

I assent.

(L.S.)

GEORGE VELLA
President

23rd December, 2022

ACT No. XXIII of 2022

AN ACT to amend the Commercial Code, Cap. 13.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

- Short title. **1. (1)** The short title of this Act is the Commercial Code (Amendment) Act, 2022, and this Act shall be read and construed as one with the Commercial Code, hereinafter referred to as "the Code".
- Cap. 13.
- Commencement. **(2)** This Act shall come into force on such date or dates as the Minister responsible for commerce may, by notice in the Gazette, establish, and different dates may be so established for different provisions and, or different purposes of this Act.
- Scope. **(3)** The scope of this Act is to amend the Code to strengthen the existing legal framework on bankruptcy and discharge of debt and to partially transpose certain provisions of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

2. Part III - "Of Bankruptcy" of the Arrangement of the Code shall be amended by the following:

Amendment of the Arrangement of the Code.

(a) the words "Of the Rights and Duties of the Curator of a Bankrupt" shall be substituted by the words "Of the Rights and Duties of the Bankruptcy Trustee";

(b) the words "Of the Proof of Debts against the Bankrupt's Estate" shall be substituted by the words "Of the Proof of Debts against the Bankruptcy Estate";

(c) the words "Of the Composition or Scheme of Arrangement" shall be substituted by the words "Of Bankruptcy with Debt Agreement";

(d) the words "Of the Ranking of Creditors" shall be substituted by the words "Of Bankruptcy without Debt Agreement"; and

(e) the words "Of the Rehabilitation and Discharge" shall be substituted by the words "Of Bankruptcy in General".

3. Article 2 of the Code shall be substituted by the following new article:

Substitution of article 2 of the Code.

"2. The commercial law relates to traders and to acts of trade done by any person, even though not a trader and, for the purposes of Part III alone:

(a) extends to the persons referred to in article 477;

(b) shall not extend:

(i) to public corporations or agencies established by law;

(ii) where any applicable law creates a separate patrimony in the hands of a person or where a person is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations;

(iii) to any accrued occupational pension entitlements;

(c) shall not extend insofar as these may be inconsistent with, or insofar as these may be construed as limiting or restricting, the application of the following laws or instruments, or any transposing legislation, as may be amended from time to time:

(i) the Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on 16 November 2001, as transposed or as enforceable in terms of Maltese law;

(ii) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as transposed in terms of Maltese law;

(iii) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as transposed in terms of Maltese law;

(iv) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(v) the safeguarding requirements of funds for:

(aa) payment institutions laid down under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, as transposed in terms of Maltese law; and

(bb) electronic money institutions laid down under Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as transposed in terms of Maltese law;

S.L. 459.01. (vi) the Financial Collateral Arrangements Regulations and any financial collateral arrangement in terms thereof;

Cap. 459. (vii) the Set-Off and Netting on Insolvency Act."

4. In article 4 of the Code, the words "commercial partnership." shall be substituted by the words "commercial partnership:" and immediately thereafter there shall be added the following new proviso:

Amendment of article 4 of the Code.

"Provided that, for the purposes of Part III, the term "trader" shall have the meaning assigned to it in article 477."

5. Title I of Part III of the Code shall be substituted by the following new Title:

Substitution of Title I of Part III of the Code.

"Title I
OF THE DECLARATION OF BANKRUPTCY

State of
bankruptcy.

477. (1) Every trader who, having regard also to his contingent and prospective liabilities, is unable to pay his commercial debts, shall suspend the payment of all his debts, and shall, upon the suspension thereof, be in a state of bankruptcy.

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(2) Without prejudice to the provisions of sub-article (1), if a commercial debt due by the trader has remained unsatisfied in whole or in part after twenty-four (24) weeks from the enforcement of an executive title against the trader by any of the executive acts specified in article 273 of the Code of Organization and Civil Procedure, the trader shall suspend the payment of all his debts and be deemed to be in a state of bankruptcy.

(3) For the purposes of this Part, the term "trader" shall, in addition to the persons referred to in article 4, also include any other natural or legal person, in respect of commercial debts for which such person is, or becomes, liable, whether as principal debtor or otherwise.

(4) In this Part, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them:

(a) "commercial debt" means any liability incurred by any person, whether as principal debtor or otherwise, insofar as that liability was incurred, or otherwise arises as a result of any liability which was originally incurred in the course of, in connection with, or for the purposes of, the exercise of any trade, business, craft or profession by the original debtor, and any other liabilities as the Minister responsible for the Malta Business Registry may, by regulations prescribe;

(b) "personal debt" means any liability incurred by any person, whether as principal debtor or otherwise, which is not a commercial debt;

(c) "debt", when used alone, means any liability incurred by any person, whether as principal debtor or otherwise, and whether a commercial debt or a personal debt; and

(d) "competent authority" means the same as the definition assigned to it in the Insolvency Practitioners Act, 2022.

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(5) A debt falling under sub-article (4)(a), which is not exclusively incurred in the pursuit of the activities described in sub-article (4)(a), shall, for the purposes of this Part, be treated as a commercial debt to the extent of that part of the debt which has been incurred, or which has arisen as a result of the activities provided for in sub-article (4)(a), and the term "commercial debt" shall, for the purposes of this Part, be read and construed accordingly.

(6) Any transfer of assets, payment of debts, or act of trade made by a trader who is in a state of bankruptcy, and which are made between the date of the suspension of payments and the date of the judgment declaring bankruptcy, shall, unless a determination is made by the court in accordance with article 482(3) that the debtor is not in a state of bankruptcy, be null and void.

Declaration in court.

478. Upon the suspension of payments, every trader shall, without undue delay, file a declaration of bankruptcy in the Civil Court (Commercial Section).

Contents of the declaration of bankruptcy.

479. (1) The declaration of bankruptcy filed by the trader must be confirmed on oath and include the following:

(a) the trader's name and his identification or registration number;

(b) the nature of the trade, business, craft or profession, in respect of which the debts have been incurred;

(c) the name, identification or registration number, and other particulars of each of the trader's creditors together with their registered address or, in the absence of a registered address, the address of their place of business or place of residence;

(d) the value and nature of the trader's debts, both commercial and personal, and the security, if any, enjoyed by the respective creditors; and

(e) such other information as the Minister may, by notice, prescribe.

(2) In case of the bankruptcy of a legal person, the declaration must also include the name and the place of residence of each of the natural persons jointly and severally liable for the debts of the legal person.

Production of books.

480. On making the declaration mentioned in the foregoing articles, the trader shall, at the same time, file in the Civil Court (Commercial Section), all his commercial books, records and other papers:

Provided that, where the trader is not a person bound to keep trade books in terms of article 13, it shall be sufficient for such person to file in the Civil Court (Commercial Section), all information and documentation as may be necessary to ascertain the circumstances in which the respective debts were incurred, together with a statement of the financial position of the person at the time listing all assets and liabilities of such person.

Declaration of bankruptcy on demand of creditor.

481. (1) Any creditor may, whether the debt owing to him is a commercial debt or otherwise, and even though such debt has not yet fallen due, proceed summarily before the Civil Court (Commercial Section), against a trader who is his debtor, or his lawful representative, demanding a declaration that such trader is in a state of bankruptcy.

Declaration may not be sought by child against parent or vice versa, etc.

(2) A declaration of bankruptcy may not be sought by a child against their parent, or by a parent against their child, or by one spouse against the other.

When declaration may be sought after death of trader.

(3) The bankruptcy of a trader, being a natural person, may be declared after his death, if prior to his death he had suspended payments; in such case the declaration of bankruptcy cannot be demanded by the creditors except within three (3) months from the death of the debtor.

Creditor
demanding
adjudication of
bankruptcy to
give security.

(4) In the case of a demand for a declaration of bankruptcy as provided in this article, the creditor making the demand shall, simultaneously with the demand, give security in an amount that shall be equivalent to the greater of ten percent (10%) of the debt owing to such creditor, or one thousand euro (€1,000) in favour of the party against whom the demand is made, for the due prosecution of the case without delay and the substantiation of his claim; in default whereof, the court may order the amount of the security to be paid, in whole or in part, to the party in whose favour such security has been given:

Provided that such payment shall not operate as a bar to an action against the creditor for damages and interest arising from such proceedings.

Summoning of
creditors.

