

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 78

FACILITATION OF COURT-SUPERVISED DEBT RESOLUTION PROCEDURES

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003),

Having worked closely with the Governing Council to ensure that economic change as necessary to benefit the people of Iraq occurs in a manner acceptable to the people of Iraq,

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi economic system as necessary to improve the condition of the people of Iraq,

Determined to improve the conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated deleterious effect on public security,

Recognizing that companies, lenders and entrepreneurs require a fair, efficient, and predictable mechanism for resolving burdensome indebtedness when incurred by businesses,

Noting that several provisions within Iraqi legislation call for unduly harsh punishments for financially distressed entrepreneurs,

Further noting that resolving the indebtedness of large corporations through in-court procedures is a challenging task requiring training and experience,

Recognizing the CPA's obligation to provide for the effective administration of Iraq, to ensure the well being of the Iraqi people and to enable the social and economic functions and normal transactions of every day life,

Acting in a manner consistent with the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a free market economy characterized by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect,

Having coordinated with the international financial institutions, as referenced in paragraph 8(e) of U.N. Security Council Resolution 1483,

In close consultation with and acting in coordination with the Governing Council, I hereby promulgate the following:

Section 1 Definitions

- 1) “Bankruptcy Law” means Part V of Law No. 149 of 1970 on the Code of Commerce, as amended.
- 2) "Penal Code" means the Law No. 111 of 1969 on the Penal Code, as amended.
- 3) “Enforcement Law” means Law No. 45 of 1980 on Enforcement of Judgments (Law on Execution).
- 4) “Civil Code” means Law No. 40 of 1953 on the Civil Law.
- 5) Gender specific language in this Order shall apply equally to male and female, and where appropriate, to entities (juridical persons) and things.

Section 2 Designation of Judges to Hear Petitions for Bankruptcy and Schemes of Arrangement

- 1) One or more first instance court judges in each governate shall be designated to hear cases arising from petitions for bankruptcy or a scheme of arrangement.
- 2) A judge described in paragraph 1 of this Section shall also hear petitions for relief filed by foreign companies with a head branch office in his designated region.
- 3) The Council of Judges shall designate the judges described in paragraph 1 of this Section within 45 days from the date this Order enters into force. Such judges shall have demonstrated a high level of expertise and/or potential ability with respect to disputes concerning companies, entrepreneurs, and banks.

- 4) The designated judges shall hear petitions for bankruptcy or a scheme of arrangement as a portion of their regular caseloads.

Section 3

Licensing of Bankruptcy Trustees

- 1) The Ministry of Justice (“Ministry”) shall be authorized to license individuals to serve as bankruptcy trustees under the Bankruptcy Law. The Ministry shall issue licensing procedures to govern this activity.
- 2) The Ministry’s licensing procedures shall ensure that license holders have a clear understanding of the procedures under the bankruptcy law as well as particular expertise in at least one of the following areas:
 - (a) commercial law and civil procedures;
 - (b) accounting and business finance;
 - (c) business management.

The procedures shall further ensure that license holders have a general knowledge in the areas described item (a) through (c) where they lack particular expertise.

- 3) The Ministry shall ensure that license holders perform their duties in conformity with the Bankruptcy Law and its goals. A license holder failing to perform his duties may be subject to fine, or suspension or cancellation of his license in accordance with procedures to be established by the Ministry.
- 4) The Ministry shall establish and promote a licensing program sufficient to provide bankruptcy judges and creditors a reasonable number of choices of qualified candidates to serve as bankruptcy trustees by no later six months after the date this Order enters into force.

Section 4

Amendments to the Bankruptcy Law

- 1) A new, unnumbered heading entitled “Preliminary Provisions” shall be added to the Bankruptcy Law (“Law”) prior to Chapter One.
- 2) Four new articles shall be added to the Law under Preliminary Provisions and prior to Chapter One. The articles shall read as follows:

Article 562. In this Part of the Commercial Code, the terms below shall be defined as follows:

(1) A “general privileged creditor” is a creditor that has a preference in payment to the debtor’s property that is not subject to a mortgage or special privilege. The general privileged creditors include those described in sub-paragraphs (a) - (c) of paragraph 2 of Article 708.

(2) An “ordinary creditor” is a creditor whose claim is neither secured by mortgage nor otherwise privileged.

