



FERREIRA LEITE, RUA, PONTES & ASSOCIADOS
SOCIEDADE DE ADVOGADOS, R. L.

INSOLVENCY

AND

EVENTUAL RESTRUCTURING PROCEEDINGS

19TH APRIL 2013

PARTNERS:



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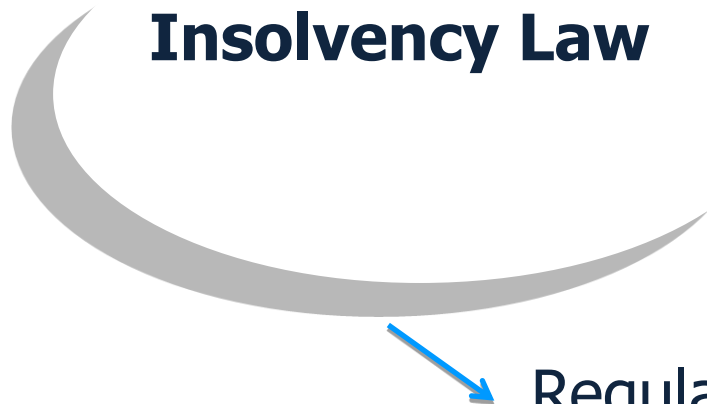
I – INSOLVENCY - DEFINITION

COMPANY'S INSOLVENCY – WHAT AND WHEN?

- **Insolvency is the situation when a debtor company is no longer able to fulfill his overdue obligations;**
- **Declaration of insolvency status will happen when the companies state that their amount of liabilities is higher than their amount of assets.**

The insolvency procedure is applicable companies no longer able to fulfill their obligations.

Insolvency Law



Regulated legal system concerning the payment of creditors in case of a company's insolvency, assuming the company is no longer able to fulfill its obligations.



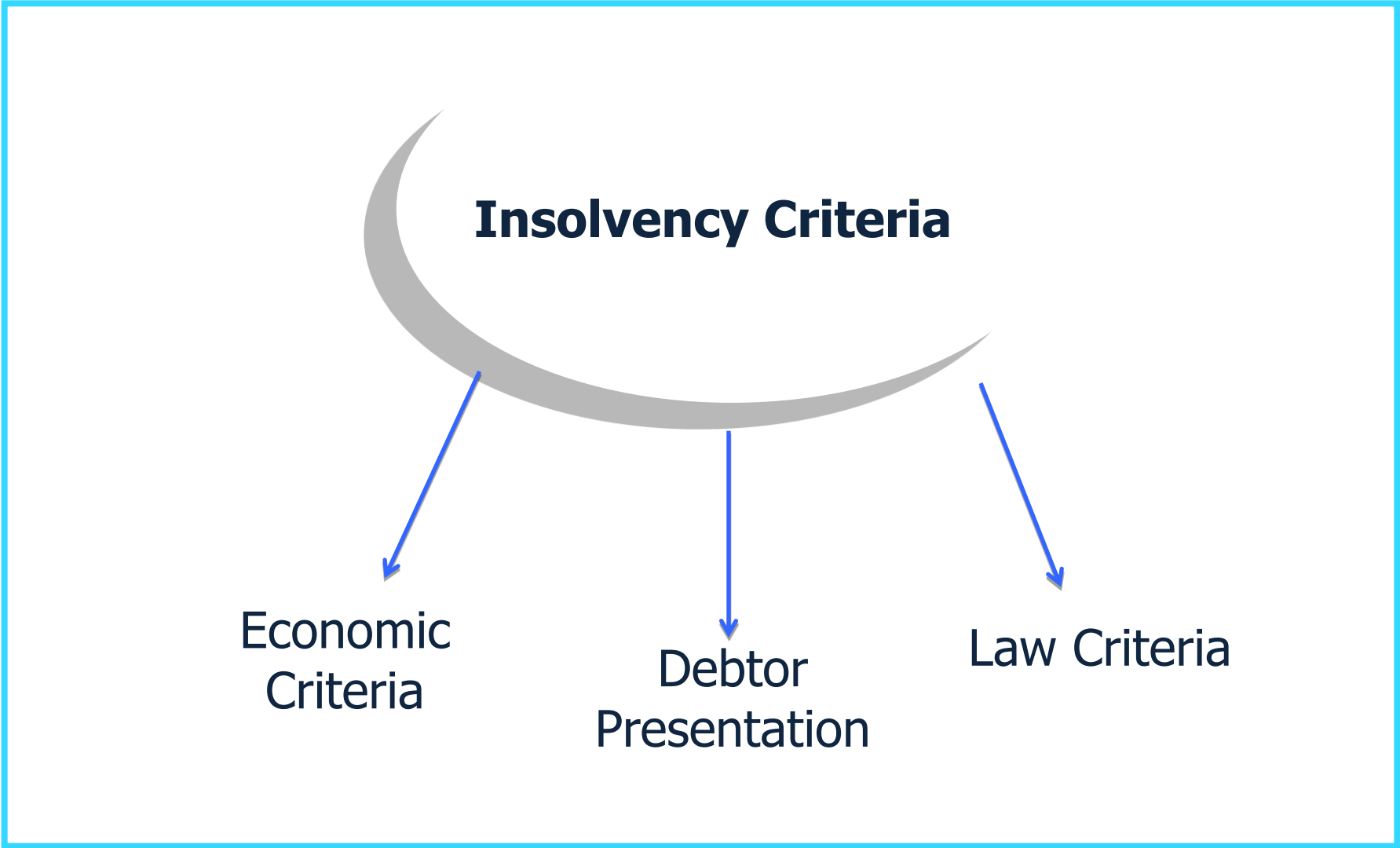
INSOLVENCY PLAN (RESTRUCTURING PLAN)