482. (1) Where a declaration of bankruptcy has been filed in terms of article 479, the registrar shall, by notice, call upon the creditors mentioned in the declaration to appear before the Civil Court (Commercial Section), on such date, and at such a time, as shall be specified in the relevant notice, being a date not later than thirty (30) days from the date on which the declaration is made, to show cause why their debtor should not be declared to be in a state of bankruptcy, and to make representations concerning the appointment by the court of a bankruptcy trustee. The registrar shall cause the notice to be served on the creditors mentioned in the declaration, and for the notice together with the declaration to be published by means of a notice containing an abstract in the Gazette and in one (1) or more daily newspapers.

(2) Where a declaration of bankruptcy is demanded in terms of article 481, the registrar shall, by notice, call upon the debtor mentioned in the declaration to appear before the Civil Court (Commercial Section), on such date, and at such a time, as shall be specified in the relevant notice, being a date not be later than thirty (30) days from the date on which the declaration is demanded, to show cause why he should not be declared to be in a state of bankruptcy. The registrar shall cause the notice to be served on the creditor making the demand, and for the notice together with the declaration to be published by means of a notice containing an abstract in the Gazette and in one (1) or more daily newspapers, calling upon interested persons to show cause why the debtor should not be declared to be in a state of bankruptcy, and to make representations concerning the appointment by the court of a bankruptcy trustee.

(3) Where the court, during the proceedings referred to above, is satisfied that cause has been shown why the debtor should not be declared to be in a state of bankruptcy, the court shall, by judgment, declare that the debtor is not in a state of bankruptcy and shall award costs against the party cast. The court shall also order that an abstract of the judgment be published, by means of a notice in the Gazette.

(4) Where the court, during the proceedings referred to above, is satisfied that cause has been shown why the debtor should be declared to be in a state of bankruptcy, the court shall deliver a judgment declaring the bankruptcy.

(5) In the event that the court is of the view that the declaration of bankruptcy made by the debtor in terms of article 479, or the declaration of bankruptcy demanded by the creditor in terms of article 481, is frivolous or vexatious, the court may award double costs against the party cast.

Suing out of acts and proceedings.

483. (1) If the creditor on whose demand the bankruptcy has been declared neglects to sue out, at his own expense, such acts and proceedings as are necessary to arrive at the making of a bankruptcy order, any other creditor, or even the bankrupt himself, may proceed to sue out such acts or proceedings.

Reimbursement of expenses incurred by the creditor.

(2) Subject to the provisions of article 499, all necessary expenses incurred during bankruptcy proceedings shall be repaid to the creditor disbursing them, out of moneys received on account of the bankruptcy estate in preference to any other debt.

Stay of claims.

484. (1) The execution of claims of a monetary nature against the bankrupt or the bankruptcy estate shall be stayed in respect of all debts referred to in article 487 upon the delivery of the judgment declaring bankruptcy.

(2) The stay of the execution of claims as provided for in sub-article (1) shall cease with regard to the bankrupt, upon the rehabilitation of the bankrupt in terms of articles 524(1)(b) or 534(1)(b), as the case may be.

Acts in fraud of creditors are void or voidable.

485. Every act transferring property, whether corporeal or incorporeal, including any renunciation of any succession or of an acquired prescription, and every obligation incurred, or other act made by the bankrupt which defrauds his creditors, shall be null and void, even though the parties interested have acted, and, or are in good faith.

The bankrupt is relieved of ownership of property.

486. (1) Upon the appointment of a bankruptcy trustee in accordance with article 488, the bankrupt shall *be ipso jure* relieved of his existing title to all assets other than those assets referred to in article 492, whether corporeal or incorporeal, and whether relating to his business or not. The ownership of such assets shall, by operation of law, devolve upon and vest in the bankruptcy trustee who shall receive and hold such assets for the benefit of the body of creditors. All debts, including the debts referred to in article 487, shall, by operation of law, become due and payable by the bankruptcy estate as vested in the bankruptcy trustee:

Provided that, notwithstanding anything stated in any other law, no charge, levy or other dues shall become payable in Malta by way of tax, duty or other government tariff or levy, notwithstanding the manner in which it is described, upon, or as a result of the transfers contemplated in terms of this article.

(2) Everything that devolves on the bankrupt after the bankruptcy but prior to the occurrence of the events referred to in articles 524(1) or 534(1), as the case may be, shall, by operation of law, when and as the same so devolves, vest in the bankruptcy trustee who shall receive and hold the thing for the benefit of the body of creditors:

Provided that, notwithstanding anything stated in any other law, no charge, levy or other dues shall become payable in Malta by way of tax, duty or other government tariff or levy, notwithstanding the manner in which it is described, upon, or as a result of the transfer contemplated in terms of this article.

(3) Any assets that shall devolve upon the bankruptcy trustee by operation of sub-articles (1) and (2) shall be received by the bankruptcy trustee subject to any third-party rights, whether real or personal, in existence at the time, which rights shall be preserved and shall not be prejudiced thereby.

Debts owing by bankrupt not yet due, become payable on declaration of bankruptcy.

487. Debts owing by the bankrupt which have not fallen due, even if privileged, secured by pledge or hypothecary, shall become payable upon the judgment of the court declaring the bankruptcy."

Substitution of Title II of Part III of the Code.

6. Title II of Part III of the Code shall be substituted by the following new Title:

"Title II
OF THE RIGHTS AND DUTIES OF THE BANKRUPTCY
TRUSTEE

Appointment of bankruptcy trustee.

488. (1) The court shall, in the judgment declaring bankruptcy, appoint one (1) or more persons as the bankruptcy trustee to exercise the functions assigned to the bankruptcy trustee under this Part:

Provided that, where more than one (1) person is appointed as the bankruptcy trustee, the persons so appointed shall be appointed to act jointly as the bankruptcy trustee and they shall be jointly responsible for the exercise of the functions assigned to the bankruptcy trustee under this Part.

(2) The bankruptcy trustee shall be deemed to be an officer of the court, and as such shall be subject to the orders of the same.

(3) In the event of the death, interdiction, incapacitation or resignation of the bankruptcy trustee or any one (1) or more of the persons so appointed, the court shall, at the instance of any interested person or on its own motion, release the said person or persons of their appointment. The court shall appoint one (1) or more other persons as the substitute bankruptcy trustee, and immediately upon the appointment being made, the provisions of articles 486, 489 and 490 shall apply *mutatis mutandis* to the substitute bankruptcy trustee.

(4) Any interested party may, within twenty (20) days from the publication of the notice referred to in article 490, apply to the court for the substitution of the bankruptcy trustee on the basis that the latter is not fit and proper, whether due to the subsistence of a conflict of interest or for any other valid reason.

Authorisation
of bankruptcy
trustee.

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Publication of
abstract of
judgment in
Gazette.

489. The bankruptcy trustee appointed by the court shall be a person duly authorised to act as such, in terms of article 4 of the Insolvency Practitioners Act, 2022, and whom the court deems fit to faithfully discharge the duties of his office.

490. (1) The bankruptcy trustee shall, within fourteen (14) days from the judgment declaring bankruptcy, notify the competent authority and the registrar of the said judgment, and cause a notice containing an abstract of the judgment to be published in the Gazette and in one (1) or more newspapers, which notice shall clearly indicate the name, surname and business address of the person or persons appointed as the bankruptcy trustee.

(2) An abstract of the judgment declaring the bankruptcy shall also be enrolled in the Public Registry within fourteen (14) days from the judgment.

Removal of
bankruptcy
trustees.

491. (1) The court may, at any stage of the proceedings, of its own motion or upon the demand of one (1) or more creditors or of the bankrupt, remove the bankruptcy trustee.

(2) No appeal shall lie against the pronouncement of the court made in terms of sub-article (1).

(3) Upon the removal of the bankruptcy trustee by the court, the court shall appoint a substitute bankruptcy trustee and the provisions of article 488 shall apply *mutatis mutandis*.

Property
which may be
retained by the
bankrupt.

492. Where the bankrupt is a natural person, the bankrupt shall be entitled to retain the use, possession and ownership of any property that, as the bankrupt may reasonably demonstrate to the satisfaction of the bankruptcy trustee, comprises:

(a) the bankrupt's main residence;

(b) any vehicle, tools, or equipment of the bankrupt, insofar as the bankrupt may reasonably demonstrate these to be necessary for the performance, by him, of an activity permissible in terms of article 498(3);

(c) any apparel and other movable effects necessary for the personal use of the bankrupt or that of any person related to him by consanguinity or affinity to the third degree inclusively;

(d) any medical supplies or equipment of the bankrupt, insofar as the bankrupt may reasonably demonstrate these to be necessary for his own physical or mental well-being or that of any person related to him by consanguinity or affinity to the third degree inclusively; and

(e) any right of nomination that the bankrupt may have to any vacant ecclesiastical benefice.

