

Austrian Bankruptcy Law

Univ.- Prof. Dr. Walter Buchegger
walter.buchegger@jku.at

Terms

What is bankruptcy law?

What is insolvency law?

Difference between enforcement proceedings and bankruptcy law

Enforcement - Bankruptcy

Enforcement

creditors acting individually

effects certain seizable goods

principle of priority among the acting
creditors

Bankruptcy

automatic effect of proceeding for all creditors in
bankruptcy

effects all seizable goods of the debtor by law
principle of equality among the creditors in
bankruptcy (dividend)

Nature of Bankruptcy Law

Bankruptcy Law consists of:

- special rules of private law
- rules of bankruptcy procedure

Special rules in bankruptcy law are an addition to Private Law, especially

- contract law
- tort law
- law of unjust enrichment

Status of being bankrupt (insolvent)

Inability to pay (Art 66 IO)

Overindebtedness (Art 67 IO)

No legal definition of bankruptcy/insolvency

Players

Bankruptcy Court (Art 63 et sequ., 182 IO)

Trustee

Administrator in reorganization proceeding

Creditors' Committee

Creditors' Assembly

plus

Organizations protecting the interests of the creditors

Creditors

creditors with claims for recovery from the Estate

secured/preferred creditors

creditors to the estate

creditors entitled to set-off

creditors with claims in bankruptcy – provable claims

creditors with subordinated claims

Proceeding

Insolvency Proceeding

Bankruptcy

involuntary proceeding

voluntary proceeding without reorganization plan

Reorganization Proceeding

always a voluntary proceeding with a reorganization plan to be filed by the debtor together with his/her motion

Proceeding

Insolvency Proceeding

Bankruptcy

Reorganization Proceeding
requirement:
plan for reorganization

plan for reorganization

liquidation

debtor in possession trustee administrating

U.S. Bankruptcy Code

U.S. Bankruptcy Code is Section 11 of the U.S.C. (U.S. Code)

What is comparable to the U.S. Chapter 11 proceeding ?

Proceeding

Insolvency Proceeding

Bankruptcy

Reorganization Proceeding
requirement:
plan for reorganization

plan for reorganization

liquidation

debtor in possession trustee administrating

Proceeding

Insolvency Proceeding

Bankruptcy

Chapter 11
fresh start
for the bankrupt company

plan for reorganization

liquidation

debtor in possession

U.S. Bankruptcy Code

U.S. Bankruptcy Code is Section 11 of the U.S.C. (U. S. Code)

What is comparable to the U.S. Chapter 11 proceeding ?

What is comparable to the U.S. Chapter 7 proceeding ?

