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Argentina: Insolvency And Bankruptcy Rules In Argentina

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Introduction

The Argentine Bankruptcy Law No 24,522, as amended (the 'Bankruptcy Law'), contemplates three main insolvency proceedings.

Two of them seek to prevent such bankruptcy, ie, the reorganisation proceeding, and the out-of-court reorganisation agreement or APE as it is known in Argentina. The other procedure stipulated by the Bankruptcy Law is the proper bankruptcy proceeding, that is a judicial proceeding aimed to liquidate the relevant party's assets and pay off the outstanding debt.

If the reorganisation procedure as such were not to go through, there is another possibility and that is the cram-down or corporate reorganisation that has not been widely used in Argentina.

Most debtors in Argentina are reorganised through the reorganisation proceeding, which is completely judicial, although, after the massive devaluation in Argentina in 2002, many public companies with indebtedness subject to foreign jurisdiction and some private companies highly indebted in hard currency subject to foreign jurisdictions have chosen the out-of-court reorganisation agreement to restructure their indebtedness. This out-of-court reorganisation agreement between all or some of the creditors and the debtor, which takes place before entering reorganisation or liquidation proceedings and – subject to court approval – is effective *vis-à-vis* other creditors.

The general provisions of the Bankruptcy Law apply to both legal entities and individuals, including, without limitations, business organisations in which the state is a shareholder. There are, however, certain exceptions made in the case of financial institutions and some difference in treatment concerning public utilities, pension and social security funds and insurance companies. Lastly, some types of organisation (such as financial entities) are excluded from the application of the Bankruptcy Law.

The Bankruptcy Law was amended and restated in 1995 and several reforms were added to it afterwards. Previously, the *pars conditio creditorum* principle, which requires the equal treatment of all unsecured creditors, had been interpreted as barring the possibility of any contractual unsecured debt subordination (which is now admissible) upon bankruptcy or reorganisation.

Unlike in some other countries, a reorganisation or bankruptcy proceeding in Argentina only commences when the court renders a judgment declaring the debtor subject to reorganisation or to bankruptcy. Thereafter, the reorganisation or bankruptcy, as the case may be, shall proceed.

In Argentina, there are no specialised courts for dealing with reorganisation and bankruptcy proceedings. Commercial courts in the city of Buenos Aires, however, are highly qualified for the job, notwithstanding they must also rule over many other unrelated matters such as individual execution proceedings or the application of consumers' laws. Special courts in the provinces of Córdoba and Mendoza are also acquainted with insolvency proceedings, as well as ruling over company or corporate issues. The rest of the courts in the country deal with reorganisation and bankruptcy proceedings along with any other commercial or civil matters.

The reorganisation procedure (concurso de acreedores)

A reorganisation proceeding (*concurso preventivo*) may only be commenced voluntarily by the debtor, who may be a physical person or a company, whether local or foreign (hereinafter, the 'debtor').

The Bankruptcy Law states that reorganisation proceedings commenced in another country may not be invoked in Argentina against the interest of 'local' creditors over assets located in Argentina, nor for invalidating or

rendering ineffective any acts executed in Argentina by the debtor subject to reorganisation proceedings in another country.

On the other hand, the opening of reorganisation proceedings in another country under its laws is sufficient cause for commencing reorganisation proceedings in Argentina, if requested by the debtor or by a creditor whose credit is to be paid in Argentina.

The debtor requesting the possibility to reorganise must submit proof of a general inability to pay debts as they fall due, as well as credible capability to reorganise.

If the debtor wishes to obtain the benefit of a reorganisation proceeding, it must file an application petitioning the court for relief under the Bankruptcy Law.

The application must include, among other things:

- i. The debtor's by-laws (applicable only for companies);
- ii. An explanation of the causes which led to its financial difficulties, and when such financial difficulties started;
- iii. An updated and complete list of all the debtor's assets and debts, jointly with a public accountant's report;
- iv. A copy of the balance sheets and financial statements of the three preceding fiscal years;
- v. A list of all the debtor's creditors and the amounts of each of such debts;
- vi. A list of all pending judicial or administrative claims filed against the debtor; and
- vii. A declaration of any other reorganisation proceeding to which the debtor may already have been subject.

In addition, the debtor must also hand in all its commercial books to the court.

Within five days after the application has been filed, the court must decide whether to grant the debtor the proceeding. If the debtor has not complied with the requirements outlined above, the application may be rejected.