Seizure of property.

493. (1) In order to secure possession of the property of the bankrupt, including his books, records and other papers, the bankruptcy trustee, shall apply to the Civil Court (Commercial Section), for the issue of a warrant of seizure against any person who may have possession of the property, including the bankrupt.

(2) In the case of bankruptcy of a legal person, the warrant of seizure shall be executed not only at the principal offices or premises of the bankrupt, but also at the residence or premises of each of the persons jointly and severally liable for the debts of the legal person.

Books open to inspection by the interested parties.

494. The books, records and other papers of the bankrupt shall be kept at such place as the court may direct, and shall be open to inspection by all interested parties on a written request made to the bankruptcy trustee, provided that the bankruptcy trustee is satisfied that the person making the request is an interested party.

Bankruptcy estate.

495. (1) The bankruptcy estate shall include all sums due to the bankrupt, including any amounts derived by the bankrupt from the conduct of any activities in terms of articles 496, 497 and 498:

Provided that the provisions of this article shall cease to have effect until they are superseded by a debt agreement or bankruptcy order made in terms of this Part, and shall, in no event, apply for a period longer than three (3) years from the date of the judgment declaring bankruptcy.

(2) Where the bankrupt carries out activities in terms of article 498(3), the bankrupt shall be entitled to receive from the bankruptcy trustee, out of any sum due to the bankrupt by way of remuneration for the said activities, an amount to be determined by the bankruptcy trustee, which amount shall not be less than the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata throughout the duration of the appointment of the bankruptcy trustee.

(3) Where the bankrupt is unable, for reasons which the bankruptcy trustee finds to be legitimate, to carry out activities in terms of article 498(3), the bankrupt shall be entitled to receive, from the bankruptcy estate, an allowance which shall not be less than the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata throughout the duration of time during which the bankruptcy trustee is appointed.

(4) The amount referred to in sub-articles (2) and (3) shall exceed the national minimum wage where the bankrupt reasonably demonstrates to the satisfaction of the bankruptcy trustee, that the bankrupt has an overriding need for the additional amount on account of grave and justifiable circumstances specific to the bankrupt or his dependants.

Sale of perishables.

496. (1) The bankruptcy trustee shall, without delay sell, whether by means of a licensed auctioneer or otherwise, such assets as the bankruptcy trustee shall deem to be perishable.

(2) Any perishables in respect of which a right of recovery in terms of Title III has not been exercised prior to their sale, shall be sold in terms of sub-article (1), and any respective right of recovery shall be extinguished and the moneys realised shall form part of the bankruptcy estate in terms of article 495.

Sale of non-perishable assets.

497. (1) Non-perishable assets cannot be sold by the bankruptcy trustee prior to the confirmation of the proposed terms of a debt agreement in terms of Title V or the sale of assets held on trust in terms of Title VI, as the case may be, except in pursuance of a summary judgment of the court, upon a sworn application issued against the parties interested.

(2) In deciding upon the sworn application, the court shall, among other things, consider:

(a) whether the value of the asset will be substantially preserved by its immediate sale;

(b) whether the bankruptcy trustee requires additional liquidity to continue the trade, business, craft or profession of the bankrupt in accordance with article 498; and

(c) whether the bankrupt is urgently in need of moneys to satisfy his ordinary and reasonable daily expenses.

(3) No appeal shall lie against the pronouncement of the court made in terms of sub-article (1).

Bankruptcy trustee may continue business.

498. (1) It shall be lawful for the bankruptcy trustee, with the authority of the court, by a decree, to, where possible, cause the continuation of the trade, business, craft or profession of the bankrupt, where the bankruptcy trustee is of the opinion that the said continuation will afford a means of increasing his assets for the benefit of the body of creditors:

Provided that, as may be necessary for the continuation of the trade, business, craft or profession of the bankrupt, the bankruptcy trustee may request the authority of the court to make use of any property held on trust in the exercise of the said trade, business, craft or profession.

(2) The court shall, when granting such authority, give such directions by a decree as the court deems most advantageous to the interests of the body of creditors:

Provided that where any creditor files an opposition to a decree by the court in terms of this article, the court may, on just cause being shown, after hearing the bankruptcy trustee, withdraw the authority.

(3) Without prejudice to the provisions of sub-article (1), the bankrupt shall not carry out any act of trade until rehabilitated in terms of this Part. Any bankrupt who is a natural person may, prior to the rehabilitation in terms of articles 524(1)(b) or 534(1)(b), as the case may be, pursue the lawful conduct of any activity:

Provided that the conduct of that activity shall not require, give rise to, or necessitate, the performance of any acts of trade by the bankrupt:

Cap. 16. Provided further that the exercise of any act of extraordinary administration in terms of article 1322 of the Civil Code by the bankrupt after the declaration of bankruptcy but prior to the rehabilitation in terms of articles 524(1)(b) or 534(1)(b), as the case may be, shall, at all times, require the express prior written consent of the bankruptcy trustee.

Sum of money which bankruptcy trustee may hold on trust.

499. (1) The bankruptcy trustee may appropriate such sum or sums as the court shall determine, to remunerate the bankruptcy trustee and to meet any expenses as the bankruptcy trustee may reasonably incur in the performance of his duties in terms of this Part, as a first charge out of the bankruptcy estate in preference to any other expense. All other moneys shall continue to be held by the bankruptcy trustee on trust, distinct and separate from the personal property of the bankruptcy trustee and from other property held by the bankruptcy trustee under any other trust.

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(2) The Minister may, in consultation with the competent authority mentioned in the Insolvency Practitioners Act, 2022, make regulations for the payment of the expenses and remuneration of the bankruptcy trustee.

(3) The Court shall have the power to order that of the expenses and remuneration of the bankruptcy trustee are paid in terms of regulations made in terms of sub-article (2).

Action against bankruptcy trustee.

500. (1) An action against the bankruptcy trustee may be brought by an interested party only on the grounds that the bankruptcy trustee has failed to carry out his functions, whether arising in terms of this Part or by order of the court.

(2) The bankruptcy trustee shall be unlimitedly and personally liable for any damages caused as a result of fraud or gross negligence on his part.

Preservation of rights.

501. (1) The bankruptcy trustee, once appointed, shall take every necessary step for the preservation of rights previously pertaining to the bankrupt as against his debtors and shall also cause to be registered in the Public Registry any hypothec affecting the property of the debtors of the bankrupt, if the bankrupt has failed to do so.

(2) It shall be the duty of the bankruptcy trustee to sue for the payment of any debts due to the bankrupt, for the benefit of the bankruptcy estate.

(3) It shall not be lawful for the bankruptcy trustee to make any compromise or refer any dispute to arbitration without the consent in writing of the majority in value of the creditors of the bankrupt and the authority of the court.

Making up of inventory.

502. (1) Within thirty (30) days from the judgment declaring bankruptcy, the bankruptcy trustee shall make up an inventory of the property comprising the bankruptcy estate and file such inventory in the registry:

Provided that the inventory shall be updated by the bankruptcy trustee with such frequency as the bankruptcy trustee may deem appropriate, having regard to the facts and circumstances, and in no case later than three (3) months from the last filing of the inventory.

(2) The period for the making up of the original inventory may, on the request of the bankruptcy trustee and for just cause, be extended to not more than forty-five (45) days.

(3) Every creditor has a right, and the bankrupt is bound, to assist in the making up of the inventory.

Contents of inventory.

503. The inventory shall contain a true list, together with a description and the estimated value, of all the property movable and immovable comprising the bankruptcy estate held on trust by the bankruptcy trustee, a statement of the debts owing to or due by the bankruptcy estate, a statement of the profits and losses of the bankrupt, and a statement of the expenses.

Power of the court.

504. It shall be lawful for the Civil Court (Commercial Section), of its own motion or on the demand of the bankruptcy trustee or of one (1) or more of the creditors, to compel the bankrupt and any other person to declare on oath all such information as it may deem necessary or useful in the interest of the body of creditors or for the making up of the inventory, or to confirm on oath the correctness of the inventory."

Substitution of
Title III of Part
III of the Code.

7. Title III of Part III of the Code shall be substituted by the following new Title:

"Title III
OF THE RIGHTS OF RECOVERY

Recovery of
bills of
exchange, etc.

505. In case of bankruptcy, it shall be lawful to recover all bills of exchange and other documents of title yet unpaid which are found in kind in the possession of the bankrupt at the time of the bankruptcy, whenever such bills of exchange or documents of title shall have been endorsed by the owner for collection for his own account.

