval and\or amending of approved Restructuring Plan by the requisite threshold of votes, as well as any other disputes arising out of Framework Agreement; and during the financial restructuring proceedings.

26) **Financial Institution** – institution which is financial according to the Law of Ukraine "On Financial Services and the State Regulation of Financial Services Markets", international financial institution, as well as foreign legal entity which is foreign financial institution according to the legislation of the countries of their incorporation provided a foreign currency credit or loan to a resident of Ukraine under a contract registered in the National Bank of Ukraine.

For the purposes of this Law, the term "significant holding" shall have the meaning defined in the Law of Ukraine "On Banks and Banking Activity" and the term "Ultimate Beneficial Owner (Controller)" shall have the meaning defined in the Law of Ukraine "On Prevention and Counteraction to Legalization (Money Laundering) of the Proceeds from Crime or Terrorism Financing and Financing of the Proliferation of Weapons of Mass Destruction". Other terms, which are used in this Law, shall have the meanings set out in the laws of Ukraine.

Article 2. Objective and the Scope of the Law

1. The objectives of Financial Restructuring are:

1) stimulating the recovery of business of financially distressed Debtors via monetary obligations and/or business restructuring;

2) preservation of financial system stability;

3) enabling access of Debtors to financing to recover its business.

2. Financial Restructuring Proceedings shall apply to the restructuring of the Debtor's business and assets, including those situated outside of Ukraine and to monetary obligation of the Debtor, including that have arisen pursuant to agreements that are governed by foreign law.

Article 3. Application of Other Laws

1. During the effect of this Law, other laws of Ukraine shall be effective subject to specific provisions of this Law.

2. Rights and obligations of Creditors and Debtors shall be governed by the applicable laws of Ukraine to the extent they do not contradict to this Law.

3. Irrespective of the identity of the parties to the dispute, the dispute resolution procedure by arbitration envisaged by the present Law shall be governed by the provisions of the Law of Ukraine “On International Commercial Arbitration” subject to specific rules established in the present Law.

Article 4. Participation of Debtors in the Financial Restructuring Proceeding

1. A Debtor can be eligible for participation in the Financial Restructuring Proceeding under this Law in the case when, it is suffering Financial Distress and the Debtor’s business may be considered viable.

A Debtor’s business activity shall be regarded as viable if the Involved Creditors have signed the Restructuring Consent.

The prospectiveness of economic activities of a Debtor is proved by the evaluation report on financial and economic activities

2. A Debtor may not file an application for financial restructuring within 18 months of the commencement of Financial Restructuring Proceeding under its earlier application or after the initiation by the Debtor of an Rehabilitation of Debtor to initiation of the proceedings in the bankruptcy case according to the Law of Ukraine “On Restoring a Debtor’s Solvency or Declaring a Debtor’s Bankruptcy”.

3. If a restructuring application is filed by several Debtors that are related to each other and have at least one joint Creditor, which is a Financial Institution, then the Financial Restructuring may be carried out jointly subject to written approval by the Involved Creditors of each Debtor, which are Financial Institutions, in the order specified by Article 23 of this Law.

Article 5. Participation of Creditors in the Financial Restructuring Proceeding

1. The Financial Institutions that are Creditors of the Debtor are entitled to participate in the process of financial restructuring.

Other Creditors are entitled to participate in the procedure of financial restructuring, if at least one Financial Institution is involved in this procedure, which is not Debtor's related party.

2.The number of involved creditor's votes is defined as a proportion of the amount of the Debtor's or number of Debtors' monetary obligations to such Creditor, in relation to which the decision on joint financial restructuring procedure is taken, divisible by one thousand hryvna except penalty (fines) and other property or financial sanctions, liabilities under securities' purchase contracts, royalties, obligations on payment of royalties.

Monetary obligation in foreign currency, for the purposes of counting the number of votes, is defined in hryvna in accordance with the official exchange rate for this currency, set by the National Bank of Ukraine as of the day of submission by the Debtor of the written application for the restructuring to the secretariat.

3. Number of votes of involved creditor – financial institution in the decision-making process, in cases, stipulated by this Law, is defined on the basis of the amount of Debtor's monetary obligation to the financial institution arising from the contracts, primary creditor for which was this or other (in case of change of the creditor) financial institution. For the amount of claims arising from other agreements, apart from the mentioned agreements, the financial institution is considered to be the Debtor's creditor on general terms and for that amount it can participate in the creditors' committee and vote on any issue, which does not require the status of financial institution.

4. The enforcement authority, the amount of Debtor's monetary obligation to which (including the amount of the tax payable) is less than one third of the Debtor's monetary obligations to all Involved creditors, except the related parties, for the day when the Debtor submits to the Secretariat a written application on restructuring, is an Involved creditor and participates in financial

restructuring proceedings without the need to provide consent for restructuring.

5. The enforcement authority, the amount of Debtor's monetary obligation to which (including the amount of the tax payable) is one third or more of the Debtor's monetary obligations to all Involved creditors, except the related parties, for the day when the Debtor submits to the Secretariat a written application on restructuring, participates in the restructuring proceedings in case of signing of the consent for restructuring.

Article 6. Framework Agreement

1. The Framework Agreement shall govern the principles and terms for coordination among Financial Institutions during Financial Restructuring Proceeding conducted under this Law.

2. The National Bank of Ukraine shall:

1) Draft the Framework Agreement;

2) Publish the draft Framework Agreement on the official web-site of the National Bank of Ukraine for submission of comments and proposals within 30 days of the publication;

3) Ensure preparation of the final version of the Framework Agreement, approve Framework Agreement and publish it on the official web-site of the National Bank of Ukraine.

3. Financial Institutions shall sign a Framework Agreement by way of sending an official written notice to the National Bank of Ukraine regarding their joining of the Framework Agreement posted on the official web-site of the National Bank of Ukraine.

Information about signing of the Framework Agreement by the financial institution is placed on the official web-site of the National Bank of Ukraine.

Article 7. Coordination among Financial Institutions

1. Financial Institutions participating in the Financial Restructuring Proceedings shall be entitled to designate one of them to lead the negotiations with the Debtor or to represent them in such Financial Restructuring Proceeding.

2. Financial Institutions that are signatories to the Framework Agreement shall coordinate in accordance with the terms and conditions of such Agreement and this Law.

Article 8. Participation of Deposit Guarantee Fund and State Banks and Banks with State Participation in the Financial Restructuring Proceeding

1. The Deposit Guarantee Fund (Fund) and the State Banks and banks with state participation shall sign a Framework Agreement and they are authorized to participate in financial restructuring proceedings of Debtors, including to approve a Restructuring Plan, sign the Standstill Agreement, conduct restructuring of their claims and monetary obligation of the Debtor in a manner envisaged by this Law, which may in particular involve changing the currency of the obligation, changing of the interest rate (including by setting it lower than the cost at which the funds are raised by the banks, including State-Owned Banks and Banks with the State Participation), a full termination of the accrual of the interest, partial debt forgiveness and other measures envisaged by the restructuring plan.

2. The Fund shall sign the Framework Agreement and participate in the restructuring proceedings of Debtors on behalf of all Banks that have been placed under temporary administration or liquidation taking into account provisions of pursuant to the Law of Ukraine "On System of Guarantee of Deposits of Individuals".

Article 9. Creditors' Committees

1. If the Financial Restructuring Proceeding of the Debtor involves two or more Financial Institutions, these institutions may form the Coordinating Committee of Financial Institutions (the Coordination Committee)

The Coordination Committee shall be established to exchange information, conduct negotiations on behalf of other Financial Institutions and for other matters related to the Financial Restructuring Proceeding. Coordination Committee comprises all Involved Creditors - financial institutions willing to take part in its activities.

2. Involved Creditors that are not Financial Institutions may form a Creditors' Committee to exchange information, conduct negotiations on behalf of other such Involved Creditors and for other matters related to the Financial Restructuring Proceeding.

Involved Creditors that are not Financial Institutions may also authorize one of the Involved Creditors to negotiate on their behalf or to coordinate their efforts without forming a Creditors' Committee.

3. An Involved Creditor representing interests of other Involved Creditors in the negotiations with the Debtor shall regularly and timely report to such Creditors

on the course, content and other relevant details of the Financial Restructuring negotiations.

Article 10. Disclosure of Information by Debtor

1. The Debtor shall, in the order defined by the meeting of the Involved Creditors:

1) provide Involved Creditors and investors (if any) with timely access to data and information according to their requests, including but not limited to information on its financial condition/financial condition of its sureties, assets, capital, liabilities, availability and condition of the collateral of the Debtor and its sureties, operations and business prospects, revenue and costs, forecasts of key operating and financial indicators for the period of the restructuring of the obligations, its Ultimate Beneficial Owner(s) (Controller (s)) and Related Parties, to ensure a proper evaluation of its financial condition and viability, and for purposes of development and consideration of the Restructuring Plan, etc.

2) provide the Involved Creditors and investors (if any) with financial statements complying with the requirements of international financial reporting standards or national accounting regulations (standards) whichever the Debtor is applying, for each of the three financial years preceding such proceeding, together with an auditor's or audit firm report (at the request of Involved Creditors);

3) cooperate fully with the Coordination Committee, the Creditors' Committee, Independent Expert or other authorized representatives of the Involved Creditors to ensure a timely evaluation of its financial and economic position, as well as the viability of the Restructuring Plan.

4) provide relevant information necessary to evaluate its competitive advantages and business value without obligation to disclose trade secrets and business know-how, if such disclosure can have a negative impact on its business;

5) comply with any further disclosure requirements set out by law.

Article 11. Debtor's financial and business activities Review

1. The Debtor shall:

1) facilitate the conduct by the independent expert review of its financial and business activities, the condition of the collateral of the Debtor and its sureties, forecasts of key operating and financial indicators of the Debtor and its Related Parties for the period of the restructuring of the monetary obligations;

2) provide to the Involved Creditors and investors (if any) a report of the independent expert on the review of its financial and business activities, that shall in particular depict the condition of the collateral of the Debtor and its sureties, forecasts of key operating and financial indicators of the Debtor and its Related Parties for the period of the restructuring of the obligations, as well as to contain information about compliance with the conditions, stipulated in Article 18, part 1 of this Law.

2. The services of the Independent Expert for preparation of the report on the review of the finance-business, the condition of the collateral of the Debtor and its sureties, forecasts of key operating and financial indicators of the Debtor and its Related Parties for the period of the restructuring of the obligations shall be paid by the Debtor, unless otherwise agreed by the parties. The procedure and time limits for such review shall be agreed between the Debtor and the Involved Creditors.

Article 12. Exchange of information and Confidentiality

1. Debtor and Involved Creditors shall have the right to exchange information relating to claims of Creditors to the Debtor and the security of such claims.

2. Involved creditors, which are the financial institutions, shall be entitled to provide restricted information, in legislatively stipulated order related to the Debtor and Surety (including covered by banking secrecy) to the Involved Creditors and investors (if any), as well as to Supervisory Board and Arbitration Committee (Arbitrator).

3. The Debtor, Involved Creditors and Supervisory Board, Secretariat and Arbitration Committee (Arbitrator), as well as other persons involved in Financial Restructuring Proceedings, shall be obliged to keep confidential data, information, documents and reports related to the Financial Restructuring Proceeding that are designated by their holders as confidential.

Article 13. Financing of the Debtor during Financial Restructuring Proceeding

1. The Debtor may obtain with the consent of Involved Creditors financing from all sources not prohibited by law before the approval of the Restructuring Plan to enable the continued operation of its business.

2. If security is required for financing referred to in Part 1 of this Article, it will be obtained first from any unencumbered assets of the Debtor, solely with the consent of the Involved Creditors (except for the Related Parties) in the order stipulated by Part Two Article 23 of this Law. The Debtor shall be entitled to grant a security interest in assets already subject to security with approval of the Creditor(s) having a prior right in such assets.

Article 14. Oversight Board

1. The Oversight Board shall be a coordination body with respect to organization and conduct of the Financial Restructuring Proceeding. The Oversight Board shall be composed of nine members - one representative from each of the National Bank of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Economic Development and Trade of Ukraine and the Ministry of Justice of Ukraine, five representatives from associations of financial markets participants, business associations, financial market experts, the candidacies of which shall be discussed at the open meeting of Verkhovna Rada Committee dealing with the issues of financial markets regulation, which by its decision delegate such representatives to the Oversight Board.

The members of the Oversight Board take part in its work on a pro-bono basis.

The Supervisory Board is headed by the Head of the Supervisory Board, elected by its members from among themselves by the simple majority of votes of the Supervisory Board members.

2. The powers of the Oversight Board shall be as follows:

1) establishing and staffing the Secretariat;

2) preparing and approving the regulation on the Secretariat;

3) monitoring the work of the Secretariat and summarizing the reports provided by the Secretariat on the course and outcome of Financial Restructuring Proceedings;

4) establishing and staffing the Arbitration Committee;

5) approving and revising the list of Arbitrators;

6) adopting and revising the Arbitration Rules and arbitration fees.

7) approval of recommendations and requirements to the documents necessary for financial restructuring proceedings, which are submitted to the Secretariat or sent by the Secretariat, as well as to the report about conducting the review of the Debtor's business activity;

8) development and approval of the requirements to the independent experts.

3. The Oversight Board shall approve its regulations.

Article 15. The Secretariat

1. The Oversight Board shall establish, in the order set by it, the Secretariat responsible for informational, analytical, organizational and administrative

support of Financial Restructuring Proceedings according to this Law. The Secretariat shall be subordinated to the Oversight Board.

2. In accordance with its functions, the Secretariat shall:

1) handle all administrative and procedural tasks related to Financial Restructuring Proceedings as required by this Law;

2) prepare and provide reports to the Oversight Board on the course and outcome of Financial Restructuring Proceedings;

3) maintain and disseminate information on Financial Restructuring Proceedings;

4) prepare guidelines for the use of Financial Restructuring Proceedings;

5) draft recommendations and requirements to the documents, defined in point 7, part Two of the Article 14 of this Law;

6) create and maintain its own web-site, where it places the information in accordance with the requirements of this Law.

3. Equipment and material procurement and organizational support to the Secretariat operations is provided at the expense of the funds received from the business entities (including non-residents), natural persons, international financial organizations in the form of non-repayable financial aid, grants, presents, other receipts, which should not be repaid.

4. The Secretariat does not directly participate in the restructuring negotiations between the Debtor and the Involved Creditors.

Article 16. Arbitration

1. Arbitration Committee shall be established by the Oversight Board and shall be composed of the President and two Vice-Presidents. The President of the Arbitration Committee shall perform the functions conferred upon him by the Arbitration Rules. The Vice-Presidents may substitute for the President in case of the President's absence. The President and the Vice-Presidents must be independent of the parties, participating in the financial restructuring proceedings, and, in case of conflict of interest, they shall be substituted by other members of the Arbitration Committee.

2. The Involved Creditors may submit for resolution by arbitration any Dispute arising in the course of the Financial Restructuring Proceeding. A Dispute may be submitted for resolution to arbitration if there is an Arbitration Agreement, which entered into in the following forms:

1) arbitration clause in the Framework Agreement;

2) written consent of the Debtor in the restructuring application.

3) Arbitration clause in Creditor's agreement for restructuring

3. The procedure of dispute resolution by arbitration shall be conducted pursuant to the Arbitration Rules and shall be deemed to be commenced after the Notice of Dispute has been filed with the Arbitration Committee.

The Notice of Dispute shall contain the following information:

1) date of filing of the Notice of Dispute;

2) summary of subject-matter of claim;

3) written consent for resolution of dispute by arbitration pursuant to the Arbitration Rules.

Not later than on the next business day upon receipt of the Notice of Dispute, the Arbitration Committee, in the order defined by the arbitration rules, shall appoint a sole Arbitrator from the list of arbitrators approved by the Oversight Board. When required pursuant to the Arbitration Rules, the Arbitration Committee shall take decisions with respect to challenge, removal and replacement of a sole Arbitrator.

The sole Arbitrator shall render an arbitral award according to the procedure and within the time limits set forth in the Arbitration Rules. Such arbitral award shall be final and binding on the parties to the Dispute.

The Rules of Arbitration shall be approved by the Oversight Board.

4. The Secretariat shall, upon request of the Arbitration Committee or an Arbitrator, render administrative and technical assistance in the course of arbitral proceedings conducted, including in respect of keeping the case files and arbitral awards.

Article 17. Conduct of the Financial Restructuring Proceeding

1. A Financial Restructuring Proceeding shall be conducted out-of-court by way of negotiations between the Debtor, its Related Parties and Involved Creditors in respect of restructuring of the monetary obligations to such Creditors, pursuant this Law.

2. If a Dispute arises in the course of the Financial Restructuring Proceeding, the Involved Creditor or may submit such Dispute to arbitration by filing a Notice of Dispute. The Dispute shall be resolved in accordance with the Arbitration Rules pursuant to Article 16 of this Law.

Article 18. Initiation of the Financial Restructuring Proceeding

1. The Debtor is entitled to initiate a Financial Restructuring Proceeding by written application submitted to the Secretariat, provided there is no open proceeding against the Debtor in a bankruptcy case or rehabilitation of the Debtor before commencement of proceedings a bankruptcy case.

2. The restructuring application shall include:

1) A written consent of the Debtor to submit Disputes to arbitration under the Arbitration Rules;

2) A reference to the availability of the consent of the Involved Creditor (Creditors) to restructuring;

3) information with confirmation that there is no open proceeding against the Debtor in a bankruptcy case or rehabilitation of the Debtor before commencement of proceedings a bankruptcy case.

3. The following shall be attached to the application:

1) the restructuring consent of the Involved Creditor(Creditors), including the restructuring consent of the enforcement authority, envisaged by part five of the Article 5 of this Law;

2) a list of all Involved Creditors, including those that are Related Parties, and current mailing addresses, e-mail address (if available) of such Creditors and the amount of monetary obligation to each of them;

3) a list of all Secured Creditors, including those that are not Involved Creditors, and current mailing addresses, e-mail address (if available) for such Creditors;

4) a list of all Debtor's Related Parties, including those that are not the Involved Creditors, and current mailing addresses, e-mail address (if available) for such Related Parties;

5) a list of any pending court and enforcement proceedings in respect of the Debtor initiated by the Creditors, identifying:

- the parties to the court and enforcement;
- the case number;
- the name of court, tribunal or other body hearing the case body of public enforcement service of Ukraine, where enforcement proceedings are initiated;

- a brief description of the subject-matter and current status of the court\enforcement proceeding.

4. The Restructuring Consent of the Involved Creditors shall be signed by one or more Financial institutions none of which is a Debtor's Related Party, that hold at least 50 percent of the total amount of claims of Financial Institutions to the Debtor, excluding liabilities to the Related Parties.

Article 19. Commencement of Financial Restructuring Proceeding

1. The Secretariat shall register an application for restructuring received from the Debtor.

The Secretariat shall verify the application and the Restructuring Consent for compliance with the requirements set forth in Article 18 of this Law and take a decision on commencement of a Financial Restructuring Proceeding not later than on the next business day after the registration of the application.