- i. It is another path for satisfying the creditors;
- ii. It steps aside from the legal rules predicted in CIRE;
- iii. It can only affect the interested legal sphere; and
- iv. It can only affect third parties legal sphere if consented or authorized.



INSOLVENCY DECLARATION

- i. It is the starting point for any decision from the creditors;
- ii. The debtors patrimony is saved for social protection and for the employees;
- iii. The retrieval is only possible after the insolvency recognition.





INSOLVENCY PROCESS CHARACTERISTICS

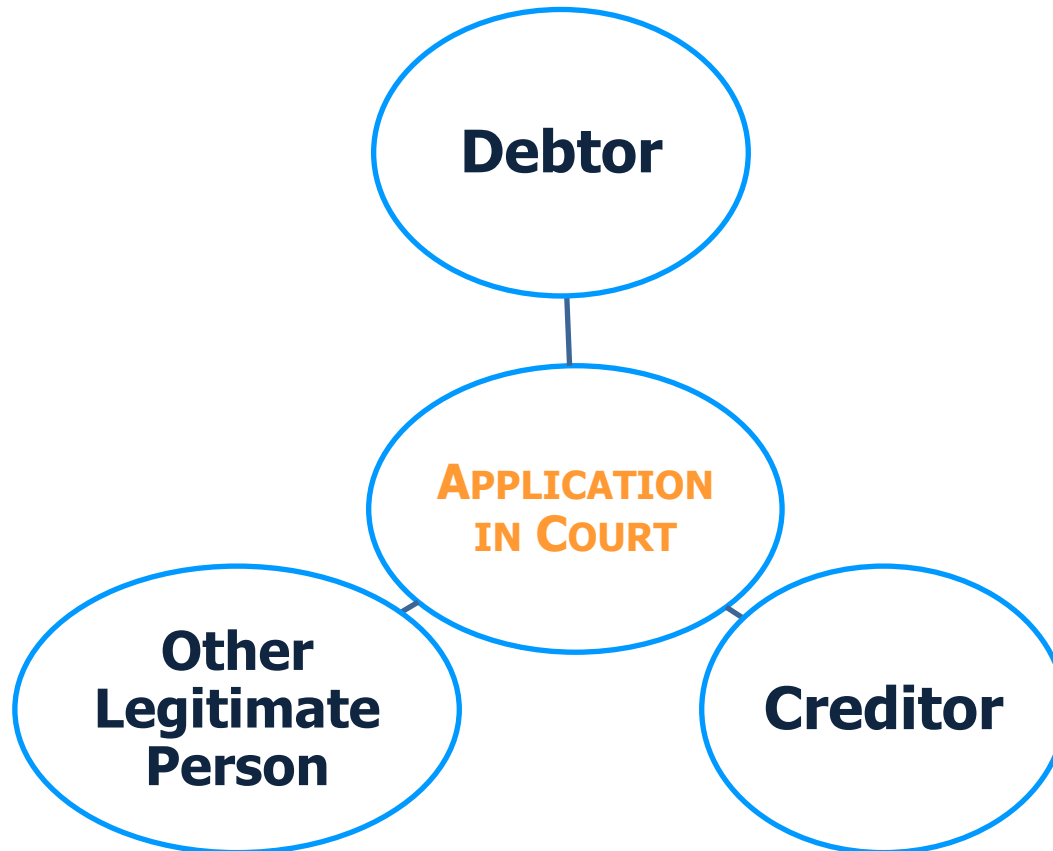
1. It is a special procedure;
2. It is an universal execution of the insolvent debtors' patrimony for paying to the creditors;
3. The creditors assume a special role in the procedure;
4. It has several judicial phases / steps;
5. It has proper entities for its conduct.