(3) The “body of creditors” consists of the general privileged and ordinary creditors.

(4) The “state of union of creditors” is the stage of the bankruptcy proceedings where the property of the bankrupt is disposed of, with the proceeds used to repay the creditors to the extent possible.

Article 563. The purpose of this Part of the Commercial Code is to establish judicial proceedings by which a trader and his creditors may resolve the trader’s indebtedness in a collective, transparent, and realistic manner, when the trader no longer can pay debts when they come due. Such resolution may result in a judicially approved agreement between the trader and his creditors or may result in the sale of the trader’s property for the repayment of the trader’s debts. In either case, the proceedings shall respect the pre-existing contractual and property rights of the trader’s creditors to the extent possible.

Article 564. A trader holding a permit or license to engage in banking business and other banking activities may not be subject as a debtor to the proceedings described in this Part.

Article 565. During the proceedings established in this Part, Articles 1361-1380 of the Civil Code shall apply to the extent they do not conflict with the provisions contained herein.

3) Article 569 (chapeau paragraph) is amended to read as follows:

(1) A trader must present a bankruptcy petition against himself within fifteen days of the date of suspension of payments. This period may be extended up to an additional forty-five days if

the trader has informed substantially all his creditors of his financial difficulties and is attempting in good faith to renegotiate the terms of his obligations. The bankruptcy petition shall be in the form of a report, giving the grounds for the suspension of payments, and must be presented to the court with the following documents:

4) Article 570, paragraph 1 of the Law is amended to read as follows: “A creditor or group of creditors with undisputed commercial debts worth more than five hundred thousand dinars, the scheduled payments for which have been missed for more than thirty days, may present a bankruptcy petition against the debtor.

5) Article 570 of the Law is supplemented with paragraphs 3, 4 and 5, which shall read as follows:

(3) Five or more employees of a trader with undisputed claims for wage arrears exceeding one month may jointly present a bankruptcy petition against the debtor.

(4) The government body or bodies authorized to enforce obligations to pay taxes and other mandatory payments to the state treasury may present a bankruptcy petition against the debtor. The bases for presentment shall be the same as those for bringing a forced execution of obligations for payment of taxes and other mandatory payments to the state under applicable law.

(5) A debt described in this Article shall be presumed to be undisputed if it is reflected in a judgment or an executive document.

6) Article 571 of the Law is suspended.

7) Article 573 of the Law is amended to read as follows:

“(1) The court of first instance designated to hear cases arising from petitions for bankruptcy or schemes of arrangement in the governate or subsection thereof wherein lies the head office of the debtor shall have jurisdiction to adjudicate his bankruptcy.

(2) A trader that is under bankruptcy proceedings in a foreign state and that has a branch in Iraq may seek the following relief in the court designated to hear bankruptcy petitions:

- (a) an order suspending all individual suits brought against the trader in any court in Iraq by ordinary creditors or those having general privileged rights;
- (b) an order prohibiting the seizure of assets of the trader wherever located in Iraq unless such assets are subject to a mortgage or privileged right under Iraqi law;
- (c) an order requiring third parties holding the trader's property to surrender such property to the representative of the trader;
- (d) an order providing other necessary relief.

(3) In determining whether to grant the relief described in the preceding paragraph, the court shall consider:

- (a) the protection of creditors in Iraq and the inconvenience in pursuing their claims in a foreign proceeding;
- (b) the just treatment of all creditors through resort to a unified bankruptcy proceeding;
- (c) whether other jurisdictions have given recognition to the foreign proceeding;
- (d) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with the bankruptcy proceedings in Iraq;
- (e) the extent that the foreign proceeding has recognized and shown deference to Iraqi bankruptcy proceedings."

- 8) Article 574, paragraph 2 of the Law is suspended.
- 9) Article 576 of the Law is amended to read as follows: "The judge who adjudicates the bankruptcy shall be the judge in charge of the bankruptcy (Judge Commissaire); the court of appeal may at anytime order his replacement by another judge designated to hear bankruptcy cases if it determines that such replacement will serve the general interests of the creditors and the debtor."
- 10) Article 578 of the Law is supplemented with a new paragraph 2, which shall read as follows: "The date of payment suspension will be the date on which the debtor could no longer make payments on his debts as they fell

due regardless of whether he paid such debts in part.” Paragraph 2 of Article 578 shall be renumbered as paragraph 3.

