

## 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 of 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 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 3 and, 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 for 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 Court 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 per cent 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 21 of 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** (Buletyn 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”** (Buletyn 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”** (Buletyn 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<sup>1</sup> that should read as follows:

“5<sup>1</sup>. “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 Bulletin 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**

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