In the case of absence of the application or the Restructuring Consent or their non-compliance with the requirements set forth in Article 18 of this Law, or if the Debtor files a new application before the expiry of the term defined in Part 2 of Article 4 of this Law, the Secretariat shall return the application to the Debtor without its consideration and without commencement of the Financial Restructuring Proceeding indicating the reasons for its return.

The Secretariat shall not later than on the next business day after the registration of the application for restructuring send to all Creditors identified in the annexes to the application a notice indicating date, time and place of holding the first meeting of Involved Creditors as well as the contact details of the Secretariat and the Debtor.

The date of the first meeting of the Involved Creditors shall be set not earlier than seven working days and not later than ten working days after the commencement date of the Financial Restructuring Proceeding.

2. In case the Secretariat decides to commence the Financial Restructuring Proceeding, the Debtor shall provide the following information to the Involved Creditors no later than seven working days before the first meeting of the Involved Creditors:

1) Justification of the need for restructuring the Debtor's liabilities (in a free form);

2) A certificate about the full amount of the Debtor's obligations with a breakdown by main creditors and/or groups of creditors as of the latest available date, including:

– Financial Institutions;
– Debtor's Related Persons;
– Creditors which are the Debtor's Related Persons (if any);
– Other creditors;
– Secured creditors indicating the collateral and its type;

3) Information about any past due indebtedness under valid contracts; the right of creditors to accelerate loans under valid contracts; any violations of the valid security contracts;

4) Information about the availability and condition of the security of the Debtor and the Property Sureties;

5) The Debtor's expectations as regards the key operating and financial indicators for the next 12 months (in a free form);

6) A list of existing court and enforcement proceedings against the Debtor: parties of the court(enforcement proceedings), case numbers, name of the court, arbitration tribunal or other body considering the case or the body of the Public Enforcement Service of Ukraine, where the enforcement proceeding is initiated; brief description of the subject of the dispute and the current status of the court(enforcement proceedings).

3. Not later than on the next business day after commencement of the Financial Restructuring Proceeding, the Secretariat shall send to all the Creditors and Debtor's Related Parties indicated in the annexes to the application for restructuring notice of commencement of a Financial Restructuring Proceeding, as well as publish such notice on the web-site of the Secretariat.

The notice of commencement of a Financial Restructuring Proceeding shall include:

1) full name of the Debtor, its mailing address, registration number in the Unified State Register of the Legal Entities, Natural Persons-Entrepreneurs and public organizations;

2) list of Involved Creditors;

3) list of Debtor's Related Parties;

4) commencement date of the Financial Restructuring Proceeding;

5) information on establishment of the Moratorium;

6) date, time and place of the first meeting of the involved creditors.

The Debtor shall have the right to amend the list of the Involved Creditors in a way of sending the notice and consent for restructuring of such Involved Creditor to the Secretariat. Such amendments can be introduced not later than two working days before the first meeting of the Involved Creditors.

Not later than within next working day after receipt of the notice on introducing amendments to the list of the Involved Creditors the Secretariat:

informs all Involved Creditors about such amendments;

updates the notice on the commencement of the financial restructuring proceedings, placed on the own web-site;

sends information, defined by parts one and two of this Article, to such Involved Creditor.

Article 20. Stay of Insolvency Proceeding

1. If on the commencement date of Financial Restructuring Proceeding an application to open a bankruptcy proceeding in respect of a Debtor has been filed with the commercial court, the Involved Creditor or the Debtor may apply for stay of the bankruptcy proceeding prior to rendering by the commercial court of the ruling on opening of the bankruptcy proceeding.

Evidence of registration by the Secretariat of the application for restructuring of the Debtor shall be submitted together with the respective motion.

2. The commercial court shall:

1) stay consideration of the application to open a bankruptcy proceeding until the day of the conclusion of the Restructuring Proceeding in accordance with Article 27 of this Law;

2) resume consideration of the application to open a bankruptcy proceeding in the event that the Restructuring Plan of the Debtor has not been approved as a result of the Financial Restructuring Proceeding;

3) dismiss the application to open a bankruptcy proceeding in the event that the Restructuring Plan of the Debtor has been approved as a result of the Financial Restructuring Proceeding and provided that the Plan provides for repayment or restructuring of the claims of a Creditor(s) that filed application to open a bankruptcy proceeding

Article 21. Moratorium

1. A Moratorium shall be introduced from the commencement day of the Financial Restructuring Proceeding.

The Moratorium shall be effective for the period until the conclusion of the Financial Restructuring Proceeding but not longer than for a period of 90 days.

This term may be extended for not more than 90 calendar days with the consent of the Involved Creditors none of which are Debtor's related parties, in the order stipulated by part two of the Article 23 of this Law. The overall period of Moratorium may not exceed 180 days.

The Involved Creditors (except the related parties), in the order stipulated by part two of the Article 23 of this Law, may decide to terminate the Moratorium at any time after the commencement of the Financial Restructuring Proceeding.

2. During the period of the Moratorium the following is prohibited:

1) for the Debtor to perform under any claims of the Creditors, except as may be agreed by the Involved Creditors, except the Related Parties, in the order stipulated by part two of the Article 23 of this Law, and the Debtor collectively as part of an agreement governing normal operations of the business during the negotiation period;

2) to conduct enforcement against the Debtor's assets and assets provided by third parties to secure the fulfillment of the Debtor's obligations to the Involved Creditors based on enforcement documents, a notarial writ or using any extra-judicial methods of enforcement;

3) to enter into pledge or mortgage agreements as to Debtor's assets, except where the entry into such agreements is required to obtain financing during the Financial Restructuring Proceeding in accordance with Article 13 of this;

4) to take steps to obtain possession or exercise control over the Debtor's assets, including pursuant to any contractual arrangement; and;

5) the set-off of counter claims of the same kind.

6) alienate, as well as sell, and conduct enforcement against the Debtor's fixed assets, which are not the object of pledge (mortgage) for the date of start of the restructuring proceedings, on the basis of the enforcement documents, as well as on the basis of enforcement inscription by a notary or in a way of any other out of court enforcement methods.

3. During the period of the Moratorium:

1) no penalties (fines), or other financial sanctions shall be charged for failure to perform or undue performance by the Debtor under any claims that are covered by the Moratorium; and;

2) the running of the limitations period or any statutory or contractual period for the exercise by the Creditors of their rights, including the period during which claims can be made to Sureties, shall be suspended.

4. The Moratorium shall not extend to claims of Creditors that are not Involved Creditors (except the case, mentioned in point 6 part two of this Article) as well as the requirements of the obligations arising from injury to life and health of citizens and the requirements for payment of wage arrears to employees and laid off employees.

The Moratorium shall extend to any claims of the Debtor's related parties.

During the period of the Moratorium, any Creditor (including to the claims of which are subject to moratorium) shall be entitled to initiate or continue a legal proceeding to obtain a judgment against the Debtor on debt recovery or foreclosure.

5. During the Financial Restructuring Proceeding, the Debtor shall take necessary measures to protect and maintain its assets.

The Debtor, its participants or shareholders, without consent of the involved creditors, none of which is Debtor's related party, in the order stipulated by the Part Two of the Article 23 of this Law, shall be prohibited from

1) engaging in any transactions to dispose of its assets other than in the usual course of business; and

2) taking decisions on a reorganization (merger, acquisition, division, spin-off, transformation).

Article 22. Standstill Agreement

1. If a decision is made to terminate the Moratorium under part two of the Article 23 of this Law, the Debtor and one or more Involved Creditors may enter into a Standstill Agreement in writing, the copy of which shall be filed with the Secretariat.

2. The Standstill Agreement shall contain the following essential terms:

1) date and conditions of entry into force of the Standstill Agreement;

2) date and terms of termination of the Standstill Agreement;

3) the terms and scope of the forbearance by Involved Creditors that sign the Standstill Agreement on actions to enforce the collection of debts and foreclosure of the pledge (mortgage) by way of court or out-of-court proceedings during the term of the Standstill Agreement.

3. The Standstill Agreement in particular may contain additional terms:

1) provision by the Debtor of information concerning the existence of security;

2) restrictions on the Debtor for making payments, using funds in its bank account (accounts), settling liabilities, obtaining financing, disposing of assets, as well as requirements for obtaining the prior permission for taking the above actions by the Debtor;

3) establishment by the Debtor of new bank accounts with a bank designated by the parties to which funds of the Debtor shall be transferred. Funds that are subject to security, other property rights in favor of Creditors or other encumbrances established under law or contract may be transferred to such accounts with written consent of the Creditors holding such property rights or encumbrances;

4) restrictions on Involved Creditors in disposing of their claims;

5) liability of the parties for breach of the Standstill Agreement;

6) the procedure of information exchange between the Parties to the Standstill Agreement;

7) terms for extension of the Standstill Agreement.

4. Involved Creditors that have not signed the Standstill Agreement shall retain all rights of Involved Creditors in the Financial Restructuring Proceeding.

5. The Standstill Agreement expires not later than the date of the Restructuring Plan coming into force

Article 23. Course of the Financial Restructuring Proceeding

1. After commencement of Financial Restructuring Proceeding, issues being resolved, in particular with respect to:

1) termination or extension of the Moratorium;

2) the need to involve an Independent Expert for the review of the Debtor's financial-business activity and the Restructuring Plan;

3) approval or rejection of a joint Financial Restructuring Proceeding for several Debtors which are Related Parties (if any), taking into account Article 4 of this Law;

4) formation of the Coordination Committee of the financial institutions;

5) formation of the Creditors' Committee;

6) entry into the Standstill Agreement;

7) procedure of coordination and carrying out the negotiations between the Involved Creditors and the Debtor on preparation of the Restructuring Plan;

8) other issues

2. Decisions with respect to the issues referred to in Part 1 of this Article shall be taken by a two-thirds of votes, defined in accordance with the procedure set by Article 5 of this Law:

–with respect to the issues referred to in points 3and, Part 4 of this Article – by the Involved Creditors which are Financial Institutions;

–with respect to the issue referred to in point 5 Part 1 of this Article – by the Involved Creditors which are not Financial Institutions;

with respect to other issues – by the Involved Creditors.

Involved creditors – the Debtor's related parties and enforcement bodies, in case envisaged by part four of Article 5 of this Law do not participate in the voting, and their claims are not counted in defining the total number of votes and total amount of claims of the involved creditors.

Decisions shall be made in writing and signed by the authorized representatives of the Debtor and the Involved Creditors, which participated in voting. The copy of the decision is handed over to the Secretariat.

3. The Debtor or the Involved Creditors may call the meeting of the Involved Creditors by filing with the Secretariat a notice with proposal on place, time and date of holding such meeting. The date of the meeting shall be defined not earlier than five business days prior to the date of filing a notice with the Secretariat.

The Debtor shall submit the Restructuring Plan to the Secretariat in requisite number of copies for each Involved Creditor. The Secretariat shall distribute this Plan and notice on the meeting for the purposes of the approval of such Plan to all Involved Creditors not later than ten business days before the proposed date of the meeting.

The decision on the approval of the Restructuring Plan shall be made at the meeting of Involved Creditors.

The Debtor and Involved Creditors shall complete negotiations and approve the Restructuring Plan not later than within 90 days of the date of commencement of the Voluntary Financial Rehabilitation Proceeding. This period may be extended for no more than a total of 90 calendar days with the consent of the Involved Creditors, none of which is the Debtor's related party, in the order stipulated by part two of the Article 23 of this Law. The overall period of financial restructuring proceedings may not exceed 180 days.

If the Debtor and Involved Creditors participating in the Financial Restructuring Proceeding are unable to achieve a consensus on approval of Restructuring Plan for the period, stipulated by this Article, the procedure of the financial restructuring is suspended.

Article 24. Cession of Claims during the Restructuring Period

1. Cession of the claims in the course of the Financial Restructuring Proceeding takes place in accordance with the Law.

All actions taken by the previous Creditor in course of the Financial Restructuring Proceeding, including actions taken in the course of dispute resolution by arbitration and the arbitral award, shall be binding on the new Creditor.

Article 25. Restructuring Plan

1. The Restructuring Plan shall be prepared by the Debtor (or Debtors if the decision is made to conduct a joint Financial Restructuring Proceeding) in cooperation with the Creditors which are the Related Parties of the Debtor (if any), the Involved Creditors and investors (if any) and shall include:

1) amounts and terms for repayment by the Debtor of the claims of Involved Creditors;

2) amounts and terms for repayment by the Debtor of the claims of the Creditors which are the Related Parties of the Debtor (if any);

3) amounts and terms of repayment by the Debtor of its liabilities for taxes, duties and other mandatory payments that shall be made according to the conditions set forth in Article 28 of this Law (if any);

4) conditions of participation of investors in the Restructuring Plan (if any);

5) conditions of opening a bank account by the Debtor in the bank determined by the parties to which the proceeds of the sale of the Debtor's assets are to be transferred exclusively for the repayment of debts to the Involved Creditors;

6) information on the conditions for repayment by the Debtor of its liabilities to other Creditors, which do not participate in the Financial Restructuring Proceeding;

7) conditions for the Debtor to obtain financing, if required;

8) procedure for the restructuring, including a list of contracts that must be signed and/or amended to complete the restructuring of the monetary obligations and/or business activity of the Debtor, and the timeframe for the signing of such contracts;

9) procedure of control over implementation of the Restructuring Plan;.

10) conditions and consequences of termination of the Restructuring Plan;

11) other conditions

2. The Restructuring Plan may provide for restructuring of the Debtor's monetary obligations and/or business by means of any of the following measures:

1) repayment in installments, amendment of maturity periods, currency of the obligations, interest rates, including their setting at a level below the cost of the funds raised and full stopping of the interest accrual, or other conditions associated with a loan or with securities securing a loan;

2) modification of other concluded agreements, of the conditions of debt liabilities or changing their form;

3) providing new funding to the Debtor with the Creditor's obligation to provide the new funding solely with the consent of such Creditor;

4) disposal of the Debtor's/Pledger's/Mortgager's assets with or without continuation of mortgage, pledge or other security interests on such property. The proceeds from the alienation of the pledged/mortgaged assets shall be used to satisfy the claims of the Pledgee/Mortgagee of such assets within the claims secured by such mortgage;

5) transfer of ownership of the Debtor's property to the Creditor in full or partial satisfaction of claims; in the case of partial satisfaction of the Creditor's claims with pledged property, the right of further claim continues to exist. The transfer of ownership of the Debtor's property to the Creditor for full or partial satisfaction of claims shall be possible only with the consent of such Creditor;

6) disposal of the Debtor's assets that have not been pledged or mortgaged;

7) partial debt forgiveness;

8) termination or amendment of contracts;

9) enforcement against the collateral, modification of mortgage and pledge agreement or waiver of security interests;

10) provision of additional collateral by the Debtor or third parties, including guarantees and sureties;

11) conversion of debt to equity;

12) obtaining new investment in the capital of the Debtor;

13) settlement of claims;

14) issuance of securities;

15) reorganization (merger, acquisition, division, spin-off, transformation) of the Debtor;

16) changes of members of the management and control bodies of the Debtor to persons identified by the Involved Creditors which are Financial Institutions;

17) changes to corporate governance of the Debtor; and;

18) any other measures relating to the financial restructuring.

When the restructuring plan envisages reorganization (merger, acquisition, division, spin-off, transformation) of the Debtor, Involved Creditors shall not be entitled to demand from the Debtor early performance of the obligations or securing obligations

3. The Restructuring Plan may provide for a division of the Involved Creditors into categories depending on the type of claims and availability (absence) of security for such claims and envisage different conditions for the settlement of claims of different categories of the Creditors. Thus such conditions for Involved Creditors, which are related parties to the Debtor, cannot be better than the conditions for the settlement of claims of any other Involved Creditor.

4. The Restructuring Plan shall be approved at the Involved Creditors' meeting.

The Restructuring Plan shall be deemed approved and binding for the Debtor, related parties, sureties, and all Involved Creditors, if all Involved Creditors voted for it. If the Restructuring Plan has been approved by vote of the of Involved Creditors, holding more than two-thirds of claims of involved creditors then, in order to take final decision on approval of the restructuring plan, the

dispute is forwarded by any of the involved creditors to the Arbitration Committee in the order stipulated by Article 16 of this Law.

In such case, the Restructuring Plan shall be deemed to have been approved by all Involved Creditors from the moment of rendering by a sole arbitrator of an arbitral award on approval of the Restructuring Plan.

Involved Creditors – Debtor's related parties, and enforcement bodies, in case envisaged by part four of Article 5 of this Law do not participate in the voting for approval of the Restructuring Plan, and their claims shall not be included when counting the total number of votes and total amount of Involved Creditors' claims.

For signing the Restructuring Plan the Involved Creditors that are parties to the Framework Agreement may authorize representative appointed pursuant to the provisions of the Framework Agreement.

The Involved Creditors that are not parties to the Framework Agreement shall be entitled to enter into agreement in order to govern the voting procedure and the requisite number of votes necessary for the approval of the Restructuring Plan and determine an authorized representative for the purposes of execution of the Restructuring Plan. The Restructuring Plan shall be deemed to have been approved by such Involved Creditors if it has been approved by the requisite number of votes pursuant to the procedure set out in such agreement.

The Restructuring Plan shall become effective as of the day of its signing by the Debtor and the Involved Creditors that voted in favor of its approval, as well as other entities entrusted with responsibilities in accordance with the restructuring plan.

If the restructuring plan is approved with the participation of the arbitrator, the restructuring plan comes into force from the day when it is signed by the Debtor, involved creditors that voted in favor of its approval, other entities entrusted with responsibilities in accordance with the restructuring plan and the arbitrator that approved such restructuring plan.

The approval and fulfillment of the Restructuring Plan shall not be deemed as a breach of contract between the Debtor and any Creditor that is not a party of the Restructuring Plan.

The conditions set out in the Restructuring Plan for the settlement of the indebtedness to the Creditors that did not participate in the voting or voted against the approval of the Restructuring Plan may not be worse than the conditions of the settlement of the indebtedness to the Creditors that voted in favor of its approval.

At that, the restructuring plan cannot envisage the obligations of the creditor, which did not participate in the voting or voted against the approval of the restructuring plan, without its consent, as to:

1) Providing funding to the Debtor;

2) Forgiving part of the debt when such debt is fully secured by the pledge (mortgage);

3) Full suspension of the accrual of the interest;

4) Forwarding the proceeds from the alienation of property pledged(mortgaged) to such Creditor, for the fulfillment of other Creditors' claims, except in the cases when the amount of the proceeds exceeds the claim of the creditor that did not participate in the voting or voted against the restructuring plan approval;

5) Obtaining the property rights to the Debtor's property in respect of full or partial satisfaction of the claims.

The terms and conditions of the approved restructuring plan are binding for all involved creditors, including the creditors that did not participate in the voting or voted against the restructuring plan approval, and shall prevail over any provisions of any contracts, concluded between the involved creditors and the Debtor, Debtor's sureties and\or property surety providers (if included into the restructuring plan), the claims under which were included into the restructuring plan.

The approved Restructuring Plan does not require approval by the enforcement authority.

The Debtor shall submit a notice on the signing of the Restructuring Plan to the Secretariat.

Amendments can be made to the Restructuring Plan following the procedure envisaged by this Law for the approval of the Restructuring Plan.