11) Article 580, paragraph 2 of the Law is amended to read as follows: “On the day following the adjudication, the court shall cause the applicable order to be posted on the Bulletin Board of the court for thirty days. Within five days from the adjudication date, the trustee in bankruptcy shall submit copies thereof to every court within the jurisdiction of which lies a head office, branch, agency or office of the debtor for having the same posted on the Bulletin Board of such court for thirty days.”

12) Article 585, paragraph 1 of the Law is amended as follows: “twenty” is replaced with “one hundred thousand” and “two hundred” is replaced with “one million.”

13) Article 586 of the Law is amended to read as follows:

(1) The court may in the bankruptcy adjudication appoint a paid agent to manage the bankruptcy, who shall be called the "bankruptcy trustee."

(2) The court shall choose the bankruptcy trustee from a roster of individuals licensed by the Ministry of Justice to perform such duties. Where the number of licensed bankruptcy trustees in the court’s jurisdiction willing to serve is less than three, the court may designate a lawyer to serve as the bankruptcy trustee, even if such lawyer lacks a bankruptcy trustee’s license.

14) Article 587, paragraph 1 of the Law is amended to read as follows: “A person may not be appointed as a bankruptcy trustee if he is a creditor, debtor, or competitor of the bankrupt, the spouse of the bankrupt, or has a relation to the bankrupt of the fourth degree or closer. He may not be appointed if he has been a partner, employee, accountant, or agent (attorney) of the bankrupt during the two years preceding the declaration of bankruptcy.

15) Article 587 is supplemented with articles 3 and 4, which shall read as follows:

(3) A bankruptcy trustee shall immediately disclose to the Judge Commissaire and the controller (auditor) any of the circumstances in paragraphs 1 or 2, should they arise during the course of the proceedings.

(4) The Judge Commissaire shall dismiss the bankruptcy trustee unless the latter can demonstrate that the circumstances will not undermine his ability to serve the best interests of the creditors and the confidence that the creditors have in him.

16) Article 589 of the Law is amended to read as follows:

(1) The bankruptcy trustee may delegate the performance of tasks to others where such delegation is likely to more efficiently and effectively safeguard the assets of the bankrupt, benefit the creditors, or otherwise facilitate the progress of the bankruptcy proceedings.

(2) The bankruptcy trustee shall be jointly liable with his deputies for the latter's actions.

(3) No delegation may occur without the prior approval of the Judge Commissaire, save for instances in which actions by deputies are necessary to safeguard the assets of the bankrupt or otherwise protect the interests of the creditors. In such cases the bankruptcy trustee shall apply for post-delegation approval as soon as reasonably possible, explaining in his application the basis for the delegation.

17) Article 591 of the Law is amended to read as follows: "The bankruptcy judge may of his own accord, or upon application being made by the bankrupt or the controller, decide to dismiss the trustee; the Judge Commissaire shall give a ruling in regard to such application within ten days of its submission, which is subject to appeal."

18) Article 593, paragraph 2 of the Law is amended to read as follows: "The Judge Commissaire shall summon the creditors to a meeting in the cases stipulated in the law and shall chair such meetings or delegate such duties to the bankruptcy trustee."

19) Article 594 of the Law is supplemented with a paragraph 3, which shall read as follows: "The Judge Commissaire may name the bankruptcy trustee as the official agent to receive service of decisions and summonses on behalf of interested parties or a group thereof if such appointment would expedite proceedings and facilitate distribution of information. In such cases, the bankruptcy trustee shall subsequently serve notices on interested parties in accordance with procedures approved by the Council of Judges."