Proceeding

Insolvency Proceeding

Bankruptcy

Chapter 11
fresh start
for the bankrupt company

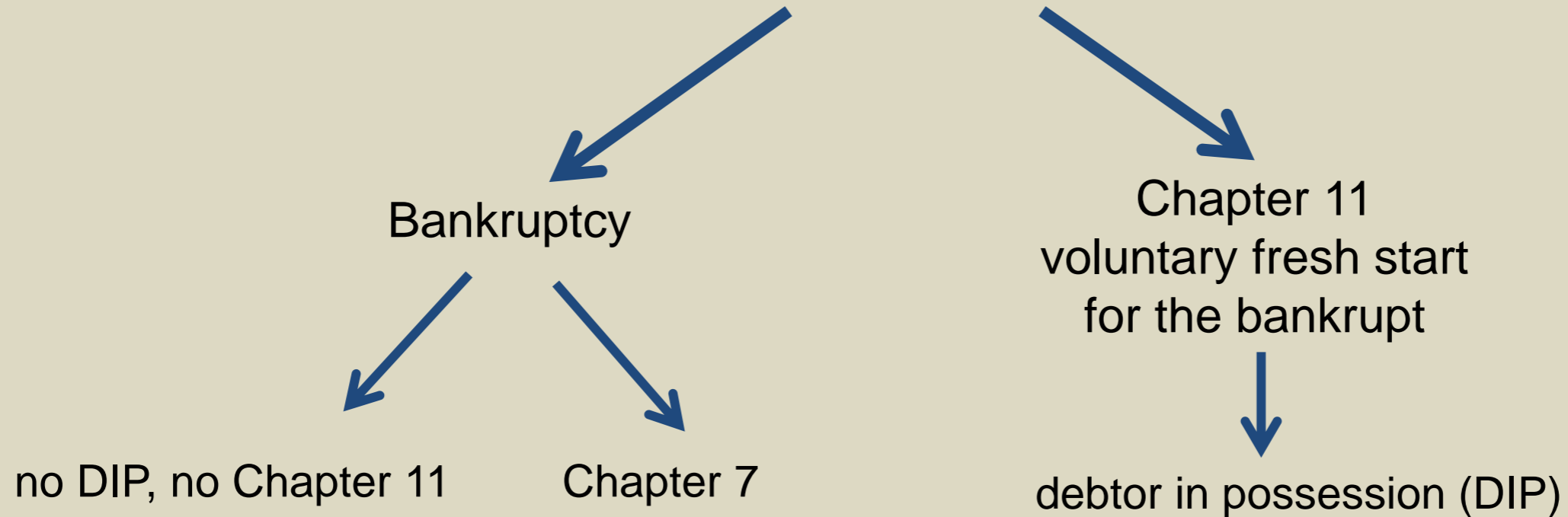
plan for reorganization

liquidation

debtor in possession

Proceeding

Insolvency Proceeding



Insolvency Register

Announcement by way of edict

www.ediktsdatei.justiz.gv.at

Substantive Bankruptcy Law

Automatic stay

Automatic stay: bars creditors from collecting

is not an injunction issued by the courts like in U.S. law

becomes effective by law once the proceeding is opened

bars creditors in bankruptcy and subordinates creditors from litigation
against the estate in bankruptcy

bars these creditors from enforcement proceedings against the estate

bars these creditors from enforcement proceedings against the debtor within the last
60 days before bankruptcy proceeding is opened

Estate Administration by Trustee

Trustee administering the Estate in Bankruptcy

in most of the cases

in bankruptcy proceedings

in reorganization proceedings where the debtor's offer equals or succeeds
20% but will not equal 30% for all creditors in bankruptcy

Estate Administration by Trustee – Debtor

Debtor's Legal Acts concerning the Estate administrated by a Trustee
are legally void for all creditors in bankruptcy

Will a payment to the debtor during bankruptcy proceedings have effect of fulfillment?

Debtor in Possession (DIP)

Debtor in Possession

is the **exemption from the rule of administration by a trustee**

in **reorganization proceedings** where the debtor's offer equals or succeeds

30% for all creditors in bankruptcy

in **bankruptcy proceedings of individuals**

Estate

Estate (Art. 2 par. 2 IO)

all seizable goods at the point in time the bankruptcy order is issued

all seizable goods or income acquired during the bankruptcy proceeding

Will the Estate the Trustee controls at the commencement of the proceeding equal to the legal definition given in Art. 2 par. 2 IO?

there are several reasons why not

Estate

claims for recovery from the estate

controlled estate

goods not in control of trustee

Estate

goods seized by
secured creditors

goods generally liable to:
creditors to the estate
creditors entitled to set-off
creditors with claims in bankruptcy
(**in rare cases** creditors with
subordinated claims)

Executory Contracts

Executory Contracts

contracts not or not entirely fulfilled neither by debtor nor contractor when bankruptcy proceeding is opened

Trustee's Right of Choice

either to fulfill and demand fulfillment

or to back out of the contract: any damages inflicted to the contractor are just claims in bankruptcy

