

**Bankruptcy Law
(Amendment)**

In order to ensure the legal safety for the business and productive relations in developing a socialist-oriented multi-sectors economy pursuant to market mechanism under State' management;

To protect the legitimate rights and interests of creditors, indebted merchants, to specify the liabilities of a indebted merchant when the petition for bankrupt settlement against the merchant appears; to promote the efficient production and business pursuant to market mechanism;

Based on the 1992 Constitution of the Socialist Republic of Vietnam;

This Law makes provision on merchant's bankruptcy.

First Part

General provisions

Chapter I
Basic Principles

Section 1 (Old Section 1 revised). Scope.

- 1- This Law is to provide bankrupt order and procedure against merchant who has fallen into bankrupt situation.
- 2- The application of this Law to the merchants, who are enterprises those directly serve national defense, security and important public service, should be implemented in accordance with the Government's provisions.
- 3- This Law does not apply to hawkers, nosh venders with low business capital, turnover and income.

Section 2 (New). Application of Bankrupt Law and relevant Laws

This Law and provisions in other relevant Laws should be applied in settling bankrupt cases against merchants operating in Vietnam and their members operating outside Vietnamese territory.

Where a difference between provision of this Law and that of a specialized law on the same issue appears, the provision of the specialized law shall be applied.

Section 3 (New). Legal capacity of dissolved enterprises.

A dissolved enterprise shall still be deemed as being existing for the purpose of bankrupt settlement against that enterprise.

Section 4 (New) Suspension of civil judgment enforcement and of claim for assets recovery of indebted merchants

After the Court has handled a bankrupt case, civil judgement enforcement relating to the assets, as well as lawsuits to recover the assets against the indebted merchant should be suspended or temporarily suspended.

Section 5 (new). Procedures applicable to indebted merchants

1- Under provisions of this Law, the procedures applicable to indebted merchants include:

- a) Rehabilitation procedure for indebted merchants;
- b) Liquidation procedure for indebted merchants.

2- During the bankrupt settlement, based on the actual situation of indebted merchant, judge must decide the application of one of two above procedures, as well as the conversion from application of one procedure to that of the another.

Section 6 (Old section 3 revised). Explanation of words.

In this Law, the following terms should have the meanings as described to them hereunder:

1- “Secured creditor” means a creditor whose loan is secured by the asset of the indebted merchant.

2- “Partly secured creditor” means a creditor whose loan is secured by asset of the indebted merchant, but the value of the secured assets is less than that of the loan.

3- “Unsecured creditor” means creditor whose loan is not secured by asset of the indebted merchant.

4- “Merchant” includes individuals, collective groups, households, collectives, limited liability companies, holding companies, partnerships, private enterprises, enterprises with partly foreign invested capital, enterprises with 100% foreign invested capital, enterprises belonging to political or social organizations, state enterprises those have business registration certificate and operate independently and continuously.

5- “Enterprise serving directly national defense, public security and important public services” means those who are operating in following areas or professions: production or maintenance of weapons, ammunition equipment, specialized facilities used for national defense and public security; economy-military combined enterprises in the important strategic locals; financing, monetary and insurance businesses; electronic production and supply; municipal transportation and public works; railways transportation, airway transportation; telecommunication; hydraulic construction

management and exploitation; management and development of specialized forests and key national protective forests.

6- Rehabilitation procedure includes management of the assets of indebted merchant in order to continue the business of that merchant.

7- Liquidation procedure includes the recovery of the assets of the indebted merchant, realization of those into money to distribute to the creditors and termination of the operation of that merchant.

8- Legal representative of merchant includes representative under laws and representatives under authorization.

9- Merchant in bankrupt situation means a merchant who losses capacity to pay due debts. Also being seen as merchant in bankrupt situation a merchant who has fallen in cease of payment of debts situation.

Chapter II

Right and duty to sue for the bankrupt settlement

Section 7 (Old section 7 revised). Creditor's right to lodge the petition

1- After 30 days since the date of sending the request of payment for a due debt, but the debt has not been paid by the merchant yet, any creditor has the right to lodge a petition to the Court at the location where the merchant's main address in merchant's business certificate is located, to request the commencement of a rehabilitation procedure or liquidation procedure against indebted merchant.