Recovery of
goods.

506. (1) It shall likewise be lawful to recover goods delivered to the bankrupt by way of deposit or sold on account of the owner, so long as the same exist in kind, wholly or in part.

(2) It shall also be lawful to recover the price or part of the price of such goods, which has not been paid in cash or otherwise, or set off in account current between the bankrupt and the buyer.

Recovery of
goods sold to
bankrupt.

507. (1) Goods sold to the bankrupt or forwarded to his account may be recovered, so long as they are in his possession or in the possession of the bankruptcy trustee.

(2) Nevertheless, such right of recovery may not subsist in cases where, before their arrival, the goods have been, without fraud, sold on invoices or bills of lading signed by the party forwarding the goods.

(3) The party recovering the goods shall be bound to return to the bankruptcy estate the sums received by him on account, and all advances made in respect of freight, commission, insurance or other expenses, and shall pay what remains due in respect of such charges.

Goods not yet
delivered to
bankrupt.

508. It shall be lawful for the seller to retain any goods sold by him to the bankrupt that are yet unpaid for by the bankrupt, and which have not yet been delivered to the bankrupt or not yet forwarded to him or to a third party on his behalf.

Bankruptcy trustee's power to withdraw goods.

509. In the cases mentioned in articles 507 and 508, the bankruptcy trustee shall have the power to take the goods on paying the seller the price agreed upon between him and the bankrupt."

8. Title IV of Part III of the Code shall be substituted by the following new Title:

Substitution of Title IV of Part III of the Code.

"Title IV
OF THE PROOF OF DEBTS AGAINST THE
BANKRUPTCY ESTATE

List of creditors.

510. (1) Within fourteen (14) days of filing the inventory in the registry, the bankruptcy trustee shall make a list of all the creditors, and file such list in the registry.

Meeting of creditors.

(2) Within fourteen (14) days of the filing of the list of creditors in the registry, the registrar shall, by order of the court, summon a meeting of the creditors by means of a notice published in the Gazette and in one (1) or more newspapers, which meeting shall be held not later than thirty (30) days from such order, in the presence of the court on the day and at the place fixed in the notice:

Provided that a copy of the notice shall be served upon the listed creditors at their residential or business address, by means of registered post.

Organisation of debts.

(3) The bankruptcy trustee shall, at such meeting, present a written debt register, by virtue of which the bankruptcy trustee shall examine the bankrupt's debts and organise the debts separately into commercial debts and personal debts, having regard to the quality and nature of such debts, and the manner in which they arose or were incurred:

Provided that, in the event that the debt register comprises a debt that has not been incurred exclusively in the pursuit of a trade, business, craft or profession, the bankruptcy trustee shall designate the said debt as being a commercial debt only to the extent that the debt has been incurred in a manner that would cause the debt to be treated as a commercial debt in accordance with article 477, having regard, in particular, to:

(a) the manner in which any asset, good, or service that has been acquired by virtue of the debt under examination has been utilised or consumed;

(b) the importance of any asset, good, or service that has been acquired by virtue of the debt under examination, to the trade, business, craft or profession of the bankrupt and the manner in which said asset, good, or service has been integrated into the bankrupt's commercial practices and relied upon for the purposes thereof; and

(c) the extent to which any asset, good, or service that has been acquired by virtue of the debt under examination, has been enjoyed for purposes extraneous to the trade, business, craft or profession of the bankrupt.

Therefore, and for the purposes of this Part, any debt that has not been incurred exclusively in the pursuit of a trade, business, craft or profession shall, to the extent that the said debt has been designated as being a commercial debt in terms of this article, be treated as a commercial debt, and otherwise as a personal debt.

Contents of
debt register.

(4) The debt register shall comprise, as a minimum:

(a) the value of each debt;

(b) the name and address of the creditor to whom each debt pertains;

(c) the date on which each debt arose;

(d) the bankruptcy trustee's classification of each debt as a commercial or personal debt, provided that, where the debt has not been incurred exclusively in the pursuit of a trade, business, craft or profession, the bankruptcy trustee shall set out the extent to which the debt has been designated as being a commercial debt in terms of sub-article (3), and shall provide any relevant documentation or information substantiating the manner in which the debt has been designated;

(e) the cause and nature of any preference or security, if any, attaching to each debt; and

(f) the manner in which all of the bankrupt's debts shall rank according to law.

Application of creditor.

511. (1) Every creditor of the bankrupt shall, at any time prior to such meeting, submit a request to the bankruptcy trustee for the admission of his debt, and shall produce and specify the documents in support of the same, on the basis of which the bankruptcy trustee shall decide whether to admit or refuse the claim, and the contents of the inventory and debt register shall be determined accordingly.

(2) Any interested party may, within twenty (20) days of such meeting, make submissions against the veracity of the contents of the inventory and debt register. The court shall only make the determination contemplated in article 514 after having heard the debtor, the bankruptcy trustee, or the creditors, as the case may be.

(3) A *procès verbal* shall be drawn up containing the pleas set up by the debtor, the bankruptcy trustee and the creditors.

Person interested can assist in the examination of claims.

512. Any person, although his debt has not been proved and admitted, may, on summarily showing that he is interested, assist in the examination of the claims of the other creditors and set up pleas in regard thereto, and shall, following a request made to the bankruptcy trustee, be provided, at his expense, a copy of the inventory and debt register.

False claim.

513. (1) Where any person wilfully makes any false claim or falsely claims a larger sum than that actually due to him, he may be sued before the Civil Court (Commercial Section), and shall, on conviction, be liable for the payment of twice the amount falsely claimed, for the benefit of the estate of the bankrupt.

(2) Such an action may be brought by the bankrupt, by any creditor of the bankrupt, or by the bankruptcy trustee, and shall lapse after a period of five (5) years from the date of such claim.

Examination
of
submissions.

514. (1) Following the submissions referred to in article 511(2), the court shall proceed to the examination of the submissions. The court shall confirm or vary the contents of the debt register, as may be relevant within thirty (30) days of the submissions of an interested party in terms of article 511(2).

(2) The bankruptcy trustee shall, within fourteen (14) days, supplement the contents of the inventory referred to in article 502(1), by the publication of the debt register drawn up in accordance with the requirements of article 510, and the debt register shall be maintained and updated with such frequency as the inventory in accordance with the requirements of article 502(1).

(3) Notwithstanding the expiration of the period referred to in article 511(2), any interested person may, by application to the court, request leave to present an application to the bankruptcy trustee for the admission of a debt not previously brought to his attention. Where the court accedes to the request, the bankruptcy trustee shall update the debt register and the procedures in articles 511(1) and (2), and 514(1), shall, *mutatis mutandis*, apply.

Appeal.

515. (1) Any decree made in terms of article 514(1) shall be subject to appeal, by application filed in the registry of the Court of Appeal within twenty (20) days from the date of the decree, and any such appeal shall have no suspensive effects on proceedings in terms of this Part:

Provided that where more than one (1) appeal against the decree is filed, the Court of Appeal shall hear all appeals simultaneously:

Provided further that in hearing the appeal, the Court of Appeal may decide to admit any new document or testimony as evidence of a debt being claimed. Where, however, the Court of Appeal finds that the claim itself, or any new document or testimony related to it, could have been filed at the time of the submissions made in terms of article 511(2), the Court of Appeal may order the appellant to bear the costs of the appeal, in whole or in part.

(2) An appeal against the decree shall not lie on the grounds that a debt, not incurred exclusively in the pursuit of a trade, business, craft or profession, has been incorrectly apportioned in terms of the proviso to article 510(3), except where the respective creditor is able to demonstrate that the apportionment has been performed in a manner that is manifestly incorrect, grossly negligent, or fraudulent.

List of
creditors
failing to
appear.

516. (1) The debt register shall separately identify and contain the names of any known creditors who failed to appear, in person or by proxy, at the meeting referred to in article 510(2), and the said creditors who failed to appear shall not be taken into account:

Provided that any listed creditor who would have ranked below the debt pertaining to known creditors who failed to appear, shall only receive payment of his debt, in terms of this Part, on condition that he provides sufficient security to the satisfaction of the bankruptcy trustee that will ensure the making, by him, of a pro rata contribution in favour of any creditor who has failed to appear in the event of their appearing within one (1) year from the day on which the security was given.

(2) Any creditor that has failed to appear at the meeting referred to in article 510(2) shall have the right to request the court to order his inclusion in the debt register and to order the taking of such other action as may be necessary so as to give effect to their inclusion."

