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The Enterprise Bankruptcy Law of the People's Republic of China (for Trial Use): A Translation*

Translated by Henry R. Zheng

CHAPTER I: General Principles

Art. 1. This law is enacted to meet the need for development of the planned socialist commodity economy and for economic reform, to promote the independence of business management of the enterprises under the ownership by the whole people,¹ to strengthen the system of economic responsibility and democratic management, to improve business management and economic performance, and to protect the lawful rights and interests of debtors and creditors.

Art. 2. This law applies to enterprises under the ownership of the whole people.

Art. 3. Enterprises that sustain serious loss due to inappropriate management and that are unable to pay off debts that mature will be declared bankrupt in accordance with the provisions of this law.

Notwithstanding the petition for declaration of bankruptcy by creditors, an enterprise will not be declared bankrupt if there is one of the following:

(i) the enterprise is one which is engaged in public utility or is of great significance to the national interest and people's livelihood, and for which the pertinent departments of government have provided funds or other assistance to pay the debts;

(ii) the enterprise is one that has obtained a guarantee and has paid its debts within six months from the date when the petition for declaration of bankruptcy is filed.

Notwithstanding the petition for declaration of bankruptcy by creditors, the bankruptcy proceedings will be suspended where the competent de-

* Adopted December 2, 1986 at the 18th session of the Standing Committee of the Sixth National People's Congress. This translation is to serve as Appendix to the previous Article by Mr. Zheng.

1. "The enterprise under the ownership by the whole people" refers to State-owned enterprises.

partment² petitions for reorganization and a conciliation agreement is reached between the enterprise and the meeting of the creditors.

Art. 4. The State will appropriately arrange, through various channels, for the employees of bankrupt enterprises to have new employment, and will ensure that they receive basic living necessities prior to their new employment. The State Council will formulate specific methods separately.

Art. 5. The jurisdiction of bankrupt cases is vested with the People's Court of the place where the debtor is situated.

Art. 6. Where this law fails to provide for applicable procedures, the provisions governing civil procedures will apply to the procedures for bankruptcy cases.

CHAPTER II: Filing and Acceptance of Bankruptcy Petitions

Art. 7. Where a debtor is unable to pay off the debt that matures, the creditor may petition to declare the debtor bankrupt.

In petitioning for declaration of bankruptcy, the creditor shall provide evidence showing the amount of the debt, whether or not the debt is secured,³ and the debtor's inability to pay the debt.

Art. 8. A debtor may petition to be declared bankrupt after the approval of the competent department.

In petitioning for declaration of bankruptcy, the debtor shall account for the losses of the enterprise, and provide the relevant accounting reports along with a schedule that details debts and credits.

Art. 9. Upon the acceptance of a bankruptcy case, the People's Court shall notify the debtor within ten days and make a public announcement of this acceptance. The People's Court shall notify known creditors within 10 days after the receipt of the debt schedule submitted by the debtor. The notice and public announcement shall provide the date of the first meeting of the creditors.

Within one month after receiving the notice or, where the notice is not received, within three months after the public announcement, creditors shall report their claims to the People's Court, stating the amount of the

2. The Chinese phrase *Shangji Zhuguan Bumen* is literally translated as "competent department at a higher level." It refers to the department of the government that has administrative authority over an enterprise. Because the English phrase "competent department" already has such an implication, the author decided to simply use "competent department."

3. The word "secured" used throughout this translation is derived from the Chinese phrase *Caichan Danbao* which literally means "secured by property." Similarly, the word "unsecured" is used in this translation to refer to "not secured by property."

claim, whether or not it is secured, and providing pertinent evidence. Failure to file reports within the time provided will be considered to be a waiver of claims.

The People's Court shall separately record the claims secured and those unsecured.

Art. 10. Where the creditor files a petition for declaration of bankruptcy, the debtor shall, within fifteen days after receiving the notice by the People's Court, submit to the People's Court the relevant materials provided in Article 8, paragraph 2 of this law. Where the debtor serves as a guarantor for other units, it shall notify the party concerned within five days after receiving the notice from the People's Court.

Art. 11. Upon the acceptance of a bankruptcy case by the People's Court, all other civil enforcement procedures against the debtor's property must terminate.

Art. 12. Upon the acceptance of a bankruptcy case, the payment by the debtor to some of the creditors is void, except for that necessary for normal production or business management.

CHAPTER III: Meetings of the Creditors

Art. 13. All creditors are members of the meeting of the creditors. Members of the meeting of the creditors are entitled to vote, except for secured creditors who have not relinquished their priority right to payment. The guarantors for the debts may become creditors and are entitled to vote after the payment of the debts on behalf of the debtor. The Chairman of the meeting of the creditors is appointed by the People's Court from among the voting creditors.

The legal representative of the debtor must attend the meeting of the creditors and answer the inquiries of the creditors.