Otherwise, the court will declare the reorganisation proceedings opened and the ruling must, among other things,

- i. set a date upon which a trustee in bankruptcy (*síndico*) will be selected by drawing lots,
- ii. order the publication of legal notices in the Official Gazette, and other newspapers as required by law,
- iii. establish a deadline for creditors to file (*verificar*) their credits before such trustee (15–20 days after the notices cited in (ii) above have been published),
- iv. issue a general injunction forbidding the debtor from disposing of any of its assets (which is registered in all public registries);
- v. order the registration of the reorganisation proceedings in the relevant public registries; and
- vi. appoint a temporary committee of creditors (to be formed by the three largest unsecured creditors).

The commencement of the reorganisation proceedings effectively stays claims of unsecured creditors against the debtor arising prior to the filing of the petition and interest on unsecured debts cease to accrue.

All stayed pecuniary lawsuits must be transferred to the court dealing with the bankruptcy proceedings, with jurisdiction over the reorganisation proceedings. However, execution proceedings related to mortgages and pledges may be initiated or continued in the relevant courts, giving notice to the court dealing with the bankruptcy proceedings. Such notice requires the filing (*verificación*) of such claims before the trustee.

Debtors (or managers or directors of companies) undergoing reorganisation may not travel outside Argentina unless prior notice is given to the court. Such trips may not exceed 40 days, unless court authorisation is

obtained.

Once the reorganisation begins, the debtor administers its estate under the supervision of the trustee; nonetheless, the debtor must obtain court approval (with prior notice given to the trustee and the committee of creditors) before engaging in any activities or transactions deemed to exceed the ordinary course of business.

In particular, it is forbidden for the debtor to start negotiations for no particular reason, or which would adversely affect the interests of creditors with claims prior to the reorganisation.

Transactions which do not comply with the requirements above may be deemed ineffective *vis-à-vis* creditors and may result in all of the debtor's estate being placed under direct control of the trustee.

The court may, under certain conditions, authorise payment of certain amounts (for salaries and similar compensation) to workers prior to other creditors. In ongoing agreements where both parties have pending obligations, the debtor is invested with discretionary powers (with the approval of the court after prior consultation with the trustee) to determine whether such agreement shall be fulfilled or terminated. If within 30 days after the opening of the reorganisation proceedings the debtor has not decided whether to continue such agreement, the creditor may terminate it, giving notice thereof to the debtor and the trustee.

The trustee must write to each creditor listed in the debtor's application, reporting the initiation of the reorganisation proceedings along with other summary information on the debtor and its respective debt, and indicating the address and deadline for creditor filings.

Regardless of such communication, all creditors (including secured creditors) must file evidence of their claims with the trustee, who evaluates them and checks the debtor's books and; if appropriate, the creditors' as well. Both the debtor and any creditor may challenge the filings made by creditors.

There is a nominal fee due in connection with such filings.

The trustee must submit a detailed report to the court of each claim (the 'Individual report') expressing its opinion thereupon and recommending the approval or rejection of each of the debts. Within ten days thereof, the court will decide on the admissibility of such filings.

Thirty days after the above-mentioned report has been filed, the trustee must submit to the court a general report (the 'General Report') containing, *among others*,

- i. an analysis of the causes which led to the debtor's financial difficulties;
- ii. a complete description of the debtor's assets and liabilities, including an estimate of the sale value of such assets;
- iii. a list of the accounting books and records of the debtor and an indication of any failure to comply with any legal or accounting requirements;
- iv. the date on which the debtor actually became insolvent;
- v. a description of any transactions which may be declared ineffective *vis-à-vis* creditors;
- vi. its opinion regarding the classes of creditors proposed by the debtor; and
- vii. the present book value of the company.

Within ten days after the court's decision regarding the creditor's filings, the debtor must submit to the trustee, to its creditors, and to the court, a proposal for the undertaking of a reorganisation proceeding. This proposal may classify creditors in different categories according to the amount, security, nature or other reasonable distinguishing features of their credit against the debtor.

It is acceptable to subordinate certain unsecured credits to other unsecured credits. There must, however, be a minimum of at least three categories, namely: secured creditors, general or unsecured creditors and creditors of amounts derived from a work relationship.

Within 20 days after the filing of the General Report, the court will decide upon the classes of creditors and shall appoint the members of the creditors' committee (which shall include at least the largest creditor in each category). Then the debtor must submit a proposal for payment to the creditors in each category and must obtain the approval of such creditors within 30 days or within the term that the court may determine, which in turn cannot be longer than 60 days. This period is called the 'Exclusivity Period'.