9. Title V of Part III of the Code shall be substituted by the

Substitution of
Title V of Part
III of the Code.

following new Title:

"Title V - OF BANKRUPTCY WITH DEBT AGREEMENT

Call of
meeting.

517. (1) After the publication of the debt register in accordance with article 514(2), the registrar shall call a meeting of the creditors whose claims have been admitted, that shall be held within thirty (30) days of the publication.

(2) The bankrupt shall also be summoned to such meeting. He cannot attend by proxy except with the approval and for reasons approved by the court. The court shall examine the instruments of proxy of those who appear on behalf of absent creditors.

Proceedings
during
meeting.

518. (1) The court shall cause the bankruptcy trustee to give, in its presence, an account of the state of the bankruptcy and of everything that has taken place since the commencement of proceedings, including but not being limited to:

(a) any property of the bankruptcy estate that the bankruptcy trustee has determined to fall within the terms of article 492;

(b) the admitted debts, and the contents of the inventory and debt register; and

(c) whether, in the view of the bankruptcy trustee, any evidence subsists to indicate that the bankruptcy may be fraudulent.

(2) The bankrupt may, in all cases, be heard. If absent, the meeting shall continue without him and the bankruptcy trustee shall file a note in the registry recording this absence.

Terms of debt
agreement and
debtor's
income
payment plan.

519. (1) During the meeting, the bankruptcy trustee shall propose for discussion and approval by the creditors, the terms of a debt agreement, for the settlement of the claims of the creditors, in whole or in part, out of the bankruptcy estate, which terms have been agreed to by the bankrupt.

(2) Where the bankrupt is a natural person, the bankruptcy trustee may propose, within the terms of the debt agreement referred to in sub-article (1), an income payment plan, in terms of which the bankrupt shall be required to continue to contribute a defined amount of money towards the bankruptcy estate in the hands of the bankruptcy trustee, out of anything that devolves on, or is derived by, the bankrupt after the rehabilitation in terms of article 524(1)(b), for a period not exceeding three (3) years to be reckoned from the date of appointment of the bankruptcy trustee, for the further settlement of debts, in whole or in part, in accordance with the terms of the debt agreement.

(3) The bankruptcy trustee shall, in support of the debt agreement, provide such information as shall be necessary to enable the creditors to appropriately evaluate the proposed terms, and in the case of an income payment plan being proposed in terms of sub-article (2), such information shall include a financial projection covering the entire duration of the income payment plan as proposed, illustrating:

(a) the income that the bankrupt may be reasonably expected to generate, on the basis of the bankruptcy trustee's best assessment, regard being had to the bankrupt's circumstances, previous experience, and qualifications; and

(b) the expenditure that the bankrupt may be reasonably expected to incur, on the basis of the bankruptcy trustee's best assessment, regard being had to the bankrupt's circumstances and dependants.

(4) The bankruptcy trustee shall, during such meeting, organise the creditors into classes, for the purpose of voting on the proposed terms, as the bankruptcy trustee may deem necessary to distinguish between the varying economic interests thereof, and which classes shall, at minimum, distinguish between:

(a) the holders of secured debts;

(b) the holders of unsecured debts;

(c) the holders of subordinated debts, meaning debts that, in the event of the liquidation of the bankruptcy estate, would remain unpaid until the full settlement of all the non-subordinated debts of the bankrupt; and

(d) the holders of any ownership rights, or other similar interests, in the bankrupt.

(5) The creditors may, at the discretion of the bankruptcy trustee, be further divided into additional classes, as may be necessary in order to distinguish between creditors within the same class but having debts pertaining to different legal priorities.

(6) All creditors comprising part of a specific class shall be treated equally for the purposes of the proposed terms, except insofar as with regard to any detrimental treatment that is expressly agreed to by the directly affected creditor or creditors.

(7) Any agreement extraneous to the proposed terms, howsoever formulated, that purports to grant an unfair advantage to a creditor, shall be null and void.

Taking of votes.

520. The creditors shall have at least fourteen (14) days to consider the proposed terms of the debt agreement, and shall reconvene on the day and at such time fixed by the court, which shall be in no case later than thirty (30) days thereafter, for the taking of a vote in the presence of the judge.

Proposed terms shall be agreed upon by majority of creditors.

521. (1) The registrar shall draw up a *procès verbal* of the proceedings that have been held and of the resolutions passed at such meetings.

(2) Only classes of creditors shall be entitled to vote, and the proposed terms shall be deemed to be approved by the body of creditors upon receiving the approval of each class of creditors.

(3) The vote of a class of creditors shall be exercised on the basis of a resolution of the creditors comprising that class, which resolution shall be supported by at least seventy-five percent (75%) of the said creditors by reference to the value of the debts represented thereby, for the purpose of approval.

(4) Where such agreement does not secure the support of each class of creditors in terms of sub-article (2), the proposed terms shall be approved by the court in accordance with article 523, where the court is satisfied that the proposed terms:

(a) shall not result in a dissenting creditor within a dissenting creditors' class being worse off under the proposed terms than that dissenting creditor would be if the terms were not approved and proceedings were instead undertaken in terms of Title VI;

(b) do not purport to allow any class of creditors to receive economic value in excess of the full amount of the debts pertaining thereto;

(c) ensure that any dissenting class of creditors is treated at least as favourably as any other class of creditors whose debts would, if the normal ranking of creditors were to be applied, rank *pari passu* with the debts pertaining to the dissenting class of creditors, and more favourably than any other class of creditors whose debts would rank below the debts pertaining to the dissenting class; and

(d) have received the approval of classes of creditors representing, by reference to the value of the debts represented thereby, at least fifty percent (50%) by reference to the value of the debts.

(5) The Civil Court (Commercial Section) shall have the authority to examine and approve any request by tutors or curators of creditors for their approval or otherwise of the proposed terms and their execution.

Proposal of
fresh terms.

522. (1) If the proposed terms are not deemed to have been approved by the creditors in accordance with article 521(3), the bankrupt, or any of the creditors, shall have the right during the same meeting, to, prior to the approval referred to in article 523, request the court to permit that the creditors submit a round of fresh terms within not more than fourteen (14) days of the refusal of the proposed terms, and in such case, the court shall allow the bankrupt and bankruptcy trustee to be heard before granting such leave.

(2) When the court has granted leave for the proposal of fresh terms, it shall call a new meeting in terms of article 518, that shall be held not later than thirty (30) days from the granting of such leave, for the approval of the fresh terms. Any fresh terms shall be submitted to the bankruptcy trustee at least seven (7) days prior to such meeting, and the bankruptcy trustee shall undertake to discuss the fresh terms with the bankrupt prior to the meeting.

(3) The provisions of this article for the court to grant leave for the proposal of a round of fresh terms may only be availed of once:

Provided that any creditor may propose fresh terms during the meeting to be held in terms of sub-article (2), and when alternative terms are proposed for approval, all of the alternative proposed terms shall be considered.

(4) Where multiple alternative proposed terms are approved in accordance with article 521(3), the court shall identify the proposed terms that enjoy the broadest support by reference to the value of the debts represented by the creditors voting in favour, and such terms shall prevail to the exclusion of all others.

Proposed
terms shall be
confirmed by
court.

523. (1) The court shall, when it is satisfied that the proposed terms have been approved in accordance with article 521(3), by order, confirm that the proposed terms have been lawfully approved by the creditors, and such confirmation shall be sufficient to make such terms binding.

(2) If the proposed terms are not deemed to have been approved in accordance with article 521(3), their confirmation by the court, once it is satisfied that the conditions referred to in article 521(4) subsist, shall be sufficient to make such terms binding:

Provided that it shall be assumed by the court that the requirements of article 521(4)(a) are satisfied, without any further inquiry by the court, unless any dissenting creditor has, by application, requested the court to assess whether the said requirements do, in fact, subsist.

(3) The confirmation or refusal of the proposed terms by the court, and any decision of the court within the context of the proceedings for the proposal and confirmation of the proposed terms of a debt agreement, shall be subject to appeal, by application to the Court of Appeal within twenty (20) days from the day of the decision of the court to confirm or refuse the proposed terms.

(4) The Court of Appeal may, notwithstanding that it has accepted an appeal made in terms of sub-article (3), uphold the decision of the court to confirm the proposed terms at first instance, and provide such remedy as necessary to ensure that the appellant is protected from the effects of the proposed terms, or duly compensated, such that the appellant:

(a) shall be entitled to receive an amount at least equivalent to that which the appellant would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the proposed terms had not been confirmed; or

(b) shall be treated at least as favourably as any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank *pari passu* with the debts pertaining to the appellant, and more favourably than any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank below the debts pertaining to the appellant.