Trustee's Avoidance Powers

Prebankruptcy Transfers to the detriment of the Creditors/the Estate

transfer is perfection rule

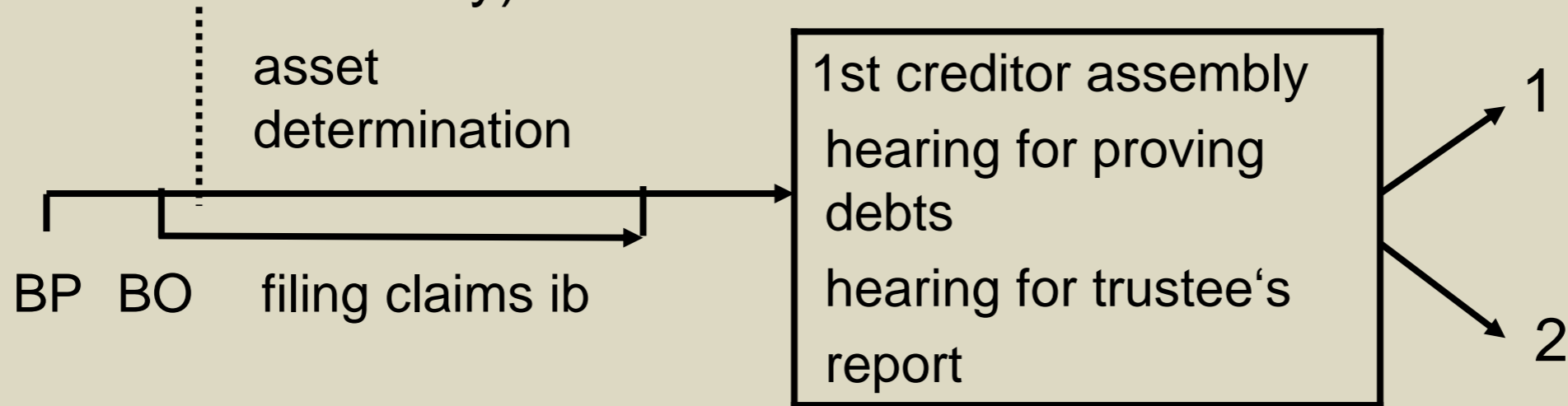
Trustee's Right to litigate

trustee claims back any financial benefit obtained by a third person before the opening of bankruptcy proceedings

Bankruptcy Proceeding

Bankruptcy Proceeding 1

(1st creditor assembly)