5. A Restructuring Plan may be terminated on the grounds set forth in the Restructuring Plan, including in the case of non-signing of contracts and/or amendments to contracts which are necessary for completing the restructuring of the indebtedness and/or business activity of the Debtor within the term established in the Restructuring Plan.

Consequences of the termination of the Restructuring Plan shall be determined by the terms of the Restructuring Plan.

Article 26. Effect of Restructuring on Mortgages and Pledges

1. Approval of the Restructuring Plan by the parties shall not be deemed to constitute a novation and shall not result in termination of the agreements of any mortgage, pledge or encumbrance of Debtor's assets, unless otherwise agreed by the parties.

Agreements on security, including mortgages or pledges of the Debtor's assets, shall remain valid and shall not change the priority of encumbrances, unless the Restructuring Plan provides otherwise, subject to the consent of the Secured Creditor holding such security.

2. Where the Restructuring Plan provides for a modification of scope and terms of a mortgage, pledge or encumbrance, the Secured Creditor who is the Pledgee (mortgagee) and the Debtor (Surety) shall amend the relevant agreements of mortgage, pledge or encumbrance and take appropriate steps to register information about encumbrances within ten business days of executing the Restructuring Plan.

The priority of security claims can be changed solely upon the consent of the Pledgee/Mortgagee.

Article 27. Conclusion of the Financial Restructuring Proceeding

1. A Financial Restructuring Proceeding shall be completed upon the occurrence of any of the following:

1) upon execution of a Restructuring Plan;

2) independent expert provided report on the review of the business activity, which does not confirm positive prospects for the debtor's activities;

3) withdrawal by the Debtor of the written application for restructuring within 30 calendar days of its submission to the Secretariat;

4) by means of a written statement submitted by Initiating Creditors none of which is the Related Party, and which own more than 50 percent of all claims of all Involved Creditors, without taking into account the claims of the Related Parties to the Secretariat that restructuring negotiations have been terminated without an agreement;

5) expiry of the time period set forth in Part 3 of Article 23 of this Law;

2. The Debtor shall inform the Secretariat of any of the events referred to in of Part 1 of this Article

If the notice is not submitted by the Debtor within one working day from the date of occurrence of the events, envisaged by the part One of this Article, any Involved Creditor has a right to notify the Secretariat about occurrence of such event.

The Secretariat shall register such notification or written statement referred to in Paragraphs 3 and 4 of Part 1 of this Article and not later than on the next business day publish it on the official web-site of the Secretariat.

3. At any point in the course of the Financial Restructuring Proceeding, the - Involved Creditors which are Financial Institutions may decide to terminate such Proceeding on the following grounds:

1) violation of the prohibitions envisaged by this law in connection with the establishment of the Moratorium;

2) violation of the restrictions established by the Standstill Agreement;

3) non-fulfillment of arbitration decisions regarding disputes in the context of the Financial Restructuring Proceeding;

The decision to terminate the Financial Restructuring Proceeding on the grounds described by this Part shall be made by a qualified majority of votes making up in amount not less than 75 per cent of the total amount of claims of the Creditors which are Financial Institutions.

Within one working day from the adoption of the decision according to this Part, the Creditors shall notify the Secretariat about the adopted decision in writing for the publication of information about the conclusion of the Financial Restructuring Proceeding.

Article 28. Tax Regime

1. The special rules on taxation of certain operations related to the conduct of the Financial Restructuring Proceeding under this Law shall be established by the Tax Code of Ukraine.

Article 29. Transactions entered into during the course of the

Financial Restructuring Proceeding

1. Transactions entered into during the course of the Financial Restructuring Proceeding, as well as property actions of the Debtor (Surety) taken with a view to implementation of the Restructuring Plan, may not be respectively declared invalid or cancelled by the commercial court in the bankruptcy proceedings of the Debtor on the grounds set forth in Article 20 of the Law of Ukraine "On Restoration of Debtor's Solvency or Declaration of its Bankruptcy" provided the

court establishes that the parties have acted in good faith and without actual intent to harm the rights or lawful interests of other creditors of such Debtor.

Article 30. Liability for Breach of this Law

1 The Debtor shall be liable for a breach under this Law as follows:

1) Breach of its obligation on disclosure of information pursuant to requirements of Article 10 of this Law or breach of obligation on provision of accurate financial statements, in accordance with requirements of Article 11 of this Law - shall entail imposition of a fine in the amount of 500 minimum salaries;

2) Disposal of its assets in the course of the Financial Rehabilitation Proceeding without obtaining a prior approval of Involved Creditors (except related parties) in the order, defined in part two of the article 23 of this Law,- shall entail imposition of a fine in the amount equal to the value of the disposed assets;

3) Taking decision on its reorganization (merger, acquisition, division, spin-off, transformation) in the course of the Financial Rehabilitation Proceeding without obtaining a prior approval of the Involved Creditors (except related parties) in the order, defined in part two of the article 23 of this Law,- shall entail imposition of a fine in the amount of 10,000 minimum salaries;

4) Transfer of funds without obtaining a prior permission of the Involved Creditors in case obtaining such prior permission is required pursuant to a Standstill Agreement shall entail imposition of a fine in the amount equal to the sum of the transferred funds;

5) Breach of requirements of Paragraph 1) of Part two of Article 21 of this Law during the period of Moratorium - shall entail imposition of a fine in the amount equal to the value of the performed claim;

6) Breach of requirements of Paragraph 3) of Part two of Article 21 of this Law during the period of Moratorium - shall entail imposition of fine in the amount equal to the value of the pledge (mortgage).

The Debtor's Ultimate Beneficial Owner (controller) and/or officers shall bear subsidiary liability for a breach by the Debtor under this Law, if the breach was committed due to fault of such persons.

2. An Involved Creditor or Debtor's Related Party shall be liable for a breach under this Law as follows:

1) Failure by an Involved Creditor to provide financing to the Debtor in case provision of such financing is required by the approved Restructuring Plan, as agreed by such Involved Creditor, - shall entail imposition of a fine in the amount of five percent of the sum of financing that has not been provided;

2) Breach by Involved Creditor or Debtor's Related Party of Paragraphs 2) and 4) of Part two of Article 21 during the period of Moratorium - shall entail imposition of fine in the amount equal to the value of assets enforced against or repossessed, and any such assets shall be turned over to the Debtor;

3) Breach by Involved Creditor or Debtor's Related Party requirements of Paragraph 5) of Part two of Article 21of this Law during the period of moratorium - shall entail imposition of fine in the amount equal to 125 percent of the value of claim which has been set off;

4) Breach by an Involved Creditor of the terms of a Standstill Agreement on enforcement of collection of debts or foreclosure against pledge (mortgage) during the term of the Standstill Agreement - shall entail imposition of fine in the amount of collected debts or value of the foreclosed pledge (mortgage), and the Involved Creditor shall be obligated to turn over.

3. Failure to honor an arbitral award rendered pursuant to Article 16 of this Law by a party against whom the arbitral award has been rendered - shall entail imposition of fine in the amount of 1000 minimum salaries.

4. The sanctions established in this Article shall be applied:

To the banks - by the National Bank of Ukraine;

To other financial institutions – by the National Commission, carrying out regulation of the financial services markets;

To other entities – by the body, defined by the Cabinet of Ministers of Ukraine.

Challenge against the decisions on imposition of sanctions may be made in court. The sums of collected fines shall be directed to the state budget of Ukraine.

Article 31. Final and Transitional Provisions

1. This Law shall enter into force within three months after it is published

2. This law shall remain in force for a period of three years from the date of its entry into force, except for:

amendments to Part four of Article 559 of the Civil Code of Ukraine – amendments to the Laws of Ukraine "On Banks and Banking Activity";

"On Mortgage"; "On Securing Creditor Claims and Registration of Encumbrances"

All Financial Restructuring Proceedings commenced during the period of the effectiveness of this Law shall continue until their completion in accordance with the requirements of this Law.

3. The legislative acts of Ukraine shall be amended as follows:

1) **Part 4 of Article 559 of the Civil Code of Ukraine** (Bulleting of Verkhovna Rada of Ukraine, 2003, No 40-44, p. 356) should be written as follows:
"4. A suretyship shall end after the expiry of the term established in the suretyship agreement. If such term is not established, the suretyship shall end if the creditor has not made a claim to the surety within six months after the due date of the main obligation, unless otherwise established by law. If the due date of the main obligation is not established or established as the moment when a claim is made, the suretyship shall end if the creditor has not made a claim to the surety within one year after the date of the suretyship agreement, unless otherwise established by law."
2) **Law of Ukraine "On International Commercial Arbitration"** (Bulleting of Verkhovna Rada of Ukraine, 1994, No 25, p. 198; 2003, No 30, p. 247; 2005, No 42, p. 464) amend with the Section IX that should read as follows:

"Section IX.

TRANSITIONAL PROVISIONS

1. For the period of validity of the Law of Ukraine "On Financial Restructuring" this law is applied to the procedure of dispute resolution in arbitration court, envisaged by the Law of Ukraine "On Financial Restructuring", regardless of the composition of the parties of the dispute.

3) **section VII "Final Provisions" of the Law of Ukraine "On Banks and Banking"** (Bulleting of Verkhovna Rada of Ukraine, 2001, No 5-6, p. 30) shall be amended with points 5-8 that should read as follows:

"5. For the period of validity of the Law of Ukraine "On Financial Restructuring", Article 62 of this Law is applied taking account of the fact that the banks, participating in the financial restructuring procedure, are entitled to provide information containing bank secrecy concerning the Debtor, his surety (property

surety), related parties to the Debtor other participants of the financial restructuring procedure, as well as to the bodies, ensuring conducting the financial restructuring procedure (Supervisory board, the secretariat Arbitration Committee (arbitrator)), in accordance with the Law of Ukraine "On Financial Restructuring".

6. During the effective period of restructuring plans, approved according to the Law of Ukraine "On Financial Restructuring", the National Bank of Ukraine may not apply disciplinary measures for non-observance of such economic ratios: short term liquidity ratio, ratio of maximum credit exposure related to one counteracting party, investment ratios, and also violation of currency position limits, if such non-observance results from the bank's participation in the Financial Restructuring Proceeding according to the Law of Ukraine "On Financial Restructuring".

7. For the period of validity of the Law of Ukraine "On Financial Restructuring, in case of violation by the Banks of the provisions of this Law, the National Bank of Ukraine applies sanctions against them, envisaged by Article 30 of the Law of Ukraine on "Financial Restructuring" in the order stipulated by this Law.

8. In case, when a bank carries out restructuring of the Debtor's liabilities in accordance with the Law of Ukraine "On Financial Restructuring", the bank can set the interest rates and commission fees at the level lower the cost of banking services in this bank";

4) **section VIII Final Provisions of the Law of Ukraine "On Financial Services and State Regulation of the Financial Services Market"** (Bulleting of Verkhivna Rada of Ukraine, 2002, No 1, p.1; 2015, , No 23, p.158) shall be amended with point 10 the following wording:

"10. For the period of validity of the Law of Ukraine "On Financial Restructuring", the State Commission for Regulation of Financial Services Markets of Ukraine shall apply sanctions against Involved Creditors – Financial Institutions (except banks), envisaged by Article 30 of the Law of Ukraine "On Financial Restructuring", in the order stipulated hereunder, in case of violation by them of the provisions of this Law.";

5) in the Law of Ukraine "On Mortgage" (The Bulleting of Verkhovna Rada of Ukraine, 2003, No 38, p.313 with following amendment):

part one of the Article 12 and first sentence of the part One of the Article 33 shall be amended with the words "unless otherwise is envisaged by the Law";

Section VI "Final Provisions" shall be amended with the point 5^1 that should read as follows:

"5[1.] "Upon the completion of the out-of-court settlement in the financial restructuring proceedings, in accordance with the Law of Ukraine "On Financial Restructuring", the claims of the mortgagee regarding the main obligation, which remain unsettled due to insufficient value of the mortgaged asset, are not suspended and shall be subject to settlement";

6) **in the Law of Ukraine "On Securing Creditor's Claims and Registration of the Encumbrances"** (Bulleting of Verhovna Rada of Ukraine, 2004, No 11, p. 140 with following amendment):

part one of the Article 23 after the words "according to which a pledge was made" should be amended with the words "unless otherwise is envisaged by the law or the contract"

section IX "Final and Transitional Provisions" shall be amended with the point 8 of the following content:

"8. In case the pledgee receives the ownership right to the pledged asset in the financial restructuring proceedings, in accordance with the Law of Ukraine on "Financial Restructuring", the claims of the pledgee that remain unsettled due to insufficient value of the pledged asset are not suspended and shall be subject to settlement."

7) **section XVII "Final and Transitional Provision" of the Law of Ukraine " On Joint Stock Companies"** (Bulleting of Verkhovna Rada of Ukraine, 2008, No 50-51, p. 384 with the following amendments) shall be amended with point 8 that should read as follows:

"8. For the period of validity of the Law of Ukraine "On Financial Restructuring" the provisions of this Law on obligatory purchase of shares by the joint-stock company on the demand of the shareholders is not applied to the Debtors – joint stock companies, participating in the financial restructuring procedure."

8) **the Law of Ukraine "On Enforcement Proceedings"** (Bulleting of Verkhovna Rada of Ukraine, 2011, No 19-20, p. 142 with the following amendments) amend with Chapter 11 that should read as follows:

"Chapter 11. Transitional provisions

1. For the period of validity of the Law of Ukraine "On Financial Restructuring" the provisions of this Law shall apply subject to the following:

The enforcement proceedings concerning the claims of the enforcer shall be mandatorily suspended in case:

1) introduction of moratorium on the enforcer's claims pursuant to Article 21 of the Law of Ukraine "On Financial Restructuring";

2) entry by the enforcer into a Standstill Agreement pursuant to Article 22 of the Law of Ukraine "On Financial Restructuring". In such case, the enforcement proceedings shall be suspended subject to the terms of the Standstill Agreement.

The suspension of the enforcement proceeding on the above grounds shall also cover any enforcement in respect of recovery of indebtedness for payment of taxes and duties.

The enforcement proceedings shall be suspended on the above grounds until the end of the respective circumstances.

If a moratorium on the requirements of the enforcer in accordance with Article 21 of the Law of Ukraine "On Financial Restructuring" is prohibited for the duration of the moratorium exclusion, including implementation and enforcement of foreclosure on non-current assets of the debtor that is not subject to pledge (mortgage) on the start date restructuring process under the provisions of the Law of Ukraine "On Financial Restructuring".

The counting of the statutory period for the provision of enforcement documents for execution shall be suspended until the completion of the Financial Restructuring Proceeding according to Article 27 of the Law of Ukraine on Financial Restructuring.

The term «standstill agreement» shall be used in the meanings provided in the Law of Ukraine "On Financial Restructuring";

9) section X "Final and Transitional Provisions" of the Law of Ukraine "On Restoring a Debtor's Solvency or Declaring a Debtor's Bankruptcy" (The Bulleting of Verkhovna Rada of Ukraine, 2012, No 32-33, p. 413 with following amendments) shall be amended with points 8 that should read as follows:

"8. For the period of validity of the Law of Ukraine "On Financial Restructuring":

1) the provisions of this Law shall apply with regard to the Law of Ukraine "On Financial Restructuring";

2) The Debtor may not initiate the rehabilitation proceeding according to Article 6 of this Law during 18 months after the commencement of the Financial

Restructuring Proceeding in relation to the Debtor according to the Law of Ukraine “On Financial Restructuring” without the consent of the financial (financials) institution (institutions), none of which are related to the debtor, who own at least 50 percent of the total amount of financial institutions claims against the debtor, except for claims related parties.

The term "related party" is used in the meaning specified in the Law of Ukraine "On Financial Restructuring";

3) Transactions (contracts) and property actions of the Debtor which were effected by the Debtor within one year before initiation of the financial proceedings according to the Law of Ukraine “On Financial Restructuring” may be recognized as invalid or nullified by the Commercial Court in the context of the bankruptcy proceedings upon a motion of the arbitration manager or a creditor on the following grounds, stipulated in part One of Article 20 of this Law”;

4) the provisions of Article 94 of this Law shall not apply to the Debtors participating in the financial restructuring proceedings in accordance with the Law of Ukraine “On Financial Restructuring”.

10) Section X Final and Transitional Provisions of the Law of Ukraine “On Deposit Guarantee System for Natural Persons” (The Bulletin of Verkhovna Rada of Ukraine, 2012, No 50, p. 564 with following amendments) shall be amended with the point 14:

“14. For the period of validity of the Law of Ukraine “On Financial Restructuring” the Deposit Guarantee Fund acts with regard to the mandate stipulated by the Law of Ukraine “On Financial Restructuring” and takes part in the proceedings , envisaged by the Law of Ukraine “On Financial Restructuring”, on the terms stipulated in the Law of Ukraine “On Financial Restructuring”.

4. The Cabinet of Ministers of Ukraine shall within three months following the date of publication of this Law:

bring its legislative acts in accordance with this Law;

ensure that ministries and other central bodies of executive power bring their acts in accordance with this Law as well as issue acts for the purpose of implementation of this Law

- define the body, applying the sanctions to the participants of the financial restructuring proceedings, which are not the financial institutions, envisaged by the Article 30 of this Law, and approve the order of application of these sanctions.

5. The NBU shall to the date of enactment of this Law:

draft and\or bring its own regulatory acts in compliance with this Law;

draft, approve and publicize the Framework Agreement in accordance with provisions of this Law

6. National Bank of Ukraine, Cabinet of Ministers of Ukraine within three months from the day of publishing of this Law shall define the candidates to the Supervisory Board.

President of Ukraine **Petro Poroshenko**

Kyiv
June 14, 2016
N 1414-VIII

ANNEX 2 – ARBITRATION RULES

APPROVED
by the decision of
the Supervisory Board
dated 24 January 2017
Minutes of the meeting No. 11

Chairman of the Board
_____S.V. Shklyar

ARBITRATION RULES

FOR THE PURPOSES OF THE LAW OF UKRAINE ON FINANCIAL RESTRUCTURING

MODEL ARBITRATION CLAUSES

Model arbitration clause for the purposes of the Debtor's Application for Restructuring and Creditor's Restructuring Consent

Any dispute, controversy or claim whatsoever arising out of or in relation to the financial restructuring procedure initiated under the Law of Ukraine "On Financial Restructuring" No. 1414-VIII dated 14 June 2016 shall be finally resolved by arbitration in accordance with the LFR Arbitration Rules.

The language of the arbitration shall be […].

The e-mail address of the [creditor]/[debtor] for the purposes of arbitration proceedings shall be […], and the address for postal delivery shall be […].

Model arbitration clause for the purposes of the agreements entered into by the parties of the financial restructuring procedure under the Law of Ukraine "On Financial Restructuring"

Any dispute, controversy or claim whatsoever arising out of or in relation to this contract entered in the course of the financial restructuring procedure under the Law of Ukraine "On Financial Restructuring" No. 1414-VIII dated 14 June 2016, including any issues in respect of its execution, performance, breach, interpretation, termination, validity or the consequences of its nullity, shall be finally resolved by arbitration in accordance with the LFR Arbitration Rules.

The language of the arbitration shall be […].