(5) An appeal made in terms of sub-article (3) shall have no suspensive effects on the execution of that decision, or on the execution of any proposed terms approved within the procedure in which that decision was made.

Effects of
confirmation.

524. (1) On the proposed terms of the debt agreement being confirmed, the bankrupt shall:

(a) where the bankrupt is a legal person, be automatically discharged of all debts, and shall be struck off the relevant register, and any debts that shall remain unpaid following the execution of the terms of the debt agreement shall, where so provided in terms of law, become the personal liabilities of such other person or persons as so contemplated by law or by the constitutive documents of the legal person:

Provided that, insofar as required for the purposes of this sub-article, the bankruptcy trustee shall perform any duties that would ordinarily be assigned to the liquidator or such equivalent person being responsible for the winding up of the relevant legal person:

Provided further that the bankruptcy trustee shall notify the competent authority of the discharge of debt, and the competent authority shall, publish a notice of completion of bankruptcy proceedings within the records of the competent authority, to which the terms of the debt agreement shall be annexed; or

(b) where the bankrupt is a natural person, be deemed to be *ipso jure* rehabilitated to trade, and may recover the ownership and possession of his property, in whole or in part, under the conditions, if any, embodied in the debt agreement:

Provided that a stipulation that the bankrupt shall have no power to do any one (1) or various acts, whether of administration or of alienation, without the consent of the bankruptcy trustee, until the complete or partial fulfilment of the bankrupt's obligations in terms of the income payment plan, shall be a valid stipulation, and shall have effect even against third parties who have contracted in good faith with the bankrupt alone:

Provided further that upon the fulfilment of the terms of the income payment plan, or upon the confirmation of the proposed terms of the debt agreement if these do not comprise an income payment plan, the bankrupt shall be automatically discharged of all commercial debts that may at any time previous to the declaration of bankruptcy have been claimed against him, and the payment of any commercial debt, or part thereof, of the bankrupt that shall remain unpaid following the full execution of the terms of the debt agreement shall be abated in full, to the benefit of the bankruptcy estate.

(2) Upon the rehabilitation to trade of a bankrupt, being a natural person, a notice of the rehabilitation shall be published by the bankruptcy trustee, by means of a notice in the Gazette and in any one (1) or more newspapers.

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(3) Upon the rehabilitation to trade of a bankrupt, being a natural person, any personal debts of the bankrupt that shall remain unpaid following the full execution of the terms of the debt agreement, shall, by novation, become the personal liabilities of the rehabilitated bankrupt, provided that the novation of such debts shall, notwithstanding the provisions of article 1186 of the Civil Code, be without prejudice to the preservation of any privilege or hypothec securing the debt:

Provided that an application may be made to the court by the rehabilitated bankrupt, by not later than twenty (20) days from the confirmation of the proposed terms, for any of the aforementioned personal liabilities to remain the liabilities of the bankruptcy trustee, who shall continue to receive payment from the rehabilitated bankrupt against such personal liabilities, in terms of the provisions of an agreement reached by and between the rehabilitated bankrupt and the relevant creditors thereof, until the respective personal debt has been satisfied in full, or until an earlier resolute condition expressly stipulated in the agreement between the rehabilitated bankrupt and his creditor or creditors has been reached:

Provided further that the court shall only accede to a request made in terms of the first proviso if it is satisfied that a valid agreement has been reached by and between the rehabilitated bankrupt and the relevant creditors thereof, and only after having received the assent of the bankruptcy trustee.

(4) The provisions of a debt agreement shall not be subject to change following the confirmation thereof, provided that amendment to the terms of an income payment plan comprising part of a debt agreement may be requested, at any time prior to the fulfilment of the terms thereof, by:

(a) the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt or his dependants, the obligations set out in terms of the income payment plan exceed the means of the bankrupt; or

(b) the creditors of the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt, the bankrupt may make a greater contribution towards the payment of his debts.

(5) Any stipulation contained in the instrument of the debt agreement, not being contrary to law, shall be valid. The aforementioned instrument may provide for the selection of one (1) or more persons, for the purpose of ensuring the execution of the terms thereof, of assisting in the sale of property if any such sale takes place, and of ensuring the distribution of the proceeds amongst the several creditors.

(6) A default in making payment according to the terms of the debt agreement shall have no effect on the abatement of debts discharged in terms of the provisions of this Part.

Where debt agreement provides for the abatement of personal debts.

525. If the debt agreement provides for the abatement of all or any part of a personal debt, the bankrupt shall be discharged, even as regards his future property, from the part abated:

Provided that such abatement and any time granted to the bankrupt for the payment of the personal debt shall not operate in favour of any other person, being a co-debtor or surety jointly and severally liable with the bankrupt.

Right of action of creditors against co-debtors.

526. Notwithstanding the debt agreement, the right of action of the creditors for the whole amount of their debts against the co-debtors or sureties jointly and severally liable with the bankrupt shall remain unimpaired, even though such creditors may have assented to the debt agreement.

The
bankruptcy
trustee shall
render
accounts.

527. (1) The bankruptcy trustee shall, within fourteen (14) days subsequent to the approval of the debt agreement, or, where relevant, from the date of the completion of the last of those terms of the debt agreement which require the intervention of the bankruptcy trustee, render his final account, and may be compelled to render such account at the instance of the bankrupt or of any other interested party.

(2) The bankruptcy trustee shall, within a period of fourteen (14) days from the date of delivery of his final account, deliver to the bankrupt or to the person appointed under the debt agreement, all the bankrupt's property, books, records and other papers or effects, in accordance with the terms of the debt agreement.

(3) Without prejudice to the requirements of sub-article (1), the bankruptcy trustee shall, every six (6) months, that shall be reckoned from the date of confirmation of the debt agreement, until the date of the submission of final accounts referred to in sub-article (1), present an interim report to the court of all activities conducted by the bankruptcy trustee, during the relevant period. The court shall, upon receipt of the report, assess the extent to which the bankruptcy trustee's functions are being conducted in a manner consistent with the object and purpose of his appointment, and the court shall, where necessary, give such orders as required to ensure the swift and effective execution of the terms of the debt agreement."

Substitution of
Title VI of Part
III of the Code.

10. Title VI of Part III of the Code shall be substituted by the following new Title:

"Title VI - OF BANKRUPTCY WITHOUT DEBT
AGREEMENT

If debt
agreement is
not approved.

528. If the bankrupt at any time communicates his intention to proceed with a bankruptcy without a debt agreement, or does not provide his consent to the proposed terms of a debt agreement in terms of the provisions of Title V, or in the event that the proposed terms are not confirmed by the creditors and leave has not been granted for the proposal of fresh terms in accordance with article 522, or if the proposed terms have not been confirmed by the court in accordance with article 523, the court shall:

(a) if the bankrupt is a legal person, instruct the bankruptcy trustee to appear before the court, on such date, and at such a time as shall be specified in the relevant notice, being a date which shall not be later than thirty (30) days from the meeting held in terms of article 518, to present the proposed terms of the bankruptcy order, which shall include:

(i) the admitted debts and the contents of the inventory and debt register;

(ii) a request to proceed to the sale of assets comprising the bankruptcy estate, under the authority of the court; and

(iii) a request for such additional authorisations as the bankruptcy trustee may consider to be necessary or required for the fulfilment of the proposed terms of the bankruptcy order;

(b) if the bankrupt is a natural person, instruct the bankruptcy trustee to appear before the court, on such date, and at such a time, as shall be specified in the relevant notice, being a date which shall not be later than thirty (30) days from the meeting held in terms of article 518, to present the proposed terms of the bankruptcy order, which shall include:

(i) the admitted debts and the contents of the inventory and debt register;

(ii) the assets, retained by the bankrupt, that the bankruptcy trustee has deemed to be protected in terms of article 492, provided that the bankruptcy trustee shall, where he deems that such assets have an excessive value in consideration of the circumstances of the bankrupt, or in any circumstances where he is so petitioned by creditors representing in excess of ten per cent (10%) of the admitted debts, propose that such assets be seized and realised in terms of article 528(b)(iii), and that a determined portion of the resultant proceeds be reimbursed to the bankrupt, as the bankruptcy trustee may deem necessary for the bankrupt to secure the use of assets that would represent a suitable replacement;

(iii) the assets, forming part of the bankruptcy estate, that shall be sold, under the authority of the court, for the settlement of the debts pertaining to the creditors, in whole or in part;

(iv) the conditions, if any, pursuant to which the bankrupt may recover ownership of those assets, forming part of the bankruptcy estate, which are not proposed for sale in terms of article 528(b)(iii), provided that such assets shall automatically fall to be sold in terms of article 528(b)(iii) if the prescribed conditions are not met;

(v) the established amount that the bankrupt shall contribute towards the bankruptcy estate in the hands of the bankruptcy trustee, in terms of an income payment plan, if any, forming part of the bankruptcy order, out of anything that devolves on, or is derived by, the bankrupt after the rehabilitation in terms of article 534(1)(b), for a period not exceeding three (3) years that shall be reckoned from the date of the original appointment of the first bankruptcy trustee, for the further settlement of debts, in whole or in part, which amount shall be formulated in accordance with the bankruptcy trustee's projection of the bankrupt's income and expenditure in terms of article 519(3); and

(vi) any other obligations that shall be imposed on the bankrupt for the duration of the income payment plan.