2- Petition for bankrupt declaration should contain the following contents:

- a) the full name and address of the petitioner;
- b) the name and address of indebted merchant;
- c) Due debt which has not been paid yet by the merchant;
If there is a debt secured by asset, the evidence of such a security should be submitted;
- d) Debt recovery process;
- ®) Basis for the request of commencement either rehabilitation procedure or liquidation procedure against the indebted merchant.

3- Copies of the request of payment and other documents or papers relating to the request of commencement of either rehabilitation procedure or liquidation procedure, if any, should be submitted as attachments to the petition.

4. Petitioner shall lodge an advance of money for bankrupt cost in accordance with the Government's provisions.

Section 8 (Old Section 8 revised). Right to lodge petition of employee or a representative for employees.

1-If a merchant does not pay the salary to an employee, the employee may, by himself or herself, or by employee's representative, or through the labor union representative, lodge petition to the Court where the merchant's main address as specified in merchant business certificate is located, to request the commencement of either rehabilitation procedure or bankrupt procedure against the indebted merchant.

2. Petition shall have the followings:

- a) Petitioner's full name and address;
- b) Indebted merchant' name and address;
- c) Number of months and the total of salaries unpaid to the employee;
- d) Employee's request to the merchant;
- ®) Basis for request of commencement either rehabilitation procedure or bankrupt procedure.

3- Copies of relevant documents and papers, if any, should be attached to the petition.

4- In case the employee's representative or the labor union representative lodges the petition, there should be a document proving that the employee authorized the employee' representative or labor union representative to do so. After the lodging of petition, the employee' representative or the labor union representative shall be seen as creditor.

5- Employee, employee' representative or labor union representative lodging petition for bankrupt settlement must not pay the advance cost of the litigation.

Section 9 (Old section 9 revised). Merchants' duty to lodge the petition for bankrupt settlement.

1- When having fallen into bankrupt situation, within 30 days, the merchant or the merchant' representative shall lodge to the Court where the merchant's main address as specified in the merchant's business certificate is located a petition for commencement of either rehabilitation procedure or bankrupt procedure.

2- Petition for bankruptcy settlement shall have the followings:

- a) Name and address of merchant who requires the commencement of procedure;
- b) Basis for the request of commencement of procedure.

3 - Attached to the petition, there should be:

- a) A report on the merchant's situation in which there are explanations about the reasons for, and relevant situation surrounding, the merchant's losses;
- b) Financial report (if the merchant is a holding company that is required to be audited by laws, the financial report shall be verified by an independent auditing office before being submitted to the Court);
- c) A detailed list of the factual situation of the merchant's assets and the locations of the assets;
- d) A detailed list of the debts (including names, addresses of merchant's debtors and creditors, of banks where the merchant has accounts; attached by a list including both credit and debit relating to the securities);

®) If the indebted merchant is a company in which its members shall be jointly responsible for the merchant's debts, the list of names and addresses of those members shall be submitted;

e) Other documents the Court finds the indebted merchant shall submit under the provisions of laws.

4- Indebted merchant or merchant's representative lodging petition for bankrupt procedure shall pay an advance for the litigation cost in accordance with the provisions of the Government.

Section 10 (new) Right to lodge petition of the owner of the indebted merchant who is a state-owned enterprise.

1- Owner of a state-owned enterprise, which has fallen to bankrupt situation, has the right to lodge the petition for either rehabilitation procedure or bankrupt procedure to Court against that enterprise.

2-Provision of subsection 1 does not apply to the owner of private enterprise.

Section 11 (new) Right to lodge petition of the shareholders.

An indebted merchant, who is a share holding company, may be sued by the shareholders for bankrupt settlement. Shareholders' petition can only be seen as legal if it is voted for by shareholders representing at least 51% the shares with voting rights.

Section 12 (new) Right to sue to People's Procuracies.

1- If a People's Procuracy, in their performance, finds a merchant has fallen into bankrupt situation, the People's Procuracy has right to sue to the Court for bankrupt procedure against that merchant.

2- If a State Investigation Bureau, Auditing office, in their performance, finds a merchant has fallen into bankrupt situation, it has the duty to report immediately to the competent People's Procuracy. The People's Procuracy shall be responsible to sue at the Court for bankrupt procedure against that merchant.

Section 13 (Old Section 10-revised) Court actively settle bankruptcy against indebted merchant.