The governing law of the contract shall be the law of […].

The e-mail address of the [party to the relevant contract] for the purposes of arbitration proceedings shall be […], and the address for postal delivery shall be […].

SECTION I

PREAMBLE

These rules are the expedited rules of arbitration setting out the procedure for resolution by arbitration of disputes arising out of or in connection with the Financial Restructuring Procedures conducted in accordance with the Law of Ukraine "On Financial Restructuring" No. 1414-VIII dated 14 June 2016 (the "**Financial Restructuring Law**").

These rules were prepared according to the requirements of the Financial Restructuring Law and shall be read and interpreted together with the Financial Restructuring Law. In the event of any conflict or inconsistency between the Financial Restructuring Law and these rules, the Financial Restructuring Law shall prevail.

All terms defined in Article 1 of the Financial Restructuring Law shall have the same meaning for the purposes of these rules unless otherwise defined herein.

The Parties to the Arbitration Agreement shall be deemed to have referred to these rules as in effect as of the date of commencement of the arbitration, unless the Parties have agreed to apply a particular version of these rules.

These rules comprise this Preamble, Articles and Schedules as approved by the Supervisory Board[188] (the "**Rules**").

SECTION II

INTRODUCTION

Article 1. Scope of application

1. The Rules shall apply to the resolution by arbitration of any controversy or disagreements between the Involved Creditors or between the Involved Creditors and the Debtor in relation to priority and amount of creditors' claims; disagreements between the Involved Creditors in relation to the approval and/or amendment of the approved Restructuring Plan by the requisite number of votes, as well as any other disagreements arising out of the Framework Agreement and in the course of the Financial Restructuring Procedure (the "**Dispute**").

[188] Supervisory Board established in accordance with Article 14 of the Financial Restructuring Law.

2. These Rules shall apply in all cases where the respective Arbitration Agreement in whatsoever manner provides for arbitration under the Financial Restructuring Law, these Rules, or in any other manner with reference to the Financial Restructuring Law.

3. In the event of a Dispute in relation to the approval and/or amendment of the approved Restructuring Plan by the requisite number of votes, Section VII of these Rules shall apply to the respective arbitration proceedings (the "**Procedure for Approval of Restructuring Plan**").

4. In relation to other types of Disputes set forth in paragraph 1 of this Article the general procedure shall apply (the "**General Procedure**").

Article 2. Communications

1. Delivery of all written submissions, notices and communications made by the Parties, the Arbitration Committee, the Secretariat and the Sole Arbitrator shall be made in electronic format by e-mail. Such documents as the Notice of Arbitration, the Answer to Notice of Arbitration, the Comments to Notice of Arbitration and all other possible written submissions of the Parties in accordance with these Rules, as well as awards made by the Sole Arbitrator shall also be transmitted to the registered addresses of the addressees by means of postal or courier service that provides for a proof of delivery.

2. Any notice or other communication, mentioned in paragraph 1 of this Article, shall be deemed to have been delivered on the date and at the time it is delivered by e-mail.

3. Delivery by e-mail to the Parties shall be made only to an e-mail address shown in the Arbitration Agreement or, if different from an e-mail address indicated in the submitted documents or absent, in case of the Claimant – to an e-mail address indicated in the Notice of Arbitration, in case of the Respondent – to an e-mail address indicated in the Answer to Notice of Arbitration, in case of the Involved Creditors – to an e-mail address indicated in the Comments of the Involved Creditors.

4. An e-mail address of the Secretariat to be used for the purposes of these Rules shall be published on the official web site of the Secretariat. An e-mail address of the Sole Arbitrator shall be provided to the Parties by the Secretariat immediately after the appointment of the Sole Arbitrator.

5. While directing any communication to the Sole Arbitrator each Party shall copy other Parties to the Dispute and the Secretariat at the same time, subject, however, to the provisions of Article 35 of these Rules. While

directing any communication to the Secretariat each Party shall copy other Parties to the Dispute and the Sole Arbitrator at the same time.

6. Immediately following commencement of the arbitration proceedings, the Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents, including documents not covered by banking secrecy or attorney-client privilege, and other information (including electronically stored information) relevant to the Dispute.

Article 3. Time Limits

1. The duration of the arbitration proceedings in the General Procedure shall not exceed 15 days from the date of referral of the case to the Sole Arbitrator in accordance with Article 15 of these Rules until the date of the award.

2. The duration of the arbitration proceedings in the Procedure for Approval of Restructuring Plan shall not exceed 18 days from the date of referral of the case to the Sole Arbitrator in accordance with Article 36 of these Rules until the date of the award.

3. The Arbitration Committee may extend any time limit established in these Rules upon a reasoned request from the Sole Arbitrator.

4. The competence of the Sole Arbitrator shall remain unaffected if the time limits set forth in paragraphs 1 and 2 of this Article are exceeded.

Article 4. Calculation of Time Limits

1. The time limits shall commence on the date following the date when the notice or other communication is delivered to the Party or to its authorised representative.

2. Public holidays and non-business days shall be included in the calculation of time limits unless otherwise provided in these Rules.

3. The time limits are deemed to be observed if the respective communications by the Parties are sent by close of business in Ukraine on the last day on which such time limits expire. Close of business in Ukraine means 5:30 pm on a day when banks are open for business in Kyiv.

4. If the last day of any time limit is a public holiday or a non-business day in Ukraine, then the time limit shall expire at the end of the first subsequent business day.

SECTION III

ARBITRATION COMMITTEE AND SECRETARIAT

Article 5. Arbitration Committee

1. The Arbitration Committee established under the Financial Restructuring Law shall act as an appointing authority and perform other functions as set out in these Rules and the Law. The Arbitration Committee shall function separately from the Secretariat.

2. The Arbitration Committee shall be composed of the President and two Vice-Presidents.

3. The President and the Vice-Presidents must be independent of the Parties participating in the financial restructuring procedure and, in case of conflict of interest, the President and/or the Vice-Presidents shall refrain from taking part in the decision-making process. In respect of any conflict of interest, members of the Arbitration Committee shall be subject to the Ethical Rules of Conduct contained in Schedule 3 to these Rules (the "**Ethical Rules of Conduct**").

4. The Arbitration Committee shall perform the following functions:

    i. establish the *prima facie* application of the Rules based on the Notice of Arbitration;

    ii. decide on the amount of the administration fee and the arbitration fee payable in the General Procedure and in the Procedure for Approval of Restructuring Plan;

    iii. appoint the Sole Arbitrator from the list of arbitrators approved by the Supervisory Board;

    iv. decide on the issues of challenge, release and substitution of an arbitrator;

    v. make proposals to the Supervisory Board as to the persons to be included into the List of Arbitrators;

    vi. make recommendations to the Supervisory Board for removal of a person from the List of Arbitrators;

    vii. consider and decide on requests of the Sole Arbitrator with respect to extension of time limits and approve any corrections by the Sole Arbitrator on its own initiative to the rendered awards;

    viii. scrutinise the draft award;

ix. make interpretation of these Rules;

x. make recommendations to the Supervisory Board as to any amendments to these Rules;

xi. perform other duties pertinent to the arbitration under these Rules.

5. Each decision of the Arbitration Committee shall be made by a majority vote. If there is no majority, the decision shall be made by the President of the Arbitration Committee. In the event that the President of the Arbitration Committee is not able to perform its functions due to a conflict of interest, the decision shall be made jointly by the Vice-Presidents acting in agreement. If there is no agreement between the Vice-Presidents, the view of the elder Vice-President shall prevail.

6. In taking decisions on appointment of the Sole Arbitrator, as well as challenge, release or substitution of an arbitrator, the Arbitration Committee shall follow the Ethical Rules of Conduct and shall be guided by the Guidelines on Conflicts of Interest in International Arbitration adopted by resolution of the Council of the International Bar Association on 23 October 2014 (the "**IBA Guidelines on Conflicts of Interest**").

Article 6. Secretariat

1. The Secretariat established under the Financial Restructuring Law shall deal with the administrative and technical matters of the arbitration proceedings and perform the following functions:

i. immediately, not later than within the same business day, on which the respective correspondence is received, forward to the Arbitration Committee all correspondence intended for the Arbitration Committee;

ii. register and forward to the Arbitration Committee the Notice of Arbitration immediately, not later than within the same business day, on which this it is received from the Claimant or the Involved Creditor;

iii. provide the Debtor with a list of documents to be submitted by the Debtor in the course of the Procedure for Approval of Restructuring Plan in accordance with Article 35 of these Rules;

iv. provide to the respective Party a request for payment of the administration fee and the arbitration fee according to the instructions of the Arbitration Committee;

v. ensure dispatch of the originals of awards and orders rendered by the Sole Arbitrator in accordance with requirements of Article 42 of these Rules;

vi. store information and documents received from the Arbitration Committee, the Sole Arbitrator and the Parties in the course of the arbitration in hard copies;

vii. maintain the electronic document processing and storage system for any documents filed in the arbitration proceedings in electronic format;

viii. assist the Sole Arbitrator in making logistical and administrative arrangements necessary for the conduct of the hearing;

ix. provide logistical and administrative support to the Arbitration Committee and the Sole Arbitrator; and

x. perform other duties pertinent to the arbitration under these Rules.

SECTION IV

COMMENCEMENT OF ARBITRATION

Article 7. Notice of Arbitration

1. A Party wishing to commence arbitration under these Rules (the "**Claimant**") shall file with the Secretariat the Notice of Arbitration, which for the purposes of these Rules shall constitute a Statement of Claim.

2. The Notice of Arbitration shall be submitted to the Secretariat to the addresses indicated on the official web-site of the Secretariat in electronic format by e-mail and in hard copy by courier or by post (registered letter) in two (2) copies. The Claimant shall simultaneously send the copy of the Notice of Arbitration to the Respondent(s) by e-mail, provided the Claimant is aware of the respective e-mail address(es), and in hard copy by courier or post (registered letter) with a proof of delivery.

3. The Secretariat shall immediately, not later than within the same business day on which the respective Notice of Arbitration is received, register and forward the Notice of Arbitration to the Arbitration Committee by e-mail.

4. The Notice of Arbitration shall contain:

(i) a date of submission of the Notice of Arbitration;

(ii) full names, telephone numbers, postal and e-mail addresses of the parties and their representatives;

(iii) documentary proof of powers of a person who signed the Notice of Arbitration and the Claimant's representative(s) in the arbitration proceedings (in accordance with Article 48 of these Rules);

(iv) arbitration agreement on the resolution of the Dispute by arbitration pursuant to these Rules or a reference thereto;

(v) summary of the Dispute, statement of claim and relief sought against other Party to the arbitration (the "**Respondent**"), as well as monetary value of the claim where applicable;

(vi) factual circumstances, on which the Claimant relies, and substantiation of legal grounds supporting the claim and the relief sought;

(vii) any documents and evidence the Claimant relies on;

(viii) confirmation of payment of the registration fee in the manner prescribed by Schedule 2 hereto;

(ix) documentary proof of dispatch of the copy of the Notice of Arbitration together with all the enclosures to the Respondent(s) obtained from the respective postal or courier service.

5. The Claimant shall also provide to the Secretariat the documentary proof of delivery of the Notice of Arbitration to the Respondent(s) once it is obtained from the respective postal or courier service.

6. The Notice of Arbitration may also contain any other information, which the Claimant deems relevant for its Notice of Arbitration.

Article 8. Commencement of Arbitration

1. Arbitration under these Rules shall commence on the date of the receipt of the Notice of Arbitration by the Arbitration Committee unless the Arbitration Committee finds that the dispute referred to in the Notice of Arbitration is clearly not eligible for arbitration pursuant to Article 1 of these Rules.

2. Following receipt of the Notice of Arbitration, the Arbitration Committee shall not later than on the next business day following such receipt, check

the conformity of the Notice of Arbitration with formal requirements as set out in Article 7 of these Rules.

3. If the Notice of Arbitration does not comply with the requirements to the Notice of Arbitration as set out in paragraph 4 of Article 7 of these Rules, the Arbitration Committee shall not later than on the following day after the receipt of the Notice of Arbitration request the Claimant to remedy the defect(s) or supplement the Notice of Arbitration with reference to the respective sub-paragraph(s) of paragraph 4 of Article 7 of these Rules, and shall fix the period of time within which the Claimant shall do so.

4. If the Claimant does not remedy or supplement the Notice of Arbitration within the deadline set by the Arbitration Committee, the Arbitration Committee shall send to the Claimant by e-mail a Notice of Rejection of the Notice of Arbitration containing grounds for such rejection with reference to the respective sub-paragraph(s) of paragraph 4 of Article 7 of these Rules. In such case, the arbitration proceedings shall be deemed terminated. Termination of the arbitration proceedings shall not prevent the Claimant from subsequently raising the same claim(s) in a new Notice of Arbitration.

5. If the dispute referred to in the Notice of Arbitration is clearly not eligible for arbitration pursuant to Article 1 of these Rules, the Arbitration Committee shall not later than the following day after the receipt of the Notice of Arbitration return the Notice of Arbitration to the Claimant with an explanation that the underlying matter is not eligible for arbitration.

SECTION V

FORMATION OF THE ARBITRAL TRIBUNAL

Article 9. Number of Arbitrators

1. Any Dispute submitted to arbitration shall be decided by a sole arbitrator.

2. Any agreement of the Parties that the Dispute(s) shall be decided by an Arbitral Tribunal composed of more than one arbitrator shall be null and void.

Article 10. Procedure for Appointment of the Sole Arbitrator

1. The Arbitration Committee shall appoint a Sole Arbitrator to resolve a Dispute within one (1) business day after the date of receipt of a Notice of

Arbitration that fully complies with the requirements set out in these Rules from the list of arbitrators approved by the Supervisory Board.

2. In making the appointment of the Sole Arbitrator, the Arbitration Committee shall take into account the nature of the Dispute, applicability of the Procedure for Approval of Restructuring Plan, sufficient availability of an arbitrator to decide the case in a prompt and efficient manner and within the time limits prescribed in Article 3 of these Rules and any other considerations, which are likely to secure the appointment of an independent and impartial Sole Arbitrator.

3. Once the Sole Arbitrator has been appointed, the Secretariat shall refer the case file to the Sole Arbitrator according to the procedure set forth in Article 15 and Article 36 of these Rules.

Article 11. Impartiality and Independence

1. The arbitrator shall be independent and impartial including in respect of the Parties to the Dispute at the time of his or her appointment and shall remain independent and impartial at all relevant times during the course of the arbitration proceedings.

2. At all stages of the arbitration proceedings under these Rules, the arbitrator shall comply with the Ethical Rules of Conduct.

3. A person before being appointed as the Sole Arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to his/her impartiality and independence including in respect of the Parties to the Dispute, and shall forthwith sign a statement of acceptance of appointment, availability, impartiality and independence, and provide it on the same day to the Arbitration Committee in the original form and to the Secretariat in copy. The copy of such statement shall be provided by the Secretariat to the Parties within one (1) day from the date, on which it is signed.

4. The arbitrator shall immediately disclose in writing to the Parties and the Arbitration Committee any facts or circumstances referred to in paragraph 3 of this Article that have arisen, have been discovered or may be discovered or arise during the course of arbitration.

Article 12. Challenge of an Arbitrator

1. An arbitrator may be challenged by a Party to the Dispute if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. In such case, the Notice of Challenge shall be submitted

within three (3) business days from the date when the circumstances giving rise to the challenge became known to that Party or, if known by the Party prior to appointment of the Sole Arbitrator, within three (3) business days from the date when the relevant Party was informed of the appointment of the Sole Arbitrator. Failure by a Party to comply with the stipulated time limit constitutes a waiver of the right to bring the challenge.

2. A Party challenging an arbitrator shall submit a Notice of Challenge to the Secretariat within time limits set forth in paragraph 1 of this Article. The Notice of Challenge shall state the reasons for the challenge and specify the date, on which the Party became aware of the circumstances, on which the challenge is based.

3. The Secretariat shall transmit a copy of the Notice of Challenge to the Sole Arbitrator and to the other Party or Parties and give them an opportunity to comment on the challenge within two (2) business days from the date of receipt of the Notice of Challenge. This time limit may not be extended. All comments shall be sent to the Secretariat, which shall promptly notify the Arbitration Committee on the position of the relevant Party and the arbitrator. Absence of comments from any of the Parties or an arbitrator within the mentioned time limit shall not be interpreted as an agreement of a Party or an arbitrator to the challenge on the alleged grounds.

4. If the other Party agrees to the grounds for challenge, the arbitrator shall resign immediately. In all other cases, the Arbitration Committee shall decide on the challenge. The Secretariat shall inform the Parties and the arbitrator on the decision of the Arbitration Committee immediately.

5. The arbitrator may withdraw from his/her appointment within two (2) business days following receipt of the Notice of Challenge. A voluntary withdrawal of the Sole Arbitrator from his/her appointment shall not imply acceptance of the grounds for the challenge as stated in the Notice of Challenge.

Article 13. Release

1. The Arbitration Committee shall be authorised at the request of a Party or at its own discretion to release an arbitrator from his/her duties if the latter fails to fulfil his/her duties as an arbitrator or has become de jure or de facto unable to fulfil such duties.

2. Before the Arbitration Committee takes a decision to release an arbitrator from his/her duties, it shall so notify the arbitrator and the Parties and give

them an opportunity to comment on the grounds for the possible release. Such comments shall be provided within two (2) business days from the date of receipt of the respective request from the Arbitration Committee. Absence of comments from any of the Parties or from an arbitrator within the mentioned time limit shall not be interpreted as an agreement of a Party or an arbitrator to release on the alleged grounds.

3. Upon the arbitrator's own request, the Arbitration Committee shall be entitled to release the arbitrator from his/her duties at any stage of the arbitration proceedings.

Article 14. Appointment of a substitute Sole Arbitrator

1. In the event of a successful challenge or release of an arbitrator in accordance with Articles 12 and 13 of these Rules, the Arbitration Committee shall within one (1) business day appoint a substitute arbitrator pursuant to the procedure envisaged in Article 10 of these Rules.

2. The time limits for the completion of the arbitration proceedings as prescribed in Article 3 of these Rules shall commence anew from the date of appointment of a substitute Sole Arbitrator.

SECTION VI

ARBITRATION PROCEEDINGS

Article 15. Referral to the Sole Arbitrator

1. Not later than within the next day after commencement of the arbitration, the Secretariat shall send to the Claimant the notification specifying the amount of the administration fee and the arbitration fee as calculated by the Arbitration Committee in accordance with Schedule 2 to these Rules and the account details for payment of such fees, which shall be paid by the Claimant within three (3) business days after receipt of such notification.

2. The Secretariat shall refer the case file to the Sole Arbitrator within one (1) day after the day of receipt of the full amount of the administration fee and the arbitration fee paid by the Claimant.

3. The Secretariat shall not refer the case file to the Sole Arbitrator until the receipt of the full amount of the administration fee and the arbitration fee from the Claimant.

4. If the Claimant fails to pay the full amount of the administration fee and the arbitration fee within the time limit prescribed in paragraph 1 of this Article, the Arbitration Committee may extend such time limit upon the Claimant's request for the same period or may declare the arbitration proceedings terminated. This shall not prevent the Claimant from re-submitting the same or new Notice of Arbitration.