INSOLVENCY PROCEDURE BEGINNING

- 1.** Debtor Presentation
- 2.** Creditors Petition
- 3.** Petition from those in charge with the debtor debts
- 4.** Petition from the Public Authorities

To Whom Does The Initiative Belongs To?



PROCESS PHASES

INSOLVENCY DECLARATION SENTENCE

Immediate effect in the Debtor and its Patrimony.



FUNCTIONAL SUBJECT & INSOLVENT MASS

The insolvency entities, powers, functions e and mass creditors.



INSOLVENCY DECLARATION EFFECTS

Over the Debtor, procedural, over the credits, ongoing bussiness & solving for mass.

VERIFICATION, ADMINISTRATION & SETTLEMENT

Verification, Reclamation & Graduation Credits.



INSOLVENCY QUALIFICATION

Negligent or Accidental qualification.



INSOLVENCY PLAN

Other Forms of Satisfaction of Creditors.



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II – INSOLVENCY QUALIFICATION

Insolvency can be:

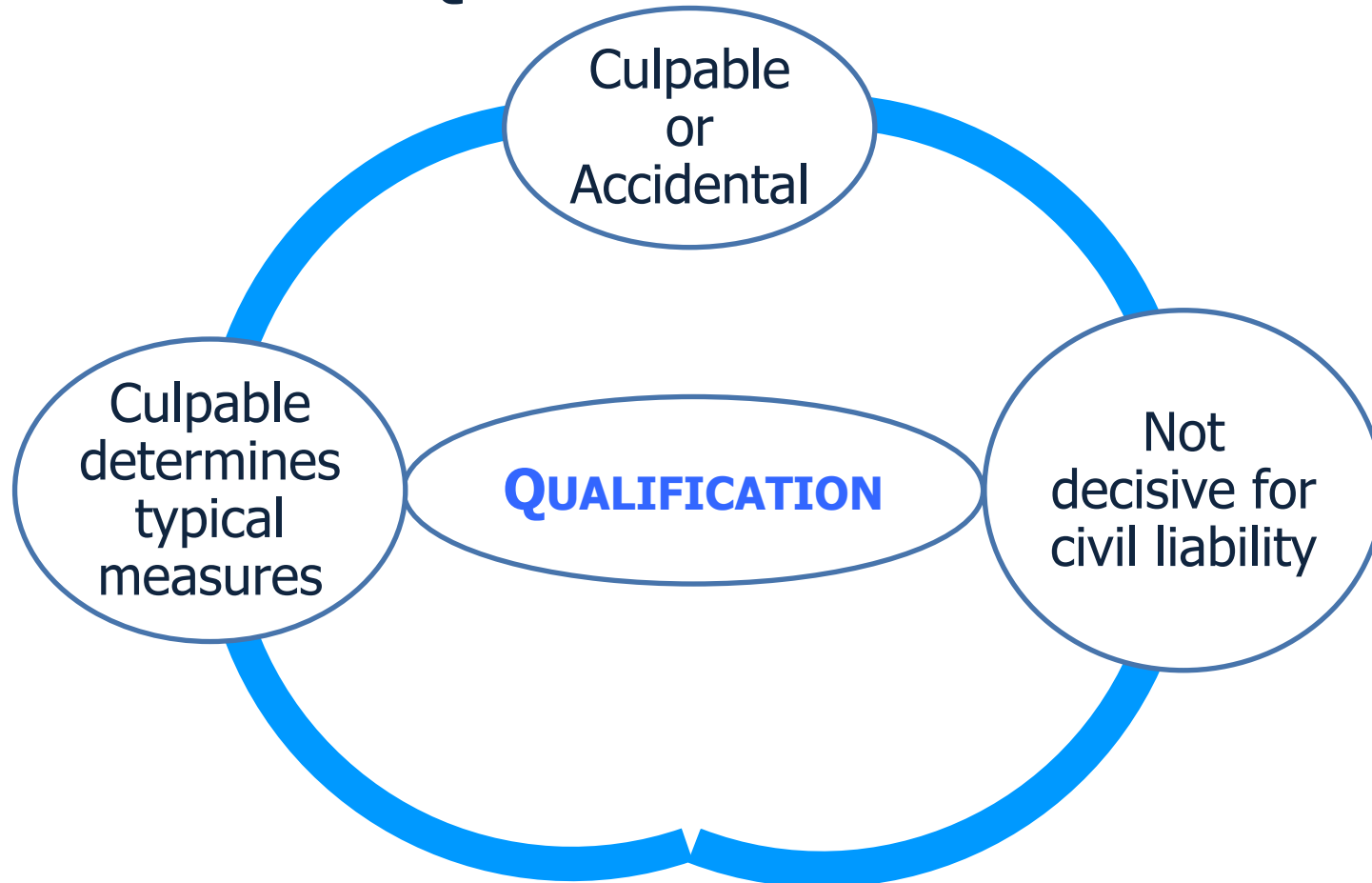
-Culpable; or

-Accidental

Culpable:

- i. Negligence from the debtor;
- ii. Its Managers destroyed or damaged the companies patrimony;
- iii. Artificially created and aggravated damages or liabilities;
- iv. Poorly fulfilled the obligation to keep accountancy.

INSOLVENCY QUALIFICATION



ASSUMPTIONS FOR INSOLVENCY QUALIFICATION

In the sentence it will be decided if the insolvency is culpable or accidental.

The insolvency is culpable if *"it has been created or aggravated as a consequence of a gross negligence from the debtor, or its in law or in fact managers, in the three years preceding the start of the insolvency process"*.

The culpable insolvency assumes that the debtor administrator practiced actions destined to impoverish the debtor's assets or unfulfilled obligations.

Actions destined to impoverish debtor's Assets:

- ➔ Debtor's Assets Dissipation;
- ➔ Artificial creation of Liabilities or Reduction of Profits;
- ➔ Resale with loss for unpaid goods;