Minimum requirements of the bankruptcy order.

529. (1) The provisions of a bankruptcy order, in terms of article 528(b), shall ensure that the bankrupt is permitted to retain moneys equivalent to the combined value of:

(a) the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata for the duration of the income payment plan; and

(b) an additional amount in excess of the national minimum wage where the bankrupt reasonably demonstrates, to the satisfaction of the court, that the bankrupt has an overriding need for the additional amount on account of grave and justifiable circumstances specific to the bankrupt or his dependants.

(2) Any funds resulting from the sale of those assets comprising the bankruptcy estate and listed in terms of article 528(b)(iii) shall be utilised for the settlement of the debts of the bankrupt, whether personal or commercial in nature, in the order in which these shall rank in terms of law.

(3) Any contributions to the bankruptcy estate made by virtue of an income payment plan in terms of article 528(b)(v) shall be utilised exclusively for the settlement of the commercial debts of the bankrupt, in the order in which these shall rank according to law:

Provided that any contributions to the bankruptcy estate made in terms of an income payment plan by virtue of article 528(b)(v) that are made subsequent to the full settlement of the commercial debts of the bankrupt shall be utilised for the further settlement of the personal debts of the bankrupt.

Presentation of evidence regarding fraud.

530. During the hearing referred to in article 528, the bankruptcy trustee shall also present a statement reflecting his evaluation of whether the bankruptcy may be fraudulent, and in the event that the statement maintains the possibility of the subsistence of fraud, the bankruptcy trustee shall submit all evidence in support of his statement.

Right to be heard.

531. The bankrupt and the creditors shall, at such hearing, or at a later date that shall be determined by the court, be given the opportunity to be heard.

Confirmation
and variation.

532. (1) Within fourteen (14) days of the hearing held in terms of article 528, or article 531 if applicable, the court shall, by order, proceed to confirm, subject to any variations as it may deem appropriate, the proposed terms of the bankruptcy order proposed in accordance with article 528, and such confirmation shall be sufficient to make the proposed terms binding.

(2) Upon the confirmation by the court in terms of sub-article (1), the court shall accede to the request of the bankruptcy trustee to proceed, within such period as shall be stipulated by the court, to the sale, under the authority of the court, of those assets comprising the bankruptcy estate and listed in terms of articles 528(a)(i) or 528(b)(iii).

(3) The terms of the bankruptcy order, and any decision of the court within the context of the proceedings for the making of a bankruptcy order, shall be subject to appeal, by application to the Court of Appeal within twenty (20) days from the day of the decision of the court to confirm or refuse the proposed terms of the bankruptcy order.

(4) The Court of Appeal may, notwithstanding that it has accepted an appeal made in terms of sub-article (3), uphold the decision of the court to confirm the proposed terms at first instance, and provide such remedy as necessary to ensure that the appellant is protected from the effects of the proposed terms, or duly compensated, such that the appellant:

(a) shall be entitled to receive an amount at least equivalent to that which the appellant would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the proposed terms had not been confirmed; and

(b) shall be treated at least as favourably as any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank *pari passu* with the debts pertaining to the appellant, and more favourably than any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank below the debts pertaining to the appellant.

(5) An appeal made in terms of sub-article (3) shall have no suspensive effects on the execution of that decision, or on the execution of any proposed terms approved within the procedure in which that decision was made.

Redemption of pledges.

533. (1) Upon being instructed to proceed to the sale of assets comprising the bankruptcy estate, the bankruptcy trustee shall be authorized to redeem pledges, for the benefit of the bankruptcy estate, upon payment of the respective debts.

(2) If the pledge is not redeemed by the bankruptcy trustee, and is sold by the creditor for a price exceeding the debt, the surplus shall be collected by the bankruptcy trustee; if the price realized is less than the debt, the creditor who had the pledge may prove and compete for the difference.

Liability for unpaid debts and rehabilitation.

534. (1) Upon the instruction by the court, to the bankruptcy trustee to proceed to the sale of assets comprising the bankruptcy estate, the bankrupt shall, provided that there is no determination by the court of the bankruptcy being fraudulent:

Where the bankrupt is a legal person.

(a) where the bankrupt is a legal person, be automatically discharged of all debts, and shall be struck off the relevant register, and any debts that shall remain unpaid following the sale of assets shall, where so provided in terms of law, become the personal liabilities of such other person or persons as so contemplated by law or by the constitutive documents of the legal person:

Provided that, insofar as required for the purposes of this sub-article, the bankruptcy trustee shall perform any duties that would ordinarily be assigned to the liquidator or such equivalent person being responsible for the winding up of the relevant legal person:

Provided further that the bankruptcy trustee shall notify the competent authority of the discharge of debt, and the competent authority shall publish a notice of completion of bankruptcy proceedings within the records of the competent authority, to which the terms of the bankruptcy order shall be annexed; or

(b) where the bankrupt is a natural person, be deemed to be *ipso jure* rehabilitated to trade, and may recover the ownership and possession of his property, in whole or in part, under the conditions, if any, embodied in the bankruptcy order:

Provided that a stipulation that the bankrupt shall have no power to do any one (1) or various acts, whether of administration or of alienation, without the consent of the bankruptcy trustee, until the complete or partial fulfilment of the bankrupt's obligations in terms of the income payment plan, shall be a valid stipulation, and shall have effect even against third parties who have contracted in good faith with the bankrupt alone:

Provided further that upon the fulfilment of the terms of the income payment plan, or upon the confirmation of the proposed terms of the bankruptcy order if these do not comprise an income payment plan, the bankrupt shall be automatically discharged of all commercial debts that may at any time previous to the declaration of bankruptcy have been claimed against him,

Where the bankrupt is a natural person.

and the payment of any commercial debt, or part thereof, of the bankrupt that shall remain unpaid following the full execution of the terms of the bankruptcy order shall be abated in full, to the benefit of the bankruptcy estate.

(2) Upon the rehabilitation to trade of a bankrupt, being a natural person, a notice of the rehabilitation shall be published by the bankruptcy trustee, in the Gazette and in any one (1) or more newspapers.

(3) Upon the rehabilitation to trade of a bankrupt, being a natural person, any personal debts of the bankrupt that shall remain unpaid following the full execution of the terms of the bankruptcy order, shall, by novation, become the personal liabilities of the rehabilitated bankrupt, provided that the novation of such debts shall, notwithstanding the provisions of article 1186 of the Civil Code, be without prejudice to the preservation of any privilege or hypothec securing the debt:

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Provided that an application may be made to the court by the rehabilitated bankrupt, by not later than twenty (20) days from the making of a bankruptcy order, for any of the aforementioned personal debts to remain the liabilities of the bankruptcy trustee, who shall continue to receive payment from the rehabilitated bankrupt against such personal debts, in terms of an agreement reached by and between the rehabilitated bankrupt and the relevant creditors thereof, until the respective personal debt has been satisfied in full, or until an earlier resolute condition expressly stipulated in the agreement between the rehabilitated bankrupt and his creditor or creditors has been reached:

Provided further that the court shall only accede to a request made in terms of the first proviso, if it is satisfied that a valid agreement has been reached by and between the rehabilitated bankrupt and the relevant creditors thereof, and only after having received the assent of the bankruptcy trustee.