Article 16. Jurisdiction of the Sole Arbitrator

1. The Sole Arbitrator may rule on its own jurisdiction, including in the case of objections with respect to the existence, scope or validity of the Arbitration Agreement. For that purpose, the Arbitration Agreement shall be treated as an agreement independent of the other terms of the contract. A decision by the Sole Arbitrator that the contract is invalid shall not result in the invalidity of the Arbitration Agreement.

2. The Sole Arbitrator may rule on the issue of its own jurisdiction in the award. A separate award on jurisdiction of the arbitrator shall not be rendered.

Article 17. Conduct of the arbitration proceedings

1. Subject to these Rules and any agreement between the Parties, the Sole Arbitrator may conduct the arbitration in such manner as the Sole Arbitrator considers appropriate.

2. In all cases, the Sole Arbitrator shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each Party an equal and reasonable opportunity to present its case, considering at all times the expedited nature of the arbitration proceedings under these Rules.

3. The Sole Arbitrator, in exercising its discretion, shall conduct the arbitration in a way to avoid unnecessary delays and expenses and to ensure a fair and efficient process for resolving the Disputes.

Article 18. Answer to Notice of Arbitration

1. Within four (4) business days following the date of the receipt by the Respondent of a copy of the Notice of Arbitration, the Respondent shall submit the Answer to Notice of Arbitration, which for the purposes of these Rules shall constitute the Statement of Defence.

2. The Answer to Notice of Arbitration shall be submitted to the Sole Arbitrator in electronic format by e-mail and in hard copy by courier or by post in two (2) copies. The Respondent shall simultaneously send a

copy of the Notice of Arbitration to the Claimant by e-mail and in hard copy by courier or post.

3. The Answer to the Notice of Arbitration shall include:

   (i) a date of submission of the Answer to Notice of Arbitration;

   (ii) full statement of the names, telephone numbers, postal and e-mail addresses of the Parties and their representatives;

   (iii) documentary proof of powers of a person who signed the Answer to Notice of Arbitration and the Respondent's representative(s) in the arbitration proceedings (in accordance with Article 48 of these Rules);

   (iv) objections concerning existence, validity or applicability of the Arbitration Agreement, if any;

   (v) a statement whether, and to what extent, the Respondent admits or denies the claims advanced by and the relief sought by the Claimant;

   (vi) counterclaim of the Respondent, if any;

   (vii) factual circumstances, on which the Respondent relies, and substantiation of legal grounds supporting the position of the Respondent;

   (viii) any documents and evidence the Respondent relies on;

   (ix) documentary proof of dispatch of the copy of the Answer to Notice of Arbitration together with all the enclosures to the Claimant obtained from the respective postal or courier service.

4. The Respondent shall also provide to the Secretariat the documentary proof of delivery of the Answer to Notice of Arbitration to the Claimant once it is obtained from the respective postal or courier service.

5. The Answer to Notice of Arbitration may also contain any other information, which the Respondent deems relevant for its Answer to Notice of Arbitration.

Article 19. Counterclaim

1. Any counterclaim may be submitted by the Respondent only with its Answer to the Notice of Arbitration and shall be related to the claims raised in the Notice of Arbitration.

2. In case the Respondent wishes to raise a counterclaim, the Answer to the Notice of Arbitration shall also include:

   (i) summary of the Dispute, counterclaim and a relief sought against the Claimant, as well as the monetary value of the counterclaim where applicable;

   (ii) the factual circumstances, on which the Respondent relies with respect to its counterclaim, and substantiation of legal grounds supporting the counterclaim and the relief sought;

   (iii) any documents and evidence the Respondent relies on with respect to the counterclaim;

   (iv) confirmation of payment of the registration fee in the manner prescribed by Schedule 2 hereto.

3. In case there is no Notice of Rejection in relation to the counterclaim in accordance with the procedure set forth in Article 20, the Claimant shall submit a reply to the counterclaim within four (4) business days following the date of the receipt by the Claimant of a request from the Sole Arbitrator for the submission of such reply. A reply to the counterclaim shall be limited to the claims raised in the counterclaim.

4. The reply of the Claimant to the counterclaim shall conform to the requirements of these Rules to the Answer to Notice of Arbitration.

5. If the counterclaim of the Respondent complies with the requirements contained in this Article, or if the Respondent cures any non-conformity upon request of the Sole Arbitrator as provided in Article 20, the Secretariat shall send to the Respondent the notification specifying the amount of the administration fee and the arbitration fee in relation to the counterclaim as calculated by the Arbitration Committee in accordance with Schedule 2 to these Rules and the account details for payment of such fees, which shall be paid by the Respondent within three (3) business days upon receipt of such notification.

6. Upon receipt of the confirmation from the Secretariat that the Respondent has fully paid the administration fee and the arbitration fee with respect to the counterclaim, the Sole Arbitrator shall send to the Claimant a request for submission of reply to the counterclaim.

Article 20. Defects with respect to the Answer to Notice of Arbitration and the counterclaim

1. If, without showing sufficient cause, the Respondent fails to communicate its Answer to Notice of Arbitration, the Sole Arbitrator shall continue the arbitration proceedings without treating such failure as an admission of the Claimant's claims contained in the Notice of Arbitration.

2. If the Answer to Notice of Arbitration does not comply with the requirements to the Answer to Notice of Arbitration as set out in paragraph 3 of Article 18 of these Rules, and in case of a counterclaim as set out in paragraphs 1 and 2 of Article 19 of these Rules, the Sole Arbitrator shall not later than on the following day after the receipt of the Answer to Notice of Arbitration send to the Respondent by e-mail a request for amendments.

3. In case of failure of the Respondent to comply with such request for amendments (other than with respect to a counterclaim) the Sole Arbitrator shall continue the arbitration proceedings without treating such failure as an admission of the Claimant's claims contained in the Notice of Arbitration.

4. In the event of failure of the Respondent to comply with such request for amendments with respect to the counterclaim, the Sole Arbitrator shall send to the Respondent the Notice of Rejection in relation to the counterclaim. Such Notice of Rejection in relation to the counterclaim shall not prevent the Respondent from subsequently raising the same claim(s) in the Notice of Arbitration.

Article 21. Variations

1. At any time prior to the closing of the arbitration proceedings pursuant to Article 30 of these Rules, any Party to the Dispute may amend or supplement its claim, counterclaim or defence provided its case, as amended or supplemented, is still covered by the relevant Arbitration Agreement, unless the Sole Arbitrator considers it inappropriate to allow such amendments or supplements having regard to the delay in making them.

2. For the purposes of paragraph 1 of this Article, any amendment or supplement shall be submitted to the Sole Arbitrator and another Party(-ies) in electronic format to the respective e-mail addresses and in hard copy by courier or by post (registered letter).

Article 22. Further submissions

1. If any of the Parties so requests, and the Sole Arbitrator considers the reasons to be compelling, the Sole Arbitrator may allow the Parties to make one supplementary written submission in addition to the Notice of Arbitration and the Answer to Notice of Arbitration. The first supplementary submission shall be made by the Party so requested, which shall be followed by the supplementary submission of another Party or Parties.

2. Such further written submissions shall be brief and the time limits for any submissions may not exceed three (3) days from the date of respective decision of the Sole Arbitrator allowing the Parties to make supplementary written submissions, which, for compelling reasons, may be extended by the Arbitration Committee upon a reasoned request of the Sole Arbitrator.

3. For the purposes of paragraph 1 of this Article, any further submission shall be submitted to the Sole Arbitrator and another Party(-ies) in electronic format to the respective e-mail addresses and in hard copy by courier or by post (registered letter).

Article 23. Withdrawal

1. Parties shall be entitled to withdraw the Notice of Arbitration or the counterclaim at each stage of the arbitration procedure until the award is rendered by the Sole Arbitrator.

2. Withdrawal of the Notice of Arbitration shall not automatically entail termination of the arbitration proceedings in relation to the counterclaim.

Article 24. Evidence

1. The Sole Arbitrator shall determine the admissibility, relevance, materiality and weight of any evidence.

2. The Sole Arbitrator may order a Party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.

3. At the request of a Party, the Sole Arbitrator may order another Party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

4. If after the hearing, as the case may be, a Party requests an opportunity to introduce additional evidence, which, for legitimate reasons, it was not able to produce at the hearing, the Sole Arbitrator may permit such introduction to the extent necessary to the resolution of the Dispute.

Article 25. Oral hearing

1. The arbitration proceedings shall be entirely document based.
2. In exceptional cases, the hearing shall be held only at the request of a Party and if the Sole Arbitrator considers the reasons for such request to be compelling.
3. The Sole Arbitrator shall, in consultation with the Parties, determine the date and time of the hearing and shall provide the Parties with reasonable notice thereof.
4. The hearing shall take place in Kyiv, Ukraine, at the premises of the Secretariat.
5. The hearing shall be held in private.
6. If, without showing sufficient cause, any Party fails to appear at the hearing or produce documentary evidence, the Sole Arbitrator may continue the arbitration proceedings and make the award on the evidence before it.
7. In case the hearing is requested and the Sole Arbitrator grants the request, the Sole Arbitrator shall simultaneously request from the Arbitration Committee an extension of time limits established in Article 3 of these Rules.

Article 26. Stenographic record

1. Any Party desiring a stenographic record of the hearing shall make arrangements directly with a stenographer and shall notify the other Parties of these arrangements in advance of the hearing. The requesting Party or Parties shall pay the costs of the record.
2. If at the Parties' request or at its own initiative the Sole Arbitrator decides to prepare an official transcript of the hearing, respective record and the transcript must be made available to the Sole Arbitrator and to the other Parties for inspection. Each Party shall be given no more than two (2) days in order to provide its comments to the transcript.

Article 27. Interpreters

1. Any Party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of his/her services.

Article 28. Experts appointed by the Sole Arbitrator

1. At the request of a Party or upon its own initiative, the Sole Arbitrator may appoint one or more experts on specific issues set out by the Sole Arbitrator, considering at all times the expedited nature of the arbitration under these Rules.

2. When deciding on appointment of an expert, the Sole Arbitrator shall decide on reasonable fees and expenses of the experts to be paid by the Parties.

3. The Sole Arbitrator shall request from the Arbitration Committee the extension of time limits established in Article 3 of these Rules, if necessary, as well as transmit information to the Arbitration Committee on the expected fees and expenses of the expert to be paid by the Parties.

Article 29. Joinder

1. After appointment of the Sole Arbitrator, a Party or any entity or person participating in the Financial Restructuring Procedure in respect of the same Debtor (the "**Involved Non-Party**"), may file an application with the Sole Arbitrator for one or more additional Parties to be joined in an arbitration as a Claimant or as a Respondent, provided that the additional Party to be joined participates in the Financial Restructuring Procedure in respect of the same Debtor and one of the following criteria is satisfied:

   (i) the additional Party to be joined is *prima facie* bound by the Arbitration Agreement; or

   (ii) all Parties, including an additional Party to be joined, have consented to the joinder of the additional Party.

2. If an Application for Joinder is contained in the Notice of Arbitration, all provisions of this Article shall apply to the Notice of Arbitration respectively.

3. An Application for Joinder may be submitted within two (2) business days from the date, on which the Answer to the Notice of Arbitration is provided by the Respondent, at the latest.

4. An Application for Joinder shall be submitted to the Sole Arbitrator, another Party to the proceedings and a Party to be joined, as the case may be, in electronic format by e-mail and in hard copy by courier or by post.

5. An Application for Joinder shall contain:

   (i) a date of submission of the Application for Joinder;

   (ii) reference number of the arbitration proceedings;

   (iii) names, telephone numbers, postal and e-mail addresses of all the Parties, including the additional Party to be joined, and their representatives, if any;

   (iv) whether the additional Party is to be joined as a Claimant or a Respondent;

   (v) if the application is being made under Article 29(1)(i), a reference to the Arbitration Agreement invoked and its copy;

   (vi) if the application is being made under Article 29(1)(ii), identification of the relevant documents evidencing consent of all Parties, including an additional Party to be joined, and, where possible, a copy of such documents;

   (vii) a reference to the contract or other instrument out of or in relation to which the Dispute has arisen and, where possible, a copy of the contract or other instrument;

   (viii) a brief statement of the facts and legal basis supporting the application;

   (ix) documentary proof of dispatch of the copies of the Application for Joinder together with all the enclosures to each Party to the arbitration and a Party to be joined, as the case may be, obtained from the respective postal or courier service.

6. A Party or an Involved Non-Party filing the Application for Joinder shall also provide to the Secretariat the documentary proof of delivery of the Application for Joinder to each Party to the arbitration and a Party to be joined, as the case may be, once it is obtained from the respective postal or courier service.

7. The Application for Joinder is deemed to be complete when all the requirements of paragraph 5 of this Article are fulfilled or when the Sole Arbitrator determines that there has been substantial compliance with such requirements. The Sole Arbitrator shall notify all the Parties by e-mail

of the results of assessment of compliance of the Application for Joinder with the requirements of paragraph 5 of this Article.

8. The Sole Arbitrator shall, after considering the views of all Parties, including the additional Party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any Application for Joinder. The Sole Arbitrator's decision to grant an Application for Joinder shall be without prejudice to the Sole Arbitrator's power to subsequently decide any question as to its jurisdiction arising from such decision.

Article 30. Closing of the arbitration proceedings

1. The Sole Arbitrator shall declare the proceedings closed when the Sole Arbitrator is satisfied that the Parties have had a reasonable and equal opportunity to present their cases subject to time limits established in Article 3 of these Rules.

Article 31. Termination of the arbitration proceedings

1. The Sole Arbitrator shall terminate the arbitration proceedings if it appears to the Sole Arbitrator that the arbitration has been abandoned by the Parties or that all claims and any counterclaim were withdrawn by the Parties, provided that, after fixing a reasonable period of time within which the Parties shall be invited to agree or to object to such termination, no Party has stated its written objection to the Sole Arbitrator to such termination upon the expiry of such period of time.

2. The arbitration shall also be deemed terminated in other cases as set forth in these Rules.

3. The Sole Arbitrator shall produce an order on termination of the arbitration proceedings and communicate it to the Parties by e-mail within one (1) business day from the day of such order of termination.

SECTION VII

PROCEDURE FOR APPROVAL OF A RESTRUCTURING PLAN

Article 32. Application of the Procedure for Approval of Restructuring Plan

1. This Section VII shall apply in case of the Dispute in relation to the approval of the Restructuring Plan or amendment of the approved Restructuring Plan by the requisite number of votes.

2. For the purposes of the Procedure for Approval of Restructuring Plan, provisions of other Sections of these Rules shall apply together with provisions of this Section VII subject to the following: Article 33 shall replace Article 7 (*Notice of Arbitration*), Article 34 shall replace Article 8 (*Commencement of Arbitration*), Article 36 shall replace Article 15 (*Referral to the Sole Arbitrator*), Article 38 shall replace Article 18 (*Answer to Notice of Arbitration*) and Article 19 (*Counterclaim*). For the avoidance of doubt, no counterclaim may be raised in the Procedure for Approval of a Restructuring Plan.

Article 33. Notice of Arbitration for the Purposes of the Procedure for Approval of Restructuring Plan

1. An Involved Creditor shall be entitled to submit a Notice of Arbitration for the purposes of the procedure for approval of the Restructuring Plan. The Notice of Arbitration may also be submitted jointly by several Involved Creditors. In the event of submission of the Notice of Arbitration by several Involved Creditors, the respective provisions of Section VII of these Rules, which apply to an Involved Creditor, shall also apply to such respective several Involved Creditors.

2. The Notice of Arbitration for the purposes of the Procedure for Approval of a Restructuring Plan shall contain:

   (i) a date of submission of the Notice of Arbitration by any of the Involved Creditors;

   (ii) full name, telephone numbers, postal and e-mail addresses of the Involved Creditors participating in the Financial Restructuring Procedure in respect of the Debtor under the Financial Restructuring Law, and of the Debtor, and their representatives;

   (iii) documentary proof of powers of a person who signed the Notice of Arbitration and the Involved Creditors' representative(s) in the arbitration proceedings (in accordance with Article 48 of these Rules);

   (iv) a written consent for resolution of the Dispute by arbitration pursuant to these Rules;

   (v) request for approval of the Restructuring Plan or request for amendment of the approved Restructuring Plan.

3. The Notice of Arbitration may also contain any other information, which the Involved Creditor deems relevant for the purposes of the Procedure for Approval of Restructuring Plan.

4. The Notice of Arbitration shall be submitted to the Secretariat in a number of copies corresponding to the number of the Involved Creditors participating in the Financial Restructuring Procedure in respect of the Debtor under the Financial Restructuring Law with addition of another four (4) copies for the Debtor, the Secretariat, the Arbitration Committee and the Sole Arbitrator.

5. The Notice of Arbitration shall be submitted to the Secretariat pursuant to the requirements set out in Article 2 of these Rules. The Notice of Arbitration may also be submitted in hard copy directly to the Secretariat.

6. The Secretariat shall immediately register and forward the Notice of Arbitration to the Arbitration Committee.

Article 34. Commencement of Arbitration in the Procedure for Approval of Restructuring Plan

1. Arbitration shall commence on the date of the receipt of the Notice of Arbitration by the Arbitration Committee.

2. Following receipt of the Notice of Arbitration, the Arbitration Committee shall check the conformity of the Notice of Arbitration with the formal requirements as set out in paragraph 1 of Article 33 of these Rules.

3. If the Notice of Arbitration does not comply with the requirements to the Notice of Arbitration as set out in Article 33 of these Rules, the Arbitration Committee shall not later than on the following day after the receipt of the Notice of Arbitration request the Involved Creditor to remedy the defect or supplement the Notice of Arbitration with reference to Article 33 of these Rules, and shall fix the period of time, within which the Involved Creditor shall do so.

4. If the Involved Creditor does not remedy or supplement the Notice of Arbitration within the deadline set by the Arbitration Committee, the Arbitration Committee shall send to the Involved Creditor by e-mail a Notice of Rejection of the Notice of Arbitration containing grounds for such rejection with reference to respective sub-paragraph of paragraph 1 of Article 33 of these Rules.

5. In case of communication of the Notice of Rejection, the arbitration proceedings shall be deemed terminated. The termination of the arbitration proceedings shall not prevent the Involved Creditor from subsequently raising the same claim(s) in a new Notice of Arbitration.

Article 35. Obligations of the Debtor in the Procedure for Approval of Restructuring Plan

1. At the date of appointment of the Sole Arbitrator, the Secretariat shall communicate to the Debtor information on the appointed Sole Arbitrator, the contact details of the arbitrator, as well as:

   (i) a copy of the Notice of Arbitration;

   (ii) a request for submission to the Sole Arbitrator of the documents listed in paragraph 2 of this Article within three (3) days following the receipt of such request by the Debtor;

   (iii) a request for payment of the registration fee payable by the Debtor within three (3) business days following the receipt of such request by the Debtor in the manner prescribed by Schedule 2 hereto;

   (iv) a request for payment of the administration fee and the arbitration fee, as calculated by the Arbitration Committee, payable by the Debtor within three (3) business days following the receipt of such request by the Debtor in the manner prescribed by Schedule 2 hereto; and

   (v) the account details for the payment of the fees referred to in sub-paragraphs (iii) and (iv).