- ➔ Self Benefit from debtor's assets dissipation;

If Culpable: Knowledge given to the Public Authorities by the Judge

- The debtors liability only exists if the criminal assumptions are fulfilled – it has to exist a legal qualification;
- The predicted crime must have been made with serious misconduct;
- The culpable, recklessness and ruinous speculations;
- The excessive expenditure.

PUBLIC PROSECUTION OFFICE

- Legal duty to promote the prosecution if it finds evidence of crime

Charges over the Insolvent Debtor:

- NEGLIGENT INSOLVENCY- art. 227^o Penal Code;
- CREDITS FRUSTRATION— art. 227^o-A Penal Code;
- CARELESS INSOLVENCY— art. 228^o Penal Code;
- CREDITORS FAVORING— art. 229^o Penal Code
 - (1 to 5 years of prison)



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III – INSOLVENCY – INVOLVED ENTITIES

TWO KINDS OF ENTITIES IN INSOLVENCY PROCEDURE



Passive entity and Active entity as parties

Passive Entities: Insolvent Debtor and Insolvency Creditors

Active Entities:

- i. The Insolvency Administrator;
- ii. The Creditors Commission;
- iii. The Creditors Assembly;
- iv. The Judge.

THE INSOLVENT DEBTOR

Being the owner of a company on the date in which occurs the insolvency situation, it has the duty of requesting the company's insolvency.

WHEN?

Within **60** days of the Insolvency situation knowledge.



The insolvency creditors.

The insolvency creditors are the entities with direct interest in their credits.

The creditors may be a legitimate party when they are the ones who request the debtor's insolvency.

The insolvency creditors are distinguished by law as:

**SECURED CREDITORS; PRIVILEGED CREDITORS;
COMMON CREDITORS ; & SUBORDINATE CREDITORS**



INSOLVENCY CREDITS CATEGORIES / ORDER OF PAYMENT

PRIVILEGED CREDITORS: CREDIT HOLDERS WITH GENERAL PRIVILEGES ESTABLISHED BY LAW (I.E. TAX AUTHORITIES, WORKERS, ETC.)