In dealing with cases relating to a merchant, if it is found that that merchant is in bankrupt situation, the Court has the power to decide the commencement of bankrupt procedure against that indebted merchant.

Chapter III

Implementing offices and persons of rehabilitation procedure
or bankrupt procedure

Section 14 (Old section 4.1-revised) Jurisdiction to settle bankrupt petition

1- People's Court of District has the jurisdiction to adjudicate bankrupt petition against business individuals, collective groups, households, and collectives.

2. People's Court of Province has jurisdiction to adjudicate bankrupt petition against merchants who are not in the cases provided for in subsection 1 of this Section.

Section 15 (Old section 16-revised) Duties, powers of the responsible judge of bankrupt settlement.

- 1- Bankrupt settlement to the merchants at the categories provided for in Section 14.1 and merchants, who are small size enterprises, shall be settled by one judge. Bankrupt settlement to the merchants, which are medium-size and large-size enterprises, should be settled by three judges.
- 2- When three judges settle a bankrupt case, one judge is assigned to act as a responsible judge.

Chief Justice of the Supreme People's Court shall provide Working Rule for the group of judges.

3. The judge shall have the following powers and duties to:

- a) gather evidence, materials for the file in settlement of bankrupt petition;
- b) supervise and examine activities of the Asset Management Team's members;
- c) issue decision on application of provisional measures in case of necessity in accordance with the provisions of laws to preserve indebted merchant's assets;
- d) organize and preside over the creditor's meeting;
- ®) determine the application of rehabilitation procedure or liquidation procedure to the indebted merchant under provisions of this Law
- e) issue decision on suspension or temporary suspension of bankrupt petition settlement in accordance with the provisions of laws.

4- During the bankrupt petition settlement, if the evidence of a crime is found, the judge shall provide documents (copies) to the People's Procuracy at the corresponding level to prosecute under criminal procedure, and shall conduct bankrupt petition settlement in accordance with bankrupt procedure.

5- The judges should be responsible to Chief Judges and before the laws for the judge's performance of judge's powers and duties.

Section 16 (Old section 17 - revised) Composition and duties of Asset Management Team.

1- Asset Management Team consists of: Court staff, bailiff of the Judgement Enforcement Office or Judgement Enforcement Group, creditors' representative, indebted merchant's representative, labor union representative or employee's representative if there is no labor union, officials of financial, banking and other professional offices. Court staff is the Head of the Asset Management Team.

2- Asset Management Team shall have the following powers and duties to:

- a) make the list of all of the assets of the indebted merchant;
- b) supervise and examine the management of asset by the merchant. When necessary, has the power to request the judge for the application of provisional measures to preserve the remained estate of the merchant;
- c) make the list of creditors and debts which should be paid to each creditor;
- d) enforce the judge's decisions during bankrupt settlement;
- Ⓜ) The Asset Management Team shall be responsible to the judges for the performance of the Asset Management Team's powers and duties.

3- Rule on the organization and operation of the Asset Management Team shall be provided for by the Government, after consulted with the Supreme People's Court.

Section 17 (Old section 42 revised) Composition of the Asset Liquidation Team.

1- Enforcement of liquidation decision over the indebted merchant is under power of Judgment Enforcement Office or Judgement Enforcement Group where the main merchant's address as prescribed in the merchant's business certificate is located.

2- Head of Judgement Enforcement Office or Chief of Judgement Enforcement Group shall issue decision to enforce the liquidation decision over the indebted merchant, shall issue decision on establishment of the Asset Liquidation Team and appoint the bailiff as Head of Asset Liquidation Team with the responsibility to monitor, supervise and examine the work of the Asset Liquidation Team.

3- Asset Liquidation Team consists of:

- a) bailiffs, officials of the Judgement Enforcement Office or Judgement Enforcement Group;
- b) representatives of financial, banking offices at the corresponding level;
- c) creditors' representative , labor union representative or employees' representative where labor union does not exists;
- d) indebted merchant's representative.

Asset Management Team' members may be appointed to participate in the Asset Liquidation Team.

The Government shall provide Rules in the organization and operation of the Asset Liquidation Team.