2. The Debtor shall submit the following documents to the Sole Arbitrator based on the request of the Secretariat:

   (i) originals of the Restructuring Plan in a number of copies corresponding to the number of the Involved Creditors participating in the respective Financial Restructuring Procedure under the Financial Restructuring Law, as well as other persons having obligations under the Restructuring Plan, already signed by the Debtor, those Involved Creditors which casted an affirmative vote with respect to the approval of the Restructuring Plan and other persons having obligations under the Restructuring Plan, if any;

(ii) certified minutes of the meeting of the Involved Creditors and/or other documents containing information on voting results in relation to the approval of the Restructuring Plan or amendment of the approved Restructuring Plan;

(iii) a certified copy of the report of the independent expert on the financial and commercial activities of the Debtor, which meets the requirements established by the Supervisory Board for such report that shall be published on the web-site of the Secretariat.

3. The Sole Arbitrator shall immediately notify the Secretariat following the receipt of the documents listed in paragraph 2 of this Article.

Article 36. Referral to the Sole Arbitrator

1. The Secretariat shall refer the case file to the Sole Arbitrator following receipt of the written proof of payment of registration fee, the administration fee and the arbitration fee by the Debtor or the Involved Creditor in accordance with instructions of the Secretariat.

2. If the Debtor fails to pay the full amount of the registration fee, administration fee and the arbitration fee within the time limits fixed by the Secretariat or by these Rules, the Arbitration Committee may declare the arbitration proceedings terminated or may extend respective time limits upon the Debtor's request.

3. Before termination of the arbitration proceedings, the Arbitration Committee shall grant the Involved Creditor, which submitted the Notice of Arbitration, the option of paying any unpaid registration fee, administration fee and the arbitration fee as applicable in lieu of the Debtor provided that any outstanding fees shall be paid within three (3) business days of a written communication from the Arbitration Committee. In this case, the Secretariat shall communicate to the Involved Creditor, which submitted the Notice of Arbitration, the requests and information regarding payment of the fees listed in sub-paragraphs (iii) to(v) of paragraph 1 of Article 35 of these Rules.

4. If after the referral of the case file to the Sole Arbitrator, the Debtor fails to submit the documents requested by the Secretariat within the time limits fixed by the Secretariat or by these Rules, the Sole Arbitrator may declare the arbitration proceedings terminated or may extend respective time limits upon the Debtor's request.

5. Before termination of the arbitration proceedings, the Sole Arbitrator shall grant the Involved Creditor, which submitted the Notice of

Arbitration, the option of providing the documents listed in paragraph 2 of Article 35 of these Rules in lieu of the Debtor provided that any outstanding documents shall be provided by the Involved Creditor within three (3) business days from receipt of respective communication from the Sole Arbitrator.

Article 37. Communication of the Notice of Arbitration to other Involved Creditors

1. Following receipt of the written proof of payment of the registration fee, the administration fee and the arbitration fee by the Debtor or the Involved Creditor, the Secretariat shall send one copy of the Notice of Arbitration to each of the Involved Creditors participating in the respective Financial Restructuring Procedure in respect of the Debtor under the Financial Restructuring Law by e-mail and in hard copy by courier or by post. The date of the receipt by the Involved Creditor of the Notice of Arbitration shall be the date of its receipt by the Involved Creditor by e-mail.

Article 38. Comments of other Involved Creditors

1. Within four (4) business days upon receipt of the Notice of Arbitration by the Involved Creditor, each creditor shall be entitled to submit to the Sole Arbitrator its Comments to the Notice of Arbitration.

2. Comments to the Notice of Arbitration shall contain:

   (i) a date of submission of the Comments to the Notice of Arbitration;

   (ii) full name, telephone number, postal and e-mail addresses of the Involved Creditor and its representative(s);

   (iii) documentary proof of powers of a person who signed the Comments to the Notice of Arbitration and the Involved Creditor's representative(s) in the arbitration proceedings (in accordance with Article 48 of these Rules);

   (iv) a statement whether, and to what extent, such Involved Creditor supports or objects to the request of the Involved Creditor, which initiated the Procedure for Approval of Restructuring Plan;

   (v) factual circumstances and substantiation of legal grounds supporting position of such Involved Creditor;

   (vi) any documents and evidence such Involved Creditor relies on;

(vii) documentary proof of dispatch of the copies of the Comment to Notice of Arbitration together with all the enclosures to all the Involved Creditors and to the Debtor obtained from the respective postal or courier service.

3. The Involved Creditor shall also provide to the Secretariat the documentary proof of delivery of the comments to the Notice of Arbitration to all the Involved Creditors and the Debtor once it is obtained from the respective postal or courier service.

4. The Comments to the Notice of Arbitration shall be submitted to the Sole Arbitrator and all Involved Creditors in a manner set out in Article 2 of these Rules.

SECTION VIII

AWARD

Article 39. Time Limits for Making the Award

1. The award shall be made within the time limits as set out in Article 3 of these Rules.

Article 40. Form and Content of the Award

1. The award of the Sole Arbitrator shall be made in writing. The award shall state the reasons, upon which it is based.

2. The award shall also indicate:

- case number and date of the award;
- place of arbitration;
- full name of the arbitrator;
- names of the Parties to the Dispute and other persons participating in the arbitration proceedings, if any;
- reference to the Arbitration Agreement of the Parties, subject matter of the Dispute and a summary of the circumstances of the case;
- decision on merits of the Dispute;
- decision on allocation of arbitration fees and costs.

3. The award shall be signed by the Sole Arbitrator. The award shall be deemed to be made at the place of the arbitration and on the date stated therein.

4. If the Parties reach a settlement agreement in course of the arbitration under these Rules, any such settlement may be recorded in the award at the request of the Parties.

5. An award shall be final and binding on the Parties to the Dispute. By agreeing to arbitration under these Rules, the Parties undertake to comply with all awards without delay.

6. For the purposes of the Procedure for Approval of Restructuring Plan, the award shall be supplemented with requisite number of the counterparts of the Restructuring Plan signed by the arbitrator.

7. The award shall enter into force on the date it is rendered and signed by the Sole Arbitrator.

Article 41. Scrutiny of the Award

1. Before signing any award, but not later than five (5) days before the expiry of the time limits set out in Article 3, the Sole Arbitrator shall submit the draft of the award to the to the Arbitration Committee.

2. Without prejudice to the Sole Arbitrator's liberty of decision, the Arbitration Committee may lay down modifications as to the form of the award and draw attention of the Sole Arbitrator to points of substance. The Arbitration Committee shall provide its comments to the draft of the award within no more than three (3) days upon the receipt of such draft of the award from the Sole Arbitrator.

3. No award shall be rendered by the Sole Arbitrator until it has been approved by the Arbitration Committee as to its form.

Article 42. Notification of the Award

1. Subject to provisions of Article 41 of these Rules, the Sole Arbitrator shall without delay render the award and within two (2) days from the date of rendering the award communicate it to each Party to arbitration, the Secretariat and the Arbitration Committee in a manner set out in Article 2 of these Rules.

2. In case of approval of the Restructuring Plan in the Procedure for Approval of Restructuring Plan, the Sole Arbitrator shall sign the requisite number of the counterparts of the Restructuring Plan so as to provide

the original of the award and the approved Restructuring Plan to the Debtor and each Involved Creditor. The Sole Arbitrator shall additionally sign two original awards for the Secretariat and the Arbitration Committee, without attaching to such originals the Restructuring Plan. One original of the Restructuring Plan approved by the Sole Arbitrator shall also be provided, without the award, to each person having obligations under the Restructuring Plan.

3. In case the Restructuring Plan is not approved in the Procedure for Approval of Restructuring Plan, the respective award shall be delivered according to the procedure specified in paragraph 1 of this Article.

Article 43. Correction of Award

1. Within five (5) days after the receipt by the Parties of the award, the Parties and/or the Arbitration Committee may request the Sole Arbitrator to correct any typographical errors, clerical mistakes, misspellings or other similar errors in the award.

2. A Party requesting for the corrections to the award under this Article shall communicate its request to all other Parties and the Arbitration Committee. Other Parties may provide their comments to such request for corrections.

3. The Sole Arbitrator may within five (5) days after the date of award request the Arbitration Committee for approval of corrections of the Sole Arbitrator to such rendered award on its own initiative.

4. The Sole Arbitrator shall make any corrections it deems appropriate and necessary.

5. Any corrections to the award shall be made in writing, and the provisions to the form and effect of the award set out in Article 40 of these Rules shall apply.

6. A decision to correct the award shall take the form of an addendum to the award and shall constitute a part of the award. Provisions of Article 42 of these Rules shall apply respectively.

Article 44. Rendering of an additional award

1. Either Party may, with notice to the other Party(-ies) and the Secretariat within five (5) days after receipt of the award in the General Procedure, request the Sole Arbitrator to render an additional award as to the claims properly presented in the arbitration proceedings but omitted from the award.

2. If the Sole Arbitrator considers the request to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall render an additional award within five (5) days after receipt of the request.

3. An additional award shall be an integral part of the arbitral award, and shall be subject to the respective provisions of Articles 40, 41 and 42 of these Rules.

SECTION IX

GENERAL PROVISIONS

Article 45. Place of Arbitration

1. The seat and place of arbitration conducted under these Rules shall be Kyiv, Ukraine.

Article 46. Language of Arbitration

1. The language of arbitration proceedings shall be Ukrainian, unless otherwise agreed by the Parties to the Dispute.

2. The Sole Arbitrator may order that any documents submitted in other languages shall be accompanied by a translation into the language of the arbitration.

Article 47. Applicable law

1. The Sole Arbitrator shall settle Dispute in accordance with the rules of law, which the Parties have chosen to apply to the subject matter of the Dispute. Any reference to the law or the legal system of a country shall be interpreted as direct reference to the substantive law of such country, rather than to the conflict of laws rules thereof. In absence of such agreement, the Sole Arbitrator shall apply the law, which it deems appropriate.

2. The Sole Arbitrator shall decide *ex aequo et bono* or as *amiable compositeur* only if the Parties to the Dispute have expressly authorised the Sole Arbitrator to do so.

Article 48. Representation

1. Each Party may participate in the arbitration proceedings through its authorised representatives.

2. Full statement of the names, telephone numbers, postal and e-mail addresses of the representatives of the respective Party, as well as proof of their authority to represent the respective Party shall be contained in the Notice of Arbitration, in the Answer to Notice to Arbitration or in the Comments to the Notice of Arbitration of the Involved Creditors.

3. Any change by a Party of its representatives in the arbitration shall be promptly communicated by e-mail to the Arbitration Committee, Secretariat, all other Parties and the Sole Arbitrator.

Article 49. Arbitration fees and costs

1. Arbitration fees shall consist of the registration fee, the administration fee and the arbitration fee.

2. Arbitration costs shall include costs for legal representation and other arbitration related costs, such as expert costs, translation costs etc. incurred by the Parties in the course of the arbitration proceedings.

3. The amount of arbitration fees, procedure for calculation of the arbitration fees to be paid by the Parties, as well as rules on allocation of arbitration fees and costs between the Parties, are set out in Schedule 2 to these Rules.

4. The Sole Arbitrator shall order a Party requesting appointing an expert, a translator or requesting a stenographic record to cover respective costs by advance payment.

5. Each Party shall bear the costs of its legal representation.

6. Any decision of the Sole Arbitrator as to the allocation of arbitration fees and costs between the Parties in accordance with Schedule 2 to these Rules shall be made in the award.

Article 50. Confidentiality

1. The Sole Arbitrator, the Arbitration Committee, the Secretariat, as well as all Parties to the Dispute shall treat as confidential and shall not disclose to any third party any matter relating to the arbitration under these Rules (including existence of the arbitration), any awards and any materials produced by any Party to the Dispute in the arbitration, save and to the extent that disclosure may be required by law and for the purposes of enforcement or challenge of the award in court proceedings.

2. This Article also applies to any expert, translator, witness or secretary appointed by the Sole Arbitrator.

Article 51. Waiver of the right to object

1. A Party who knows that any provision of these Rules or any requirement under the Arbitration Agreement has not been complied with and yet proceeds with the arbitration without stating its objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived its right to object.

2. By agreeing to the arbitration under these Rules, each Party confirms that these Rules give it a fair opportunity to present its case and respond to the case of the other Party.

Article 52. Exclusion of liability

1. Neither member, officer, employee of the Secretariat, the Arbitration Committee, as well as the Sole Arbitrator, nor any expert appointed by the Sole Arbitrator, is liable to any Party for any act or omission in connection with the arbitration unless such act or omission constitutes wilful misconduct or gross negligence.

Article 53. Interpretation of the Rules

1. Any request for interpretation of these Rules shall be considered by the Arbitration Committee.

* * *

Schedule 1. Formation of the List of Arbitrators

1. The List of Arbitrators shall be approved by the Supervisory Board.

2. The Supervisory Board upon the proposal by the Arbitration Committee shall include into the List of Arbitrators those persons who meet the below qualification requirements after carefully and objectively reviewing all the candidacies.

3. The prospective arbitrators shall meet the following requirements in order to be included into the List of Arbitrators for appointment as the Sole Arbitrator under the Rules in the General Procedure:
   (i) high degree in law (master (specialist);
   (ii) experience in the civil, commercial and financial fields of law of not less than 7 years, including any experience of acting as an arbitrator, a practicing lawyer, an attorney, a scholar etc.;
   (iii) high reputation and moral characteristics;
   (iv) working command of Ukrainian language;
   (v) working command of English language as an advantage;
   (vi) recognised competence in the fields of arbitration and presence in the lists of arbitrators of the recognised arbitral institutions is considered as an advantage.

4. In order to be included into the List of Arbitrators for appointment as the Sole Arbitrator under the Rules in the Procedure for Approval of Restructuring Plan the prospective arbitrators shall meet the following requirements:
   (ii) high degree in finance or economics or law (master (specialist);
   (iii) experience in the field of finance and business sector of not less than 10 years, including any experience as a CFO, a finance manager, an accountant, an insolvency administrator, a senior member of the management of a bank, an auditor, a head of legal department of a bank or other financial institution;
   (iv) high reputation and moral characteristics;
   (v) working command of the Ukrainian language;
   (vi) working command of English language as an advantage;
   (vii) recognised competence in the fields of law or finance is considered as an advantage.

5. A person wishing to be included into the List of Arbitrators to act as an arbitrator under the Rules either in the General Procedure or the Procedure

for Approval of Restructuring Plan shall send to the Secretariat his or her application with a full CV. Letters of recommendation from reputable arbitral or financial institutions or persons practicing in the respective fields of arbitration and finance are also taken into consideration.

6. The List of Arbitrators shall include first and given names of the arbitrator, his/her date of birth, nationality, education and scientific degrees, if any, indication of experience and the current job position.

7. The Supervisory Board shall review the list of arbitrators annually. Any revisions or amendments to the List of Arbitrators shall enter into force from the date of their publication on the official web site of the Secretariat.

Schedule 2. Arbitration Fees and Costs

As provided in Article 49 of the Rules, arbitration fees under the Rules shall consist of the registration fee, the administration fee, the arbitration fee.

The registration fee shall cover the expenses of the operations of the Secretariat relevant for the commencement of the arbitration proceedings under the Rules and fees of the members of the Arbitration Committee for appointing the Sole Arbitrator. The registration fee shall be non-refundable.

The administration fee shall cover the administration expenses of the Arbitration Committee and the Secretariat in the course of the arbitration proceedings under the Rules and the fees of the members of the Arbitration Committee for exercising any of the functions envisaged by the Rules, including scrutiny of the arbitral award and any costs of the arbitration proceedings (lease of premises for the hearing etc.) in accordance with these Rules.

The arbitration fee shall cover the fees of an arbitrator for hearing and deciding the Dispute.

The residents of Ukraine shall pay the registration fee, the administration fee and the arbitration fee in Ukrainian Hryvnia at the exchange rate set by the National Bank of Ukraine on the day of payment to the banking account indicated on the web-site of the Secretariat or specified in the notice from the Secretariat.

Non-residents of Ukraine shall pay the registration fee, the administration fee and the arbitration fee in a freely convertible currency to the banking account indicated on the web-site of the Secretariat or specified in the notice from the Secretariat.

When making each payment, a Party shall indicate its name, the type of fee, the case reference, if available, and the beneficiary of the payment.

I. Registration Fee

A registration fee in amount of USD 500 shall be paid in the following two circumstances:

(i) pursuant to the General Procedure, by the Claimant when filing the Notice of Arbitration in accordance with Article 7 of the Rules;

(ii) pursuant to the Procedure for Approval of Restructuring Plan, by the Debtor or the Involved Creditor upon receipt from the Secretariat of a request in accordance with Article 35 of the Rules.

II. Administration Fee

An administration fee shall be paid in the following two circumstances:

(i) pursuant to the General Procedure, by the Claimant upon receipt of a notification from the Secretariat in accordance with Article 15 of the Rules or, in case of counterclaim, by the Respondent upon receipt of the respective notification from the Secretariat in accordance with Article 19 of the Rules;

(ii) pursuant to the Procedure for Approval of Restructuring Plan, by the Debtor or the Involved Creditor upon receipt from the Secretariat of the respective request in accordance with Article 35 of the Rules.

In the General Procedure and in the Procedure for Approval of Restructuring Plan, the amount of the administration fee shall be calculated by the Arbitration Committee in accordance with the following schedule.

Schedule for Calculation of the Administration Fee	
Amount of Dispute (USD)	**Administration Fee**
<500,000	USD 500
500,001 – 5,000,000	USD 500 + 0.033% of the amount >500,000
5,000,001 – 10,000,000	USD 1,985 + 0.02% of the amount >5,000,000
10,000,001 - 50,000,000	USD 3,000 + 0.005% of the amount >10,000,000
>50,000,000	USD 5,000

In Disputes relating to the amount of creditors' claims, only the disputed part of the creditors' claims shall be taken into account for the purposes of calculation of the Administration Fee.

In Disputes relating to disagreements between the Involved Creditors in relation to the approval and/or amendment of the approved Restructuring Plan by the requisite number of votes, only the amount of claims of those Involved Creditors which are entitled to vote but did not participate in voting or voted against approval of the Restructuring Plan shall be taken into account for the purposes of calculation of the Administration Fee.

In case of claims having no monetary value, the administration fee shall be USD 1,000.

III. Arbitration Fee

An arbitration fee shall be paid:

(i) pursuant to the General Procedure, by the Claimant upon receipt of the respective notification from the Secretariat in accordance with Article 15 of the Rules or, in case of counterclaim, by the Respondent upon receipt of the respective notification from the Secretariat in accordance with Article 19 of the Rules;

(ii) pursuant to the Procedure for Approval of the Restructuring Plan, by the Debtor or the Involved Creditor upon receipt from the Secretariat of the respective request in accordance with Article 35 of the Rules.

In the General Procedure and in the Procedure for Approval of Restructuring Plan, the amount of the administration fee shall be calculated by the Arbitration Committee pursuant to the following schedule.