- 20) Article 595, paragraphs 2 and 3 of the Law are amended as follows: In paragraph 2, “three” is replaced with “ten”. In paragraph 3, “ten” is replaced with “twenty”.
- 21) Article 596, paragraph 1 of the Law is amended to read as follows: “The Judge Commissaire shall appoint a controller from among the creditors who nominate themselves for the post, or, with consent of a majority of the seven largest creditors from the private sector, shall appoint an independent auditor chosen by such group. In the latter case, the independent auditor shall serve as a controller but shall be compensated in accordance with procedures for compensating the bankruptcy trustee. He shall also be subject to the restrictions in Article 587.
- 22) Article 599, paragraph 1 of the Law is amended to read as follows: “The controller shall not receive fees in consideration of his work, except in cases provided for in Article 596.”
- 23) Article 602, paragraphs 1 and 2 of the Law are amended to read as follows:
- (1) A person who is adjudicated bankrupt shall disclose such information upon request, and, regardless of request, shall disclose such information to any person relying on the bankrupt’s integrity and competence.
 - (2) An adjudication of bankruptcy may be the basis for a justified termination of any arrangement in which the bankrupt’s integrity and competence is relied upon by the counterparty.
- 24) Article 604 of the Law is amended to read as follows: “Having been adjudicated bankrupt, a bankrupt may not pay or receive debts owing to him. Negotiable instruments reflecting an obligation of the bankrupt shall be deemed opposed.”
- 25) Article 614 of the Law is amended to read as follows: “All acts of disposal by the bankrupt occurring 90 days prior to suspending payments other than those set down and within the time limits stipulated in the preceding Article shall be adjudged ineffectual against the body of creditors and shall result in the return of the asset for the benefit of the creditors, if the act of disposal is detrimental to their interests and the counterparty in the disposal was aware at the time of the disposal that the bankrupt had suspended payments.”
- 26) Article 622 of the Law is amended to read as follows: “The adjudication of bankruptcy bars the running of interest on ordinary debts and debts that are

subject to a general privilege in regard to the body of creditors only; interest on secured debts may only be claimed on amounts resulting from the sale of the mortgaged or charged property; the principal amount of the debt is collected in the first place, then the interest which accrues prior to the bankruptcy adjudication, and then interest which accrues thereafter.

- 27) The title of Section III of Chapter III is amended to read as follows: “Creditors whose Debts are Secured by a Mortgage or Special Privileged Right over Movable Property and Creditors with General Privileged Rights”.
- 28) Article 631, paragraph 1 of the Law is amended to read as follows: “After seeking the leave of the Judge Commissaire, the trustee may within the ten days following the adjudication of bankruptcy pay out of the funds available to him, and notwithstanding the existence of any other debt, the wages and salaries accruing to the workers and employees before the adjudication of bankruptcy for thirty days; where the trustee does not have at his disposal sufficient funds to pay the foregoing debts, payment thereof must be made from funds of the bankrupt or the first lot of funds coming to the bankruptcy that have resulted from the sale of property not subject to mortgage or special privilege, or from excess proceeds from the sale of such property, even though there are other debts having a priority of order.”
- 29) Article 633 of the Law is amended to read as follows: “The general privileged right accorded to the Government on grounds of various kinds of taxes shall cover only the principal portion of the debt of the tax due from the bankrupt for the two years which preceded the adjudication of bankruptcy; other taxes due shall be considered ordinary debts.”
- 30) Article 634 of the Law is amended to read as follows: “Where a distribution of the properties to which the right of the body of creditors relate is to occur prior to the sale of movable property secured by mortgage or special privilege, such creditors may participate in such distributions as ordinary creditors to the extent they have abandoned their claim to such security. Mortgagees or creditors having priorities who have not received all or part of their debts from the price of the movable property may participate in regard to the balance remaining for them with the ordinary creditors in the distribution of the properties to which the right of the body of creditors relate, provided their debts have been proved.”
- 31) An article, to be enumerated as Article 637-A and to be inserted after Article 637 shall read as follows: “The bankruptcy trustee may, at any time after obtaining leave from the Judge Commissaire, pay the debt secured by

a mortgage and or special privilege on immovable property and recover it for the account of the body of creditors.”

32) Article 646 of the Law is amended to read as follows:

(1) Where a purchaser is adjudged bankrupt before he pays the price of goods which have entered into his possession or that of his agent, the vendor may not claim rescission of the sale nor the recovery of the goods and he loses his right of priority, except as provided in paragraph 2 of this Article.

(2) A stipulation enabling the vendor to recover or retain his right of priority over the goods may not be adduced against the body of creditors, unless there is a stipulation which retains ownership of the property in the seller, which has been registered according to the applicable law.

(3) A vendor who has made the stipulation in paragraph (2) and has registered it according to the applicable law shall have the same rights over the goods that a mortgagee has over the mortgaged property.

33) Article 661, paragraph 2 of the Law is amended as follows: “five hundred” is replaced with “two million, five hundred thousand”.