The proposals for payment may consist of, among others,

- a discount, a refinancing of the debts, or a combination of both;
- the transfer of assets or property to the creditors;
- the incorporation of a company jointly with the unsecured creditors;
- the restructuring of the debtor's business structure;
- the administration of all or part of the debtor's estate by the creditors;
- the issuance of convertible or non-convertible securities;
- the granting of guarantees of payment of the debts by third parties;
- the capitalisation of credits.

The same proposal has to be made to each and all creditors within the same category; however, different proposals may be made to different categories.

Each class of creditors must accept the proposal. Such acceptance requires a majority of votes of the creditors in writing within each category, which must represent, in addition, at least two-thirds of all unsecured debts. The consent of secured creditors is not required, unless the debtor has conditioned its proposal to the obtaining such consent, or a proposal is made to them, in which case their unanimous approval is required. Only then does the reorganisation plan or agreement become effective, and the debtor emerges from the reorganisation proceeding.

The court has the faculty to approve the plan if the majority is not met in one of the categories, provided some special requirements in the law are complied with.

If the approvals were not obtained in the reorganisation proceeding – another possibility - the cram-down of corporate reorganisation

Pursuant to the Bankruptcy Law, when the debtor is not a physical person, ie a legal entity such as a limited liability company (sociedad de responsabilidad limitada: SRL), a corporation (sociedad anónima: SA), a cooperative company or a state-controlled company, it is not necessary to follow bankruptcy proceedings if the debtor fails to obtain the necessary approvals for its reorganisation plan.

If the debtor fails to obtain the majorities required by law, instead of declaring its bankruptcy, the court will open a registry for a five-day term, during which any creditor or interested party may register itself in order to file an offer to purchase the equity capital of the company. The law provides no limitation concerning the persons or legal entities who may register. If the five-day term elapses and no person has requested registration, bankruptcy proceedings shall follow.

Registered persons/entities may file their proposals to the same categories of creditors provided by the debtor, or they may propose new categories of creditors. Within a 20-day period, registered persons have to obtain the consent of the creditors to their respective plans, in the same majorities requested in the reorganisation proceedings. Five days before the expiration of the term, a hearing will be held, in which the registered persons must inform the court and interested parties of the progress of the negotiations.

The first of the registered persons to obtain the required majorities is awarded the right to purchase the company's equity for a sum of not less than the value of the company as assessed by the court. The value of the shares must be calculated by an expert appointed by the court following certain guidelines set out in the Bankruptcy Law.

If the proposed purchase price is less than the one determined by the court, the offering party, in addition to obtaining the consent of the creditors, must also obtain the approval of shareholders.

The registered person who obtains the necessary consent must deposit a sum of no less than 25 per cent of the offer, as guarantee for the compliance of the payment terms.

Once all these requirements have been met, the court will approve the accepted agreement and the transfer of equity to the buyer in a ten-day period, once the remainder of the purchase price is paid.

If the required majorities do not accept the proposal submitted by the registered persons in the 20-day period, bankruptcy and liquidation will follow.

Out-of-court reorganisation agreement (*acuerdo preventivo extrajudicial* or 'APE')

A debtor in a situation of suspension of payments or with economic or financial difficulties of a general nature may reach an agreement with its creditors and submit it for judicial approval. This is what the APE basically is.

This proceeding allows a debtor who is unable to pay its debts, or is undergoing economic or financial difficulties, to enter into an out-of-court repayment plan with all or part of its creditors. If two-thirds of the unsecured creditors approve, the debtor may request court approval of the reorganisation agreement, which produces the same effects as those granted under regular reorganisation proceedings.

This out-of-court reorganisation agreement may be executed by means of a private instrument, with the signature of the parties and the representations invoked, duly certified by a Public Notary.

It must be taken into account that the agreements shall be binding on the intervening parties even if the court's approval is not obtained, unless otherwise expressly agreed.

In order to request the court's approval of the agreement, the debtor must submit the following documents, and credit for:

- i. documents accounting for the state of the debtor's assets and liabilities, duly certified by a certified public accountant;
- ii. a list of the debtor's creditors, along with their personal information and all information concerning their credits;
- iii. a list of any court or administrative claims in process, or with passed judgment yet to be enforced;
- iv. a precise enumeration of the commercial and other books kept by the debtor;
- v. the portion of the debtor's global debt that the creditors who have signed the agreement represent; and
- vi. the percentage this represents with respect to all the debtor's registered creditors.