Schedule for Calculation of the Arbitration Fee	
Amount of dispute (USD)	**Arbitration fee**
<500,000	USD 3,000
500,001 – 5,000,000	USD 7,000 + 0,089% of the amount >500,000
5,000,001 – 10,000,000	USD 11,000 + 0,08% of the amount >5,000,000
10,000,001 - 50,000,000	USD 15,000 + 0,0125% of the amount >10,000,000
50,000,001-100,000,000	USD 20,000 + 0,01% of the amount >50,000,000
>100,000,000	USD 25,000

In Disputes relating to the amount of creditors' claims, only the disputed part of the creditors' claims shall be taken into account for the purposes of calculation of the Arbitration Fee.

In Disputes relating to disagreements between the Involved Creditors in relation to the approval or amendment of the approved Restructuring Plan by the requisite number of votes, only the amount of claims of those Involved Creditors, which are entitled to vote but did not participate in voting or voted against approval of the Restructuring Plan, shall be taken into account for the purposes of calculation of the Arbitration Fee.

In case of claims having no monetary value, the arbitration fee shall be USD 5,000.

IV. Reimbursement of Arbitration Fees and Costs

Reimbursement of Administration Fee

If the arbitration has been terminated with no award on the merits of the Dispute, 50% of the paid administration fee shall be reimbursed by the Secretariat to the Party that made a payment.

If in the course of the arbitration proceedings the Dispute is settled by the Parties amicably, no administration fee shall be reimbursed by the Secretariat.

Reimbursement of Arbitration Fee

If a Notice of Arbitration is withdrawn prior to the submission of the Answer to Notice of Arbitration or, in case of counterclaim, a counterclaim is withdrawn prior to the submission of the reply to counterclaim in the General Procedure, or if a Notice of Arbitration is withdrawn prior to submission of the Comments to the Notice of Arbitration in the Procedure for Approval of Restructuring Plan, 90% of the paid arbitration fee shall be reimbursed to the Party that made a payment.

If the Notice of Arbitration or counterclaim is withdrawn after closing of the arbitration proceedings in accordance with Article 30 of the Rules, 25% of the paid arbitration fee shall be reimbursed to the Party that made a payment.

If in the course of the arbitration proceedings the Parties settle the Dispute amicably, no arbitration fee shall be reimbursed.

V. Allocation of Arbitration Fees and Costs

Allocation of Arbitration Fees and Costs in the General Procedure

The arbitration fees and costs shall be borne by a Party or Parties, which are not successful in its or their claims.

In case either of the Parties is partially successful, the Sole Arbitrator may apportion the arbitration fees and costs between the partially unsuccessful Parties on a pro rata basis if it determines that apportionment is reasonable, taking into account the circumstances of the case.

Each Party shall bear the costs of its legal representation. Such costs shall not be subject to allocation between the Parties.

Allocation of the Arbitration Fees and Costs in the Procedure for Approval of Restructuring Plan

All arbitration fees and costs in the Procedure for Approval of Restructuring Plan shall be borne by the Debtor or the Involved Creditor.

Schedule 3. Ethical Rules of Conduct

Preamble

Persons appointed as arbitrators to resolve disputes under the Rules bear serious responsibilities and obligations to the Parties and to the public authorities, including certain professional and ethical obligations.

Arbitrators shall be at all times impartial, independent, efficient and professional in the course of their duties and shall seek to provide the Parties with a just and effective resolution of their Dispute. Arbitrators shall always be and shall remain free from bias.

These Ethical Rules of Conduct provide for generally accepted standards of ethical conduct for the guidance of arbitrators appointed under these Rules.

These Ethical Rules of Conduct are incorporated into the Rules by reference and, thus, are directly binding on arbitrators and the Parties.

Article 2 of these Ethical Rules of Conduct shall apply as applicable to the members of the Arbitration Committee appointed by the Supervisory Board.

These Ethical Rules of Conduct do not substitute and do not supersede the applicable law or of the International Bar Association Guidelines on Conflicts of Interest in International Arbitration.

Article 1. Acceptance of appointment

1.1. Any arbitrator shall accept an appointment only if he or she is fully satisfied that he or she is and will remain impartial and independent from the Parties to the Dispute.

1.2. Any arbitrator shall accept an appointment only if he or she fully satisfies himself or herself that he or she has sufficient time and is prepared to commit the attention needed for an effective resolution of the dispute in an expedited manner.

1.3. Any arbitrator shall accept an appointment only if he or she is appropriately qualified and experienced to determine the issues in dispute.

1.4. It is inappropriate and unacceptable for an arbitrator to contact the Arbitration Committee or the Supervisory Board to solicit an appointment as the Sole Arbitrator.

1.5. Once an arbitrator has accepted an appointment, he or she shall not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to proceed with exercise by him or her of his or her functions, including, if the arbitrator becomes physically or mentally unable to meet the reasonable expectations of the Parties.

Article 2. Impartiality and Independence

2.1. Every arbitrator shall be impartial and independent of the Parties at the time of accepting an appointment as the Sole Arbitrator and shall remain so until the final award has been rendered or the arbitration proceedings have otherwise finally terminated.

2.2. An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator if he or she has any doubt as to his or her ability to be impartial or independent.

2.3. After acceptance of appointment and while serving as an arbitrator a person shall avoid entering into any professional, business or personal relationship, or acquiring any financial or personal interest, which is likely to affect his or her impartiality or independence or might reasonably create doubts thereof.

2.4. The International Bar Association Rules of Conflict of Interest in International Arbitration shall be applied to assess the level of impartiality and independence of the Sole Arbitrator.

2.5. An arbitrator shall decide all matters justly, exercising independent judgment, and shall not permit outside pressure to affect his or her decision.

Article 3. Disclosure

3.1. A person before accepting the appointment as the Sole Arbitrator shall disclose all facts and circumstances that may give rise to justifiable doubts as to his or her impartiality or independence, including:

(a) any known direct or indirect financial or personal interest in the outcome of the arbitration;

(b) any known existing or past direct or indirect financial, business, professional or personal relationships, which might reasonably affect impartiality or lack of independence in the eyes of any reasonable person;

(c) the nature and extent of any prior knowledge he or she may have of the dispute; and

(d) any other matters, relationships, or interests, which may affect his or her impartiality and independence in relation to the dispute.

3.2. The obligation to disclose interests or relationships described in paragraph 3.1 is a continuing duty, which requires a person who accepts appointment as the Sole Arbitrator to disclose relevant facts as soon as possible at any stage of the arbitration proceedings.

3.3. Any doubt as to whether or not disclosure is to be made shall be resolved in favour of disclosure.

3.4. Disclosure shall be made to all Parties and the Arbitration Committee.

Article 4. Information and Communication

4.1. When approached by the Arbitration Committee with an invitation to accept an appointment, a prospective arbitrator shall be informed of the names of all the Parties, as well as the general nature of the dispute.

4.2. A prospective arbitrator shall promptly make any additional inquiries to the Arbitration Committee to clarify information necessary for conducting a conflict check. A prospective Sole Arbitrator shall keep the provided information confidential.

4.3. An arbitrator shall not confer with any of the Parties or their representatives until the Arbitration Committee gives notice of the appointment of the Sole Arbitrator to the Parties.

4.4. An arbitrator shall avoid impropriety or the appearance of impropriety in communicating with the Parties. Throughout the arbitration proceedings, an arbitrator shall avoid all unilateral communications regarding the case with any Party, or its representatives.

4.5. Whenever an arbitrator receives any communication concerning the case from one Party, which has not already been sent to every other Party, the arbitrator shall immediately send or cause it to be sent to the other Parties.

Article 5. Conduct of the arbitration and decision-making

5.1. An arbitrator shall conduct the arbitral proceedings in fair and expedited manner. He or she shall ensure equal treatment of and professional approach to all the Parties and their arguments.

5.2. An arbitrator shall carefully and justly decide all the issues in dispute.

5.3. An arbitrator shall not permit any influence in his or her decision making process and shall not delegate his or her duty to decide the dispute to any third person.

5.4. Upon request of the Parties, an arbitrator shall render an award on agreed terms (a settlement) reached by the Parties provided that the latter does not contradict any mandatory provisions of applicable law.

Article 6. Fees

6.1. In accepting an appointment, the Sole Arbitrator agrees to the remuneration set forth in the Schedule to these Rules on Arbitration Fees and Costs and he or she is forbidden from making any unilateral arrangements with any of the Parties or their representatives for any variation in the payment of fees including any payment of additional fees.

Article 7. Confidentiality

7.1. An arbitrator shall treat as confidential and shall not disclose to any third party any matter of which he or she became aware by acting as an arbitrator or by being approached for potential appointment under the Rules (including the existence of the arbitration), any award and any materials produced by any Party to the Dispute in the arbitration, save and to the extent that disclosure may be required by law. The indicated information shall constitute the confidential information.

7.2. The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust with the Parties and shall not, at any time, use confidential information acquired during the course of the proceedings to gain direct or indirect personal advantage or advantage for others, or in a manner which may or is likely to affect adversely the interests of third parties.

Schedule 4. Guidelines for rendering an award in the Procedure for Approval of Restructuring Plan

Preamble

The Restructuring Plan is an agreement providing for the restructuring of the monetary obligations and/or commercial activity of the Debtor in the financial restructuring procedure, which has been entered into in a manner set forth by the Financial Restructuring Law, between the Debtor, the Involved Creditors, the investors (if any), as well as other persons having obligations under the Restructuring Plan.

According to the Financial Restructuring Law, all Involved Creditors at the meeting of the Involved Creditors shall approve the Restructuring Plan. If the Restructuring Plan is approved by the votes of a majority of at least two-thirds of the Involved Creditors, any of the Involved Creditors shall be entitled to submit to arbitration the Dispute regarding approval of the Restructuring Plan.

These Guidelines address matters relevant for rendering an award in the Procedure for Approval of Restructuring Plan.

These Guidelines are based solely on the respective provisions of the Financial Restructuring Law and do not introduce any additional requirements as to the Restructuring Plan or procedure for its approval.

Article 1. General

When rendering an award in the Procedure for Approval of Restructuring Plan, the Sole Arbitrator shall:

- verify conformity of the content of the Restructuring Plan with the requirements set forth in the Financial Restructuring Law (Article 2 of these Guidelines);
- examine compliance of the procedure of the approval of the Restructuring Plan with the relevant procedural rules and requirements set forth in the Financial Restructuring Law (Article 3 of these Guidelines);
- examine position of those Involved Creditors that did not participate in voting or voted against approval of the Restructuring Plan based on the

Comments submitted by such Involved Creditors in the arbitration proceedings (Article 4 of these Guidelines).

Article 2. Requirements to the Content of the Restructuring Plan under the Financial Restructuring Law

In the Procedure for Approval of Restructuring Plan, the Sole Arbitrator shall verify conformity of the Restructuring Plan with the following requirements:

- terms and conditions provided for by the Restructuring Plan with respect to the repayment of debts to the Involved Creditors that did not participate in voting or voted against the Restructuring Plan shall not be less favourable than the terms and conditions for repayment of debts to the Involved Creditors that voted in favour of the Restructuring Plan (*part 4 of Article 25 of the Financial Restructuring Law*);

- the Restructuring Plan may not impose any obligations on any Involved Creditor that did not participate in voting or voted against approval of the Restructuring Plan without its consent (*part 4 of Article 25 of the Financial Restructuring Law*):

  (i) to provide new financing to the Debtor;

  (ii) to release a part of the debt if such debt is fully secured by pledge (mortgage);

  (iii) to completely suspend the charging of interest;

  (iv) to apply funds received from the sale of the collateral for the repayment of debts to other Involved Creditors other than in circumstances where the sale proceeds exceed the claims of the relevant Involved Creditor(s) that did not participate in the voting or voted against approval of the Restructuring Plan;

  (v) to obtain title to the Debtor's assets to fully or partially satisfy its claims.

- conditions for the satisfaction of claims of the Involved Creditors, which are the Debtor's related persons (as defined in the Financial Restructuring Law) may not be more favourable than conditions for the

satisfaction of claims of other Involved Creditors (*part 3 of Article 25 of the Financial Restructuring Law*);

- the Restructuring Plan may not provide for the termination of the security agreement and change of priority ranking of a particular collateral of the respective Involved Creditor(s), if such Involved Creditor(s) holding such security, did not vote in favour of approval of the Restructuring Plan (*part 1 of Article 26 of the Financial Restructuring Law*).

Article 3. Compliance of the Procedure for Approval of Restructuring Plan with Procedural Rules and Requirements of the Financial Restructuring Law

In the Procedure for Approval of Restructuring Plan, the Sole Arbitrator should check compliance of the procedure of the approval of the Restructuring Plan with the following procedural rules and requirements of the Financial Restructuring Law:

- time limits for the Financial Restructuring Procedure (90 calendar days from the date of commencement of the Financial Restructuring Procedure or 180 days from the date of commencement of the procedure in case of an extension) have not elapsed before the date of rendering an award (part 3 of Article 23 *of the Financial Restructuring Law*);

- prior to commencement of the arbitration proceedings, the Restructuring Plan has been approved by a majority holding at least two thirds of claims of the Involved Creditors, excluding Involved Creditors which are the Debtor's related persons and enforcement authorities (if claims of the enforcement authorities (including tax debt) constitute less than one third of the aggregate total of all claims of the Involved Creditors, excluding claims of the Debtor's related persons) (*part 4 of Article 25 of the Financial Restructuring Law*);

- the meeting of the Involved Creditors, at which the Restructuring Plan was approved, was convened in accordance with the requirements of the Financial Restructuring Law (*part 3 of Article 23 of the Financial Restructuring Law*);

- the Involved Creditors voted in accordance with respective voting arrangement, if any, envisaged in any agreement between the Involved Creditors (*part 4 of Article 25 of the Financial Restructuring Law*);

- representatives acting on behalf of several Involved Creditors that signed the Restructuring Plan acted in accordance with respective representation provisions envisaged either in the Framework Agreement or in any other agreement between the Involved Creditors (*part 4 of Article 25 of the Financial Restructuring Law*).

Article 4. Position of the Involved Creditors that did not participate in the voting or voted against approval of the Restructuring Plan

For the purposes of rendering an award in the Procedure for Approval of Restructuring Plan and determining whether the Restructuring Plan is fair and equitable for Involved Creditors that did not participate in voting or voted against it, the Sole Arbitrator may consider the position of the Involved Creditors that did not participate in the voting or voted against approval of the Restructuring Plan under such Restructuring Plan in comparison to the position of such Involved Creditors in the event of liquidation of the Debtor. The respective information may be obtained from the expert report prepared in the course of the Financial Restructuring Procedure and submitted by the Debtor.

Article 5. Amendments to the Restructuring Plan

In case of a Dispute in relation to amendment of the Restructuring Plan, these Guidelines shall apply *mutatis mutandis* (*part 4 of Article 25 of the Financial Restructuring Law*).

ANNEX 3 – LIST OF FORMS FOR LFR MAIN AND ARBITRATION PROCEEDINGS

A. LFR MAIN PROCEEDING FORMS

Form No.	Title/Topic	Purpose	Art
1.	Application	To initiate Financial Restructuring proceeding	18
2.	Restructuring Consent	Consent and identification of participating creditors (includes consent to Arbitration)	18
3a.	Notice of Commencement of FR Proceeding and 1st Meeting of Creditors	Notice to creditors identified in Annexes, and to publication on website	19
3b.	Notice of 1st Meeting of Involved Creditors *(alternate)*	Date, time and place of holding the 1st meeting of Involved Creditors & contact details of Secretariat	19
4.	Notice of return of application	Where application fails to meet commencement criteria	19
5.	Information on Debtor's Current Business Status - Prepared for First Meeting of Involved Creditors	Debtor's disclosures following commencement	19
6.	Debtor's Notice of Amended List of Involved Creditors	To amend or add additional Involved Creditors to the process	19.3
7.	Secretariat Amended Notice of Commencement	Notice of amended list of Involved Creditors	19.3
8.	Application to Commercial Court for Stay of Insolvency	Stay of Insolvency Proceeding application submitted by Debtor or Involved Creditor prior to opening of bankruptcy	20
9.	Process Schedule and Deadlines (notional)	To establish a schedule for the proceedings, actions and negotiation	23
10.	Notice of Transfer of Claim *No form required*	Parties may engage in transfer of Claims during a proceeding	24
11a.	Restructuring Plan *No specified form or template*	Plan must be distributed, voted and accepted	25
11b.	Notice of Meeting on	To inform parties of date, time and	23

	Restructuring Plan	place of meeting to discuss and vote on the restructuring plan	
11c.	Attendance Roster for persons voting on Restructuring Plan	Used to register votes of creditors attending meeting of Involved Creditors to vote on plan	23 & 25
11d	Voting Notice (by voting assembly)	Notice used if voting by assembly	23
11d-alt	Voting Notice (by mail)	Notice used if voting by mail	23
11e.	Proxy	Proxy used where a designated person votes on Creditor's behalf	
11f.	Ballot for voting	Ballot used	
11g.	Notice of Signing of the Restructuring Plan	To give notice that a plan has been accepted and signed	25.4
12.	Notice of conclusion or termination of proceeding	Inform Secretariat of occurrence of an event of completion or termination of proceeding	27