SECURED CREDITORS: CREDIT HOLDERS BENEFITTING FROM WARRANTIES IN SECURITIES OR REAL ESTATE ASSETS.

REGULAR CREDITORS: CREDIT HOLDERS WHICH DO NOT BENEFIT FROM ANY PRIVILEGE OR WARRANTY.

SUBORDINATED CREDITORS: CREDIT HOLDERS WHICH ARE PAID LAST.

THE INSOLVENCY ADMINISTRATOR

- One of the most relevant part in the Insolvency Process is the Insolvency Administrator.
- It is fundamental the nomination of an Insolvency Administrator, due to the suspicion of the debtor's administration.
- The administration has to be assigned to an independent administrator (the Insolvency Administrator).

INSOLVENCY ADMINISTRATOR

Substitutes the debtor
in the insolvent mass
administration. *

Committed to present a
Report to the Creditors
Assembly.

Presents or is in charge
of an Insolvency Plan.

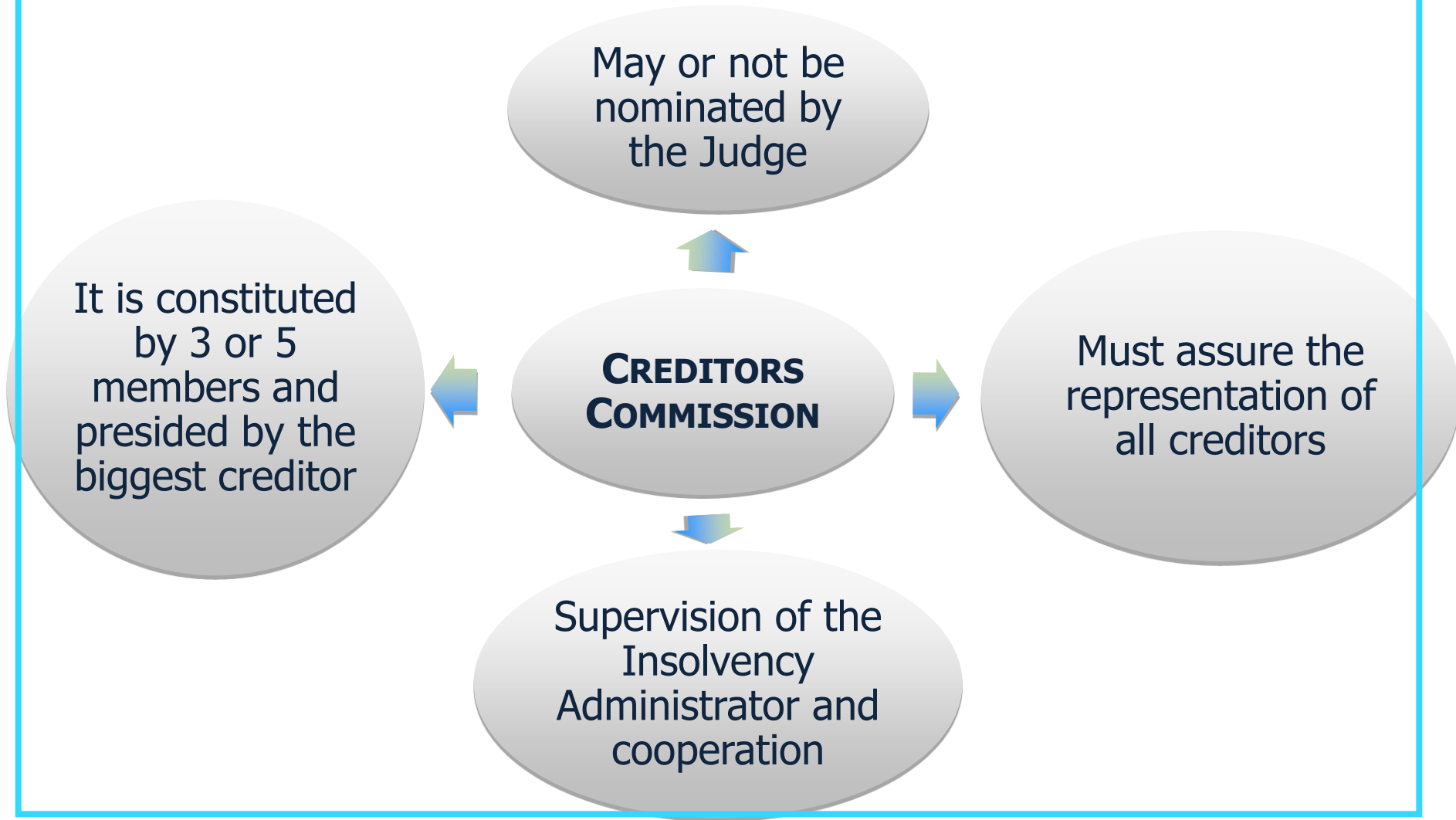
INSOLVENCY ADMINISTRATOR RESPONSABILITIES

It is civilly liable for damages caused to the debtor or to the insolvency creditors.