Section 18 (Old section 43 revised) Powers and duties of the Head of the Asset Liquidation Team

1. Head of the Assets Liquidation Team has the following powers and duties to:

- a) issue decision in recovering and auctioning the asset of the merchant to whom the liquidation procedure is applied.
- b) conduct asset distribution scheme in accordance with the judge's decision;

- c) issue decision to freeze accounts of the merchant to whom the liquidation procedure is applied in the banks; open new account to deposit money received from recovery the merchant's loans and auctioning merchant's assets.

2- Head of Asset Liquidation Team shall be responsible to Head of the Judgement Enforcement Office or Chief of the Judgement Enforcement Group during performance of powers and duties in accordance with the provisions of laws.

Section 19 (Old section 44 revised) Powers and duties of Asset Liquidation Team

The Asset Liquidation Team shall have the following powers and duties to:

- 1- receive assets and the relevant documents transferred to by the Asset Management Team;
- 2- recover and manage all of asset, documents, accounting books and seal of the merchant who is declared bankrupt;
- 3- discover and request the Head of Asset Management Team to recover the indebted merchant's assets or the value of the assets or the deference in the value of the asset those were sold or transferred illegally in accordance with Section 20. The Asset Liquidation Team shall recover asset, value of asset and that difference under the decision of the Head of the Asset Liquidation Team.
 - 4- based on the Decision of the Head of the Asset Liquidation Team, organizes auction of the indebted merchant. Auction of the indebted merchant's assets shall be notarized by the State Notary. If the asset auctioned is a synchronic set of equipment, it shall be sold synchronically. It can only be sold separately if it is unable to send it synchronically. Auction of the assets and settlement of the right to use land of the merchant shall be in accordance with the provisions of laws.

5- deposit all of amounts of money received of the merchant who is declared bankrupt to newly opened accounts in the bank;

6- implement liquidation in accordance with the decision of the judge.

Section 20 (Old section 45 revised) Recovery of assets or of the value of assets of the indebted merchant.

Head of Asset Liquidation Team shall request the Court to issue the decision on recovery of assets, value of asset of the indebted merchant in the case described in Section 33 of this Law.

Section 21 (*Old section 5 revised*) **Supervision of compliance of the bankrupt legislation.**

People's Procuracy should supervise the compliance with laws in settlement of bankrupt petitions against merchant and enforcement of bankrupt decision relating to the assets under the provisions of laws.

Chapter IV
Bankrupt assets

Section 22 (*Old section 19 revised*) **Scope of bankrupt assets.**

- 1- All of assets the merchant has at the moment at which the merchant has been recognized as having fallen into bankrupt situation are bankrupt assets.
- 2- Interests, assets and rights over assets the merchant will have from the performance of transactions those happened before the moment at which the merchant has been recognized as having fallen into bankrupt situation belong to the bankrupt assets.
- 3- Other rights over assets of the indebted merchant.
- 4- Assets those belong to secured property are not bankrupt assets; the value of secured property exceeding the value of debt secured by that secured property belong to bankrupt asset.
- 5- Value of the right to use land of the merchant is also recognized to be in the scope of bankrupt assets.

Section 23 (*new*) **Management and disposition of bankrupt assets.**

Asset Management Team and Asset Liquidation Team should have power to manage and dispose the bankrupt assets in accordance with the provisions of this Law.

Chapter V
Claims in bankruptcy

Section 24 (*new*) **Scope of claims in bankruptcy.**

Claims to recover assets against the indebted merchant those are not secured by asset, and claims those are secured by asset but the preferential right on payment has been set aside, have been established before the commencement of the bankrupt settlement procedure, are called the claims in bankruptcy.

Section 25 (*Old section 23.1 revised*) **Undue debts.**

Debts those have not been due at the time of commencement of bankrupt settlement should be deemed as due, but the interests for the undue period shall not be calculated.

Section 26 (*Old section 38 revised*) **Claims secured by mortgaged or pledged asset.**

For claims those are secured by mortgaged or pledged assets and have been established before the commencement of the bankrupt settlement procedure, the creditors should have the right to receive preferential payment over the secured asset. If the value of the mortgaged or pledged asset is not sufficient to cover debts of a secured creditor, then the unpaid value must be a claim in bankruptcy and be paid under bankrupt procedure.