Bankruptcy Proceeding 2

1st creditor assembly
hearing for proving
debts
hearing for trustee's
report

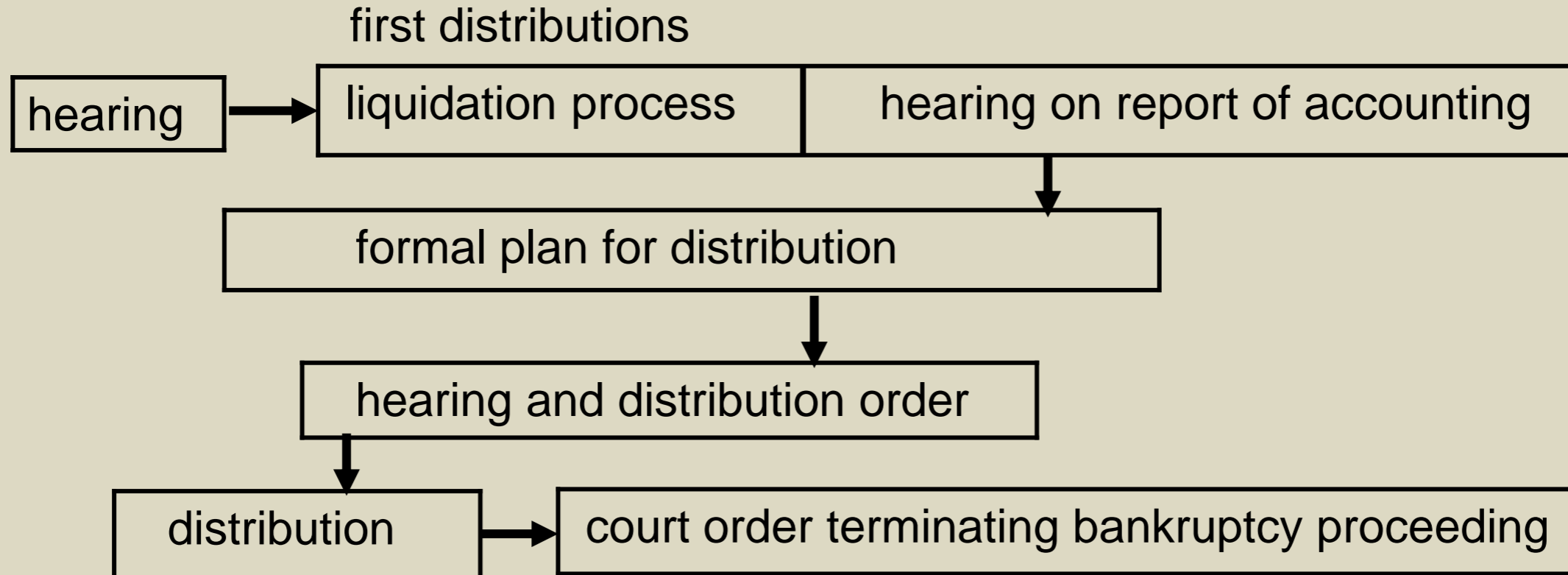
1

liquidation

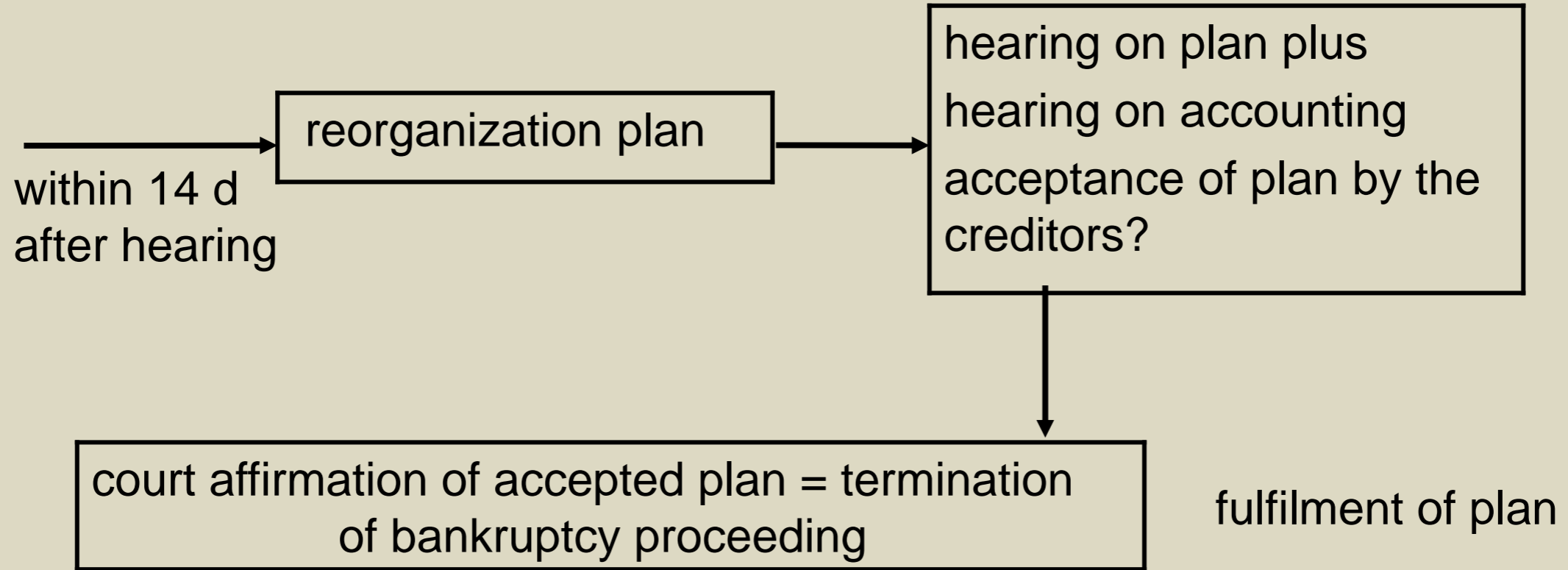
2

debtor files a reorganization plan

Bankruptcy Proceeding 3a Liquidation



Bankruptcy Proceeding 3b Reorganization Plan



Reorganization Proceeding

Debtors entitled to Petition

Reorganization Plan requires a voluntary petition plus immediate filing of a reorganization plan!