As mentioned above, in order to request the court's approval of the agreement, it must be signed by a majority of unsecured creditors representing two-thirds of the total unsecured liabilities.

The filing of the agreement to the court for its approval must be made public by publishing notices in legal publications of the jurisdiction of the court, and in one local newspaper of widespread distribution.

Within ten days of the last publication of the legal notices, the creditors who have not signed the agreement may oppose its approval by the court, but only on the grounds of omission or exaggeration of the debtor's assets or liabilities or if the required majority was not met.

The debtor must be given notice of such opposition in order to address the creditors' arguments. If necessary, there shall be a ten-day term for filing evidence, after which the court has ten days to issue a decision on the admissibility of the opposition.

If the creditors' opposition is deemed appropriate by the judge, bankruptcy proceedings will follow.

If there are no oppositions and the formal requirements are met, or if the oppositions are rejected, the court shall proceed to approve the agreement. The approval means the agreement shall be binding on all unsecured creditors, even on those that did not sign the agreement.

The bankruptcy

Bankruptcy proceedings are for liquidating the assets of an insolvent debtor; out-of-court arrangements are not allowed for these ends. The purpose of such proceedings is to liquidate those assets and pay off the relevant debts.

Bankruptcy proceedings are usually initiated at the request of unsecured creditors, with the purpose of cashing their credits by putting pressure on the debtor.

However, bankruptcy may follow reorganisation proceedings in certain cases:

- i. when the debtor fails to obtain the creditors' consent for its reorganisation proposal;
- ii. when there are no interested parties in the purchase of the company in the *cram-down* or Corporate Reorganisation process, or when there are but they have not succeeded in obtaining other creditors' consent for the purchase proposal and have not made the due deposit;
- iii. when the approved agreement between debtor and creditors is afterwards invalidated;
- iv. when the debtor during the process declares its inability to fulfill the agreement; or
- v. when he or she later fails to comply with the approved agreement and a creditor requests their bankruptcy.

It is also possible for the debtor or any creditor to file a petition for bankruptcy directly.

Contrary to reorganisation proceedings, the debtor is excluded from the administration of its assets – with the exceptions determined by law – of which the trustee is in charge.

Any creditor's or debtor's petition requires sufficient evidence that the debtor has not paid its obligations as they fall due. The Bankruptcy Law sets out certain acts which may be considered as evidence of insolvency, referred to as 'revealing acts':

- Judicial or extrajudicial acknowledgement of the debtor's inability to pay its debts.
- Delay in the fulfilment of an obligation.
- Concealment or absence of the debtor or the administrators of the company, if that were the case, without leaving a representative behind with sufficient faculties and means to fulfil its obligations.
- Closing down of the company's main administrative office, or of the establishment where the debtor conducts its activity.
- Sale at a disadvantageous price, concealment or transfer of the properties as payment.
- Judicial invalidation of performed acts that defrauded creditors.

- Any fraudulent or disadventegous means employed in order to obtain funds.

Within five days after the debtor has been given notice by a creditor of the filing of a petition for its bankruptcy, it must show that it is not insolvent; otherwise, the court will declare the debtor bankrupt. Unless it was commenced because of a failed reorganisation proceeding, a liquidation proceeding may be converted by the debtor into a reorganisation proceeding if it complies with certain requirements.

If requested by a creditor, the court may order preliminary injunctions to ensure that the debtor's property will remain intact, provided the creditor adequately accounts for the risk in the delay of the measures.

The judgment declaring bankruptcy must, among others,

- i. properly identify the bankrupt person, or the partners in the case of a company of unlimited liability;
- ii. issue a general injunction forbidding the debtor from disposing of any of its assets and ordering the recording thereof and of the bankruptcy in the relevant public registries;
- iii. order the bankrupt person and any relevant third parties to deliver the debtor's assets to the trustee;
- iv. order the debtor to give over to the trustee all documents related to the accountability of its business and any commercial books it has kept;
- v. forbid third parties to make payments to the bankrupt person;
- vi. order that all correspondence be intercepted and given over to the trustee;
- vii. set a date upon which the trustee who will act as liquidator, will be selected by drawing lots;
- viii. order the liquidation of the debtor's assets;
- ix. order the publication of legal notices in the Official Gazette and other newspapers, as required by law; and
- x. set a deadline for creditors to file their claims and credits before the trustee (within 20 days after the notices referred in (ix) above have been published).