34) Article 666 paragraph 1 of the Law shall have appended to it the following sentence: “If the bankruptcy trustee is effecting service in accordance with paragraph 3 of Article 594, the statement shall also include the preferred method by which the creditor shall receive notices with regard to the proceedings.”

35) Article 667 of the Law is amended as follows: In paragraph 1, “ten” is replaced with “thirty”. In paragraph 2, “ten” is replaced with “thirty” and “twenty” is replaced with “sixty”.

36) Article 668, paragraph 3 of the Law is suspended.

37) Article 669, paragraph 2 of the Law is amended as follows: “sixty” is replaced with “one-hundred”.

38) Article 670 of the Law is amended as follows: “ten” is replaced with “thirty”.

- 39) Article 678, paragraph 1 of the Law is amended to read as follows: “The debtor, or creditors representing 25% of the amount of the ordinary debt, may request that a composition offer be considered. The right to submit such request shall expire on the tenth day after the filing of the list of debts prepared in accordance with Article 671. In such cases, the Judge Commissaire shall summon the creditors whose debts have been accepted finally or provisionally to be present at the deliberations of the composition.
- 40) Article 678, paragraph 3 of the Law is amended to read as follows: “The bankruptcy trustee shall within the time limit stipulated in the preceding paragraph have the notice to the meeting to be present at the composition deliberations published in one or more daily newspapers determined by the Judge Commissaire.”
- 41) Article 679, paragraph 1 of the Law is amended to read as follows: “The composition meeting shall be held at the place and time determined by the Judge Commissaire who shall preside over the meeting. Such meeting shall occur within thirty to forty-five days after the last newspaper publication of the notice stipulated in Article 678.
- 42) Article 681 of the law is amended to read as follows: “The composition shall not be concluded except with the consent of a majority of the creditors with the right to vote whose debts have been accepted finally or provisionally provided they hold two thirds of such debts; creditors who did not participate in the voting shall not be counted for the purposes of the foregoing two majorities and their debts shall not be considered .”
- 43) Article 682, paragraph 2 of the Law is suspended.
- 44) Article 683 of the Law is amended to read as follows:
- (1) Creditors holding a mortgage or special privilege over particular property of the bankrupt or having the status of a general privileged creditor may not take part in the voting on composition for their debts secured or privileged as aforesaid unless they abandon such securities or privileges in advance; the abandonment may be confined to part of the security or privilege; the abandonment shall be mentioned in the minutes of the meeting.
 - (2) Any one of the creditors mentioned in the preceding paragraph who takes part in the voting on the composition but fails to declare abandonment of all or part of his security or

privilege shall be deemed to have abandoned the entire security or privilege.

(3) In all cases, the abandonment shall be final regardless of whether the composition is concluded.

(4) The security or privilege covered by the abandonment shall regain its validity if the composition is annulled.

45) Article 684, paragraph 2 of the Law shall be amended to read as follows: “Where the consent stipulated in Article 681 is not attained, the deliberations shall be adjourned for ten days, after which no adjournment shall be made.”

46) Article 687 of the Law is supplemented with new paragraphs 4 and 5, which shall read as follows:

“(4) A composition shall provide for equal treatment of ordinary creditors. An ordinary creditor may nevertheless agree to less favorable treatment under the composition.

(5) A composition shall not be concluded unless all of the arrears on obligations corresponding to claims secured by mortgage or that are otherwise privileged are paid, unless individual creditors with such claims agree to less favorable treatment.”

47) Article 689 of the Law is amended to read as follows:

“(1) A composition shall be valid in regard to the ordinary creditors even when they have not participated in the proceedings or did not approve the composition.

(2) A composition shall have no effect with respect to claims secured with a mortgage or that are otherwise privileged, except where the creditors with such claims agree on an individual basis to be subject to the composition.”

48) Article 691, paragraph 1 of the Law is amended to read as follows: “All the effects of bankruptcy shall cease by the issue of the order of the Judge Commissaire approving the composition, except for the consequences mentioned in Article 602.”

49) Article 699 of the Law is supplemented with new paragraphs 4 and 5, which shall read as follows:

“(4) So long as general privileged creditors are paid in full, such composition may stipulate the full forgiveness of debts in exchange for the abandonment of the debtor’s property.