Debtors entitled to Reorganization Proceeding

legal entities

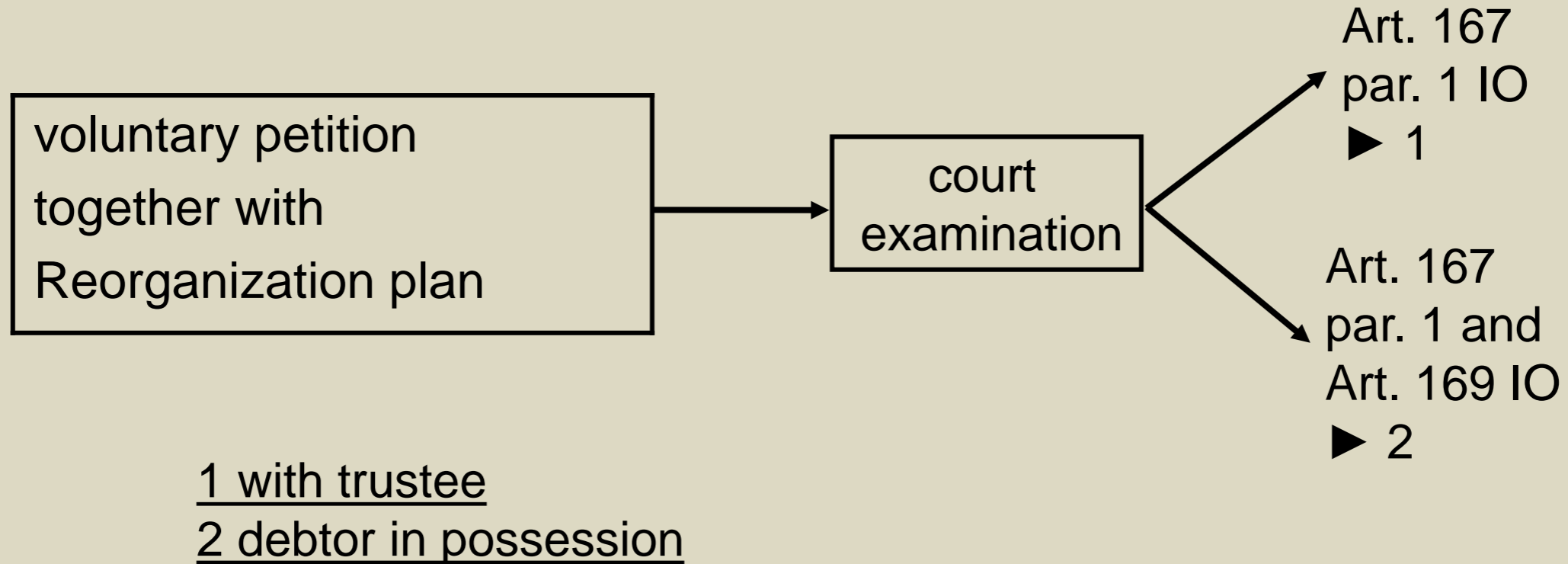
business partnerships where no physical person bears full liability

individuals running an enterprise

estates of deceased persons

Reorganization Proceeding 1

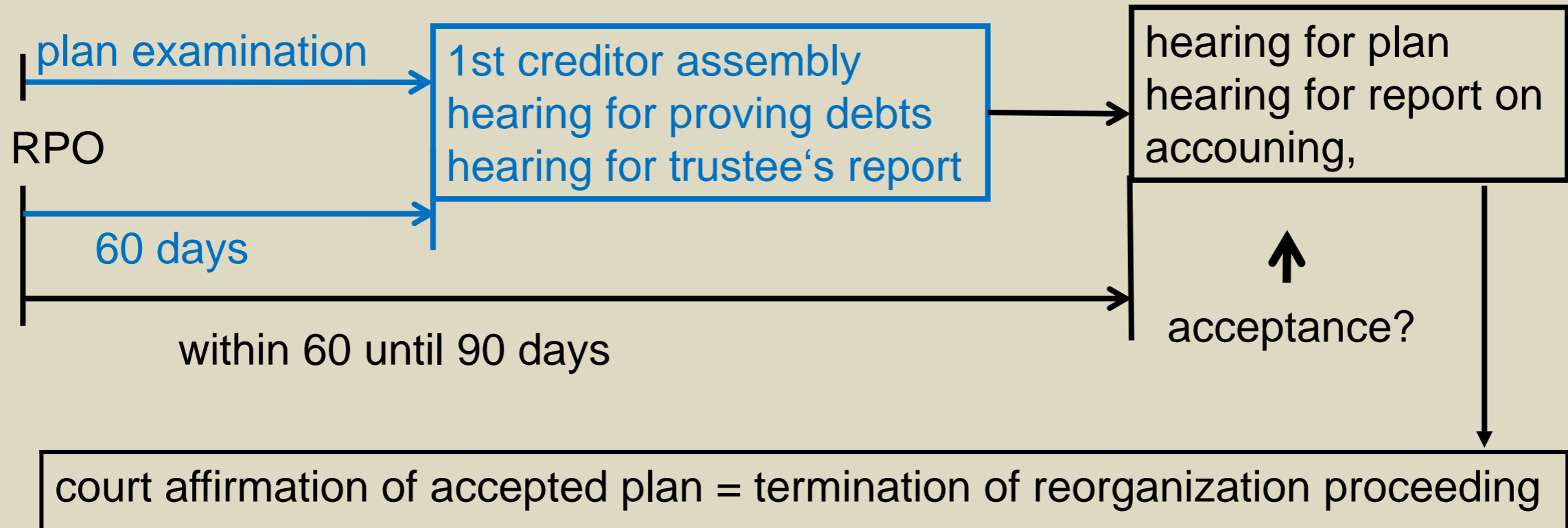
General Prerequisites



Reorganization Proceeding 2a

20% offer – trustee administration

no liquidation by trustee!



Reorganization Proceeding 2b 30% offer – debtor in possession

administrator in reorganization proceeding!