Unlike a reorganisation proceeding, the debtor is removed from the administration of its assets and a trustee is placed in charge thereof to preserve and administer the debtor's property, as well as to take part in name of the debtor in any legal claims over the property subject to the proceedings. Since the bankrupt debtor is removed from the administration of its assets, all payments to creditors by a debtor must be made through the intermediation of the court, which also collects all payments that should be made to the debtor. Should the debtor receive such payments by himself, make any payments or perform acts over the assets subject to the proceeding, such acts will be automatically void and null.

As in the case of reorganisation, all claims and proceedings against the debtor are automatically stayed as from the date of the order pursuant to which the debtor is adjudged bankrupt.

Typically the court orders the closing down of the debtor's business locations, the confiscation of its commercial books and papers and the suspension of all its activities. Ordinarily, the trustee will sell the debtor's assets as soon as practicable in order to distribute the proceeds thereof to creditors (in accordance with the priorities established by the Bankruptcy Law). However, in certain exceptional circumstances, ie, in the case of public utilities being subject to the proceedings, or in order to prevent damage to creditors, the court may order that the activities of a bankrupt company be continued under supervision of the trustee.

The debtor's debts originated after its bankruptcy may be the object of new reorganisation proceedings, which will only comprise the remaining assets after the first liquidation was performed and its produce distributed, and any assets the debtor may have acquired after he was discharged from bankruptcy.

Depending on the date when insolvency was first manifested, the bankruptcy court may determine a preference (or 'suspect') period of up to two years prior to the bankruptcy judgment and until the court declaration of the bankruptcy. Certain acts which occurred during this suspect period may be ineffective *vis-à-vis* other creditors by operation of law, namely, acts made for no apparent reason, or when a debt is paid before it falls due, or when a

security interest is obtained for a debt which is not yet due and which was originally unsecured.

Furthermore, certain acts may be declared by the court to be ineffective *vis-à-vis* other creditors to the extent the creditor had actual knowledge (or should have known) that the debtor was insolvent and the act was damaging to the other creditors (notwithstanding that the creditor whose act is under attack may show that such act has not damaged the other creditors).

Creditors (including, without limitation, creditors with secured credits) must submit their claims for payment to the trustee, giving supporting evidence thereof. As in the case with reorganisation proceedings, there is also a nominal fee due in connection with such filings. The trustee may also promote the creation of a committee of creditors for the supervision of the whole liquidation proceedings, but this rarely occurs.

It must be considered, however, that notwithstanding the requirement to file their claims, some preferred creditors are already entitled to summary execution proceedings over the debtor's assets which secure their credits.

In this respect, it is important to point out that the law establishes two types of preferences:

- i. special preferences, which are granted exclusively over certain specific assets of the debtor; and
- ii. general preferences, which are granted over all the debtor's assets.

The following credits, among others, have a special preference, in decreasing order of priority:

- i. construction, improvement or maintenance expenses over the relevant asset (to the extent that such asset is still in the debtor's possession);
- ii. salaries and related compensation of workers in the debtor's business, which is made effective over the proceeds of the sale of stock, raw materials and machines located in the debtor's premises;
- iii. specific taxes and duties due over the asset to which the tax applies; and
- iv. mortgages and pledges over the proceeds of the sale of the mortgaged or pledged asset. Such securities may consist, among others, of:
 - a. A common chattel mortgage: the contract is written and the movable property or credit subject of the pledge is handed over to the creditor.
 - b. A registered chattel mortgage: movable property or business supplies are the subject of the pledge, which is registered before the National Registry of Chattel Mortgages.
 - c. A mortgage: a real estate property is the object of this security. The act is put down in a public deed and then registered before the Register of Immovable Property.
 - d. Other securities include warrants, debentures, negotiable obligations, and mortgages on ships or planes.

The following credits have a general preference, in decreasing order of priority:

- i. labour credits not subject to a special preference;
- ii. the principal amount of social security debts;
- iii. funeral, medical and certain personal expenses of individuals; and
- iv. the principal amount of any taxes and duties due.

Many unsecured credits may be the result of a contractual or extra-contractual obligation. In many cases they are recorded in commercial papers such as bills of exchange (*letras de cambio*), promissory notes (*pagarés*) or cheques, which in the case of not being paid entitle the creditor to executive proceedings. If they are not thus recorded, an ordinary judicial procedure must be started (often of long duration) in order to obtain a judgment that entitles the creditor to executive proceedings.