It is disciplinary responsible for the committed offenses within his professional duties.

Not responsible for events preceding the insolvency declaration, including tax facts.

THE CREDITORS COMMISSION



CREDITORS COMMISSION

Its principal function is to cooperate with the Insolvency Administrator and supervise his activity.

Can freely examine the insolvent accountancy.

Must issue a report with the credits claims and its objections.

Must comment on the report and Insolvency Plan.

CREDITORS ASSEMBLY

The Creditors Assembly is justified due to the collective insolvency proceedings in execution, which implies the need of coordination of several creditors claims.

In the Assembly each creditor votes according to the amount of his credit. Each 1 € credit equals to 1 vote.

Creditors Assembly Composed by:

- All credit holders of the insolvent debtor;
- By the Insolvency Administrator;
- By the members of the Creditors Commission;
- By the debtor and its managers;
- By the employees commissions or their representatives;
- By the Public Prosecution Office..



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IV – INSOLVENCY DECLARATION EFFECTS



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INSOLVENCY DECLARATION

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INSOLVENCY DECLARATION SENTENCE

Should Contain:

- i. The date and the time of pronouncement – in the absence of this information, it is considered noon.
- ii. The insolvent debtor identification, identifying the headquarters or his domicile;
- iii. The domicile of the insolvent managers settlement;
- iv. Insolvency's Administrator nomination;
- v. The Creditors Commission eventual indication.



INSOLVENCY DECLARATION SENTENCE

Mandatory:

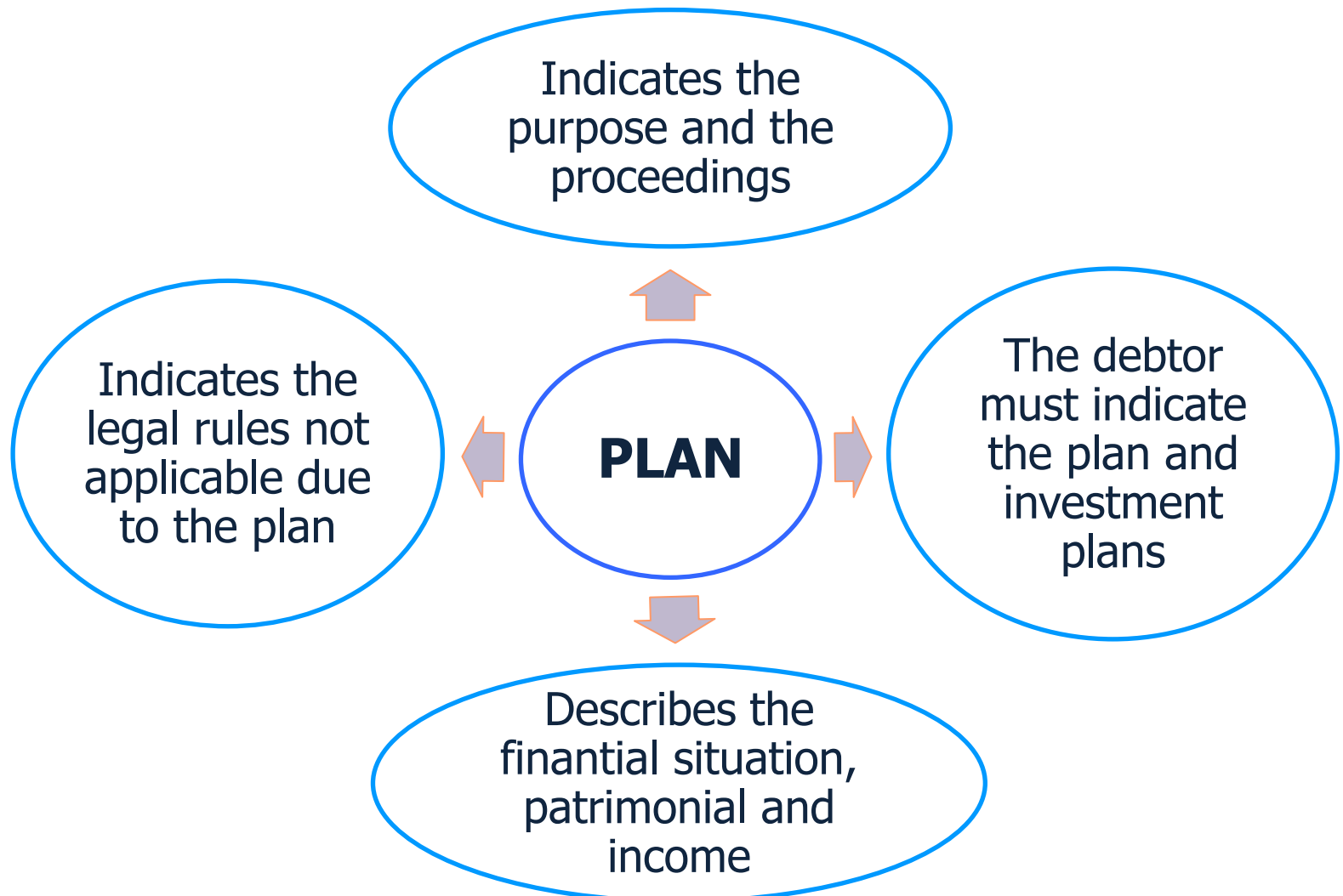
1. Document delivery from the debtor – Relevant Documents;
2. Deliver to the Public Prosecution Office of criminal evidence;
3. The opening of the insolvency qualification incident;
4. The deadline, until 30 days for the credits claiming and designation for the Creditors Assembly, destined to appreciate the Insolvency's Administrator Report.