(4) The provisions of a bankruptcy order shall not be subject to change following the confirmation thereof, provided that amendment to the terms of an income payment plan comprising part of a bankruptcy order may be requested at any time prior to the fulfilment of the terms thereof, by:

(a) the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt or his dependants, the obligations set out in terms of the income payment plan exceed the means of the bankrupt; or

(b) the creditors of the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt, the bankrupt is able to make a greater contribution towards the payment of commercial debts that would otherwise be discharged.

(5) Any stipulation contained in the bankruptcy order, not being contrary to law, shall be valid. The aforementioned instrument may provide for the selection of one (1) or more persons, for the purpose of ensuring the execution of the terms thereof, of assisting in the sale of property if any such sale takes place, and of securing the distribution of the proceeds amongst the several creditors.

(6) A default in making payment according to the terms of the bankruptcy order shall have no effect on the abatement of debts discharged in terms of the provisions of this Part.

Where
bankruptcy
order provides
for the
abatement of
part of debt.

535. If the bankruptcy order provides for the abatement of all or any part of a personal debt, the bankrupt shall be discharged, even as regards his future property, from the part abated:

Provided that such abatement and any time granted to the bankrupt for the payment of the personal debt shall not operate in favour of any other person, being a co-debtor or surety jointly and severally liable with the bankrupt.

Right of action of creditors against co-debtors.

536. Notwithstanding the bankruptcy order, the right of action of the creditors for the whole amount of their debts against the co-debtors or sureties jointly and severally liable with the bankrupt shall remain unimpaired.

The bankruptcy trustee shall render accounts.

537. (1) The bankruptcy trustee shall, within fourteen (14) days subsequent to the approval of the bankruptcy order, or, where relevant, from the date of the completion of any of the terms of the bankruptcy order which require the intervention of the bankruptcy trustee, render his final account, and may be compelled to render such account at the instance of the bankrupt or of any other interested party.

(2) The bankruptcy trustee shall, within a period of fourteen (14) days from the date of delivery of his final account, deliver to the bankrupt or to the person appointed under the bankruptcy order, all the bankrupt's property, books, records and other papers or effects, in accordance with the terms of the bankruptcy order.

(3) Without prejudice to the requirements of sub-article (1), the bankruptcy trustee shall, every six (6) months, that shall be reckoned from the date of confirmation of the bankruptcy order until the date of the submission of final accounts referred to in sub-article (1), present an interim report to the court of all activities conducted by the bankruptcy trustee, during the relevant period. The court shall, upon receipt of the report, assess the extent to which the bankruptcy trustee's functions are being conducted in a manner consistent with the object and purpose of his appointment, and the court shall, where necessary, give such orders as required to ensure the swift and effective execution of the terms of the bankruptcy order."

Substitution of Title VII of Part III of the Code.

11. Title VII of Part III of the Code shall be substituted by the following new Title:

"Title VII - OF BANKRUPTCY IN GENERAL

General provisions.

538. In all cases of bankruptcy:

Appointment of curator to give his consent in lieu of a creditor.

(1)(a) Upon the authorisation of the court for the bankruptcy trustee to proceed to the sale of assets comprising the bankruptcy estate in terms of article 497, or in pursuance to a debt agreement, or a bankruptcy order, and if the bankruptcy trustee has identified the need to obtain the consent of a creditor prior to the transfer of any asset or assets, and, or, where the creditor is required to appear on any pertinent public deed so as to consent to the cancellation of, or a reduction in, any cause of preference and the registration of the same, enjoyed by the creditor over the said asset or assets, the bankruptcy trustee may, if he is of the opinion that the consent of the said creditor is, or may be withheld, make an application to the court for the appointment of a curator.

(b) A curator appointed in terms of this article, may under the authority of the court, consent to the transfer of assets and, or, appear on any pertinent public deed to consent for and on behalf of the creditor, referred to in paragraph (a), who may withhold his consent to the cancellation of, or reduction in, any cause of preference, and the registration of the same, enjoyed by the said creditor, on condition that the curator receives that portion of the proceeds of the sale of assets which, in terms of law and subject to the debt agreement or bankruptcy order, which pertains to the said creditor, that shall be applied in his favour in terms of article 538(1)(c):

Provided that the court shall only proceed to the appointment of a curator for the sale of assets comprising the bankruptcy estate in terms of article 497, where the bankruptcy trustee has, in his application, expressed the opinion that the creditor, referred to in paragraph (a), who may withhold his consent shall receive, as a result of the sale of assets, an amount at least equivalent to that which the said creditor would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the sale of assets were not to take place.

(c) The curator shall receive, for and on behalf of the creditor, referred to in paragraph (a), who may withhold his consent, that portion of the proceeds of the sale of assets referred to in article 538(1)(b) which, in terms of law and subject to the debt agreement or bankruptcy order, pertains to the said creditor, and shall ensure that such funds are either distributed to the said creditor or, if this is not reasonably practicable, deposited in court for the benefit of the said creditor:

Provided that the proceeds of a sale of assets in terms of article 497, shall not be distributed or deposited in terms of paragraph (c), but shall aggregate to the bankruptcy estate in terms of article 495.

(2) (a) once the judgment declaring bankruptcy is given in terms of article 488, no interest on the sums due by the bankrupt shall accrue from the date of the declaration of bankruptcy made by the trader himself, or from the date of the application by a creditor demanding a declaration of bankruptcy, as the case may be; and

(b) there shall be no possibility of discharge with respect to debts arising from:

(i) any fine (ammenda or multa) due by the debtor in terms of the Laws of Malta;

(ii) civil debts due by the debtor by way of damages in tort;

- Cap. 452. (iii) wages due by the debtor and constituting a privileged claim over the assets of the debtor in terms of article 20 of the Employment and Industrial Relations Act;
- Cap. 386. (iv) debts due by the debtor by way of fraudulent or wrongful trading in terms of the relevant provisions of the Companies Act; and
- Cap. 16. (v) debts due by the debtor in relation to maintenance obligations in terms of the relevant provisions of the Civil Code.

Fraudulent
bankruptcy.

539. (1) The benefits granted by articles 524 and 534 in favour of the bankrupt shall not apply in the case of fraudulent bankruptcy.

(2) A bankrupt shall be deemed to be a fraudulent bankrupt in each one (1) of the following cases:

(a) if he makes an untrue statement in respect of the debts owing to or from him, or in respect of his bankruptcy, saving any criminal proceedings which may be brought against the bankrupt for having perjured himself or sworn falsely;

(b) if he has simulated any expenses or losses or if he fails to give a satisfactory explanation of the manner in which his income has been disposed of;

(c) if he has concealed or removed any sum of money, or any debt due to him, goods, merchandise or other movable effects;

(d) if he has made fictitious sales, transactions or donations;

(e) if he has simulated collusive debts between himself and fictitious creditors, by simulated writings or by declaring himself debtor, without consideration or cause, in any public or private act;

(f) if he has concealed or destroyed his books, documents or other papers relating to his accounts.

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Cases where trader may be adjudged a fraudulent bankrupt.

540. A bankrupt may in the following cases be adjudged a fraudulent bankrupt, unless he sufficiently proves that he had no intent to defraud:

(a) if he has not kept books or if his books do not show the true state of his assets and liabilities;

(b) if, on being lawfully summoned for any meeting which, by the provisions of this Part he is bound to attend, he fails to attend;

(c) if he has not aided in the making up of the inventory."

Substitution of article 547 of the Code.

12. Article 547 of the Code shall be substituted by the following new article:

"547. Commercial jurisdiction, except for the provisions of Part III, shall be exercised by the Civil Court, First Hall, in accordance with the provisions contained in the Code of Organization and Civil Procedure."

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Substitution of article 549 of the Code.

13. Article 549 of the Code shall be substituted by the following new article:

"549. The Civil Court, First Hall, shall also take cognizance of actions against agents or other persons commissioned by merchants or their subordinates in regard only to transactions carried out in the ordinary course of the business of their principal; and of actions by the former against the principal."

Consequential amendment to the Civil Courts (Establishment of Sections) Order. S.L.12.19.

14. Regulation 5A of the Civil Courts (Establishment of Sections) Order shall be amended by the following:

(a) the marginal note thereof shall be substituted by the following new marginal note:

"Assignment of cases to the Civil Court (Commercial Section). Cap. 13. Cap. 386. Cap. 378. Cap. 379. Cap. 510. Act No. XXIV of 2022."; and

(b) the words "matters regulated by the Companies Act" thereof shall be substituted by the words "matters regulated by the Third Part of the Commercial Code and any regulations made thereunder, by the Companies Act, by the Pre-Insolvency Act, 2022".

Passed by the House of Representatives at Sitting No. 70 of the 14th
December, 2022.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA