

*Hanoi, June 19, 2014*

**LAW ON  
BANKRUPTCY**

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*The National Assembly promulgates the Law on Bankruptcy.*

**CHAPTER I**

**General Provisions**

**Article 1** *Governing scope*

This Law stipulates the order of and procedure for filing for, acceptance of jurisdiction over and commencement of bankruptcy procedures; determining asset obligations and measures for preservation of assets in the course of resolution of bankruptcy; procedures for recovery of business operations; declaration of bankruptcy and implementation of decisions declaring bankruptcy.

**Article 2** *Applicable entities*

This Law applies to enterprises and cooperatives or alliances of cooperatives (hereinafter collectively referred to as *cooperatives*) established and operating pursuant to the law.

**Article 3** *Application of the Law on Bankruptcy*

1. The *Law on Bankruptcy* shall apply upon resolution of bankruptcy of enterprises and co-operatives established in the territory of the Socialist Republic of Vietnam.
2. In the case of inconsistency between the provisions of an international treaty to which the Socialist Republic of Vietnam is a member and those of this Law, the provisions of that international Treaty shall apply.

**Article 4** *Interpretation of terms*

In this Law, the following terms are construed as follows:

1. *Insolvent enterprise or co-operative* means an enterprise or cooperative failing to perform an obligation to repay a debt within three (3) months from the maturity date.

2. *Bankruptcy* means a status where an enterprise or cooperative becomes insolvent and is subject to a people's court's decision declaring bankruptcy.
3. *Creditor*, including unsecured creditor, partly secured creditor or secured creditor, means an individual, body or organisation having the right to require an enterprise or cooperative to perform an obligation to repay a debt.
4. *Unsecured creditor* means an individual, body or organisation having the right to require an enterprise or a cooperative to perform an obligation to repay an unsecured debt with the assets of the enterprise or the cooperative or a third party.
5. *Secured creditor* means an individual, body or organization having the right to require an enterprise or a cooperative to perform an obligation to repay a secured debt with the assets of the enterprise, the cooperative or a third party.
6. *Partly secured creditor* means an individual, a body or an organization having the right to require an enterprise or a cooperative to perform an obligation to repay a secured loan with the assets of the enterprise, the cooperative or a third party where the value of such assets is less than that loan.
7. *Asset management officer* means an individual practising the job of managing and liquidating the assets of an insolvent enterprise or cooperative in the course of resolving the bankruptcy.
8. *Asset managing and liquidating enterprise* means an enterprise that practises the job of managing and liquidating the assets of an insolvent enterprise or cooperative in the course of resolving bankruptcy.
9. *Person conducting bankruptcy procedures* means the chief justice of a people's court, a judge, the chief prosecutor of a people's procuracy, a prosecutor, an asset management officer, an asset management and liquidation enterprise, the head of a civil judicial enforcement office or an enforcement officer in the course of resolving bankruptcy.
10. *Participant in bankruptcy procedure* means a creditor, employee, insolvent enterprise or cooperative, shareholder, group of shareholders, member of a cooperative or member cooperative of an alliance of cooperatives, debtor of the enterprise or cooperative and other persons with related interests or obligations in the course of resolving bankruptcy.
11. *Petition fee for commencement of bankruptcy procedure* (hereinafter referred to as *bankruptcy fee*) means an amount a petitioner for commencement of bankruptcy procedure must pay in order for a people's court accepting jurisdiction over the petition to commence the bankruptcy procedure.
12. *Bankruptcy costs* means amounts payable for resolving bankruptcy, including costs of the asset management officer or asset management and liquidation enterprise, audit costs, costs of newspaper releases and other costs in accordance with the law.
13. *Costs of asset management officer or asset management and liquidation enterprise* means the amount payable for resolving bankruptcy to an asset management officer or to the asset management and liquidation enterprise.

14. *Advance payment of bankruptcy costs* means the amount determined by a people's court for newspaper releases and for advance payment of costs of the asset management officer and the asset management and liquidation enterprise.

**Article 5** *Person having the right and obligation to file petition for commencement of bankruptcy procedure*

1. An unsecured creditor or partially secured creditor has the right to file a petition for commencement of bankruptcy procedure upon expiry of 3 months from the maturity date of a debt which an enterprise or a cooperative failed to perform the obligation to repay.

2. Employees, the grassroots trade union, and the immediately higher grassroots trade union in a place where a grassroots trade union has not been established, have the right to file a petition for commencement of bankruptcy procedure upon expiry of three (3) months from the date when the obligation to pay wages and other debts to the employees was due and not performed by the enterprise or cooperative.

3. The legal representative of an enterprise or cooperative has the obligation to file a petition for commencement of bankruptcy procedure when the enterprise or cooperative becomes insolvent.

4. The owner of a private enterprise, chairman of the board of management of a shareholding company, chairman of the members' council of a limited liability company with two or more members, owner of a one member limited liability company or an unlimited liability partner of a partnership company has the obligation to file a petition for commencement of bankruptcy procedure when their enterprise becomes insolvent.

5. A shareholder or a group of shareholders owning 20% or more of ordinary shares for at least six (6) consecutive months has the right to file a petition for commencement of bankruptcy procedure when their shareholding company becomes insolvent. A shareholder or a group of shareholders owning less than 20% of ordinary shares for at least six (6) consecutive months has the right to file a petition for commencement of bankruptcy procedure when their shareholding company becomes insolvent if it is so stipulated in the charter of the company.

6. A member of a cooperative or the legal representative of a member cooperative of an alliance of cooperatives has the right to file a petition for commencement of bankruptcy procedure when the cooperative or the alliance of cooperatives becomes insolvent.

**Article 6** *Notice about insolvent enterprise or cooperative*

1. Upon finding an enterprise or cooperative insolvent, an individual, body or organisation is responsible to notify in writing those who have the right or obligation to file a petition for commencement of bankruptcy procedure as stipulated in Article 5 of this Law.

2. An individual, body or organisation which makes such notice must ensure its accuracy. If wilfully making a wrong notice that causes loss to an enterprise or cooperative, such individual, body or organisation must compensate for the damage and be responsible before the law.

**Article 7** *Relevant individual, body or organisation's responsibility for providing documents and evidence*

1. An individual, body or organisation managing or keeping documents and evidence related to a bankruptcy is responsible to completely and promptly provide the documents and evidence relevant to the bankruptcy within fifteen (15) days from the date of receiving a request from a creditor, enterprise, cooperative, people's court, people's procuracy, asset management officer or asset management and liquidation enterprise.

2. An individual, body or organisation which fails to provide the documents or evidence in accordance with clause 1 of this article must reply in writing and specify the reasons and, if wilfully failing to provide the documents and evidence for no legitimate reason, shall be dealt with in accordance with the law.

**Article 8** *Jurisdiction of courts to resolve bankruptcy*

1. The people's court of a province or a city under central authority (hereinafter collectively referred to as *provincial people's court*) has jurisdiction to resolve bankruptcy in respect of enterprises with business registration or enterprise registration and cooperatives with business registration or cooperative registration made in such province and in one of the following cases:

(a) Bankruptcy involving overseas assets or overseas participants in bankruptcy procedure;

(b) An insolvent enterprise or cooperative with branches or representative offices located in many rural districts, urban districts, towns or cities of various provinces;

(c) An insolvent enterprise or cooperative having real estate located in many rural districts, urban districts, towns or cities in various provinces;

(d) Bankruptcy under the jurisdiction of the people's court of a rural district, urban district, town or city of a province (hereinafter referred to as *district-level people's court*) which the provincial people's court takes to resolve due to the complicated nature of the matter.

2. A district-level people's court has jurisdiction to resolve a bankruptcy as to an enterprise or cooperative whose head office is located in a rural district, urban district, town or city of the same province and such bankruptcy does not fall into the cases stipulated by clause 1 of this article.

3. The People's Supreme Court shall provide guidelines on the implementation of this article.

**Article 9** *Duties and powers of judges conducting bankruptcy procedures*

1. Verifying and collecting documents and evidence in connection with dealing with a petition for commencement of bankruptcy procedure if necessary.

2. Making decisions to commence or not to commence a bankruptcy procedure.

3. Making decisions to appoint or replace an asset management office or an asset management and liquidation enterprise.

4. Supervising the activities of asset management officers and asset management and liquidation enterprises.

5. Making decisions to have an insolvent enterprise or cooperative audited if necessary
6. Making decisions on the sale of the assets of an insolvent enterprise or cooperative subsequent to commencing the bankruptcy procedure to cover the bankruptcy costs.
7. Making decisions on an interlocutory injunction in accordance with the law.
8. Issuing an injunction to prohibit [related persons] leaving their place of residence and requesting the competent authority to extradite the representatives of an insolvent enterprise or cooperative in accordance with law.
9. Organising creditors' meetings.
10. Making decisions to recognise the resolution of the creditors' meeting on the method of recovering the business operations.
11. Making decisions to suspend the conduct of a bankruptcy procedure.
12. Making decisions declaring bankruptcy of an insolvent enterprise or cooperative.
13. Taking administrative penalty measures and requesting competent authorities to deal with [*a bankruptcy case*] in accordance with the criminal law.
14. Consulting previous decisions to resolve bankruptcies in similar bankruptcy matters in accordance with the guidelines of the People's Supreme Court.
15. Declining to resolve bankruptcy if it falls under one of the cases as set out in clause 1 of article 10 of this Law.
16. Performing other duties and power in accordance with the law.

**Article 10** *Refusal or change of judge in the course of resolving bankruptcy*

1. A judge must decline to participate in bankruptcy settlement or must be replaced in the following cases:
  - (a) Concurrently being a participant in the bankruptcy procedure or a representative or relative of a participant in the bankruptcy procedure in that bankruptcy matter.
  - (b) Having participated as a controller, asset management officer, person protecting the legitimate rights and interests of a participant in the bankruptcy procedure, assessor, value appraiser, valuator or interpreter in that bankruptcy.
  - (c) Being in the same group of judges who resolve that bankruptcy and being a relative of another one of the judges.
  - (d) Having participated in making a decision to declare bankruptcy as to that bankruptcy;
  - (dd) There are clear grounds suggesting that the judge may not be unbiased while performing the duties.

2. A change of judges shall be decided by the chief justice of the people's court. If a judge in charge of the bankruptcy is the chief justice, the change of the judge shall be decided by the immediately higher people's court. The chief justice's decision to change judges shall be final.

**Article 11** *Individuals and enterprises practising the job of asset management and liquidation*

Individuals or enterprises which may practise the job of asset management and liquidation in the course of resolving bankruptcy include:

1. Asset management officers;
2. Asset management and liquidation enterprises.

**Article 12** *Conditions for practising as an asset management officer*

1. The following persons may be issued with practising certificates as asset management officers:
  - (a) Lawyers;
  - (b) Auditors;
  - (c) Persons having a bachelor degree in law, economics, accounting, finance or banking and five (5) or more years of experience in the field in which they have trained.
2. Conditions for practising as an asset management officer:
  - (a) Having full civil capacity;
  - (b) Having good ethics and a sense of responsibility and being upstanding, honesty and unbiased;
  - (c) Holding a practising certificate as an asset management officer.
3. The Government shall provide detailed regulations on issuance of practising certificates for asset management officers and shall exercise State administration of asset management officers.

**Article 13** *Asset management and liquidation enterprise*

1. The following types of enterprises may practise the job of asset management and liquidation in the course of resolving bankruptcy:
  - (a) Partnerships;
  - (b) Private enterprises.
2. Conditions for an enterprise to practise the job of asset management and liquidation:

- (a) A partnership with at least two unlimited liability partners being asset management officers and with its general director or director being an asset management officer;
  - (b) A private enterprise with its owner being both an asset management officer and, concurrently, its director.
3. The Government shall provide detailed regulations on practising the job of asset management and liquidation and shall exercise State administration of asset management and liquidation enterprises.

**Article 14** *Individuals who must not practise the job of asset management and liquidation*

- 1. Cadres, civil servants and officials; military officers, career servicemen and defence workers in bodies and units of the People's Army; officers and career non-commissioned officers in bodies and units of the People's Police.
- 2. Persons who are currently subject to prosecution for criminal liabilities; persons who have been convicted but whose conviction records have not been removed; persons who are currently subject to administrative handling measure imposition which led them to a compulsory education establishment or compulsory detoxification establishment.
- 3. Persons who lose civil capacity or are subject to limited civil capacity.

**Article 15** *Revocation of practising certificate of asset management officer*

1. Those who have been issued with practising certificates of asset management officer and fall into one of the following cases shall be subject to revocation of their practising certificates of asset management officer:
- (a) Being cadres, civil servants and officials; military officers, career servicemen and defence workers in bodies and units of the People's Army; officers and career non-commissioned officers in bodies and units of the People's Police;
  - (b) Being convicted and the verdict has taken effect;
  - (c) Having their practising certificates as a lawyer or auditor revoked;
  - (d) Being replaced in accordance with sub-clauses (a) and (b) of clause 1 of article 46 of this Law in two or more bankruptcy cases.
2. The Government shall provide detailed regulations on revocation of practising certificates of asset management officers.

**Article 16** *Rights and obligations of asset management officer and asset management and liquidation enterprise*

- 1. Management of the assets, supervision of the business operations and liquidation of the assets of an insolvent enterprise or cooperative include:

- (a) Verifying, collecting and managing the documents and evidence relevant to the operations of the enterprise or cooperative;
  - (b) Preparing the asset inventory, list of creditors and list of debtors;
  - (c) Preserving assets; preventing the sale or transfer of assets without the permission of a judge; preventing the dispersal of assets; maximizing the value of the assets of the enterprise or cooperative when selling or liquidating the assets;
  - (d) Supervising the business operations of enterprises or cooperatives in accordance with law;
  - (dd) Hiring individuals and organisations to perform tasks in accordance with law;
  - (e) Making recommendation to the judge on sale of the assets of the enterprise or cooperative to cover the bankruptcy costs;
  - (g) Selling the assets in accordance with the decision of the judge to cover the bankruptcy costs;
  - (h) Organising the valuation and liquidation of assets in accordance with this Law; reporting to related participants in bankruptcy procedure on tasking individuals and organisations with carrying out the liquidation of the assets;
  - (i) Sending amounts of money collected to the account opened by the competent people's court or civil judicial enforcement office at a bank.
2. Representing the enterprise or cooperative if the enterprise or cooperative has no legal representative.
  3. Reporting on the status of assets, debts and operations of the enterprise or cooperative and participating in developing the plan to recover the business operations of the insolvent enterprise or cooperative.
  4. Recommending the judge perform the following tasks:
    - (a) Collect documents and evidence;
    - (b) Declare a transaction invalid and decide to recover the assets of the enterprise or cooperative which have been sold or transferred illegally;
    - (c) Issue an interlocutory injunction or administrative penalty measures; transfer the file to a competent criminal authority in accordance with law.
  5. Being entitled to remuneration and fulfilling the responsibility for taking out job insurance in accordance with the law.
  6. Reporting on the performance of their duties and powers as requested by the judge or the civil judicial enforcement office; Bearing responsibility before the judge, civil judicial enforcement office and the law for the performance of their duties and powers.



**Article 17** *Duties and powers of civil judicial enforcement office*

1. Implementing decisions on interlocutory injunctions, decisions declaring a transaction invalid, decision declaring bankruptcy and other decisions in accordance with this Law.
2. Requesting asset management officers and asset management and liquidation enterprises to organise the valuation and liquidation of assets and carry out the liquidation of the assets in cases as stipulated by clause 4 of article 121 of this Law.
3. Supervising the operations of asset management officers and asset management and liquidation enterprises upon carrying out the liquidation of the assets of a bankrupt enterprise or cooperative; requesting asset management officers and asset management and liquidation enterprises to report on the asset liquidation.
4. Recommending the people's court replace an asset management officer or an asset management and liquidation enterprise in the course of carrying out the liquidation of the assets of a bankrupt enterprise or cooperative in accordance with Article 46 of this Law.
5. Distributing the assets of the enterprise or cooperative in accordance with the decision of the people's court.
6. Deciding to end the implementation of a decision to declare an enterprise or cooperative bankrupt.
7. Performing other duties and powers in accordance with the law on civil judicial enforcement.

**Article 18** *Rights and obligations of participants in bankruptcy procedure*

1. Satisfying the requests from the judge, asset management officer, asset management and liquidation enterprise and civil judicial enforcement office in accordance with the law on bankruptcy.
2. Providing documents and evidence relevant to bankruptcy resolution.
3. Requesting individuals, bodies or organisations keeping and managing the documents and evidence to provide the documents and evidence relevant to their legitimate rights and interests in order to submit same to the people's court.
4. Requesting the judge, asset management officer or asset management and liquidation enterprise to verify and collect documents and evidence which they themselves are unable to obtain, or to seek an examination, valuation and appraisal of the prices of assets; requesting the judge to decide to have the insolvent enterprise or cooperative audited; requesting the judge to summon witnesses.
5. Accessing, taking notes of and duplicating the documents and evidence presented by other participants in the bankruptcy procedure or collected by the judge.
6. Recommending the application, change or cancellation of an interlocutory injunction.
7. Receiving valid notices in order to exercise their rights and obligations.

8. Protecting or asking another person to protect their legitimate rights and interests.
9. Attending creditors' meetings.
10. Requesting a replacement of the asset management officer or the asset management and liquidation enterprise in accordance with Article 46 of this Law.
11. Requesting the asset management officer or the asset management and liquidation enterprise add creditors to the list of creditors and/or debtors to the list of debtors.
12. Making a recommendation to the asset management officer or the asset management and liquidation enterprise on recovery of sums of money and assets from the debtors.
13. Having to present themselves as requested by the asset management officer or asset management and liquidation enterprise or as summoned in writing by the people's court and submitting to the decisions of the people's court in the course of bankruptcy resolution.
14. Participating in asset management and liquidation as requested by the judge, civil judicial enforcement office, asset management officer or asset management and liquidation enterprise.
15. Requesting review of the decisions of the people's court in accordance with this Law.
16. In case of the decease of an individual participating in the bankruptcy procedure, his or her legitimate heir shall exercise his or her rights and obligations in accordance with this article.

**Article 19** *Rights and obligations of person filing petition for commencement of bankruptcy procedure*

1. The rights and obligations of a participant in a bankruptcy procedure are stipulated by Article 18 of this Law.
2. Nominating the name of the asset management officer or asset management and liquidation enterprise with the people's court prior to the commencement of bankruptcy procedure.
3. Paying the bankruptcy fee and making the advance payment of bankruptcy costs unless not required.
4. The submission of the petition for commencement of bankruptcy procedure must be truthful.

**Article 20** *Rights and obligations of insolvent enterprise or cooperative*

1. The rights and obligations of a participant in bankruptcy procedure are set out in Article 18 of this Law.
2. Giving opinions accepting or rejecting part or the whole of the petition of the person filing the petition for commencement of bankruptcy procedure.
3. Having to making public the decision to commence bankruptcy procedure immediately after receiving it.

**Article 21** *Inspecting compliance with the law in the course of resolution of bankruptcy*

1. The people's procuracy shall inspect compliance with the law in the course of resolving bankruptcy and exercising the rights to make a request, recommendation or appeal in accordance with this Law.
2. The people's procuracy shall attend the meetings which consider its recommendations and appeal; and shall inspect the decisions of the people's court on resolution of bankruptcy.

**Article 22** *Bankruptcy fees*

A person filing a petition for commencement of bankruptcy procedure must pay a bankruptcy fee in accordance with the law on legal costs and fees of the people's court. A person filing the petition in cases stipulated by clause 2 of article 5 and sub-clause (a) of clause 1 of article 105 of this Law is not required to pay the bankruptcy fee.

**Article 23** *Bankruptcy costs and advance payment of bankruptcy costs*

1. Bankruptcy costs shall be paid from the value of the assets of the insolvent enterprise or cooperative.
2. A person filing a petition for commencement of bankruptcy procedure must make an advance payment of bankruptcy costs except for cases as stipulated by clause 2 of article 5 and sub-clause (a) of clause 1 of article 105 of this Law.
3. An asset management officer or an asset management and liquidation enterprise may be tasked by the people's court with selling certain assets of the insolvent enterprise or cooperative to cover the bankruptcy costs. The valuation, re-valuation and sale of the assets shall comply with Articles 122, 123 and 124 of this Law.
4. The people's court shall make a decision on the amount of advance payment of bankruptcy costs and the rate of bankruptcy costs on a case by case basis in accordance with the law and a decision on the refund of the advance payment of bankruptcy costs unless the person filing the petition for commencement of bankruptcy procedure is in breach of clause 4 of article 19 of this Law.

**Article 24** *Costs of asset management officer and asset management and liquidation enterprise*

1. The costs of the asset management officer or asset management and liquidation enterprise shall be calculated based on their time, efforts and performance of their duties.
2. The Government shall provide detailed regulations on the costs of asset management officers and asset management and liquidation enterprises.

**Article 25** *Request for, issuance of and notification of documents in resolution of bankruptcy*

The people's court, people's procuracy, civil judicial enforcement office, asset management officer and asset management and liquidation enterprise has the obligation to make requests for, issuance of and notification of documents to participants in bankruptcy procedure in accordance with this Law and the legislation on civil proceedings.

## CHAPTER II

### Petitions and Acceptance of Jurisdiction over Petitions to Commence Bankruptcy Procedures

#### **Article 26** *Creditor's petition for commencement of bankruptcy procedures*

1. When petitioning a people's court for commencement of bankruptcy procedure, a creditor as stipulated by clause 1 of article 5 of this Law must prepare a petition for commencement of bankruptcy procedure.
2. A petition for commencement of bankruptcy procedure must contain the following main contents:
  - (a) Full date;
  - (b) Name of the people's court having the power to resolve the bankruptcy;
  - (c) Name and address of person preparing the petition;
  - (d) Name and address of the enterprise or cooperative subject to the petition for commencement of bankruptcy procedure;
  - (dd) Due debts.

Attached to the petition must be the evidence proving the due debts.

3. If there is a recommendation on the appointment of an asset management officer or asset management and liquidation enterprise, the petition for commencement of bankruptcy procedure must specify the name and address of such asset management officer or asset management and liquidation enterprise.

#### **Article 27** *Petition of employees or representatives of trade union for commencement of bankruptcy procedure*

1. Upon petitioning the people's court for commencement of bankruptcy procedure, employees or representatives of the trade union as stipulated by clause 2 of article 5 of this Law must prepare a petition for commencement of bankruptcy procedure.
2. The petition for commencement of bankruptcy procedure must contain the following main contents:
  - (a) Full date;
  - (b) Name of the people's court having the power to resolve the bankruptcy;
  - (c) Name and address of person preparing the petition;

(d) Name and address of the enterprise or cooperative subject to the petition for commencement of bankruptcy procedure;

(dd) Total amount of wages and other due debts which the enterprise or co-operative has failed to pay to its employees.

Attached to the petition must be evidence proving the wages and other due debts.

3. If there is a recommendation on appointment of an asset management officer or asset management and liquidation enterprise, the petition for commencement of bankruptcy procedure shall specify the name and address of such asset management officer or asset management and liquidation enterprise.

4. As from the date of filing the petition, the employees or the representatives of the trade union shall have the same rights and obligations as creditors in accordance with this Law.

**Article 28** *Petition of insolvent enterprise or cooperative for commencement of bankruptcy procedure*

1. An enterprise or cooperative as stipulated by clause 3 and clause 4 of article 5 of this Law must prepare a petition for commencement of bankruptcy procedure.

2. The petition for commencement of bankruptcy procedure must contain the following main contents:

(a) Full date;

(b) Name of the people's court having the power to resolve the bankruptcy;

(c) Name and address of the enterprise or cooperative;

(d) Name and address of the person preparing the petition;

(dd) Grounds for the petition for commencement of bankruptcy procedure.

3. The following papers and documents must be enclosed with the petition for commencement of bankruptcy procedure:

(a) The financial statements of the enterprise or cooperative for the three (3) most recent years. If the enterprise or cooperative has been established and operating for less than three (3) years, the financial statements of the enterprise or cooperative for its entire operational period must be enclosed;

(b) An explanation of the cause resulting in insolvency; report on the results of measures which have been taken to recover the enterprise or cooperative but which failed to overcome the insolvency;

(c) A detailed list of assets and locations of the assets of the enterprise or cooperative;

(d) A list of creditors and a list of debtors which specify the names and addresses of the creditors, the debtors, debts, secured, unsecured and partially secured loans borrowed [debts] which have become due or have not yet become due;

(dd) Papers and documents relevant to the establishment of the enterprise or cooperative;

(e) Results of price appraisal and valuation of remaining assets (if any).

4. If there is a recommendation on appointment of an asset management officer or asset management and liquidation enterprise, then the petition for commencement of bankruptcy procedure shall specify the name and address of such asset management officer or asset management and liquidation enterprise.

5. Any persons as stipulated by clause 3 and clause 4 of article 5 of this Law who fail to file a petition for commencement of bankruptcy procedure when the enterprise or cooperative becomes insolvent must bear responsibility before the law. If any losses which arise after the enterprise or cooperative becomes insolvent are due to the failure to file the petition for commencement of bankruptcy procedure, they must be compensated for.

**Article 29** *Petition for commencement of bankruptcy procedure of shareholder or group of shareholders of a joint-stock company or member of cooperative or member cooperative of an alliance of cooperatives*

1. When petitioning the people's court for commencement for bankruptcy procedure, a shareholder or a group of shareholders of a joint stock company, a member of a cooperative or the legal representative of a member cooperative of an alliance of cooperatives as stipulated by clause 5 and clause 6 of article 5 of this Law must prepare a petition for commencement of bankruptcy procedure.

2. The petition for commencement of bankruptcy procedure must contain the contents as set out in clause 2 of article 28 of this Law and must enclose the documents (if any) as stipulated by clauses 3 and 4 of article 28 of this Law.

**Article 30** *Method of filing petition for commencement of bankruptcy procedure*

1. A person who needs to petition for commencement of bankruptcy procedure must file a petition and attached documents and evidence with the competent people's court by one of the following methods:

(a) Filing in person with the people's court;

(b) Sending to the people's court by post.

2. The date of filing the petition for commencement of bankruptcy procedure shall be determined as the date of receiving the petition by the people's court or the date of the post stamp from the sending location.

**Article 31** *Assigning judge to resolve petition for commencement of bankruptcy procedure*

1. Within three (3) working days from the date of receiving a petition for commencement of bankruptcy procedure, the chief justice of the people's court shall assign a judge or a group of three (3) judges to resolve the petition for commencement of bankruptcy procedure.

2. The chief justice of the People's Supreme Court shall provide the working regulations for such group of judges as set out in clause 1 of this article.

**Article 32** *Dealing with petition for commencement of bankruptcy procedure*

1. Within three (3) working days from the date of being assigned, the judge must consider the petition and handle it as follows:

(a) If the petition for commencement of bankruptcy procedure is valid, the judge shall notify the person filing the petition for commencement of bankruptcy procedure about paying bankruptcy fees and making advance payment of bankruptcy costs unless payment of bankruptcy fees or advance payment of bankruptcy costs is not required;

(b) If a petition for commencement of bankruptcy procedure fails to contain adequate contents as set out in Articles 26, 27, 28 or 29 of this Law, the judge shall notify the person filing the petition thereof in order to amend or supplement the petition;

(c) Transferring the petition for commencement of bankruptcy procedure to a competent people's court if it falls under the power to resolve it of the other people's court;

(d) Returning the petition for commencement of bankruptcy procedure.

2. The notification of handling the petition for commencement of bankruptcy procedure must be made in writing and sent to the person filing the petition and the insolvent enterprise or cooperative for its information.

**Article 33** *Transferring petition for commencement of bankruptcy procedure to competent people's court and resolving request for reviewing the transfer of the petition*

1. The people's court which deals with a petition in accordance with clause 1(c) of article 32 of this Law is responsible to transfer the petition for commencement of bankruptcy procedure and attached documents and evidence to a competent people's court and to inform the person filing the petition for commencement of bankruptcy procedure for his/her information.

2. Within three (3) working days from the date of receiving the decision to transfer the petition, the person filing the petition or the people's court to which the petition is transferred shall have the right to request its immediately higher people's court to review the transfer of the petition.

3. Within three (3) working days from the date of receiving the request, the chief justice of the immediately higher people's court shall resolve the request for reviewing the transfer of the petition. The decision of the chief justice of the immediately higher people's court shall be final.

**Article 34** *Notification of amendment of and supplement to petition for commencement of bankruptcy procedure*

If a petition for commencement of bankruptcy procedure fails to contain adequate contents as set out in Articles 26, 27, 28 or 29 of this Law, then the people's court shall inform the person filing the petition for information and for amendment and supplementation. The time limit for amendment and supplementation shall be determined by the people's court, but shall not be more than 10 working days from the date of receiving the notification by the person filing the petition; in special cases, the people's court may extend this period by not more than 15 days.

**Article 35** *Returning petition for commencement of bankruptcy procedure*

1. The people's court shall decide to return a petition for commencement of bankruptcy procedure in the following cases:

- (a) The person filing the petition fails to comply with the provisions of article 5 of this Law;
- (b) The person filing the petition fails to amend or supplement the petition for commencement of bankruptcy procedure in accordance with Article 34 of this Law;
- (c) Another people's court has commenced the bankruptcy procedure against the insolvent enterprise or cooperative;
- (d) The person filing the petition for commencement of bankruptcy procedure withdraws the petition in accordance with article 37.2 of this Law;
- (dd) The person filing the petition fails to pay the bankruptcy fees or to make advance payment of bankruptcy costs, unless payment of bankruptcy fees or advance payment of bankruptcy costs is not required.

2. A decision to return a petition for commencement of bankruptcy procedure of the people's court must specify the reason for returning the petition. The people's court shall be responsible to send this decision to the person filing the petition for commencement of bankruptcy procedure and the people's procuracy at the same level within three (3) working days from the date of issuing the decision.

**Article 36** *Request for reviewing the return of petition for commencement of bankruptcy procedure*

1. Within 3 working days from the date of receiving a decision to return the petition for commencement of bankruptcy procedure by the people's court, the petitioner for commencement of the bankruptcy procedure shall have the right to request for review, and the people's procuracy at the same level shall have the right to make a recommendation to the chief justice of the people's court which made the decision to return the petition.

2. Within 3 working days from the date of receiving the request for review or the recommendation on the decision to return the petition for commencement of bankruptcy procedure, the chief justice of the people's court which made the decision to return the petition must issue one of the following decisions:

- (a) Sustaining the decision to return the petition for commencement of bankruptcy procedure;
- (b) Annulling the decision to return the petition for commencement of bankruptcy procedure and accepting jurisdiction over the petition in accordance with this Law.

3. Within five (5) working days from the date of receiving the decision to resolve the request for review or the recommendation on the decision to return the petition for commencement of bankruptcy procedure, the petitioner for commencement of the bankruptcy procedure shall have the right to request review and the people's procuracy shall have the right to recommend the chief justice of the immediately higher people's court consider and resolve it.



4. Within 7 working days from the date of receiving the request for review or the recommendation on the return of the petition for commencement of bankruptcy procedure, the chief justice of the immediately higher people's court must issue one of the following decisions:

- (a) Sustaining the decision to return the petition for commencement of bankruptcy procedure;
- (b) Annuling the decision to return the petition for commencement of bankruptcy procedure and requesting the people's court to accept the jurisdiction over the petition in accordance with this Law.

5. A decision to resolve the request for review or the recommendation of the chief justice of the immediately higher people's court shall be final. This decision must be sent to the petitioner, the people's procuracy at the same level, the people's procuracy which made the recommendation and the people's court which issued the decision to return the petition.

**Article 37** *Negotiation between creditor filing a petition for commencement of bankruptcy procedure and insolvent enterprise or cooperative*

1. Within 3 working days from the date of receiving a valid petition for commencement of bankruptcy procedure by the people's court, the insolvent enterprise or cooperative and the creditor filing such petition shall have the right to have a written request sent to the people's court in order for the parties to negotiate for withdrawal of the petition.

The people's court shall determine the time of negotiation but it must not more than 20 days from the date of receiving the valid petition for commencement of bankruptcy procedure.

2. If the parties mutually agree to withdraw the petition for commencement of bankruptcy procedure, then the people's court shall return such petition.

3. If the negotiation is unsuccessful or if by the expiry of the time limit for negotiation the parties failed to carry out the negotiation, then the people's court shall inform the person filing the petition about payment of the bankruptcy fee and advance payment of bankruptcy costs and accept jurisdiction over the petition for commencement of bankruptcy procedure in accordance with this Law.

4. The negotiation of the parties under this article must not be in contravention of the law on bankruptcy.

**Article 38** *Procedure for payment of bankruptcy fee and advance payment of bankruptcy costs*

1. Within three (3) working days from the date of receiving a valid petition for commencement of bankruptcy procedure, the people's court shall estimate the amount of advance payment of bankruptcy costs and inform the petitioner for commencement of the bankruptcy procedure in order to make the payment of the bankruptcy fee and the advance payment of bankruptcy costs.

If negotiation is requested, the notification shall be made to the petitioner for commencement of the bankruptcy procedure in order for payment of the bankruptcy fee and advance payment of bankruptcy costs in accordance with article 37.3 of this Law.

2. Within fifteen (15) days from the date of receiving the notification of payment of bankruptcy fee and advance payment of bankruptcy costs, the person who filed the petition for commencement of bankruptcy procedure must make the payment of the bankruptcy fee and the advance payment of bankruptcy costs as follows:

- (a) Paying the bankruptcy fee to the civil judicial enforcement office;
- (b) Making the advance payment of bankruptcy costs to the account opened by the people's court at a bank.

**Article 39** *Acceptance of jurisdiction over petition for commencement of bankruptcy procedure*

The people's court shall accept jurisdiction over a petition for commencement of bankruptcy procedure upon receiving the receipt for payment of bankruptcy fee and the receipt for advance payment of bankruptcy costs. If payment of bankruptcy fee or advance payment of bankruptcy costs is not required, the time of accepting jurisdiction shall be calculated from the date the people's court receives the valid petition for commencement of bankruptcy procedure.

**Article 40** *Notification of acceptance of jurisdiction over petition for commencement of bankruptcy procedure*

1. Within 3 working days from the date of accepting jurisdiction over a petition, the people's court must notify in writing the person filing the petition for commencement of bankruptcy procedure, the insolvent enterprise or cooperative, and any bodies or organisations currently resolving matters relevant to the insolvent enterprise or cooperative as supplied by the parties and the people's procuracy at the same level regarding acceptance of jurisdiction over the petition for commencement of bankruptcy procedure.

If the person filing the petition for commencement of bankruptcy procedure is the legal representative of the insolvent enterprise or cooperative, then the people's court must inform the creditors as supplied by the enterprise or cooperative.

2. If the person filing the petition is not the insolvent enterprise or cooperative, then within fifteen (15) days from the date of receiving notification from the people's court, the insolvent enterprise or cooperative must present papers and documents to the people's court in accordance with article 28.3 of this Law.

**Article 41** *Temporary suspension of resolving request for insolvent enterprise or cooperative's performance of an asset obligation*

Within five (5) working days from the date the people's court's accepts jurisdiction over a bankruptcy matter, the temporary suspension of the insolvent enterprise or cooperative's performance of asset obligation shall be as follows:

1. The civil judicial enforcement office must temporarily suspend civil judicial enforcement of assets to which the enterprise or cooperative is subject, except for any verdict and decision obliging the insolvent enterprise or cooperative to compensate for life, health and honour or to pay wages to employees. The temporary suspension shall comply with the law on civil judicial enforcement;

2. The people's court or the arbitrator must temporarily suspend the resolution of civil, business, commercial and labour matters related to an asset obligation to which the enterprise or cooperative is a

concerned party. The procedure for temporary suspension shall comply with the law on civil proceedings and the law on commercial arbitration.

The people's court must separate and temporarily suspend the resolution of the civil part of a criminal or administrative case or administrative case relevant to an asset obligation to which the enterprise or cooperative is a concerned party. The procedure for separating out and temporary suspension shall comply with the law on criminal proceedings or administrative proceedings;

3. Any competent authority or organisation shall temporarily suspend realization of secured assets of the enterprise or cooperative by secured creditors.

Secured assets which are subject to a risk of being destroyed or a considerable decrease in value shall be dealt with in accordance with clause 2 and clause 3 of Article 53 of this Law.

### CHAPTER III

#### Commencement of Bankruptcy Procedure

##### **Article 42** *Decision to commence or not to commence bankruptcy procedure*

1. Within thirty (30) days from the date of accepting jurisdiction over a petition for commencement of bankruptcy procedure, the judge must issue a decision to commence or not to commence the bankruptcy procedure, except for cases stipulated by Article 105 of this Law.

2. The judge shall make a decision to commence the bankruptcy procedure when an enterprise or cooperative is insolvent.

3. If necessary, prior to the decision to commence the bankruptcy procedure, the judge may convene a meeting attended by the person filing the petition for commencement of bankruptcy procedure, the owner of the enterprise or the lawful representative of the enterprise or cooperative subject to such petition, and related individuals and organisations in order to consider and inspect the grounds proving that the enterprise or cooperative is insolvent.

4. A decision to commence bankruptcy procedure must contain the following main contents:

(a) Full date;

(b) Name of the people's court; full name of the judge conducting the bankruptcy procedure;

(c) Date and number of acceptance of jurisdiction over the petition for commencement of bankruptcy procedure; name and address of person preparing the petition;

(d) Name and address of insolvent enterprise or cooperative;

(dd) Time and location of report made by creditors and legal effects of failure to make the report.

5. The people's court shall issue a decision not to commence the bankruptcy procedure if it finds that the enterprise or cooperative does not fall into the case stipulated by clause 2 of this article.

In such case, the person filing the petition for commencement of bankruptcy procedure receives a refund of the advance payment of bankruptcy costs; [and may] request the insolvent enterprise or cooperative discharge its asset obligation which was temporarily suspended in accordance with Article 41 of this Law.

6. A decision to commence or not to commence the bankruptcy procedure shall take effect as from the date of issuing the decision.

**Article 43** *Notification of decision to commence or not to commence bankruptcy procedure*

1. A people's court's decision to commence the bankruptcy procedure must be sent to the person filing the petition, to the insolvent enterprise or cooperative, creditors, the people's procuracy at the same level, the civil judicial enforcement office, the taxation authority and the business registration body of the locality where the head office of the enterprise or cooperative is located and must be posted on the National Business Registration Portal, the portal of the people's court and in 2 consecutive issues of a local newspaper of the locality where the head office of the insolvent enterprise or cooperative is located.

2. A people's court's decision not to commence the bankruptcy procedure must be sent to the person filing the petition, the enterprise or cooperative subject to the petition for commencement of the bankruptcy procedure and the people's procuracy at the same level.

3. The time limit for sending and notifying the decision to commence or not to commence the bankruptcy procedure is 3 working days from the date of issuing the decision by the people's court.

**Article 44** *Resolving request for review of and recommendation on decision to commence or not to commence bankruptcy procedure*

1. Within 7 working days from the date of receiving a decision to commence or not to commence the bankruptcy procedure, any participants in the bankruptcy procedure shall have the right to request review of and the people's procuracy at the same level shall have the right to appeal against, the decision to commence or not to commence the bankruptcy procedure.

2. Immediately after receiving the request for review or the appeal, the people's court which issued the decision to commence or not to commence the bankruptcy procedure shall send the file of the bankruptcy matter to the immediately higher people's court for resolution.

3. Within 3 working days from the date of receiving the file of the bankruptcy matter together with the request for review or the appeal, the immediately higher people's court shall appoint a group of three (3) judges to consider and resolve the request for review or the appeal and shall send the file of the bankruptcy matter to the people's procuracy at the same level.

4. Within five (5) working days from the date of receiving the file of the bankruptcy matter sent by the people's court, the people's procuracy at the same level must return it to the people's court.

5. Within five (5) working days from the date of receiving the file of the bankruptcy matter returned by the people's procuracy at the same level, the group of judges must hold a meeting to consider and resolve the request for review or the appeal.

6. The meeting of the group of judges is attended by the people's procuracy, and a secretary of the people's court prepares the meeting minutes. If necessary, other persons may be summoned to be further questioned about unclear issues.

7. The group of judges shall have the right to issue one of the following decisions:

(a) Sustaining the decision to commence or not to commence the bankruptcy procedure;

(b) Annuling the decision not to commence the bankruptcy procedure and tasking the people's court which made such decision with considering issuance of a decision to commence the bankruptcy procedure;

(c) Annuling the decision to commence the bankruptcy procedure and informing the people's court which made such decision and the participants in the bankruptcy procedure thereof.

8. The decision of the group of judges is final and enforceable.

9. The chief justice of the People's Supreme Court shall provide the working regulations for such group of judges which resolve requests for review of or appeals against decisions to commence or not to commence bankruptcy procedure.

**Article 45** *Appointment of asset management officer and asset management and liquidation enterprise*

1. Within 3 working days from the date of issuing a decision to commence the bankruptcy procedure, the judge shall be responsible to appoint an asset management officer or an asset management and liquidation enterprise.

2. Grounds for appointment of asset management officer or asset management and liquidation enterprise:

(a) The individual holds a practising certificate for asset management officer; the enterprise is an asset management and liquidation enterprise;

(b) Recommendation on appointment of an asset management officer or an asset management and liquidation enterprise made by the person filing the petition for commencement of bankruptcy procedure;

(c) [The proposed] asset management officer or asset management and liquidation enterprise has no interests related to the bankruptcy matter;

(d) The nature of resolving the petition for commencement of bankruptcy procedure;

(dd) [The proposed] asset management officer or asset management and liquidation enterprise is not being a relative of any participant in the bankruptcy procedure.

3. A written appointment of an asset management officer or asset management or liquidation enterprise must contain the following main contents:

- (a) Full date;
- (b) Name and address of creditors, and of insolvent enterprise or cooperative;
- (c) Name and address of the asset management officer or asset management and liquidation enterprise;
- (d) Summary of the contents of the petition for commencement of the bankruptcy procedure;
- (dd) Grounds for appointment of the asset management officer or asset management and liquidation enterprise;
- (e) Advance payment of the cost of the asset management officer or asset management and liquidation enterprise;
- (g) Specific duties and powers of the asset management officer or asset management and liquidation enterprise;
- (h) Signature of the judge and stamp of the people's court.

**Article 46** *Change of asset management officer or asset management and liquidation enterprise*

1. An asset management officer or asset management and liquidation enterprise may be subject to the judge's decision on replacement in one of the following cases:

- (a) Being in breach of obligations in accordance with this Law;
- (b) There are grounds proving the asset management officer or asset management and liquidation enterprise failed to be objective in performing the duties;
- (c) In a case of force majeure the asset management officer or asset management and liquidation enterprise failed to perform the duties.

2. A decision to replace the asset management officer or asset management and liquidation enterprise must be in writing, specifying the handling of the advance payment of the cost of the replaced asset management officer or asset management and liquidation enterprise and sent immediately to the asset management officer or asset management and liquidation enterprise and the participants in the bankruptcy procedure.

3. Within three (3) working days from the date of receiving a decision to replace the asset management officer or asset management and liquidation enterprise, the participants in the bankruptcy procedure, and the asset management officer or the asset management and liquidation enterprise shall have the right to make a request to the chief justice of the competent people's court for review of the decision.

4. Within three (3) working days from the date of receiving the request for review of the decision to replace the asset management officer or asset management and liquidation enterprise, the chief justice of the people's court shall consider and issue one of the following decisions:

(a) Disapproving the request for review of the decision to replace the asset management officer or asset management and liquidation enterprise;

(b) Annuling the decision to replace the asset management officer and asset management and liquidation enterprise.

5. The decision of the chief justice of the people's court as stipulated in clause 4 of this article is final.

6. In case of a change under sub-clauses (a) and (b) of clause 1 of this article, the asset management officer or the asset management and liquidation enterprise must make a full refund of the advance payment of its costs. In case of a change under sub-clause (c) of clause 1 of this article, the asset management officer or asset management and liquidation enterprise shall be entitled to a payment of its costs in proportion to the completed portion of the job.

7. Within 3 working days from the date of the decision on replacement, the replaced asset management officer or asset management and liquidation enterprise must hand over all completed work to the new asset management officer or asset management and liquidation enterprise.

8. The asset management officer or asset management and liquidation enterprise which is replaced in accordance with sub-clauses (a) and (b) of clause 1 of this article or which fails to make the handover in accordance with clause 7 of this article shall, depending of the nature and the extent of the breach, be subject to administrative penalty or prosecution for criminal liability and, if causing any loss must compensate for it in accordance with the law.

**Article 47** *Business operations of enterprise or cooperative subsequent to a decision to commence the bankruptcy procedure*

1. Subsequent to a decision to commence bankruptcy procedure, an enterprise or cooperative may still continue its business operations, but must be subject to the supervision of the judge and the asset management officer or asset management and liquidation enterprise.

2. The judge shall, if finding that the legal representative of the enterprise or cooperative is incapable of management or that the enterprise or cooperative shows an indication of breaching article 48.1 of this Law, shall issue a decision to replace the legal representative of the enterprise or cooperative as requested by the creditors' meeting or the asset management officer or asset management and liquidation enterprise.

**Article 48** *Prohibited operations of an enterprise or cooperative subsequent to a decision to commence the bankruptcy procedure*

1. Subsequent to a decision to commence the bankruptcy procedure, the enterprise or cooperative is prohibited from carrying out the following activities:

(a) To conceal, dispose of or donate any assets;

(b) To pay any unsecured debts except for the unsecured debts arising subsequent to the commencement of bankruptcy procedure and paying wages to employees of the enterprise or cooperative as stipulated by sub-clause (c) of article 49.1 of this Law;

(c) To abandon any right to claim a debt;

(d) To convert unsecured debts into debts secured or partly secured by the assets of the enterprise or cooperative.

2. Any transactions as set out in clause 1 of this article shall be invalid and dealt with in accordance with article 60 of this Law.

**Article 49** *Supervising operations of enterprise or cooperative subsequent to decision to commence bankruptcy procedure*

1. Subsequent to a decision to commence the bankruptcy procedure, the enterprise or cooperative must report to the asset management officer or asset management and liquidation enterprise prior to carrying out the following activities:

(a) Activities in connection with borrowing or a pledge, mortgage, guarantee, purchase, sale, assignment, leasing out of the assets; sale or conversion of the shares; transfer of the ownership rights in any asset;

(b) Termination of performance of an effective contract;

(c) Making payment for debts arising subsequent to the commencement of the bankruptcy procedure; paying wages to the employees of the enterprise or cooperative.

2. Forms of report shall include reports in person, by registered post, regular post, email, fax or telex.

3. Within three (3) working days from the date of receiving a report from the enterprise or cooperative, the asset management officer or asset management and liquidation enterprise shall be responsible to answer the enterprise or cooperative whether it may or may not carry out the activities as set out in clause 1 of this article and must be responsible for the answer. The asset management officer or asset management and liquidation enterprise must report to the judge on the contents of the answer.

4. The activities as set out in clause 1 of this article which are carried out without the consent of the asset management officer or asset management and liquidation enterprise shall be suspended with the original conditions to be reinstated and the consequences to be resolved in accordance with the law.

**Article 50** *Judicial authorisation in resolving bankruptcy*

1. In the course of resolving a bankruptcy, a people's court may give a decision on judicial authorisation in order for another people's court to recover the assets, seek testimonies of the participants in the bankruptcy procedure, make an on-site appraisal, carry out asset valuation or take other measures to collect documents and evidence related to the bankruptcy matter.

2. The decision on authorisation must specify the names and addresses of the participants in bankruptcy procedure related to the authorisation and the authorised specific tasks.



3. Any people's court which receives a decision on authorisation shall be responsible to carry out the authorised specific tasks within thirty (30) days from the date of receiving the decision on authorisation and must notify the results in writing to the people's court which issued the decision on authorisation; upon failure to perform the authorised tasks, a written notification specifying the reasons for such failure must be given to the people's court which issued the decision on authorisation.

## CHAPTER IV

### Asset Obligations

#### **Article 51** *Determining value of asset obligations*

1. The asset obligations of an enterprise or cooperative which were established prior to a people's court's decision to commence the bankruptcy procedure shall be determined at the time of issuing the decision to commence the bankruptcy procedure.
2. The asset obligations of an enterprise or cooperative which are established subsequent to a people's court's decision to commence the bankruptcy procedure shall be determined at the time of issuing the decision to declare bankruptcy.
3. If the asset obligations as set out in clauses 1 and 2 of this article are not monetary ones, the people's court shall determine their monetary value.

#### **Article 52** *Determining interest on debts*

1. The calculation of interest after the date of issuance of a decision to commence bankruptcy procedure on any debts shall continue in accordance with agreements but payment of the interest shall be temporarily suspended.

If a judge makes a decision to suspend the conduct of bankruptcy procedure in accordance with Article 86 of this Law or to suspend the procedure for recovery of the business operations in accordance with sub-clause (a) of article 95.1 of this Law, the suspension of payment of interest shall end and the parties shall resume payment of interest in accordance with the agreements.

2. As for new debts arising between the commencement of the bankruptcy procedure and the date of declaring the enterprise or cooperative bankrupt, the interest on such debts shall be determined as agreed but not contrary to the law.
3. The calculation of interest on a debt must not continue after the date of the decision declaring the enterprise or cooperative bankrupt.

#### **Article 53** *Settlement of secured loans*

1. The asset management officer or asset management and liquidation enterprise shall, after commencement of the bankruptcy procedure, make a recommendation to the judge on the settlement

of secured loans temporarily suspended in accordance with article 41.3 of this Law and the judge shall consider and settle them specifically as follows:

(a) If the secured assets are used to carry out procedures for business recovery [rehabilitation], the handling of the secured assets shall comply with the resolutions of the creditors' meeting;

(b) If the procedure for business recovery are not carried out or the secured assets are not required for carrying out the procedures for business recovery, then settlement shall be in line with the time stated in the contract in respect to a secured contract which has become due. As for a secured contract which has not become due, prior to declaring the enterprise or cooperative bankrupt, the people's court shall suspend the contract and settle the secured loan. The settlement of secured loans shall comply with clause 3 of this article.

2. If the secured assets are subject to risk of destruction or considerable decrease in value, the asset management officer or asset management and liquidation enterprise shall recommend the judge permit the immediate settlement of such secured asset in accordance with clause 3 of this article.

3. The settlement of the secured assets under sub-clause (b) of clause 1 and clause 2 of this article shall be carried out as follows:

(a) Secured loans which were established prior to the people's court's acceptance of jurisdiction over the petition for commencement of bankruptcy procedure shall be repaid with those secured assets;

(b) If the value of the secured assets is not enough to repay the debt amount, the unpaid part of the debt shall be repaid in the course of liquidating the assets of the enterprise or cooperative; if the value of the secured asset is more than the debt amount, the difference shall be incorporated into the value of the assets of the enterprise or cooperative.

#### **Article 54** *Order of distribution of assets*

1. Where a judge issues a decision declaring bankruptcy, the assets of the enterprise or cooperative shall be distributed in the following order:

(a) Bankruptcy costs;

(b) Unpaid wages, severance allowances, social insurance and health insurance of the employees and other benefits in accordance with the executed labour contracts and collective labour agreement;

(c) Debts arising subsequent to the commencement of the bankruptcy procedure which serve the purpose of business recovery of the enterprise or cooperative;

(d) Financial obligations to the State; unsecured debts payable to the creditors named in the list of creditors; secured debts which remain unpaid due to the value of the assets being insufficient to repay them.

2. If there is a residual value of the assets of the enterprise or cooperative after full payment of the items stipulated in clause 1 of this article, such value shall belong to:

(a) The members of the co-operative or member cooperative;

- (b) The owner of the private enterprise;
  - (c) The owner of the single member limited liability company;
  - (d) The members of the multiple member limited liability company or the shareholders of the shareholding company;
  - (dd) The partners of the partnership.
3. If the value of the assets is insufficient to make the payments in accordance with clause 1 of this article, each entity having the same priority shall be paid the corresponding proportion of his or her debt.

**Article 55** *Asset obligations in case of joint or guarantee obligations*

1. Where a number of enterprises or co-operatives are jointly liable for a single debt and one or all of such enterprises and co-operatives have become insolvent, the creditor shall have the right to require any one of such enterprises or co-operatives to repay the debt due to the creditor in accordance with law.
2. Where a guarantor has become insolvent, the guarantee shall be resolved as follows:
  - (a) If the guarantee obligation arises, the guarantor must perform such guarantee obligation. If the guarantor fails to make full payment to the extent of the guarantee, the beneficiary shall have the right to require the principal to repay the deficit;
  - (b) If the guarantee obligation has not yet arisen, the principal must replace it with another security, unless otherwise agreed by the principal and the beneficiary.
3. If the principal or both the guarantor and the principal become insolvent, the guarantor must bear the liability in lieu of the principal in accordance with the law.

**Article 56** *Return of leased or borrowed assets when enterprise or co-operative is declared bankrupt*

1. Within 10 working days from the date of receiving a decision declaring bankruptcy, the owner of the assets leased or borrowed by the enterprise or cooperative for use in business operations must present papers proving the ownership and lease or lending contracts to the civil judicial enforcement office in order to collect his or her assets.
2. If an enterprise or cooperative declared bankrupt has already paid the rent but the term of the lease has not yet expired, the lessor may only collect the asset after repaying the sum representing the remaining part of the term of the lease in order for the civil judicial enforcement office to incorporate it into the volume of assets of such enterprise or cooperative.
3. If an enterprise or cooperative declared bankrupt has assigned a leased or borrowed asset to another person and failed to recover it, the lessor or lender shall have the right to claim compensation for such asset in the same manner as if it were an unsecured debt.

**Article 57** *Return of assets received as security*

An insolvent enterprise or cooperative shall only return the assets received as security to individuals or organisations which handed them over to the enterprise or cooperative to secure the performance of their obligations to the enterprise or cooperative before the people's court commenced the bankruptcy procedure if such individuals or organisations have performed the obligations to the enterprise or cooperative.

**Article 58** *Recovery of goods sold*

Where a seller has dispatched goods sold to a purchaser being an insolvent enterprise or cooperative but the payment has not yet been made and the purchaser has not yet received the goods, the seller shall be permitted to recover such goods. If the insolvent enterprise or cooperative has received such goods and has been unable to return them, such seller shall become an unsecured creditor.

## CHAPTER V

### Measures for Preservation of Assets

**Article 59** *Transactions which shall be deemed invalid*

1. A transaction of an insolvent enterprise or cooperative which was conducted within the six (6) months prior to the date when the people's court issued a decision to commence the bankruptcy procedure shall be deemed invalid if it falls into one of the following cases:

- (a) The transaction is related to asset assignment which is not at market price;
- (b) Conversion of an unsecured debt into a debt secured or partly secured by the assets of the enterprise or cooperative;
- (c) Payment or setoff which benefits a creditor in respect of a debt that has not yet become due or with a sum that is larger than a debt which has become due;
- (d) Donation of the assets;
- (dd) The transaction is outside the purpose of the business operations of the enterprise or cooperative;
- (e) Other transactions for the purpose of disposing of the assets of the enterprise or co-operative.

2. A transaction of an insolvent enterprise or cooperative as set out in clause 1 of this article which is conducted with related persons within the eighteen (18) months prior to the date when the people's court issued a decision to commence the bankruptcy procedure shall be deemed invalid.

3. The related persons set out in clause 2 of this article include:

- (a) With regard to a subsidiary company: the parent company, a manager of the parent company or any person who has the power to appoint such managers.

- (b) With regard to a parent company: any subsidiary company; with regard to a cooperative: any enterprise established by the cooperative
  - (c) Persons or a group of persons capable of controlling the decision making of and operations of an enterprise or cooperative via its management bodies;
  - (d) With regard to an enterprise or cooperative: a manager of the enterprise or cooperative;
  - (dd) The spouse, parent or foster parent, child, adopted child, or sibling of a manager of an enterprise or cooperative, or of a member or shareholder who holds the controlling capital contribution or shares;
  - (e) Any individual authorised to represent those described in sub-clauses (a), (b), (c), (d) and (dd), of this clause;
  - (g) Any enterprise in which any of the persons described in sub-clauses (a), (b), (c), (d), (dd), (e) and (h) of this clause hold interests to the extent that they control the decision-making process of the management bodies of the enterprise;
  - (h) Any group of persons who agree to orchestrate together in order to take over a proportion of capital contribution, shares, or interests in the company or in order to control the decision- making process thereof.
4. The asset management officer or asset management and liquidation enterprise are responsible to consider any transactions of an insolvent enterprise or cooperative and, if finding any transactions as set out in clause 1 and clause 2 of this article, to request the people's court to declare them invalid.

**Article 60** *Declaring a transaction invalid*

1. Within ten (10) working days from the date when an asset management officer, asset management and liquidation enterprise or a participant in the bankruptcy procedure requests a declaration of invalid transaction or the people's court finds a transaction is covered by clause 1 and clause 2 of article 59 of this Law, the people's court shall issue one of the following decisions:
- (a) Rejecting the request made by the asset management officer, the asset management and liquidation enterprise or the participant in the bankruptcy procedure;
  - (b) Declaring the transaction invalid, annulling security measures and resolving the consequences of the invalid transaction in accordance with the law.
2. A decision to declare a transaction invalid shall take effect from the date of its issuance.
3. Within five (5) working days from the date of receiving a decision declaring a transaction invalid, the insolvent enterprise or cooperative or the party entering into the transaction together with the enterprise or cooperative shall have the right to make a written request to the chief justice of the people's court for review of the decision declaring the transaction invalid.
4. Within seven (7) working days from the date of receiving the request for review of the decision declaring the transaction invalid, the chief justice of the people's court which issued the decision must issue one of the following decisions:

- (a) Rejecting the request for review of the decision to declare the transaction invalid;
- (b) Annuling the decision declaring the transaction invalid. A dispute, if any, shall be resolved in accordance with Chapter X of this Law.

5. Within seven (7) working days from the date of receiving a decision as set out in clause 1(b) of this article, the civil judicial enforcement office shall be responsible to take the initiative to organise implementation of the decision in accordance with the law on civil judicial enforcement.

**Article 61** *Suspension or temporary suspension of performance of effective contract*

1. Within five (5) working days from the date of the people's court's acceptance of jurisdiction over a petition for commencement of bankruptcy procedure, if finding that the performance of a contract that is effective and is being performed or has not yet been performed may cause disadvantage to the enterprise or cooperative, then a creditor or the insolvent enterprise or cooperative shall have the right to request the people's court to issue a decision to temporarily suspend the performance of the contract, except for settlement of secured loans in accordance with Article 53 of this Law.

2. The written request for a decision of the people's court to temporarily suspend the performance of the contract as set out in clause 1 of this article must contain the following main particulars:

- (a) Full date;
- (b) Name and address of the person making the request;
- (c) Number and title of the contract; signing date of the contract;
- (d) Party entering into the contract with the enterprise or cooperative;
- (dd) Specific contents of the contract;
- (e) Grounds for requesting temporary suspension of the performance of the contract.

3. Within five (5) working days from the date of receiving the written request, if approving it, the people's court shall issue a decision temporarily suspending the performance of the contract; if the request is not approved, the person making it shall be notified thereof in writing.

4. Within five (5) working days from the date when the people's court issues the decision to commence the bankruptcy procedure, the people's court must review the temporarily suspended contracts as set out in clause 1 of this article in order to issue one of the following decisions:

(a) Continuing the performance of the contract where such performance that is currently effective and is being performed will cause no disadvantage to the enterprise or cooperative or where, if performed, it will cause no disadvantage to the enterprise or cooperative;

(b) Suspending the performance of the contract and resolving the consequences in accordance with Article 62 of this Law.

5. If the people's court decides not to commence the bankruptcy procedure, the people's court which decided to temporarily suspend performance of the contract in accordance with clause 1 of this article shall decide to annul the decision on temporary suspension.

**Article 62** *Payment or compensation for loss upon suspension of performance of contracts*

1. Upon suspension of performance of a contract, in the case where any assets which the enterprise or co-operative which has become insolvent received from the contract still exist in the parcel of assets of such enterprise or co-operative, the party contracting with such enterprise or co-operative shall have the right to demand return of such assets and pay any amounts received from such enterprise or co-operative; if such assets no longer exist, the contracting party shall have the same rights as an unsecured creditor in respect of any unpaid amount.

2. In the case where suspension of performance of a contract causes any loss to the party contracting with the enterprise or co-operative, the contracting party shall have the same rights as an unsecured creditor regarding such loss.

**Article 63** *Clearing obligations*

1. After the people's court has decided to commence bankruptcy procedures, creditors and an enterprise or co-operative which has become insolvent may conduct clearance of obligations in respect of contracts which were established prior to the decision to commence bankruptcy procedures.

2. The clearance of obligations in accordance with clause 1 of this article must be approved by the asset management officer or asset management and liquidation enterprise. The asset management officer or asset management and liquidation enterprise shall report to the judge on the clearance of obligations.

3. Methods of clearance of obligations:

(a) Parties with corresponding [equal] asset obligations shall not be required to discharge their obligations to each other and the obligations shall be deemed to have been terminated, unless otherwise provided by law;

(b) In the case where the parties have unequal asset obligations but the difference of the greater asset value belongs to the enterprise or co-operative, the party contracting with the enterprise or co-operative must pay the asset value difference in order for it to be incorporated into the parcel of assets of the enterprise or co-operative.

(c) In the case where the parties have unequal asset obligations but the difference of the greater asset value belongs to the party contracting with the enterprise or co-operative, such party shall become an unsecured creditor in respect of the asset value difference.

**Article 64** *Assets of enterprise or co-operative which has become insolvent*

1. The assets of an enterprise or co-operative which has become insolvent shall comprise:

- (a) Assets and rights to assets which the enterprise or co-operative had at the time the people's court decided to commence bankruptcy procedures;
  - (b) Assets and rights to assets acquired after the people's court decided to commence bankruptcy procedures;
  - (c) Value of secured assets exceeding the amount of the secured debt which must be paid to a secured creditor by the enterprise or co-operative;
  - (d) Value of any land use rights of the enterprise or co-operative as determined in accordance with the law on land;
  - (dd) Assets recovered from any assets concealed or disposed of by the enterprise or co-operative;
  - (e) Assets and rights to assets acquired through recovery from invalid transactions;
  - (g) Other assets in accordance with [as stipulated by] law.
2. The assets of a private enterprise or partnership which has become insolvent shall comprise:
- (a) The assets stipulated in clause 1 of this article;
  - (b) The assets of the owner of the private enterprise or partners in the partnership not directly used in business activities; if the owner of a private enterprise or the partners in a partnership have assets with common ownership, the share of the owner of the private enterprise or of the partners in a partnership shall be distributed in accordance with the provisions of civil law and [other] relevant laws.
3. In the case where a co-operative is declared bankrupt, assets which are not distributed shall be dealt with in accordance with the law on co-operatives.

**Article 65** *Inventory of assets of enterprise or co-operative which has become insolvent*

1. Within a time-limit of thirty (30) days from the date of receipt of the decision to commence bankruptcy procedures, the enterprise or co-operative which has become insolvent must conduct an inventory of assets and determine the value of such assets; where necessary, there must be a written request to the judge for an extension, but an extension shall not be granted on more than two occasions, and each extension shall not exceed thirty (30) days. The valuation of the assets of the enterprise or co-operative must be carried out in accordance with law.
2. Where the legal representative of the enterprise or co-operative is absent, the person appointed by the asset management officer or asset management and liquidation enterprise to act as the representative of the enterprise or co-operative shall conduct the inventory and valuation of assets of the enterprise or co-operative.
3. If the inventory and valuation of assets by the enterprise or co-operative as stipulated in clause 1 of this article is found to be inaccurate, the people's court shall request the asset management officer or asset management and liquidation enterprise to hold a further inventory and revaluation of a part or all of the assets of the enterprise or co-operative. The value of assets shall be determined and valued in accordance with market values at the time of the inventory.



4. Where the representative of the enterprise or co-operative and other people do not co-operate in conduct of the inventory of assets or deliberately falsify the inventory of assets, they shall be dealt with in accordance with law.

**Article 66** *Submission of notices requesting payment of debts*

1. Within a time-limit of thirty (30) days from the date of the decision of the people's court to commence bankruptcy procedures, creditors must submit notices requesting payment of debts to the asset management officer or asset management and liquidation enterprise.

2. A notice requesting payment of debts must include the following items:

(a) Name, address, nationality and identity number of the creditor or of his or her representative;

(b) Total debts payable, including each debt, the amount of due debts and the amount of interest due but unpaid; the amount of undue debts; the amount of secured debts and security interests; the amount of unsecured debts payable by the enterprise or co-operative; and contractual damages (if any).

3. A notice requesting payment of debts shall be accompanied by data and evidence proving such debts. A notice requesting payment of debts must be signed by the creditor or his or her legal representative.

4. If there is an event of *force majeure* or an objective impediment, the duration of such *force majeure* or objective impediment shall not be included in the time-limit stipulated in clause 1 of this article.

**Article 67** *Preparation of list of creditors*

1. Within a time-limit of fifteen (15) days from the date of expiry for submission of notices requesting payment of debts, the asset management officer or asset management and liquidation enterprise must prepare a list of creditors, collect documents relating to the debts and publicly post the list of creditors. The list of creditors must specify names, addresses, nationalities and identity numbers of creditors or their representatives, and the amount of the debt owed to each creditor categorized into secured and unsecured debts and due and undue debts.

2. The list of creditors must be publicly posted [listed] at the head office of the people's court conducting the bankruptcy procedures, at the main headquarters of the enterprise or co-operative and on the portal for enterprise registration and the portal of the people's court, and must be sent to creditors who submitted notices requesting payment of debts within ten (10) working days from the date of posting [listing].

3. Within a time-limit of five (5) working days from the date of expiry for posting, creditors and the enterprise or co-operative which has become insolvent shall have the right to request the judge to review the list of creditors. In the case of *force majeure* or an objective impediment, the duration of such *force majeure* or objective impediment shall not be included in the time-limit stipulated in this clause.

4. Within a time-limit of three (3) working days from the date of receipt of a petition for review, the judge must consider and resolve the petition; and if the judge considers there are grounds for the petition, he or she shall make amendments of or additions to the list of creditors.

**Article 68** *Preparation of list of debtors*

1. The asset management officer or asset management and liquidation enterprise must prepare a list of debtors of the enterprise or co-operative which has become insolvent. The list must specify names, addresses, nationalities and identity numbers of debtors or their representatives, and the amount of the debt owed by each debtor categorized into secured and unsecured debts and due and undue debts.
2. Within a time-limit of forty-five (45) days from the date of the decision to commence bankruptcy procedures, the list of debtors must be publicly posted [listed] at the head office of the people's court conducting the bankruptcy procedures and at the main headquarters of the enterprise or co-operative, and must be sent to debtors for ten (10) working days from the date of posting [listing].
3. Within a time-limit of five (5) working days from the date of expiry for posting, debtors and the enterprise or co-operative which has become insolvent shall have the right to request the judge to review the list of debtors.
4. Within a time-limit of three (3) working days from the date of receipt of a petition for review, the judge must consider and resolve the petition; and if the judge considers there are grounds for the petition, he or she shall make amendments of or additions to the list of debtors.

**Article 69** *Registration of secured transactions by enterprise or co-operative which has become insolvent*

If an enterprise or co-operative which has become insolvent lends to another person assets for which secured transactions must be registered in accordance with law but have not been registered, the enterprise or co-operative must immediately make such registration; where the enterprise or co-operative does not do so, the asset management officer or asset management and liquidation enterprise must register such secured transactions.

**Article 70** *Imposition of temporary emergency measures*

1. In the course of resolving a petition to commence bankruptcy procedures, any person having rights and obligations to file a petition in accordance with article 5 of this Law, the asset management officer or asset management and liquidation enterprise shall have the right to request the people's court having jurisdiction to conduct bankruptcy procedures to issue a decision imposing one or more of the following temporary emergency measures in order to preserve the assets of the enterprise or co-operative which has become insolvent and to ensure the lawful rights and interests of employees:
  - (a) Permitting the sale of perishable goods, of goods nearing the end of their use-by-date, or of goods which may be difficult to sell unless sold at the appropriate time; permitting the harvest or sale of crops or other products or goods;
  - (b) Attachment and sealing up of assets of the enterprise or co-operative;
  - (c) Freezing bank accounts of the enterprise or co-operative; freezing assets at a depository;
  - (d) Sealing up of stores and funds, seizure and administration of accounting books and relating data of the enterprise or co-operative;

- (dd) Prohibiting the transfer of property rights in respect of the assets of the enterprise or co-operative which has become insolvent;
  - (e) Prohibiting alteration of the status quo of the assets of the enterprise or co-operative which has become insolvent;
  - (g) Prohibiting performance or ordering compulsory performance of a number of specified acts by the enterprise or co-operative or by other related individuals or organizations;
  - (h) Compelling advance payment of wages, salaries, compensation or allowances for occupational accidents or occupational diseases by employers to employees;
  - (i) Other temporary emergency measures in accordance with law.
2. Any person requesting imposition of temporary emergency measures must send a written request to the people's court having jurisdiction. The written request for imposition of temporary emergency measures must include the following items:
- (a) Date, month and year;
  - (b) Name and address of the person requesting imposition of temporary emergency measures;
  - (c) Name and address of the person upon whom the imposition of temporary emergency measures is requested;
  - (d) Reasons for imposition of temporary emergency measures;
- (dd) Temporary emergency measures required to be imposed and specific requirements.

Depending on the request for imposition of temporary emergency measures, the person making such request must provide evidence to the people's court to prove the necessity for imposition of such temporary emergency measures.

3. Procedures for imposition, change or cancellation of temporary emergency measures, resolution of requests for reconsideration of imposition, change or cancellation of temporary emergency measures and implementation of decisions on imposition, change or cancellation of temporary emergency measures shall be in compliance with the provisions of this Law, the laws on civil procedures and on execution of civil judgments.

4. The People's Supreme Court shall provide guidelines for implementation of this article.

**Article 71** *Dealing with temporary suspension of execution of civil judgments or of resolution of cases*

1. If the people's court issues a decision to not commence bankruptcy procedures, the people's court, arbitrator or civil judgment enforcement office which issued a decision on temporary suspension in accordance with article 41 of this Law shall issue a decision to revoke such decision on temporary suspension.

2. If the people's court issues a decision to commence bankruptcy procedures, the people's court, arbitrator or civil judgment enforcement office which issued a decision on temporary suspension in accordance with article 41 of this Law must issue a decision on suspension and transfer the file on the case to the people's court which is conducting the bankruptcy procedures for resolution.

3. If the people's court issues a decision on suspension of conduct of bankruptcy procedures in accordance with article 86.1 of this Law and on suspension of the procedures on recovery of business operations in accordance with article 951(a) of this Law, the people's court, arbitrator or civil judgment enforcement office shall issue a decision to revoke the decision on suspension stipulated in clause 2 of this article and resolve the case in accordance with law.

**Article 72** *Dealing with suspension of execution of civil judgments or of resolution of cases*

1. In the case of suspension of execution of judgments in accordance with article 71.2 of this Law, the people's court which is conducting the bankruptcy procedures shall, depending on the specific circumstances, resolve as follows:

(a) If a judgment or decision of the people's court has been legally effective and there is no decision on attachment of assets of the enterprise or co-operative as security for execution of such judgment, the judgment creditor shall be paid in the same manner as an unsecured creditor;

(b) If a judgment or decision of the people's court has been legally effective and there is a decision on attachment of assets of the enterprise or co-operative as security for execution of such judgment, the judgment creditor shall be paid in the same manner as a secured creditor.

2. In the case of suspension of resolution of cases in accordance with article 71.2 of this Law, immediately after receipt of the file on the case from the people's court which issued the decision to suspend resolution of the case, the people's court which is conducting the bankruptcy procedures must consider and make a decision on any asset obligation which the enterprise or co-operative which has become insolvent must discharge or on any asset obligation which another party must discharge in favour of the enterprise or co-operative as follows:

(a) If it is the insolvent enterprise or co-operative which must discharge an asset obligation to a party, the party in favour of which the enterprise or co-operative must discharge the asset obligation shall have the right to request payment from the parcel of assets of the enterprise or co-operative in the same manner as a creditor;

(b) If a party must discharge an asset obligation to the insolvent enterprise or co-operative, such party must pay the enterprise or co-operative the equivalent value of such asset obligation.

**Article 73** *Obligations of banks where enterprise or co-operative has account*

As from the date when the people's court issues a decision declaring that an enterprise or co-operative is bankrupt, any bank where the enterprise or co-operative which is declared bankrupt has an account shall be strictly prohibited from paying any debts of such enterprise or co-operative, unless a written consent is obtained from the people's court or civil judgment enforcement office.

**Article 74** *Obligations of employees*

As from the date when the people's court issues a decision to commence bankruptcy procedures, employees shall be obliged to protect the assets of the enterprise or co-operative; and must not take any action aimed at concealing or disposing of the assets of the enterprise or co-operative.

## CHAPTER VI

### Meeting of Creditors

#### **Article 75** *Convening and sending notices of meeting of creditors*

1. The judge must convene a meeting of creditors within a time-limit of twenty (20) days from the date of completion of the inventory of assets in the case where the conduct of the inventory of assets is completed after finalization of the list of creditors or from the date of finalization of the list of creditors in the case where the conduct of the inventory of assets is completed prior to finalization of the list of creditors, unless a meeting of creditors is not required to be held in accordance with article 105 of this Law.
2. Notice of the meeting of creditors and other relevant documents must be sent to all parties with the right to participate in the meeting of creditors and to those with the obligation to participate in the meeting of creditors as stipulated in articles 77 and 78 of this Law no later than fifteen (15) days prior to the commencement of the meeting. Notice of the meeting of creditors must specify the time, venue, agenda and contents of the meeting of creditors.
3. Notice of the meeting of creditors and documents shall be delivered by hand or sent by registered or non-registered mail, fax, telex or email or by other means provided that the sending is recorded.

#### **Article 76** *Principles of conduct of meeting of creditors*

1. Respect for agreements among participants in the bankruptcy procedures if such agreements neither violate legal prohibitions nor contravene social ethics.
2. Equality in rights and obligations of participants in the bankruptcy procedures.
3. Publicity in the conduct of the meeting of creditors.

#### **Article 77** *Right to participate in meeting of creditors*

The following parties have the right to participate in the meeting of creditors:

1. Creditors named on the list of creditors. A creditor may appoint in writing a proxy to attend the meeting on its behalf and the proxy shall have the same rights and obligations as the creditor.
2. A representative of employees and a union representative who has been authorized by employees; in this case, the representative of employees and the union representative shall have the same rights and obligations as a creditor.

3. A guarantor, after it has paid a debt on behalf of the enterprise or co-operative which has become insolvent; in this case, the guarantor shall become an unsecured creditor.

**Article 78** *Obligation to participate in meeting of creditors*

1. Any petitioner requesting commencement of bankruptcy procedures as stipulated in article 5 of this Law and the owner of the enterprise or the legal representative of the enterprise or co-operative shall be obliged to participate in the meeting of creditors; if such persons are unable to participate, they must appoint in writing proxies to participate in the meeting on their behalf and the proxies shall have the same rights and obligations as their principals.

2. Where the representative of the insolvent enterprise or co-operative is deliberately absent without a legitimate reason, the asset management officer or asset management and liquidation enterprise shall file a written request at the people's court to deal with the case in accordance with law.

**Article 79** *Conditions for validity of meeting of creditors*

1. The number of creditors representing at least fifty-one (51) per cent of the total unsecured debts attend the meeting.

Any creditor who does not attend the meeting of creditors but has sent to the judge his or her written opinions on the contents stipulated in article 83.1 of this Law prior to the date of the meeting shall be deemed attending the meeting.

2. The asset management officer or asset management and liquidation enterprise assigned to resolve the petition for commencement of bankruptcy procedures must attend the meeting of creditors.

**Article 80** *Adjournment of meeting of creditors*

1. A meeting of creditors shall be adjourned if the conditions stipulated in article 79 of this Law are not satisfied; if a meeting of creditors is adjourned, the judge shall prepare minutes and record opinions of participants in the meeting of creditors. The judge must immediately notify the adjournment of the meeting of creditors to participants in the bankruptcy procedures on the day the meeting is adjourned.

2. Within a time-limit of thirty (30) days from the date of adjournment of the meeting of creditors, the judge must reconvene the meeting of creditors.

3. If a meeting of creditors which is reconvened in accordance with clause 2 of this article still fails to satisfy the conditions stipulated in article 79 of this Law, the judge shall prepare minutes and a decision declaring bankruptcy.

**Article 81** *Agenda and proceedings of meeting of creditors*

1. A meeting of creditors shall be conducted as follows:

(a) A judge shall be assigned to be responsible for commencing the meeting of creditors;

(b) The meeting of creditors shall vote to pass the appointment of the meeting secretary at the proposal of the asset management officer or asset management and liquidation enterprise in order to prepare the meeting minutes;

(c) The asset management officer or asset management and liquidation enterprise shall report on the presence and absence of participants in the meeting of creditors in accordance with notices of the meeting issued by the people's court and reasons for their absence and shall check the personal identity papers of participants in the meeting;

(d) The judge shall inform the meeting of creditors of participants in such meeting and contents of resolution of the petition for commencement of bankruptcy procedures;

(dd) The asset management officer or asset management and liquidation enterprise shall report to the meeting of creditors on the business status and on the financial position of the insolvent enterprise or co-operative; and on the results of the inventory of assets, list of creditors, list of debtors and other items he or she considers necessary;

(e) The owner of the enterprise or the legal representative of the enterprise or co-operative shall present his or her opinion on the items on which the asset management officer or asset management and liquidation enterprise has reported to the meeting of creditors and shall propose a plan and solution for restructuring business operations and on the ability and time- frame for payment of debts.

(g) Creditors or their legal representatives shall present specific issues required to be resolved, and reasons, purposes and grounds for their petitions for resolution of bankruptcy;

(h) Parties concerned or their legal representatives shall present their opinions on issues relating to their rights and obligations in resolution of the petition for commencement of bankruptcy procedures;

(i) Witnesses shall present their opinions; assessors or representatives of price appraisal agencies shall present assessment or valuation results; and persons implementing other judicial assistance measures shall explain unclear or contradictory issues;

(k) The asset management officer or asset management and liquidation enterprise shall publicize written opinions, documents and evidence provided by those who are absent from the meeting, if any;

(l) The meeting of creditors shall debate the items on which the asset management officer or asset management and liquidation enterprise has reported and the opinions presented by participants in the meeting of creditors;

(m) The asset management officer or asset management and liquidation enterprise and participants in the meeting of creditors shall have the right to request the judge to issue a decision on behalf of the legal representative of the insolvent enterprise or co-operative;

(n) Creditors shall have the right to establish a representative board of creditors.

2. A resolution of a meeting of creditors shall be passed if it is approved by more than half of the total number of unsecured creditors present and representing at least 65% in value of the unsecured debts. The resolution of the meeting of creditors shall be binding on all creditors.

**Article 82** *Representative board of creditors*

1. A representative board of creditors shall be composed of between 3 and 5 members who are elected by creditors at the meeting of creditors, including a chairperson, a vice chairperson and member(s).
2. The representative board of creditors shall, on behalf of creditors, supervise the implementation of the resolutions of the meeting of creditors and request the asset management officer or asset management and liquidation enterprise to implement the resolutions of the meeting of creditors. If the asset management officer or asset management and liquidation enterprise fail to carry out such request, the representative board of creditors shall have the right to report such failure in writing to the judge responsible for resolution of bankruptcy.

**Article 83** *Resolutions of meeting of creditors*

1. The meeting of creditors shall have the right to issue a resolution containing one of the following conclusions:
  - (a) Requesting suspension of resolution of a petition for commencement of bankruptcy procedures if falling into the categories stipulated in article 86.1 of this Law;
  - (b) Requesting application of measures to recover business operations of the enterprise or co-operative;
  - (c) Requesting declaration of bankruptcy of the enterprise or co-operative.
2. A resolution of the meeting of creditors must contain the following main particulars:
  - (a) Full date;
  - (b) Name of the asset management officer or asset management and liquidation enterprise;
  - (c) Name and address of the petitioner for the commencement of bankruptcy procedures;
  - (d) Name and address of the enterprise or co-operative against which an application to commence bankruptcy procedures has been made;
  - (dd) Names and addresses of parties concerned;
  - (e) Opinions of participants in the meeting of creditors;
  - (g) Opinions of the asset management officer or asset management and liquidation enterprise regarding the requests of participants in the meeting of creditors;
  - (h) Conclusions made at the meeting of creditors and voting results.



3. A resolution of the meeting of creditors must contain signatures of the judge, asset management officer or representative of the asset management and liquidation enterprise and be announced at the meeting of creditors.

4. If the meeting of creditors fails to approve a resolution in accordance with article 81.2 of this Law, the people's court shall declare the enterprise or co-operative bankrupt.

**Article 84** *Sending of resolutions of meeting of creditors*

Within three (3) working days from the date of the meeting of creditors, the people's court shall send the resolution of the meeting of creditors to the people's procuracy at the same level and to persons who have the right or obligation to participate in the meeting of creditors as stipulated in articles 77 and article 78 of this Law.

**Article 85** *Request and proposal for review of resolutions of meeting of creditors and resolution of such request and proposal*

1. If disagreeing with a resolution of the meeting of creditors, within five (5) working days upon receipt of the resolution of the meeting of creditors, a person having the right or obligation to attend the meeting of creditors as stipulated in article 77 and article 78 of this Law shall have the right to file a written request, and the people's procuracy at the same level shall have the right to make a proposal, to the chief judge of the people's court resolving the bankruptcy case to review the resolution of the meeting of creditors.

2. A written request or proposal shall contain the following main particulars:

- (a) Full date;
- (b) Name and address of the requester or the procuracy making the proposal;
- (c) Contents of the request or proposal.

3. Within ten (10) working days after receipt of the written request or proposal, the chief justice of the people's court resolving the bankruptcy case shall consider and issue either of the following decisions:

- (a) To reject the request or proposal;
- (b) To re-organize the meeting of creditors.

4. Within three (3) working days after the date of such decision, the decision resolving the request or proposal shall be sent to the people's procuracy at the same level and to persons having the right or obligation to attend the meeting of creditors as stipulated in articles 77 and article 78 of this Law.

5. The decision on resolution as stipulated in clause 3 of this article shall be the final decision.

**Article 86** *Suspension of conduct of bankruptcy procedures*

1. During the period from the date on which the people's court issues a decision to commence bankruptcy procedures to the date prior to issuance of a decision declaring that an enterprise or co-operative is

bankrupt, if the enterprise or co-operative does not become insolvent, the people's court shall issue a decision to suspend the conduct of the bankruptcy procedures.

The enterprise or co-operative must refund advance payment of bankruptcy expenses to the petitioner for commencement of bankruptcy procedures, unless the petitioner breaches article 19.4 of this Law.

2. A decision on suspension of conduct of bankruptcy procedures must be served on persons who were notified of the decision on commencement of bankruptcy procedures as stipulated in article 43.1 of this Law within three (3) working days from the date of such decision.

Within fifteen (15) days after receipt of such decision, participants in the bankruptcy procedures shall have the right to request for review of, and the people's procuracy at the same level shall have the right to make proposals to the chief judge of the people's court resolving the bankruptcy procedures about, the decision on suspension of conduct of bankruptcy procedures.

3. Within three (3) working days after receipt of the request for review or the proposal as prescribed in clause 2 of this article, the chief judge of the people's court resolving the bankruptcy procedures must consider and resolve the proposal or the request for review of the decision on suspension of conduct of bankruptcy procedures and issue either of the following decisions:

(a) To uphold the decision on suspension of conduct of bankruptcy procedures;

(b) To overturn the decision on suspension of conduct of bankruptcy procedures and assign a judge to resolve the bankruptcy case.

4. The decision on resolution of request or proposal for review of the decision on suspension of conduct of bankruptcy procedures must be sent to persons who were notified of the decision on commencement of bankruptcy procedures as stipulated in article 43.1 of this Law within three (3) working days from the date of such decision.

## CHAPTER VII

### Procedures for Recovery of Business Operations

#### **Article 87** *Formulation of plan for recovery of business operations*

1. Within a time-limit of thirty (30) days from the date on which the meeting of creditors passes a resolution on application of the procedures for recovery of business operations, the insolvent enterprise or co-operative must formulate a plan for recovery of its business operations and send it to the chief judge, creditors and the asset management officer or asset management and liquidation enterprise for their opinions.

2. Within a time-limit of ten (10) working days from the date of receipt of the plan for recovery of business operations of the enterprise or co-operative, creditors and the asset management officer or asset management and liquidation enterprise shall send their opinions to the enterprise or co-operative for the purpose of finalization of the plan for recovery of business operations which was reported to the asset management officer or asset management and liquidation enterprise, creditors or the representative board of creditors (if any).

3. Upon receipt of the plan for recovery of business operations as stipulated in clause 2 of this article, the asset management officer or asset management and liquidation enterprise shall have the duty to report it to the judge.

4. Within a time-limit of fifteen (15) days from the date of receipt of the plan for recovery of business operations from the asset management officer or asset management and liquidation enterprise, the judge shall review it before submission to the meeting of creditors for consideration and approval.

**Article 88** *Contents of plan for recovery of business operations*

1. A plan for recovery of business operations of the insolvent enterprise or a co-operative shall specify the measures for recovery of business operations; and the conditions, time-limit and a plan for payment of debts.

2. Measures for recovery of business operations shall comprise:

- (a) Raising capital;
- (b) Reducing, writing off or rescheduling debts;
- (c) Changing lines of production and business;
- (d) Renovating production technology;
- (dd) Restructuring the management apparatus, merging, dividing or separating production sections;
- (e) Selling shares to creditors and other people;
- (g) Selling or leasing assets;
- (h) Other measures which are not contrary to law.

**Article 89** *Time-limit for implementation of plan for recovery of business operations*

1. The time-limit for implementation of the plan for recovery of business operations of the insolvent enterprise or co-operative shall be in accordance with the resolution of the meeting of creditors approving such plan.

2. If the meeting of creditors fails to specify a time-limit for implementation of the plan for recovery of business operations of the insolvent enterprise or co-operative, the time-limit for implementation of such plan shall be not more than 3 years after the date it is approved by the meeting of creditors.

**Article 90** *Conditions for validity of meeting of creditors approving plan for recovery of business operations of enterprise or co-operative*

1. The number of creditors representing at least fifty-one (51) per cent of the total unsecured debts attend the meeting.

Any creditor who does not attend the meeting of creditors but has sent to the judge his or her written opinions on approval or disapproval of the plan for recovery of business operations of the enterprise or co-operative prior to the date of the meeting shall be deemed attending the meeting.

2. The asset management officer or asset management and liquidation enterprise assigned to resolve the petition for commencement of bankruptcy procedures must attend the meeting of creditors.

**Article 91** *Agenda and proceedings of meeting of creditors approving plan for recovery of business operations*

1. The judge shall convene a meeting of creditors to consider and approve the plan for recovery of business operations within a time-limit of ten (10) working days from the date of the decision to submit to the meeting of creditors the plan for recovery of business operations of the insolvent enterprise or co-operative.

2. The meeting of creditors shall be conducted as follows:

(a) A judge shall be assigned to be responsible for commencing the meeting of creditors;

(b) The meeting of creditors shall vote to pass the appointment of the meeting secretary at the proposal of the asset management officer or asset management and liquidation enterprise in order to prepare the meeting minutes;

(c) The asset management officer or asset management and liquidation enterprise shall report on the presence and absence of participants in the meeting of creditors in accordance with notices of the meeting issued by the people's court and reasons for their absence and shall check the personal identity papers of participants in the meeting;

(d) The judge shall inform the meeting of creditors of participants in the meeting of creditors;

(dd) The representative of the enterprise or co-operative shall present the plan for recovery of business operations;

(e) Participants in the meeting of creditors shall present their opinions on the plan for recovery of business operations;

(g) The meeting of creditors shall discuss and vote to approve the plan for recovery of business operations.

4. The meeting of creditors may be adjourned once if its conditions for validity are not satisfied. The re-organization of the meeting of creditors must be implemented in accordance with articles 90 and 91 of this Law.

5. A resolution of the meeting of creditors on approval of the plan for recovery of business operations shall be passed when more than half of the total number of unsecured creditors present at the meeting and representing at least sixty-five (65) per cent in value of the unsecured debts vote in approval of the resolution.

A plan for recovery of business operations which involves the use of secured assets must specify the period of use of such secured assets and plan for realization of such secured assets and be agreed by the creditors secured by such assets.

6. The resolution of the meeting of creditors shall be binding on all creditors.

7. In the case of failure to re-organize the meeting of creditors or the meeting of creditors fails to approve a resolution in accordance with clause 5 of this article, the people's court shall declare the enterprise or co-operative bankrupt.

**Article 92** *Recognition of resolution of meeting of creditors on approval of plan for recovery of business operations of enterprise or co-operative*

1. The judge shall issue a decision recognizing the resolution of the meeting of creditors on approval of the plan for recovery of business operations of the insolvent enterprise or co-operative. This resolution shall be binding on all relevant participants in the bankruptcy procedures.

As from the effective date of the resolution, the enterprise or co-operative shall no longer be subject to the prohibitions and supervision in its business operations as stipulated in articles 48 and 49 of this Law.

2. The people's court shall send the decision recognizing the resolution of the meeting of creditors on approval of the plan for recovery of business operations to the insolvent enterprise or co-operative to all creditors and the people's procuracy at the same level within a time-limit of seven (7) working days from the date of issuance of the decision.

**Article 93** *Supervision of implementation of plan for recovery of business operations*

1. After the judge issues a decision recognizing the resolution of the meeting of creditors on approval of the plan for recovery of business operations of the insolvent enterprise or co-operative, the asset management officer or asset management and liquidation enterprise and creditors shall supervise the business operations of the enterprise or co-operative.

2. Once every six months, the enterprise or co-operative must report on the status of implementation of the plan for recovery of its business operations to the asset management officer or asset management and liquidation enterprise. The asset management officer or asset management and liquidation enterprise shall be responsible for reporting to the judge and notifying creditors.

**Article 94** *Amendments of or additions to plan for recovery of business operations*

1. During the process of implementation of the plan for recovery of business operations, creditors and the enterprise or co-operative shall have the right to reach agreement on amendments of or additions to the plan for recovery of business operations.

2. An agreement on amendments of or additions to the plan for recovery of business operations of the enterprise or co-operative shall be approved when more than half of the total number of unsecured creditors present and representing at least sixty-five (65) per cent in value of the unsecured debts vote in approval of such amendments or additions.

3. The asset management officer or asset management and liquidation enterprise shall send to the judge a written request for issuance of a decision recognizing the agreement on amendments of or additions to the plan for recovery of business operations of the enterprise or co-operative.

The decision recognizing the agreement on amendments of or additions to the plan for recovery of business operations of the enterprise or co-operative shall be sent to the insolvent enterprise or co-operative and its creditors within a time-limit of seven (7) working days from the date of issuance of the decision.

**Article 95** *Suspension of procedures on recovery of business operations*

1. The judge shall issue a decision suspending the procedures on recovery of business operations of the insolvent enterprise or co-operative in any one of the following circumstances:

(a) The enterprise or co-operative has completed implementation of the plan for recovery of its business operations;

(b) The enterprise or co-operative cannot implement the plan for recovery of business operations;

(c) The enterprise or co-operative remains insolvent upon expiry of the time-limit for implementing the plan for recovery of business operations.

2. The people's court shall make a public notification of the decision suspending the procedures on recovery of business operations of the enterprise or co-operative in accordance with the provisions of clause 1 of article 43 of this Law.

**Article 96** *Legal consequences of suspension of procedures on recovery of business operations*

1. In the case stipulated in article 95.1(a) of this Law, the enterprise or co-operative shall be deemed to be no longer insolvent. The judge responsible for resolving the petition for commencement of bankruptcy procedures shall be responsible to issue a written notice of cessation of rights and obligations of the asset management officer or asset management and liquidation enterprise.

2. In the cases stipulated in sub-clauses (b) and (c) of article 95.1 of this Law, the judge shall issue a decision declaring that the enterprise or co-operative is bankrupt.

## CHAPTER VIII

### Bankruptcy Procedures Applicable to Credit Institutions

**Article 97** *Application of provisions on bankruptcy procedures to credit institutions*

The bankruptcy procedures applicable to credit institutions shall be implemented in accordance with this chapter. For any matters which are not covered in this chapter, the relevant provisions of this Law, except for those of chapters VI and VII, shall apply.

**Article 98** *Right and obligation to file petition to commence bankruptcy procedures*

If after the State Bank of Vietnam has issued a document on termination of special control or on termination of imposition or non-imposition of measures for recovery of solvency but a credit institution remains insolvent, the following persons shall have the right and obligation to file a petition to commence bankruptcy procedures:

1. The persons stipulated in clauses 1, 2, 5 and 6 of article 5 of this Law;
2. The credit institution which has the obligation to file a petition to commence bankruptcy procedures; if the credit institution fails to do so, the State Bank of Vietnam shall file a petition to commence bankruptcy procedures against such credit institution.

**Article 99** *Acceptance of jurisdiction over petition to commence bankruptcy procedures against credit institutions*

The people's court shall accept jurisdiction over a petition to commence bankruptcy procedures against a credit institution after the State Bank of Vietnam has issued a document on termination of special control or on termination of imposition or non-imposition of measures for recovery of solvency but the credit institution remains insolvent.

**Article 100** *Return of special loans*

Any credit institution receiving special loans from the State Bank of Vietnam or from other credit institutions in accordance with the *Law on Credit Institutions* and which is declared bankrupt must return such special loans to the State Bank of Vietnam or other credit institutions prior to distribution of assets pursuant to article 101 of this Law.

**Article 101** *Order for distribution of assets*

1. Distribution of the assets of the credit institution shall be conducted in the following order:
  - (a) Bankruptcy expenses;
  - (b) Unpaid wages, severance allowances, social insurance and health insurance for employees and other benefits in accordance with the signed labour contracts and collective labour agreement;
  - (c) Deposits; amounts payable by deposit insurance institutions to people who deposit money at the bankrupt credit institution in accordance with the law on deposit insurance and guidelines of the State Bank of Vietnam;

(d) Financial obligations to the State Bank of Vietnam; unsecured debts payable to creditors named in the list of creditors; secured debts not yet paid as the value of their secured assets is insufficient for debt payment.

2. If there is a remaining value of assets of the credit institution after full payment of the debts stipulated in clause 1 of this article, such remaining value shall belong to:

(a) The members of a credit institution being a co-operative;

(b) The owner of a credit institution being a one member limited liability company;

(c) The members making capital contributions to a credit institution being a limited liability company with two or more members; the shareholders of a credit institution being a shareholding company.

3. If the value of the assets is insufficient for payment as provided for in clause 1 of this article, the creditors of the same priority shall be paid the corresponding proportion of their debts.

**Article 102** *Return of trust or custodial assets when credit institution is declared bankrupt and liquidation of assets*

Within a time-limit of ten (10) working days from the date of receipt of a decision declaring that a credit institution is bankrupt, owners of assets entrusted to, kept in custody at, or assigned for management to, the credit institution under asset trust, custody or management contracts must present papers proving ownership and relevant records and documents to the civil judgment enforcement office in order to recover their assets.

**Article 103** *Transactions of credit institution subject to special control*

Transactions conducted by a credit institution during the period of imposition of measures for special control or for recovery of solvency under the control of the State Bank of Vietnam shall not be governed by the provisions on invalid transactions as stipulated in article 59 of this Law.

**Article 104** *Decision declaring bankruptcy of credit institution*

Within a time-limit of thirty (30) days from the date on which the asset management officer or asset management and liquidation enterprise finalizes a list of creditors, list of debtors and list of assets of the credit institution, the people's court shall issue a decision declaring that such credit institution is bankrupt.

The People's Supreme Court shall provide guidelines for implementation of this article.

## CHAPTER IX

### Declaration of Bankruptcy of Enterprise or Co-Operative



**Article 105** *Declaration of bankruptcy of enterprise or co-operative in accordance with summary procedures*

1. The people's court shall resolve bankruptcy in accordance with summary procedures in the following cases:

(a) A petition for commencement of bankruptcy procedures is filed in accordance with clauses 3 and 4 of article 5 of this Law but the insolvent enterprise or co-operative has no money or other assets to pay bankruptcy fees or to make advance payment of bankruptcy expenses;

(b) After a court has accepted jurisdiction over a petition to commence bankruptcy procedures, the insolvent enterprise or co-operative has no assets to pay bankruptcy expenses.

2. In the case where it is considered that an enterprise or a co-operative falls within the category stipulated in clause 1 of this article, the people's court shall notify participants in the bankruptcy procedures that it shall resolve the case in accordance with summary procedures.

3. Within a time-limit of thirty (30) days from the date on which the people's court serves a notice as stipulated in clause 2 of this article, the people's court shall consider and declare that the enterprise or co-operative is bankrupt for the cases stipulated in clause 1 of this article, or continue the resolution in accordance with general procedures and notify participants in the bankruptcy procedures.

4. If the people's court issues a decision declaring the enterprise or co-operative is bankrupt in accordance with clause 1(b) of this article, the petitioner shall not be refunded bankruptcy fees or advance payment for bankruptcy expenses which were paid.

**Article 106** *Decision declaring bankruptcy when meeting of creditors is unsuccessful*

Within a time-limit of fifteen (15) days after receipt of a report on results of the meeting of creditors, the people's court shall issue a decision declaring that the enterprise or co-operative is bankrupt in the cases stipulated in clause 3 of article 80, clause 4 of article 83 and clause 7 of article 91 of this Law.

**Article 107** *Decision declaring bankruptcy of enterprise or co-operative after resolution of meeting of creditors*

1. Within a time-limit of fifteen (15) days after receipt of a resolution of the meeting of creditors requesting declaration of bankruptcy as stipulated in article 83.1(c) of this Law, the people's court shall consider and make a decision declaring that the enterprise or co-operative is bankrupt.

2. After the meeting of creditors has passed a resolution applying the procedures for recovery of business operations, the people's court shall issue a decision declaring that the enterprise or co-operative is bankrupt in any one of the following circumstances:

(a) The enterprise or co-operative fails to formulate a plan for recovery of its business operations within the time-limit stipulated in article 87.1 of this Law;

(b) The meeting of creditors does not approve the plan for recovery of business operations of the enterprise or co-operative;

- (c) The enterprise or co-operative fails to implement the plan for recovery of business operations.

**Article 108** *Decision declaring bankruptcy of enterprise or co-operative*

1. A decision declaring that an enterprise or co-operative is bankrupt must contain the following main particulars:

- (a) Full date;
- (b) Name of the people's court and full name of the judge responsible for the conduct of the bankruptcy procedures;
- (c) Name and address of the enterprise or co-operative which is declared bankrupt;
- (d) Grounds for declaration of bankruptcy;
- (dd) Termination of the operations of the bankrupt enterprise or co-operative; suspension of transactions relating to the enterprise or co-operative; termination of the obligation to calculate interest to the enterprise or co-operative; resolution of consequences arising from suspended transactions; declaration of invalid transactions and resolution of consequences arising from invalid transactions; termination of labor contracts signed with employees and settlement of benefits for employees;
- (e) Termination of the powers of the representative of the enterprise or co-operative;
- (g) Liquidation of the assets and auction of the remaining assets of the enterprise or co-operative;
- (h) Plan for distribution of the value of the assets before and after declaration of bankruptcy of the enterprise or co-operative in accordance with the order for distribution of assets as stipulated in article 54 of this Law;
- (i) Transfer of requests for resolution of disputes to a competent people's court;
- (k) Prohibited positions which may not be assumed pursuant to article 130 of this Law after the enterprise or co-operative has been declared bankrupt.
- (l) Resolution of other matters in accordance with law.

2. A decision declaring that an enterprise or co-operative is bankrupt shall be legally effective as from the date of issuance.

**Article 109** *Service and notification of decision declaring bankruptcy of enterprise or co-operative*

1. Within a time-limit of ten (10) working days from the date of issuance of a decision declaring that an enterprise or co-operative is bankrupt, the people's court must make notification in accordance with article 43.1 of this Law; and serve a copy of the declaration of bankruptcy on the Department of Justice where the people's court is located if the decision declaring that the enterprise or co-operative is bankrupt prohibits individuals from assuming positions or from establishing or managing an enterprise or co-operative.

2. Within a time-limit of ten (10) working days from the date of issuance of a decision declaring that an enterprise or co-operative is bankrupt, the people's court must send the decision to the business registration office in order that the name of the enterprise or co-operative shall be deleted from the business register; in the case where the People's Supreme Court issues a decision resolving a request for review or protest pursuant to article 113 of this Law, this time-limit may be extended, but not for more than fifteen (15) days from the date on which the chief justice of the People's Supreme Court issues the decision.

**Article 110** *Asset obligations after decision declaring bankruptcy of enterprise or co-operative*

1. A decision declaring that an enterprise or co-operative is bankrupt as stipulated in articles 105, 106 and 107 of this Law shall not exempt the owner of a private enterprise or the partners in a partnership from their asset obligations owed to an unpaid creditor, unless otherwise agreed by the participants in the bankruptcy procedures or unless otherwise provided by law.

2. Asset obligations which arise after there is a decision declaring that an enterprise or co-operative is bankrupt shall be resolved in accordance with the provisions of the law on execution of civil judgments and of other relevant laws.

**Article 111** *Request for review of or protest against decision declaring bankruptcy of enterprise or co-operative*

1. The parties who are notified as stipulated in article 109.1 of this Law shall have the right to lodge a request for review of, and the people's procuracy at the same level shall have the right to protest against, a decision declaring that an enterprise or co-operative is bankrupt.

2. The time-limit for lodging a request for review or protest shall be fifteen (15) days from the date of receipt of the decision or proper notification of the decision declaring that an enterprise or co-operative is bankrupt.

Within a time-limit of three (3) working days from the date of receipt of a request for review or protest, the people's court which issued the decision declaring that an enterprise or co-operative is bankrupt must send the bankruptcy file together with the request or protest to the court at the immediately superior level for its consideration and resolution.

**Article 112** *Resolution of request for review of or protest against decision declaring bankruptcy of enterprise or co-operative*

1. Immediately upon receipt of the bankruptcy file together with the request or protest, the people's court at the immediately superior level shall appoint a council of three judges to consider and resolve the request for review of or protest against the decision declaring that an enterprise or co-operative is bankrupt and send the bankruptcy file to the people's procuracy at the same level.

2. Within a time-limit of five (5) working days from the date of receipt of the bankruptcy file sent by the people's court, the people's procuracy at the same level must return the file to the people's court.

3. Within a time-limit of twenty (20) working days from the date of receipt of the bankruptcy file together with the request or protest, the council of judges must hold a working session and issue one of the following decisions:

- (a) To reject the request or protest and to uphold the decision declaring that the enterprise or co-operative is bankrupt;
  - (b) To modify the decision that the enterprise or co-operative is bankrupt;
  - (c) To overturn the decision declaring that the enterprise or co-operative is bankrupt and to return the file to the competent lower people's court for re-resolution.
4. The working session of the council of judges shall be attended by the people's procuracy and recorded in minutes by a clerk of the people's court. Where necessary, the people's court may summon the requester and other relevant persons to the working session to present their opinions.
5. The decision resolving the request or protest of the people's court at the immediately superior level shall be legally effective as from the date of issuance.

**Article 113** *Consideration of request or protest in accordance with special procedures*

1. Within a time-limit of fifteen (15) days from the date on which the people's court at the immediately superior level issues a decision resolving a request or protest in accordance with article 112 of this Law, if there is a request for review lodged by a participant in the bankruptcy procedures or a protest lodged by the People's Supreme Procuracy or the people's court, the chief justice of the People's Supreme Court shall re-consider such decision when any of the following grounds exists:

- (a) There is a serious breach of the laws on bankruptcy;
- (b) There arises a new circumstance which may substantially change the contents of the decision declaring bankruptcy and which was unknown to the people's court or the participants in the bankruptcy procedures at the time the people's court issued such decision.

2. Where there is a ground as stipulated in clause 1 of this article, the People's Supreme Court shall request the people's court which issued a decision resolving a request or protest in accordance with article 112 of this Law to transfer the bankruptcy file to the People's Supreme Court for consideration and resolution.

3. Within a time-limit of thirty (30) days of receipt of a request or protest, the chief justice of the People's Supreme Court shall have the right to issue either of the following decisions:

- (a) To reject the request for review or protest and to uphold the decision by the lower people's court;
- (b) To overturn the decision by the lower people's court declaring that the enterprise or co-operative is bankrupt and the decision resolving a request for review or protest, and to return the bankruptcy file to the lower people's court for re-resolution.

4. A decision by the chief justice of the People's Supreme Court on resolution of a request or protest shall be the final decision and shall be legally effective as from the date of issuance.

## CHAPTER X

### Dealing with Disputed Assets of Enterprise or Co-operative

**Article 114** *Dealing with asset-related dispute arising prior to decision declaring bankruptcy of enterprise or co-operative*

1. During the process of resolution of bankruptcy of an enterprise or co-operative, if an asset-related dispute arises prior to a decision declaring bankruptcy of the enterprise or co-operative, the people's court resolving the bankruptcy case must consider to separate the disputed assets for resolution in another case in accordance with the law on civil procedures.
2. After issuance of an effective judgment or decision of the people's court on resolution of the asset-related dispute as stipulated in clause 1 of this article, the people's court resolving bankruptcy shall deal with such assets as follows:
  - (a) If a decision declaring bankruptcy has not been issued, assets obtained under the effective judgment or decision shall be included in assets of the enterprise or co-operative;
  - (b) If a decision declaring bankruptcy has been issued, assets obtained under the effective judgment or decision shall be distributed in accordance with such decision declaring bankruptcy.
3. The separation of disputed assets in another case as stipulated in clause 1 of this article shall be notified in accordance with article 43.1 of this Law.
4. After an enterprise or co-operative is declared bankrupt, the asset management officer or asset management and liquidation enterprise shall participate in the resolution of asset-related disputes on behalf of the enterprise and co-operative.

**Article 115** *Dealing with cases in which asset-related disputes arise during the process of enforcement of decision declaring bankruptcy of enterprise or co-operative*

1. Where an asset-related dispute arises during the process of liquidation of assets in accordance with a decision declaring bankruptcy of an enterprise or co-operative or where a decision declaring bankruptcy of an enterprise or co-operative is unenforceable, the enforcement officer, asset management officer, asset management and liquidation enterprise or a participant in the bankruptcy procedures shall request the people's court which resolved the bankruptcy case to consider the dispute.
2. Within a time-limit of ten (10) working days from the date of receipt of a request from the enforcement officer, asset management officer, asset management and liquidation enterprise or a participant in the bankruptcy procedures, the people's court must consider to issue either of the following documents:
  - (a) [A document] rejecting the request of the enforcement officer, asset management officer, asset management and liquidation enterprise or a participant in the bankruptcy procedures; or
  - (b) [A document] transferring the request to a competent person for consideration to make a protest against the decision declaring bankruptcy of the enterprise or co-operative in accordance with law.

3. Where the enforcement officer, asset management officer, asset management and liquidation enterprise or a participant in the bankruptcy procedures disagrees with the document stipulated in sub-clause (a) of clause 2 of this article, he or she may request a competent person to consider to make a protest against the decision declaring bankruptcy of the enterprise or co-operative in accordance with law.

4. The asset management officer or asset management and liquidation enterprise shall represent the enterprise or co-operative to resolve asset-related disputes.

## CHAPTER XI

### Bankruptcy Procedures Involving Foreign Elements

#### **Article 116** *Participant in bankruptcy procedures being foreigner*

Participants in the bankruptcy procedures being foreigners must comply with the law on bankruptcy of Vietnam.

#### **Article 117** *Judicial mandate by people's court of Vietnam to foreign competent authority*

1. During the process of resolution of bankruptcy cases involving foreign elements, the people's court shall conduct judicial mandate in accordance with mutual judicial assistance agreements to which the Socialist Republic of Vietnam is a contracting party or on the principle of reciprocity.

2. Judicial mandate procedures shall be conducted in accordance with the laws on civil procedures and on mutual judicial assistance.

#### **Article 118** *Procedures for recognition and enforcement of decision on resolution of bankruptcy issued by foreign court*

The recognition and enforcement of a decision on resolution of bankruptcy issued by a foreign court shall be implemented in accordance with mutual judicial assistance agreements to which the Socialist Republic of Vietnam is a contracting party and other regulations on mutual judicial assistance.

## CHAPTER XII

### Enforcement of Decision Declaring Bankruptcy of Enterprise or Co-operative

#### **Article 119** *Competence to enforce decision declaring bankruptcy*

The competence to enforce a decision declaring bankruptcy shall be implemented in accordance with this Law, the law on execution of civil judgments and other relevant laws.

#### **Article 120** *Procedures for enforcement of decision declaring bankruptcy*

1. Within a time-limit of five (5) working days from the date of issuance of a decision declaring bankruptcy, the civil judgment enforcement office shall be responsible to proactively issue a decision or to assign an enforcement officer to enforce the decision declaring bankruptcy.
2. Upon receipt of a decision on assignment from the head of the civil judgment enforcement office, the enforcement officer shall exercise the following duties:
  - (a) To open a bank account under the name of the civil judgment enforcement office which is competent to enforce the decision declaring bankruptcy in order to deposit amounts recovered from the bankrupt enterprise or co-operative;
  - (b) To supervise the liquidation of assets conducted by the asset management officer or asset management and liquidation enterprise;
  - (c) To apply coercive measures to recover assets and hand over such assets to those who have acquired them in the bankruptcy case in accordance with the law on execution of civil judgments;
  - (d) To implement the plan for distribution of assets in accordance with the decision declaring the bankruptcy of the enterprise or co-operative upon receipt of a report on the results of liquidation of assets from the asset management officer or asset management and liquidation enterprise.

**Article 121** *Request to conduct liquidation of assets by asset management officer or asset management and liquidation enterprise*

1. Within a time-limit of two (2) working days after receipt of a decision on assignment issued by the head of the civil judgment enforcement office, the enforcement officer shall issue a written request to the asset management officer or asset management and liquidation enterprise to conduct liquidation of assets.
2. The written request to the asset management officer or asset management and liquidation enterprise to conduct liquidation of assets must contain the following main particulars:
  - (a) Full date;
  - (b) Name of the requesting enforcement officer;
  - (c) Name of the asset management officer or asset management and liquidation enterprise conducting liquidation of assets;
  - (d) Name and address of the bankrupt enterprise or co-operative;
  - (dd) Specific methods of liquidation of assets as stipulated in articles 122, 123 and 124 of this Law.
3. The written request to the asset management officer or asset management and liquidation enterprise to conduct liquidation of assets must be sent to the people's court, people's procuracy and participants in the bankruptcy procedures.
4. If the asset management officer or asset management and liquidation enterprise fails to liquidate assets after two (2) years from the date of receipt of the written request from the enforcement officer as

stipulated in clause 2 of this article, the asset management officer or asset management and liquidation enterprise must terminate the liquidation of assets and transfer all documents and assets of the bankrupt enterprise or co-operative to the civil judgment enforcement office for resolution and liquidation of assets in accordance with law.

**Article 122** *Valuation of assets*

1. The asset management officer or asset management and liquidation enterprise must arrange valuation of assets in accordance with law within a time-limit of ten (10) working days from the date of issuance of a decision declaring bankruptcy.

Upon entry into a service contract with a valuation organization, the asset management officer or asset management and liquidation enterprise may not enter into a valuation contract with any organization or individual in which or whom the asset management officer or asset management and liquidation enterprise has relevant rights and interests.

2. If assets to be liquidated are in danger of being destroyed or significantly decreasing in their value, the asset management officer or asset management and liquidation enterprise shall specify the value of such assets and liquidate them in accordance with law.

**Article 123** *Revaluation of assets*

1. Assets shall be revalued when there are serious breaches of article 122 of this Law which falsify the results of valuation of assets.

2. The judge shall decide on revaluation of assets in the case where assets are sold in accordance with article 23.2 of this Law. The enforcement officer shall make a decision on revaluation of assets in the case where assets are liquidated.

**Article 124** *Sale of assets*

1. Assets shall be sold in the following forms:

- (a) Auction;
- (b) Sale not through auction procedures.

2. The auction of assets being moveable property valued at VND 10,000,000 or more and immoveable property shall be implemented in accordance with the law on auction of assets.

Within a time-limit of not more than five (5) working days from the date of valuation, the asset management officer or asset management and liquidation enterprise shall have the right to reach an agreement with an auction organization. The asset management officer or asset management and liquidation enterprise shall enter into a service contract for auction of assets with the auction organization.

Where the asset management officer or asset management and liquidation enterprise cannot reach an agreement with the auction organization, the enforcement officer shall select an auction organization to enter into a service contract for auction of assets.



A service contract for auction of assets shall be entered into within a time-limit of ten (10) days from the date of valuation.

The auction of movable property must be conducted within a time-limit of thirty (30) days from the date of the service contract for auction of assets. For immovable property, this time-limit shall be forty-five (45) days.

3. The asset management officer or asset management and liquidation enterprise shall conduct an auction of assets to be liquidated in the following cases:

(a) In the province or city under central authority where assets are located, there is no auction organization or there are auction organizations but they all refuse to enter into a service contract for auction of assets;

(b) Moveable property valued at between VND 2,000,000 and VND 10,000,000.

The auction of moveable property must be conducted within a time-limit of thirty (30) days from the date of valuation or the date of receipt of written refusals to provide auction services from auction organizations. For immovable property, this time-limit shall be forty-five (45) days.

4. The asset management officer or asset management and liquidation enterprise shall sell assets valued at less than VND 2,000,000 or assets stipulated in article 122.2 of this Law not through auction procedures.

The sale of assets must be conducted within a time-limit of not more than five (5) working days from the date of issuance of a decision on enforcement of the decision declaring bankruptcy or the decision on sale of assets.

5. The procedures for auction of assets shall be carried out in accordance with the law on auction of assets.

**Article 125** *Recovery of assets in case of breach*

1. The asset management officer, asset management and liquidation enterprise or enforcement officer shall request the people's court to make a decision on recovery of the assets of the enterprise or co-operative due to the performance of an invalid civil transaction in accordance with article 59 of this Law. The recovery of assets shall be implemented in accordance with the law on execution of civil judgments.

2. Disputes over the recovery of assets or differences in the value of the assets of the enterprise or co-operative shall be dealt with in accordance with article 115 of this Law.

**Article 126** *Suspension of enforcement of decision declaring bankruptcy*

The head of the civil judgment enforcement office shall decide to suspend the enforcement of a decision declaring bankruptcy in the following cases:

1. The enterprise or co-operative which is declared bankrupt does not have any assets to be liquidated or distributed;

2. The distribution of the assets of the enterprise or co-operative which is declared bankrupt has been completed;
3. The head of the civil judgment enforcement office has reported to the people's court which resolved the bankruptcy and notified the relevant individuals, bodies and organizations of the suspension of enforcement of the decision declaring bankruptcy.

**Article 127** *Dealing with assets of enterprise or co-operative arising after issuance of decision declaring bankruptcy of enterprise or co-operative*

1. If an invalid civil transaction as stipulated in article 59 of this Law is identified after a decision declaring bankruptcy of an enterprise or co-operative has been issued, the asset management officer or asset management and liquidation enterprise shall have the right to request the people's court to declare the transaction invalid, deal with the consequences of the invalid transaction and distribute the assets of the enterprise or co-operative in accordance with article 54 of this Law.
2. If undistributed assets are identified after a decision declaring bankruptcy of an enterprise or co-operative has been issued, the people's court which declared the bankruptcy shall consider and decide to distribute such assets in accordance with article 54 of this Law.
3. The civil judgment enforcement office shall organize the enforcement of a decision on distribution of assets as stipulated in clause 2 of this article.

**Article 128** *Resolution of complaint about enforcement of decision declaring bankruptcy of enterprise or co-operative*

Complaints or the resolution of complaints about the enforcement of a decision declaring bankruptcy of an enterprise or co-operative shall be implemented in accordance with the law on execution of civil judgments.

## **CHAPTER XIII**

### **Dealing with Breaches**

**Article 129** *Responsibility for breach of law on bankruptcy*

1. Any individual, body or organization breaching the law during the process of resolution of bankruptcy shall, depending on the nature and seriousness of the breach, be disciplined, be subject to administrative penalty or be subject to criminal prosecution; and if loss and damage is caused, compensation must be paid in accordance with law.
2. The asset management officer or asset management and liquidation enterprise breaching the law during the process of resolution of bankruptcy shall, depending on the nature and seriousness of the breach, be subject to administrative penalty; and if loss and damage is caused, compensation must be paid in accordance with law. If the asset management officer or an employee of the asset management and liquidation enterprise commits a criminal offence, he or she may be subject to criminal prosecution in accordance with law.

**Article 130** *Prohibited positions which may not be assumed after declaration of bankruptcy of enterprise or co-operative*

1. A person holding the position of chairman, general director, director or member of the board of management of an enterprise in which the State owns one hundred (100) per cent capital and which is declared bankrupt shall not be permitted to undertake such positions in any State owned enterprise as from the date on which the State owned enterprise is declared bankrupt.
2. The representative of State capital in any State owned enterprise which is declared bankrupt shall not be permitted to undertake managerial positions in any enterprise with State capital.
3. If the holder of a managerial position in any enterprise or co-operative which is declared bankrupt intentionally breaches the provisions of clause 1 of article 18, clause 5 of article 28 or clause 1 of article 48 of this Law, the judge shall consider and decide to deprive him or her of the right to establish, or to act as a manager of, an enterprise or co-operative within a period of three (3) years from the date on which the people's court issues a decision declaring bankruptcy.
4. The provisions in clauses 1, 2 and 3 of this article shall not apply in the case where an enterprise or co-operative is declared bankrupt for reasons of *force majeure*.

## CHAPTER XIV

### Implementing Provisions

**Article 131** *Transitional provisions*

1. As from the effective date of this Law, any assets of an enterprise or co-operative which are identified after a decision declaring bankruptcy is issued in accordance with the Law on Bankruptcy No. 21/2004/QH11 shall be dealt with in accordance with article 127 of this Law.
2. Any complaint about or protest against a decision declaring bankruptcy which is issued in accordance with the Law on Bankruptcy No. 21/2004/QH11 prior to the effective date of this Law and remaining unsettled by the effective date of this Law shall be dealt with in accordance with the procedures stipulated in clause 2 of article 111, articles 112 and 113 of this Law.
3. Any petition for commencement of bankruptcy procedures over which jurisdiction was accepted by the people's court prior to the effective date of this Law shall be dealt with in accordance with this Law if a decision declaring the bankruptcy of an enterprise or co-operative has not yet been issued.
4. The Government, the People's Supreme Court and the People's Supreme Procuracy shall provide guidelines for implementation of this article.

**Article 132** *Effectiveness*

1. This Law shall be of full force and effect as of 1 January 2015.

2. The Law on Bankruptcy No. 21/2004/QH11 shall cease to be effective on the effective date of this Law.

**Article 133** *Detailed regulations and guidelines for implementation*

The Government, the People's Supreme Court and the People's Supreme Procuracy shall provide detailed regulations and guidelines for implementation of the articles assigned in this Law.

---

*This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 7th session on 19 June 2014.*

**The Chairman of the National Assembly**

NGUYEN SINH HUNG