Art. 14. The first session of the meeting of creditors shall be convened by the People's Court within fifteen days after expiration of the claims-reporting period. The subsequent sessions will be convened when the People's Court or the Chairman of the meeting of the creditors considers it necessary, or upon the request of the liquidation group or the unsecured creditors who represent one-fourth or more of the total claims.

Art. 15. The meeting of the creditors has the following power and functions:

- (i) examining the evidence of claims, determining whether or not the claims are secured, and the amount of the claims;
- (ii) discussing and adopting a conciliation agreement;
- (iii) discussing and adopting the plan for disposal and distribution of the bankrupt estate.

Art. 16. The resolutions of the meeting of the creditors must be adopted

by a simple majority of the creditors that are present and are entitled to vote, representing fifty percent (50%) or more of the total unsecured claims, except that a resolution adopting a conciliation agreement must be approved by the creditors representing two-thirds or more of the total unsecured claims.

The resolution of the meeting of the creditors is binding to all creditors. A creditor that considers the resolution of the meeting of the creditors in violation of laws may petition the People's Court for a determination within seven days after the resolution is adopted.

CHAPTER IV: Conciliation and Reorganization

Art. 17. Where the creditors petition for a declaration that an enterprise is bankrupt, the competent department in charge of the enterprise may petition, within three months after the People's Court has accepted the bankrupt case, for a reorganization of the enterprise. Such a reorganization may not last more than two years.

Art. 18. After the petition for a reorganization is filed, the enterprise shall propose a draft conciliation agreement to the meeting of the creditors.

The conciliation agreement shall provide the deadline before which the enterprise must pay off its debts.

Art. 19. After extending approval and confirmation, the People's Court will publicly announce the conciliation agreement entered into between the enterprise and the meeting of the creditors, and suspend the bankruptcy proceedings. The conciliation agreement takes effect from the date of its public announcement.

Art. 20. Reorganization of an enterprise is in the charge of the competent department.

The assembly of employee representatives of the enterprise shall discuss the enterprise's reorganization plan. The state of the reorganization shall be reported to and comments shall be solicited from the assembly of the employee representatives. The state of reorganization shall be reported to the meeting of the creditors on a regular basis.

Art. 21. Where any of the following occur during the reorganization, upon the decision of the People's Court, the reorganization will be terminated and the enterprise will be declared bankrupt:

- (i) the enterprise fails to perform the conciliation agreement;
- (ii) the financial situation of the enterprise continues to deteriorate and the meeting of the creditors petitions for terminating the reorganization;
- (iii) the enterprise commits any of the acts listed in Article 35 of this law, resulting in serious damage to the interests of the creditors.

Art. 22. If the enterprise is able to pay off its debts in accordance with

the conciliation agreement through the reorganization, the People's Court shall terminate the bankruptcy proceedings and issue a public announcement [of this termination].

Where the enterprise is unable to pay off its debts according to the conciliation agreement upon expiration of the reorganization period, the People's Court shall declare the enterprise bankrupt and once more record the claims in accordance with Article 9 of this law.

CHAPTER V: Declaration of Bankruptcy and Liquidation

Art. 23. Where any of the following occurs, the People's Court will issue a decision and declare an enterprise bankrupt:

- (i) the enterprise shall be declared bankrupt under Article 3 of this law;
- (ii) the reorganization is terminated under Article 21;
- (iii) upon expiration of the reorganization period, the enterprise is unable to pay off its debts in accordance with the conciliation agreement.

Art. 24. The People's Court shall establish a liquidation group within 15 days after the enterprise is declared bankrupt to take over the bankrupt enterprise. The liquidation group shall take charge of the custody, liquidation, assessment, disposal and distribution of the bankrupt estate. The liquidation group may conduct necessary civil activities in accordance with the law. The People's Court will appoint members of the liquidation group from among the staff members of such pertinent departments as the competent department in charge of the enterprise and the departments of the government in charge of finance, and from among specialists.

The liquidation group may hire necessary personnel. The liquidation group is accountable and will report its work to the People's Court.

Art. 25. No unit or individual may unlawfully dispose of the property, accounts, documents, materials or seals, etc. of the bankrupt enterprise. Persons who owe debts to or hold the property of the bankrupt enterprise shall pay off the debts or return the property to the liquidation group only.

Art. 26. The liquidation group may decide whether to terminate or continue to honor the contracts of the bankrupt enterprise that have not yet been performed.

Where the liquidation group decides to terminate a contract, resulting in damage to the other party, the damages are considered bankrupt claims.

Art. 27. The legal representative of the bankrupt enterprise has the responsibility of taking care of the enterprise's property, accounts, documents, materials, and seals, etc. before completing the procedure to transfer these to the liquidation group.

Before the bankruptcy proceedings terminate, the legal representative of

a bankrupt enterprise will conduct his work in accordance with the request of the People's Court or the liquidation group, and may not leave his post without permission.