B. ARBITRATION PROCEEDING FORMS

No.	Title	Article	Authority	Procedure
1	Receipt confirmation letter from the Secretariat		Secretariat	General & Special
2	Internal registration form for each Notice of Arbitration (to be kept by the Secretariat)	7(3) 33(6)	Secretariat	General & Special
3	Letter to Involved Creditor on receipt of Notice of Arbitration	34(1)	Secretariat	Special
4	Sole Arbitrator's Statement of acceptance of appointment, availability, impartiality and independence	11(3)	Sole Arbitrator	General & Special
5a	Decision on appointment of the Sole Arbitrator (or substitute Sole Arbitrator)	10(1)	Arbitration Committee	General & Special
5b	Notice of appointment of the Sole Arbitrator (or substitute Sole Arbitrator)	10 (1)	Arbitration Committee	General & Special
6	Notice of Secretariat on appointment of the Sole Arbitrator and referring case file	10 (1) 15(2) 36(1)	Secretariat	General & Special
7a	Request of the Arbitration Committee for	8(3)	Arbitration	General

	remedying defects of the Notice of Arbitration		Committee	
7b	Request of the Arbitration Committee for remedying defects of the Notice of Arbitration (procedure of approval of a plan)	34(2)	Arbitration Committee	Special
8a	Notice of Rejection of the Notice of Arbitration	8 (4)	Arbitration Committee	General
8b	Notice of Rejection of the Notice of Arbitration (procedure of approval of a plan)	34(4)	Arbitration Committee	Special
9	Notice of the Arbitration Committee returning the Notice of Arbitration without commencement of proceedings	8(5)	Arbitration Committee	General & Special
10a	Request for payment of the administration fee and arbitration fee (general procedure)	15(1)	Secretariat	General
10b	Request to the Debtor for payment of the administration fee and arbitration fee (procedure of approval of a plan)	35(1)	Secretariat	Special
10c	Request to Initiating Creditor for payment of administration fee and arbitration fee (procedure of approval of a plan)	36(3)	Secretariat	Special
11	Model request of the Secretariat to the Debtor on provision of documents (procedure of approval of a plan)	35 (2)	Secretariat	Special
12	Model letter of the Secretariat on comments to the Notice of Challenge	12 (3)	Secretariat	General & Special
13	Model letter of Arbitration Committee to the parties on comments as to grounds for release of the Sole Arbitrator	13	Arbitration Committee	General & Special
14a	Decision of Arbitration Committee on challenge of the Sole Arbitrator	12 (4)	Arbitration Committee	General & Special
14b	Notice of Arbitration Committee on challenge of Sole Arbitrator	12(4)	Arbitration Committee	General & Special
15a	Decision of Arbitration Committee on release of the Sole Arbitrator	13	Arbitration Committee	General & Special
15b	Notice of Arbitration Committee on release	13	Arbitration	General &

	of Sole Arbitrator		Committee	Special
16a	Decision of Arbitration Committee on release of Sole Arbitrator (upon Sole Arbitrator's request)	13	Arbitration Committee	General & Special
16b	Notice of Arbitration Committee on release of Sole Arbitrator (upon Sole Arbitrator's request)	13	Arbitration Committee	General & Special
17	Request for remedying defects of the counterclaim	20 (2)	Sole Arbitrator	General
18	Notice of Rejection of the Counterclaim	20 (4)	Sole Arbitrator	General
19a	Skeleton of an order of the Sole Arbitrator granting the joinder	29 (8)	Sole Arbitrator	General & Special
19b	Notice of the Sole Arbitrator granting the joinder	29 (8)	Sole Arbitrator	
20a	Skeleton of an order of the Sole Arbitrator rejecting the joinder	29 (8)	Sole Arbitrator	General & Special
20b	Notice of the Sole Arbitrator rejecting the joinder	29 (8)	Sole Arbitrator	
21	Model request of Sole Arbitrator to the Arbitration Committee on extension of time limits for the Arbitration Proceedings	3 (3)	Sole Arbitrator	General & Special
22a	Decision of Arbitration Committee on extension of time limits	3 (3)	Arbitration Committee	General & Special
22b	Notice to the Parties on granting extension of time limits for the Arbitration Proceedings	3 (3)	Arbitration Committee	General & Special
23	Order of the Sole Arbitrator on termination of the Arbitration Proceedings	31	Sole Arbitrator	General & Special
24	Model letter of the Arbitration Committee to the Sole Arbitrator with respect to scrutiny of the arbitral award	41 (2)	Arbitration Committee	General & Special
25	Model letter of the Arbitration Committee to the Sole Arbitrator with respect to scrutiny of the arbitral award (approval without changes)	41	Arbitration Committee	General & Special

26a	Skeleton on the arbitral award	40	Sole Arbitrator	General
26b	Skeleton of the arbitral award (procedure of approval of a plan)	40	Sole Arbitrator	Special
27	Skeleton of the additional arbitral award	44	Sole Arbitrator	General & Special
28	Skeleton of the addendum to the arbitral award (on clarification of typographical errors, clerical mistakes)	43	Sole Arbitrator	General & Special
29a	Model cover letter of the Sole Arbitrator dispatching arbitral awards and other procedural documents to the parties	6 (1)(v)	Sole Arbitrator	General
29b	Model cover letter of the Sole Arbitrator dispatching arbitral awards and other procedural documents to the parties (procedure of approval of a plan)	42	Sole Arbitrator	Special
30a	Model cover letter of the Secretariat dispatching arbitral awards and other procedural documents to the parties	6 (1)(v)	Secretariat	General
30b	Model cover letter of the Secretariat dispatching arbitral awards and other procedural documents to the parties (procedure of approval of a plan)	42	Secretariat	Special

ANNEX 4 – PROCESS SCHEDULE AND KEY DEADLINES (LFR FORM NO. 9)

	Stage	Time
1.	Application for Financial Restructuring Proceeding (Art. 18). Secretariat verifies compliance, registers application, commences proceeding, notifies involved creditors of commencement and 1st meeting of Involved Creditors, posts proceeding commencement on website (Art. 19)	**Commencement Date**: _____
2.	Debtor provides Information on **Debtor's Current Business Status** Prepared for First Meeting of Involved Creditors, including: 1) Justification of need for restructuring of Debtor's liabilities (free form); 2) Certification of full amount of liabilities w/breakdown by creditor groups, including: FIs, Debtors Related Persons, Creditors that are Related Persons, Secured Creditors, other creditors; 3) Details on amounts past due under valid contracts, rights of creditors to accelerate loans, and any violations of security contracts; 4) Availability and condition of security of Debtor and Property Sureties; 5) Debtors (key expectations re:) financial projections for next 12 months (free form); 6) List of existing court and enforcement proceedings (Art. 19)	7 working days before 1st Meeting **Deadline**:
3.	First meeting of Involved Creditors (ICs). Decisions to be taken include:	**Date:** **Time:**

	- Formation of Coordination Committee of Financial Institutions (CCFI) and selection of Lead Bank (if applicable) - Formation of Creditors Committee (if applicable) - Procedure of coordination and carrying out negotiations - Approval or denial of joint financial restructuring proceeding for several related debtors - Stay of Bankruptcy Proceeding (if applicable) - Termination of Moratorium & Entry into a Standstill - Selection of Independent Experts and other experts [see No. 8. below] - Review of Debtor's Information on Debtors Business Status - Additional Due Diligence and business information needed - Signing of Confidentiality Agreement or NDAs - Prospects for interim operations and financing - Initial restructuring prospects and options - **Establishment of Process Schedule with key deadlines** (Arts. 19 & 23)	**Location**:
4.	Additional meetings of Involved Creditors called on 5 working days notice to Secretariat, proposing place, time and date of such meeting (Art. 23)	Continuous
5.	Debtor submits Notice of Stay of Bankruptcy Proceeding, if necessary (Art. 20)	**Deadline**:

6.	Decision on opting-out of Moratorium or execution of Standstill Agreement(s) (Arts. 20-21)	**Deadline**:
7.	Creditors submit claims in writing to CCFI/Lead Bank (claims completed using standardized LFR form)	**Deadline**: [Within 15 days of commencement]
8.	Selection/engagement of an Independent Expert and/or other experts carried out as requested by the creditors based on the agreed terms of reference. Criteria for Independent Expert and Independent Business Review based on guidelines approved by Supervisory Board.	**Deadline**: [Within 10-15 days of commencement]
9.	**Due Diligence on Business** Debtor submits all further information requested by CCFI or Independent Expert necessary to prepare and evaluate plan. Article 10 identifies required disclosures, as follows: 1) Debtor's financial condition/financial condition of its sureties, assets, capital, liabilities, availability and condition of collateral of the Debtor and its sureties, operations and business prospects, revenue and costs, forecasts of key operating and financial indicators for the period of the restructuring of the obligations, its Ultimate Beneficial Owner(s) (Controller (s)) and Related Parties, to ensure a proper evaluation of its financial condition and viability, and for purposes of development and consideration of the Restructuring Plan, etc. 2) financial statements complying with the requirements of international financial reporting standards or national accounting	**Deadline**: [Within 30 days of commencement]

	regulations (standards) whichever the Debtor is applying, for each of the three financial years preceding such proceeding, together with an auditor's or audit firm report (at the request of Involved Creditors); 3) Relevant information necessary to evaluate the Debtor's competitive advantages and business value. **Schedule 1** (Due Diligence Data and Information) outlines typical data and information necessary for the Independent Expert to prepare an independent business review and for proper evaluation of the business prospects.	
10.	Independent Expert to submit independent business review report to CCFI/Lead Bank or Involved Creditors	**Deadline**: Within 60-75 days after commencement, extendable by [30] days max. [if LFR process extended]
11.	Plan submission by Debtor to Secretariat, and distribution to Involved Creditors Independent Experts viability assessment to be distributed with plan to creditors	**Deadline**: Within 80 days of commencement, extendable up to 90 days max.
12.	Amendment to List of Involved Creditors, if necessary Should occur before 1st Meeting of Involved Creditors	**Deadline**:
13.	Involved Creditors propose amendments to Restructuring Plan	Within 10 days of meeting on plan
14.	Involved Creditor Meeting on Restructuring Plan	**Deadline**: 10 days after plan distribution
15.	If Restructuring Plan consideration is not	Next business day after

	completed, meeting adjourned to next business day, and continuing until concluded	creditor meeting, etc.
16.	New meeting of Involved Creditors, if valid request approved for adjournment of meeting to consider amendments to plan	As determined by parties
17.	Submission of Notice of Dispute to Secretariat and Arbitration (if at least two-thirds majority (but less than 100%) approve the Restructuring Plan) Establish schedule/deadlines for Arbitration Panel decision pursuant to the Arbitration Rules	**Deadline**: Immediately following creditors meeting on plan
18.	Decision on extending Financial Restructuring proceeding period (90 days max) and notice to Secretariat	Prior to 90 days after commencement
19.	Decision on whether to privately reorganize, formally reorganize under Law on Bankruptcy Act or terminate restructuring proceeding	At creditors meeting on plan or within 90 days from commencement (unless extended)

<u>Schedule 1</u> - Due Diligence Data and Information

The following items and supporting documents are typically part of a due diligence business review and disclosure. *The Supervisory Board for Financial Restructuring has approved Guidelines for Independent Experts and the Independent Business Review Report*.

GROUP STRUCTURE	- All subsidiaries, associates and percentage holding in each case. - country of incorporation - indicate whether dormant
GROUP LIABILITIES	- all liabilities (including contingent and off-balance sheet) to be included with current utilizations, original maturities and purpose of each separate utilization - lists should be reconciled and all discrepancies resolved
RECOURSE STRUCTURE	- specific details of lender, borrower, secured party, guarantors/letter of comfort and any limitations thereon to be provided - details of any security, negative pledge and subordination arrangements
INTERCOMPANY POSITIONS	- all current credit, trade, service, royalty or other revenue-earning intercompany - agreements and current position - subordination arrangements - shareholder and director remunerations and agreements
GROUP ASSETS	- asset registers - encumbered or unencumbered
BUSINESS PLAN	- market analysis - competitive analysis - any existing independent reports on market position or competitiveness of debtor

CASH FLOW ANALYSIS & PROJECTIONS	- historical cash flow statements for in past three years - cash-flow projections for next 3-5 years and sensitivity analysis - planned cost cutting and revenue - enhancement initiatives - planned sale of non-strategic assets and anticipated proceeds
MAJOR AGREEMENTS FOR LAST 3 YEARS	- customers - suppliers - lenders - shareholders - management - executives
ANY OTHER INFORMATION ON CURRENT CONDITION AND FUTURE VIABILITY	

ANNEX 5 – REGULATION ON INDEPENDENT BUSINESS REVIEW REPORTS

ON THE REVIEW OF FINANCIAL AND COMMERCIAL ACTIVITY OF THE DEBTOR

The requirements and recommendations of the report on the review of financial and commercial activity of the debtor have been developed in accordance with Article 11 and Article 14 of the Law of Ukraine "On Financial Restructuring" No. 1414-VIII (hereinafter - the Law).

In accordance with Article 11 of the Law, the report of the independent expert review of financial and economic activity (hereinafter - report) shall reflect, in particular, status of pledged property of the Debtor and/or its property guarantor, operational and financial forecast of the activities of the Debtor`s and its related parties for the restructuring period, and also include information on compliance with the requirements specified in part 1 of Article 18 of the Law.

An independent expert shall review the financial and commercial activity of the Debtor and its related parties, the activities of whom shall be a resource for the Debtor to perform its obligations on behalf of the Involved Creditors. For purposes of the report, the list of such related parties is agreed by the Involved creditors and together with the Debtor is considered as the Debtor Group.

The main objective of the report is to provide an objective and independent analysis of the financial and commercial activity, aimed at revealing the true reasons for financial distress and finding adequate methods for efficient recovery of the debtor. In the process, the focus should be on short and long-term forecasts (including analysis of assumptions based on the analysis of historical performance), to a greater extent than historical data reporting. The work of the expert shall use all the information that may be relevant to the task, not limited to this document verbatim.

To clarify the above aspects, the work of the independent expert may involve the following stages:

1. **Overview of the business and management review**
2. **The analysis of the historical and current financial reporting for the last 3 years**
3. **Market review**

4. **Operational and financial projections of the Debtor / Debtor Group**
5. **Legal assessment**
6. **Collateral review**
7. **Conclusions and Recommendations**

The Independent Business Review report should consist of at least the following parts (but not limited to):

1. **Overview of the business and management review:**

- Analysis of legal and operational structure of the Debtor / Debtor Group;
- Products-cash flow chart of the Debtor / Debtor Group; information on key business partners of the Debtor / Debtor Group, evaluation of their influence on business activity of the Debtor / Debtor Group;
- Information on ultimate beneficiary (ies) / owner (s) / controller (s) of the Debtor / Debtor Group, determination of its/their area of business;
- Review of the Debtor's financial reporting system and comments on its reliability;
- Assessment and comments on the ability of management to manage in the crisis environment; assessment of management's operational and financial strategy;
- Assessment of production capacities and its current utilization;
- Assessment of the products / services range, volumes of production and sales of goods and services (actual and at least for the last 3 years), raw materials base, etc.

2. **Financial analysis of the Debtor / Debtor Group for the last two years (based on BS, P&L, cash flow reports), including, but not limited to:**

- Dynamics and structure of: revenues, cost of goods, operating income;
- Analysis of the P&L report, comments on single, exceptional, unusual operations and other adjustments made to the key indicators by management and / or independent expert;
- Analysis of the reports on cash flow for the relevant period;
- Analysis of the indebtedness/interest bearing debt structure, including off – credits, issued securities, warranties, off-balance and other bonds, (their terms and conditions, performance of obligations);
- Review of the currency position and currency results. Short description of assets and obligations, income and costs denominated in foreign currency.

- Liquidity review, structure of the working capital, net working capital as of the last reporting date, including analysis of current business transactions and payments.
- Analysis of capital expenses (where relevant);
- Analysis of key efficiency indicators of the Debtor / Debtor Group compared to those generally accepted for the Debtor's industry;
- Assessment of non-core assets of the Debtor / Debtor Group;
- Analysis of intragroup transactions and correspondence of such transactions to market conditions;
- Analysis of key factors that led the Debtor / Debtor Group to financial difficulties.

3. Market review.

• Market overview (including local and exports), and its development perspectives during the term provided for by the restructuring plan: annual growth rate, main trends, risks – based on available industry researches and / or appropriate information provided by the Debtor, etc.;

• Review of state regulation of the market (quotas/customs rates and others), if applicable;

• Review of competitiveness of the Debtor's / Debtor Group 's goods / services, principal competitors of the debtor/Group, their market share and the debtor/Group's share based on available industry researches and / or appropriate information provided by the Debtor, etc.

4. Analysis of the operational and financial projections of the Debtor / Debtor Group and the restructuring plan:

• Cash flow projection (financial model) should be developed by the Debtor / Debtor Group for at least 5 years, including operating flows, financial and investment activity, cash available for debt service and repayment;

• Analysis of the model should be done by the independent expert who should comment at least the following issues (but not limited to):

  • completeness of the model;

  • Analysis of the main assumptions underlying the model and plan;

  • Proposals based on risk analysis in key assumptions (if any) on adjustments to cash flow available for debt servicing and repayment of the forecast period;

  • Stress test financial models and cash flow sensitivity analysis to changes in key assumptions and identifying key vulnerabilities in terms of implementation.

- Review of short-term and strategic plans of the Debtor/Group initiatives to reduce costs;
- Analysis of the optimal level of debt burden of the Debtor / Group: analysis of the volume and timing of additional funding requirements (if any), the calculation of the expected financial results from additional funding, the analysis of the maximum level of debt that the Debtor/Group can support within the projected period.

5. Legal assessment of the Debtor /Group and separate issues of its activity.

- Check of the legal status of the Debtor, including compliance with part 1 of Article 18 of the Law;
- Legal due diligence in respect of the title to the core assets of the Debtor / Debtor Group and identification of the related risks. The list of the core assets shall be agreed by the involved creditors;
- Review of licenses, permissions and other regulation documents crucial for the Debtors activity;
- Targeted analysis of the main contracts of the Debtor that may affect the debt restructuring procedure in case of challenge or invalidation of such contracts. The list of the main contracts shall be determined by the involved creditors in each procedure;
- Assessment of the material court disputes between Debtor / Debtor property guarantor (s) and not involved creditors for the potential substantial impact on restructuring procedure or restructuring plan. The materiality criteria shall be determined by the involved creditors in each separate procedure;
- Assessment of encumbrances over the collateral assets (check the public registers) for the purpose of identification of the potential substantial impact on restructuring procedure or restructuring plan.

6. Collateral review.

- Description of the main features of existing and additional collateral;
- Analysis of the latest available collateral evaluation report, including comments concerning the applied methodology, possible shortcomings and their impact on reliability of the valuation results. If the latest available valuation report is older than 12 months, the involved creditors may require the Debtor to renew the report or order a new valuation by themselves.
- As per a separate task of the involved creditors – site visit and / or inventory of collateral or a separate list of collateral / non-collateral asset.

7. CONCLUSIONS AND RECOMMENDATIONS. The report on the review of financial and economic activity of the debtor shall include an opinion on the prospects of economic activity of the debtor, the key risks and conditions for such prospects, conclusions regarding the likelihood of a positive impact of the restructuring plan to restore the business Debtor / Groups if implemented, and recommendations based on the work and goals of the activity.

Separate remarks and recommendations:

Financial reporting of the Debtor / Debtor's Group.

For the purposes of the report on the review of financial and commercial activities, an independent expert shall use financial reports of the Debtor / Debtor's Group (by the decision of the involved creditors) at least for the last 3 years or a period longer than 3 years if reasoned by an independent expert or/and by the decision of the involved creditors. Financial reporting is optimal if prepared and audited according to IFRS. In case there are no IFRS financial reports, the Debtor shall provide its available financial reports for review.

Important assumptions:

- A complete commercial analysis of the business (i.e. detailed assessment of the competitive position of the debtor and the prospects for growth on the market) shall not be a part of the Report. If necessary, pursuant to the decision of the involved creditors, the independent expert shall provide services on detailed operational and strategic diagnostics of the Debtor under a separate arrangement.
- Assumptions for the financial projections of the Debtor / Debtor's Group shall be properly supported by research and analysis, including relevant research of the sector.
- As a part of the work of the independent expert, particularly for the purposes of analysis of the capital expenses, technical experts shall be involved pursuant to a separate decision on this point of the involved creditors.

These requirements and guidelines include main components of the Report, however in each particular case by the decision of the involved creditors each section may be supplemented with additional chapters or the task of the expert may be specified.

Monitoring of the performance of the restructuring plan

If the restructuring plan provides for regular monitoring of the debtor's performance of its obligations during the period of restructuring, the expert may be involved by the creditors for conducting regular monitoring of such performance (after approval of the restructuring plan). In such case, this matter shall be dealt with separately on the basis of a separate decision of the involved creditors, or on a bilateral basis pursuant to a separate agreement between a creditor and the expert.

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GUIDE TO
LAW ON FINANCIAL RESTRUCTURING
OF BUSINESSES IN UKRAINE