Section 27 (*Old section 39 revised*) **Order of payment of bankrupt assets.**

The distribution of the value of bankrupt assets should comply with the following priority order:

- 1- Costs and expenses under provisions of laws for bankrupt settlement;
- 2- Debts on salary, allowance for employment termination, social insurance under provisions of laws and other interests under collective bargain and labor contract signed;
- 3- Tax liabilities;
- 4- Debts of the creditors listed in the creditors list those should be paid as follows:
 - a) If the value of bankrupt assets is sufficient to pay debts in full for creditors, each creditor shall be fully paid ;
 - b) If the value of bankrupt assets is insufficient to pay debts in full for creditors, each creditor shall be partly paid the creditor's debt on the proportional basis .
- 5- If, after all of creditors debts have been fully paid, the value of the bankrupt asset has a surplus, the surplus belong to:
 - a) Merchant who is individual or owner of the private enterprise;
 - b) Members of the company, in case of a company;
 - c) State budget, in case of a state owned enterprise.

Section 28 (*new*) **Equality among claims at the same rank.**

Claims at the same preferential rank should be paid proportionally based on the value of each claim.

Section 29 (*new*) **Not being recognized as claim in bankruptcy**

Claims those have been established after the commencement of bankrupt settlement procedure and claims relating to the continuation of the indebted merchant's operation are not seen as claims in bankruptcy. Those claims should not be paid through the preferential order.

Section 30 (*new*) **Value of a non-monetary claim**

Where the objective of the indebted merchant's liability is non-monetary, the monetary value of that liability shall be specified at the time of commencement of the

bankrupt settlement procedure in order to incorporate such a value into the claims in bankruptcy

Section 31 (new) Claim in bankruptcy in case of joint liability.

In case that many merchants have a joint liability to a debt and one or all of them has fallen into bankrupt situation, the creditor has right to sue, in legal status of the bankrupt merchant's creditor, against any merchant among the merchants with joint liability to recover wholly the creditor's loan.

Section 32 (new) Claim in case the warrantor is bankrupt

In case that the warrantor is declared bankrupt, the warrantee has right to sue, in legal status as the warranted indebted merchant's creditor, for the whole value of the debt specified at the time of commencement of the bankrupt settlement procedure against such a merchant.

Chapter VI
Power of denial

Section 33 (new) Activities should be denied

The following activities of the indebted merchant are void if they were conducted within 6 months before the date on which the merchant ceased payment of debts:

- 1- Gifting or giving real or personal assets to another;
- 2- Performing bilateral contracts according to which the indebted merchant's liability is clearly larger than another party's liability;
- 3- Paying debt that was undue on the date that is specified by the court to be the cease of payment date;
- 4- Paying due debt but the payment was not in the form of a monetary payment;
- 5- Making a mortgage or pledge for the debt those had previously arisen.

Section 34 (new) Scope of the application of the power of denial

Power of denial over the activities provided for in Section 33 is applied in both rehabilitation procedure and liquidation procedure.

Section 35 (new) non-application of power of denial.

After the date on which the Court has handled a bankrupt case, the power of denial shall not be applied to payments by the indebted merchant for the debts required for the merchant's ordinary course of business or production.

Section 36 (new) Exercise of the power of denial.

Power of denial shall be exercised by Head of the Asset Management Team or Head of the Asset Liquidation Team in accordance with the decisions of the Court settling the bankrupt case.

Chapter VII
Power of avoidance to enforceable contracts

Section 37 (new) Exercise the power of avoidance to enforceable contracts.

Head of the Asset Management Team or Head of the Asset Liquidation Team can decide to deny or to continue the performance of the enforceable contracts, which the indebted merchant has not performed yet.

Section 38 (new) Basis for denial or performance of the enforceable contracts

The denial of, or continuance of, the performance of an enforceable contract shall aim at releasing the indebted merchant from a contract that is meaningless to a merchant fallen into bankrupt situation and increasing the merchant's financial resource.

Section 39 (new) Relations in a bilateral contracts

1- At the time of commencement of the bankrupt settlement procedure, if the indebted merchant and the other party to the contract has not performed fully a bilateral contract, the persons provided for in Section 37 may rescind the contract, or perform the liability of the indebted merchant and then, require the performance of obligation by another party.

2- In case stipulated in subsection 1 of this Section, the another party may send a notice requiring the final decision on whether the contract shall be rescinded or performed continuously, if the decision is not received within the mentioned deadline, the contract shall be deemed to be rescinded.