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The background of the slide is a high-speed photograph of water splashing, creating a dynamic and energetic feel. The water is captured in various stages of splashing, with many small droplets and larger, more complex shapes. The overall color palette is light, with various shades of blue and white.

V – THE INSOLVENCY PLAN (RESTRUCTURING PLAN)





INSOLVENCY PLAN CONTENT

The Insolvency Plan can regulate:

- Credit Payments over the Insolvency;
- The Insolvent Mass settlement and its division for the credits claimers;
- The debtors responsibility.



THE INSOLVENCY PLAN MAY ADOPT THE FOLLOWING PROCEDURES:

- i. Reduction of share capital to cover losses;
- ii. Share capital increase, in cash or in kind, to be subscribed by third parties or by the debtor;
- iii. Amendment of the company Articles;
- iv. Company's transformation into a distinct type;
- v. Amendment of governing bodies.



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VI – CREDITORS PAYMENT

CREDITORS PAYMENT

After procedure of liquidation of all company's assets, the credit payments determines the following settlements:

➔ Mass Debts; &

➔ The credits over the insolvency.



RANKING OF CLAIMS IN THE INSOLVENCY

The credits should be paid within this Ranking:

1. Privileged Credits(ex: Estate credits, Social Security);
2. Secured Credits (ex: property seized, mortgaged);
3. Common Credits;
4. Subordinate Credits.

- ➔ The credit payments over the insolvency are only the ones verified in the court sentence.
- ➔ The payment of privileged credits is made by the assets which do not have real estate warranties.
- ➔ The payment of the common credits is made in the proportion of the credits in case of the insufficiency insolvent mass.
- ➔ The subordinate credits payment is made after the common credits.

This proceedings may, of course, differ in case a Restructuring Plan is approved and enters in force. In such case, a different order of payments may occur, and based on different proportional rules. It is often established a partial debt pardon from all or some creditors, and also concerning interests; Payment time may also differ from initially established, and scheduled within 20 or even 30 year installments...



END OF PROCEEDINGS: Liquidation and Proportional payment
OR Agreement on Insolvency Plan!

EU rules on insolvency Proceedings

Council regulation (EC) No 1346/2000, of 29 May 2000

(updated along the years - last update dated of June 2011)

The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law.

The EU rules on this matter do not pretend to create a common EU insolvency law, but only to establish some international rules on the matter.

The referred rules have been adopted by the Portuguese Estate, and they are part of Portuguese Insolvency Law.



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QUESTIONS ?



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OK!

**THANK YOU FOR YOUR
ATTENTION!**

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