Art. 28. The bankrupt estate consists of the following property:

- (i) all the property the bankrupt enterprise managed and operated at the time when it was declared bankrupt;
- (ii) the property the bankrupt enterprise acquired after it was declared bankrupt and before the bankruptcy proceedings terminated;
- (iii) other property rights that the bankrupt enterprise should be vested with.

The property that was used as collateral shall not be included in the bankrupt estate. However, where the value of the collateral exceeds the debts, the excess portion shall be included in the bankrupt estate.

Art. 29. Property belonging to other persons that is in the possession of the bankrupt enterprise is obtained through the liquidation group by those who have rights in that property.

Art. 30. Bankrupt claims are claims which are not secured prior to the declaration of bankruptcy, and secured claims, in which the owner has relinquished his priority right to payment.

The expenses the creditors incurred for participation in the bankruptcy proceedings may not be included in the bankrupt claims.

Art. 31. Claims that have not matured are considered due at the time of the declaration of bankruptcy. However, interest accrued from pre-maturity shall be deducted from the claims.

Art. 32. Creditors whose claims were secured prior to the declaration of bankruptcy shall have priority rights to the payment out of the collateral. Where the secured claims exceed the amount of the collateral, the portion of the claims that is not paid off is considered a bankrupt claim and is satisfied in accordance with the bankruptcy proceedings.

Art. 33. Where a creditor owes debts to the bankrupt enterprise, these debts may be offset prior to the bankruptcy liquidation.

Art. 34. The following bankruptcy expenses shall be paid out of the bankrupt estate first:

- (i) expenses incurred for administration, sale and distribution of the bankrupt estate, including expenses for hiring staff;
- (ii) expenses incurred for litigation of the bankruptcy case;
- (iii) other expenses incurred during the bankruptcy proceeding for the common interest of the creditors.

Where the bankrupt estate is insufficient to pay off the bankruptcy expenses, the People's Court shall declare the termination of the bankruptcy proceedings.

Art. 35. During the period starting six months prior to the acceptance of

the bankruptcy case by the People's Court and ending on the date of the declaration of bankruptcy, the following acts of a bankrupt enterprise are void:

- (i) concealing, secretly dividing or giving away its property;
- (ii) selling its property at a reduced price not in the ordinary course of business;
- (iii) providing property as security for the debts not originally secured;
- (iv) providing pre-payment for the debts not due;
- (v) relinquishing its claims.

Where a bankrupt enterprise commits one or more of the acts listed above, the liquidation group is entitled to petition the People's Court to recover the property. The recovered property is included in the bankrupt estate.

Art. 36. The set of equipment in the bankrupt estate shall be sold in its entirety. Where such a sale is impossible, the set can be split and sold separately.

Art. 37. The liquidation group will propose a plan for the distribution of the bankrupt estate that will be discussed and adopted by the meeting of the creditors and carried out after obtaining a decision by the People's Court.

After paying off the bankruptcy expenses, the bankrupt estate will be liquidated in accordance with the following order of priority:

- (i) the employees' wages and the expenses of the labor insurance the bankrupt enterprise owes;
- (ii) taxes the bankrupt enterprise owes;
- (iii) bankruptcy claims.

Where the bankrupt estate does not suffice to satisfy all the claims in the same order, the distributions will be pro rata.

Art. 38. Upon the completion of the distribution of the bankrupt estate, the liquidation group will petition the People's Court to terminate bankruptcy proceedings. After the termination of the bankruptcy proceedings, the outstanding claims will no longer be satisfied.

Art. 39. After the bankruptcy proceedings terminate, the liquidation group will register the cancellation with the department which originally issued registration to the bankrupt enterprise.

Art. 40. Where a bankrupt enterprise commits any of the acts listed in Article 35 of this law and such an act is discovered within one year from the date of the termination of the bankruptcy proceedings, the People's Court will recover the property and distribute it in accordance with Article 37 of this law.

Art. 41. Where a bankrupt enterprise commits any of the acts listed in Article 35 of this law, the legal representative of the bankrupt enterprise

and the persons directly responsible will be subject to administrative penalty, and where their acts constitute crimes, criminal liability will be investigated and imposed in accordance with the law.

Art. 42. After an enterprise is declared bankrupt, the supervisory departments and auditing departments of the government will take charge of investigating the responsibility that led the enterprise to bankruptcy.

The legal representative of the bankrupt enterprise who is primarily responsible for the bankruptcy will be subject to administrative penalties. Where the competent department in charge of the bankrupt enterprise is primarily responsible for the bankruptcy, the leaders of such competent department will be subject to administrative penalty.

Where the legal representative and the leaders of the competent department in charge of the bankrupt enterprise have caused the enterprise to be bankrupt through negligence, resulting in serious loss to state property, criminal liability will be investigated and imposed in accordance with Article 187 of the Criminal Laws of the People's Republic of China.

CHAPTER VI: Supplementary Provisions

Art. 43. This law will be implemented on a trial basis three months after the Law of the Enterprises Under the Ownership of the Whole People takes effect. The State Council will provide the specific planning for such trial implementation.