Section 40 (new) Right to compensation

1- If the contract has been denied as provided for in Section 39, another party to the contract shall have the same rights as a creditor in bankrupt case does to recover the damages caused by the rescission of the contract.

2- If object the indebted merchant received from the contract is still existing, the other party to the contract shall have right to recover that part of asset; if the asset has not existed, the another party to the contract shall have right as a creditor having a claim against bankrupt asset does.

Section 41 (new) Relation in a processing contract

If the indebted merchant has the liability to perform a work under a processing contract, the persons provided for in Section 37 may require the party ordering the processing to provide the materials and require the indebted merchant to perform the

work. The indebted merchant's wage for the performance of that liability shall belong to the bankrupt assets.

Chapter VIII
Power of set- off

Section 42 (new) Scope of set-off

Creditor and the indebted merchant may set off the obligations for the transactions those have been established before the commencement of bankrupt settlement procedure in accordance with the provisions in Section 386 of the Civil Code.

Section 43 (new) Prohibition of set- off.

Setting off is prohibited in the following situations:

- 1- Creditor has committed the obligation to the indebted merchant after the commencement of the bankrupt settlement procedure;
- 2- Creditor has committed the obligation to the indebted merchant although the creditor has known that the merchant has ceased payment of debts or the bankrupt petition has existed;
- 3- Claim of person who bears obligation to the indebted merchant has been satisfied by another in a bankrupt case after the issuance of the decision for commencement of the bankrupt case.

Chapter IX
Right to recover assets

Section 44 (Old section 46 revised). Return of asset leased or borrowed by the indebted merchant

Within 30 days from the date on which the Court has issued decision to handle petition for bankrupt settlement, owner of the assets leased or borrowed by the merchant to use in production or business shall present documents proving the ownership, lease contract or contract in borrowing to Head of the Asset Management Team or Head of the Asset Liquidation Team to have the owner's asset returned. In the case that a dispute appears, it can be brought to Court for settlement under general procedure.

In the case the indebted merchant has paid rent in advance but the term of the lease has not expired yet, the owner can only receive the assets after having refunded the surplus of rent, which shall be incorporated into the bankrupt assets either by the Assets Management Team or by the Asset Liquidation Team, for the undue period.

Section 45 (new) Prohibition of asset recovery

Any person who gave the asset to the indebted merchant before the issuance of decision by the Court to handle the petition for bankrupt settlement shall not recover the asset if the reason of such a recovery is to secure civil liability.

Section 46 (new) Recovery of goods sold

In case that the seller has sent the goods, but the purchaser, who is the indebted merchant, has not paid money and has not received the goods at the delivery location either, the seller can recover these goods; however, this provision does not exclude the right of persons mentioned in Section 37 to require transport of goods to the delivery location and make payment for the goods.

Section 47 (new) Recovery of asset by requiring compensation

If the asset, which is subject to right to recovery, has been transferred, person, who has the right to recover, shall have right for compensation for that asset.

Second Part

Provisions on Bankrupt Petition Settlement Procedure
Chapter I

Lodging petition and handling petition for bankrupt settlement

Section 48 (new) Lodging Petition for Bankrupt Settlement

1- When a person having right to lodge petition for bankrupt settlement provided for in Chapter II of this Law lodges a petition for bankrupt settlement, the petition shall clearly state whether it requires the commencement of rehabilitation procedure or liquidation procedure.

2- If the petitioner is not the indebted merchant, within 5 days since the receipt of the petition, the Court shall give a notice to the indebted merchant. Within 15 days since the receipt of the Court's notice, the indebted merchant shall submit to the courts the documents and papers provided for in Section 9.3 of this Law. If those documents can not be sufficiently submitted, the reason for that shall be given.

If the indebted merchant is a guarantor to a guarantee, within 5 days since the receipt of the Court's notice, the fact that the indebted merchant being sued shall be notified to the relevant parties.

Section 49 (new) Lodging petition for bankrupt settlement against an enterprise dissolved

If the indebted merchant is an enterprise, which has been dissolved, a person having right to sue can require the Court to settle under bankrupt procedure that enterprise, if the assets of that enterprise have not been transferred or distributed.