(5) When the debtor is a limited liability company or joint stock company, the composition may allow for the cancellation of all outstanding shares of the debtor and the issuance of new shares. In lieu of selling the debtor’s property, such shares may be sold with the price thereof distributed to the creditors.”

50) Article 701, sub-paragraph (a) of the Law is amended to read as follows: “if the debtor fails to apply for a composition within the time limits established in Article 678;”.

51) Article 705 of the Law is supplemented with a new paragraph 1, which shall read as follows:

“(1) The property of the debtor available for the benefit of the body of creditors shall include:

- (a) property not subject to mortgage or special privilege;
- (b) property not subject to recovery under Articles 641-646;
- (c) property not exempted from execution;
- (d) the excess proceeds described in Articles 630 and 635.”

The remaining paragraphs in Article 702 are renumbered accordingly.

52) Article 708 of the Law is amended to read as follows:

“(1) The fees, expenses of the administration of the bankruptcy, the aids determined for the bankrupt and his dependents and sums due to creditors enjoying priorities shall be deducted from the proceeds of the sale of the bankrupt’s property and the balance distributed to the creditors in accordance with this Article.

(2) The balance described in the preceding paragraph shall be distributed among the body of creditors according to the following order:

- (a) the claims described in paragraph 1 of Article 1372 of the Civil Code;
- (b) claims for unpaid taxes, duties, and other obligatory payments to the government that arose within the two year period prior to the adjudication of bankruptcy and during its administration;
- (c) all claims not having a general privilege, and claims of creditors who have fully or partially abandoned secured or privileged claims.

(3) No category of creditor in the preceding paragraph shall receive distributions until the prior category has been paid in full. Where a distribution is not sufficient to pay a category of creditors in full, creditors in such category shall be paid in proportion to the amount of their claims.

(4) The dividends of the contested debts shall be set aside and kept until a decision is made in regard to said debts.”

53) Article 714 of the Law (chapeau paragraph) is amended as follows: “one thousand” is replaced with “five million”.

54) Article 717, paragraph 2 of the Law is amended to read as follows: “The report provided for in Article 569 shall be submitted to the court designated to hear bankruptcy cases within the jurisdiction of which lies the head office of the company.”

55) Article 719 of the Law is suspended.

56) Article 722, paragraph 1 of the Law is amended to read as follows: “The Judge Commissaire may of his own initiative or pursuant to an application by the trustee, controller or a creditor order that the consequences stipulated in Article 602 be suffered by directors or managers of a company who would have committed gross faults which led to the disruption of the business or the suspension of payments of the company.”

57) Article 730 of the Law is amended to read as follows: “Except for the case of fraudulent bankruptcy, the consequences described in Article 602 shall cease to have legal effect after the lapse of one year from the date on which the bankruptcy terminated (was concluded).”

58) Article 743, paragraphs 1 and 3 of the Law are amended to read as follows:

“(1) A trader may present an application for a scheme of arrangement if his financial operations suffered a disruption which may result in a suspension of payments.

(3) A scheme of arrangement may be granted to a company which satisfies the terms laid down in the preceding two paragraphs; nevertheless a scheme of arrangement may not be granted to a company in liquidation.”

59) Article 744, paragraph 1 of the Law is amended as follows: “two years” is replaced with “one year”.

60) Article 749, paragraph 1, sub-paragraph (c) of the Law is amended by replacing “the two years” with “the year”.

61) Article 753 of the Law is amended as follows: “twenty” is replaced with “one hundred thousand” and “two hundred” is replaced with “one million”.

62) Article 754, paragraph 1 of the Law is amended to read as follows: “Where the court decides to accept the petition for a scheme of arrangement, it shall order the opening of proceedings, establish a preliminary date of the suspension of payments, and appoint in the order a trustee to carry on and follow up the proceedings of the scheme.”

63) Article 760 of the Law is supplemented with the following paragraphs 3 and 4:

“(3) The stay of proceedings of execution with respect to claims secured by mortgage or special privilege shall expire as a matter of law either as of the date the order approving the scheme of arrangement or 120 days from the date of the order opening the proceedings, whichever comes first.

(4) A creditor described in paragraph 3 of this Article shall be entitled to a level of security equal to the extent to which his claim was secured as of the date of the order opening the proceedings. The judge in charge shall have the authority and duty to take all steps necessary to ensure the level of security is maintained for such a creditor.”