The bankruptcy judgment will determine some personal limitations on the debtor's activity or on the administration of its estate, such as prohibition on leaving the country without the court's previous authorisation. It has other consequences as well:

- all of the debtor's obligations and debts become due and payable;
- interest ceases to accrue, except for secured credits, which continue to accrue interest, but only to the extent that principal credit plus the interest does not surpass the value of the security;
- all judicial claims filed against the debtor prior to the bankruptcy judgment shall be dealt with thereafter by the bankruptcy court; and
- any and all judicial claims in progress against the debtor are stayed.

To sum up, the steps of the procedure above described are:

- a. Presentation before the trustee by the creditors, submitting their claims for payment and proof thereof;
- b. It is possible for other creditors or the debtor himself to claim the invalidity of the claims for payment submitted by other creditors;
- c. The trustee issues an individual report with an opinion on each of the credits;
- d. The court resolves whether to consider the claim admitted and valid or not; such resolution may be appealed.

Any obligations emerging from agreements must be complied with by the debtor's counterparty in such agreements, if all the obligations of the debtor under such contract have been fully fulfilled as of the date of bankruptcy. On the other hand, if the counterparty has fully discharged its obligations and at the date of bankruptcy there are unfulfilled obligations of such debtor, the counterparty must file a claim for its credit before the trustee.

However, if at the date of bankruptcy both parties have outstanding pending obligations, within 20 days after the notices announcing the bankruptcy proceedings are published, the creditor has to inform the court of any agreement with pending obligations, and of its plan to request the termination or continuation of such agreement.

The trustee has to render an opinion as to whether such agreements should be continued or terminated. The court, however, is vested with discretionary powers to determine whether such agreement shall be fulfilled, or terminated within a short period of time. If the operations of the debtor have been interrupted, the agreement is stayed until the court reaches a decision in connection with the contract's termination.

If the contract is continued, the creditor would be entitled to full payment of the amounts owed to it under the agreement still in force. Nevertheless, if the court has not yet reached a decision after 60 days from the notices announcing the bankruptcy were published, the creditor may request the termination of the agreement. However, if within ten days following such petition the court notifies the creditor of its intention to have the agreement continued, it will not be terminated.

In urgent cases, the court may shorten the periods referred to above.

If an agreement is not terminated because of a breach of a contractual obligation by the counterparty, or if it was not judicially claimed before the date of bankruptcy, any clauses concerning the termination of an agreement in the case of breach of contract (such as the occurrence of certain events of default), cannot be invoked in the event of bankruptcy of the defaulting party. The filing of the claims may be made only when it has taken place prior to the date on which the debtor is adjudged bankrupt; hence, it requires that the obligations of both parties become due prior to the bankruptcy judgment.

Certain other agreements (such as master agreements, agreements to be performed over a certain period of time or agreements where the personal qualities and capabilities of the debtor are required) are automatically terminated upon the declaration of bankruptcy.

Certain creditors enjoy a preference or privilege in the distribution of the debtor's assets once the bankruptcy expenses have been accounted for, since they have first priority. This rule may differ for certain debtors such as financial institutions, insurance companies and pension funds.

The bankruptcy court has the power to extend the bankruptcy of the debtor to:

- i. a person or legal entity who has used the debtor's assets as its own, thereby defrauding creditors;
- ii. a related or controlling person or company of the debtor that has improperly manipulated the assets of the debtor for the related company's own benefit or for the benefit of the economic group of which the parent company is a part;
- iii. a person or legal entity whose assets were inseparable mixed with the assets of the debtor.

Once the assets available to pay creditors and the amounts owed by the debtor to each creditor are determined, the trustee liquidates the assets of the debtor.

Liquidation may be carried out either by the sale: (a) of the entire business as a going concern; (b) of the bulk of all assets; or (c) of the business assets through auctions upon a gradual basis.

After the sale is concluded, the trustee prepares its final report, including its proposals for distribution of the assets among the creditors, and notice thereof is given to the creditors, who may in turn object to such plan.

It is important to note that credits with a general preference may not take up more than 50 per cent of the total assets of the debtor. Unless subordinated, unsecured creditors will be paid on a *pari passu* basis, that is, the produce will be proportionally distributed among them.

After a decision is issued on the admissibility of the objections, and the proposal is finally approved, the distribution takes place. Thereafter, once the liquidation process has been completed and the distribution has been made, the bankruptcy proceedings conclude and the debtor is discharged bankrupt.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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