64) Article 761 of the Law is amended to read as follows:

“(1) The making of the order of opening the proceedings of the scheme shall not cause the debts owing by the debtor to mature nor shall it stop the running of interest thereon; any stipulation to the contrary shall be void.

(2) The effects on the debtor’s contracts stipulated in paragraphs 2 and 3 of Article 638 and paragraphs 2, 3, and 4 of Article 639 shall apply to proceedings for a scheme of arrangement.

(3) The debtor may continue to retain possession of property of others so long as he is performing the obligations on which his right of possession is based. Any stipulation otherwise is null and void.

(4) The trustee may initiate suits resulting from the application of the provisions of Articles 613, 614, 615, 616 and 618.”

65) Article 763, paragraphs 1 and 2 of the Law are amended as follows: In paragraph 1, “ten” is replaced with “thirty”. In paragraph 2, “twenty” is replaced with “sixty”.

66) Article 765, paragraph 1 of the Law is amended as follows: “thirty” is replaced with “seventy”.

67) Article 774, paragraph 1 of the Law is amended to read as follows: “The scheme shall not be concluded except with the consent of the creditors who hold more than half of the ordinary debts which have been accepted finally or provisionally.”

68) Article 776, paragraph 2 of the Law is amended to read as follows: “Where the consent stipulated in Article 774(1) is not attained, the stipulations of Article 684 shall be applied.”

69) Article 776 shall be supplemented with a paragraph 3, which shall read as follows: “A proposal for a scheme of arrangement that is not approved in the second meeting shall be deemed rejected. Creditors shall be free to pursue their claims, pending any judgment of bankruptcy against the debtor.”

70) Article 778 of the Law is supplemented with paragraphs 4 and 5, which shall read as follows:

“(4) A scheme of arrangement shall provide for equal treatment of ordinary creditors. An ordinary creditor may nevertheless agree to less favorable treatment under the scheme of arrangement.

(5) A scheme of arrangement shall not be concluded unless all of the arrears on obligations corresponding to claims secured by mortgage or that are otherwise privileged are paid, unless individual creditors with such claims agree to less favorable treatment.”

71) Article 780, paragraph 1 of the Law is amended to read as follows: “A scheme of arrangement shall be valid in regard to the ordinary creditors even when they have not participated in the proceedings or did not approve the scheme of arrangement. It shall have no effect, however, with respect to claims secured with mortgage or that are otherwise privileged, except where the creditors with such claims agree on an individual basis to be subject to the scheme of arrangement.”

Section 5 Amendments to the Penal Code

- 1) Article 470 of the Penal Code (chapeau paragraph) is amended as follows: “100 dinars” is replaced with “500,000 dinars.”
- 2) Article 470, paragraph 4 of the Penal Code is amended to read as follows: “If he fails to make application to the bankruptcy trustee or the judge in charge of the proceedings in person when required to do so without a reasonable excuse or if he fails to provide statements required by such persons or if such statements are false.”
- 3) Article 470 of the Penal Code is supplemented by a paragraph (6), which reads as follows: “If, after adjudication of bankruptcy, he fails to disclose such fact to persons when required to do so by law.”
- 4) Article 474 of the Penal Code (chapeau paragraph) is amended as follows: “200 dinars” is replaced with “1,000,000 dinars.”

Section 6
Amendments to the Enforcement Law

Article 108, paragraph 2 of the Enforcement Law is suspended.

Section 7
Amendments to the Civil Code

Article 1370, paragraph 2 of the Civil Code is suspended.

Section 8
Clarifying and Implementing Instructions

- 1) The Council of Judges is authorized to issue instructions to judges that implement, clarify, and/or supplement procedures and practices under the Bankruptcy Law. Unless stated otherwise and where applicable, such instructions shall be binding upon judges, bankruptcy trustees, their deputies, controllers, and parties to the bankruptcy proceeding.
- 2) Where such instructions conflict with the Bankruptcy Law, the latter shall govern. Where the Bankruptcy Law conflicts with Law No. 83 of 1969 on Civil Actions, the former shall govern.

Section 9
Entry into Force

Section 4 of this Order shall enter into force on the sixtieth day after the date of signature. All other sections shall enter into force on the date of signature.

 4/20/09

L. Paul Bremer, Administrator
Coalition Provisional Authority