Section 50 (new) Time limit for handling the petition

1- If the petitioner is the indebted merchant, the Court shall decide whether to handle the petition or not within 7 days since the receipt of the petition.

2- If the petition for bankrupt settlement is not lodged by the indebted merchant, the Court shall decide whether to handle the petition or not within 7 days since the date of the receipt of the documents required as provided for in Section 48.2 of this Law.

3- If it finds that the petition for bankrupt settlement needs to be amended or supplemented by other documents, the Court shall require the petitioner to make revision or provision of the supplementary documents within 7 days since the Courts so requires. After receiving the revised petition and supplementary documents within the time limit, the Court shall decide whether to handle it or not within 7 days. If the Court does not receive the revised petition and supplementary documents, it shall be deemed that the petitioner has withdrawn the petition.

Section 51 (new) Handling decision to sue under bankrupt procedure of the People's Procuracies.

The Court shall handle the decision to sue under bankrupt procedure of the People's Procuracies in the procedure provided for in sections 48, 49, 50 of this Law.

Section 52 (new) Basis for handling the petition for bankrupt settlement

1- Within time limit provided for in section 50 of this Law, if it finds that the indebted merchant has fallen into bankrupt situation, the Court shall handle the case. On the contrary, the Court shall issue decision on not handling the petition and return the petition to the petitioner.

2- Under subsection 9, Section 6 of this Law, a merchant shall be seen as falling into bankrupt situation if:

- a) A debt was due;
- b) Creditor required the payment; and
- c) There is clear evidence that the debtor is incapable to pay the debtor's debt.

Section 53 (Old Section 37 revised) Decision on handling petition for bankrupt settlement

Decision on handling petition for bankrupt settlement shall contain the followings:

- 1- Name of the Court, full name of the judge responsible for bankrupt settlement;
- 2- Date and court filing number for bankrupt petition;
- 3- Full names of the Assets Management Team's members;
- 4- Name and address of the indebted merchant;
- 5- Times and locations of declarations of the financial claims in the bankrupt case, legal consequences for not declaring those claims within time limit specified.

Section 54 (Old section 13 revised) Decision on not handling the petition for bankrupt settlement

1- Decision on not handling petition for bankrupt settlement shall contain the followings:

- a) Name of the Court;
- b) Petitioner's full name and address;
- c) Name and address of the indebted merchant;
- d) Reasons for requiring bankrupt settlement;
- Ⓣ) Basis for not handling the petition for bankrupt settlement;
- e) Right to appeal against the decision on not handling the petition for bankrupt settlement.

2- Copies of the decision on not handling the petition for bankrupt settlement should be sent to the petitioner and the indebted merchant.

Section 55 (Old sections 12 and 21 revised) Notice on handling the petition for bankrupt settlement.

1- Within 10 days since the date of handling the petition for bankrupt settlement, the Court shall notify the indebted merchant and publish the decision on handling in the local newspapers where the indebted merchant's main address is located, and central daily newspapers in three consecutive issues.

2- In addition to public notification of the decision on handling of the petition for bankrupt settlement as provided for in subsection 1 of this Section, the Court shall forward the decision on handling to creditors, attached by a list of detailed debts submitted by the indebted merchant.

3- After such a notification, within 30 days since the receipt of the notice for the creditors who have been informed, and within 60 days since the first day of the publicly publishing in the local and central daily newspapers the decision on handling the petition for bankrupt settlement for the creditors who have not been informed, a creditor shall send the creditor's claim to the court and clearly state the values of claim, notwithstanding the creditor's claim is secured or not, and give evidence about the claim. Creditor who has not informed the creditor's claim within the above time limit should be deemed to abandon the claim.

Section 56 (Old section 13 revised) Appeal against the decision on not handling petition for bankrupt settlement

Within 10 days since the Courts has issued the decision on not handling the petition for bankrupt settlement, petitioner can appeal against such a decision to the directly upper Court.

Section 57 (new) Jurisdiction of the appellate court

Within 30 days since the receipt of the appeal against the decision on not handling the petition of the bankrupt settlement by the first instance court, the appellate court shall issue one of the following decisions:

- 1- to allow the decision on not handling the petition for bankrupt settlement by the first instance court.
- 2- to set aside the decision on not handling the petition for bankrupt settlement and order the issuance of the decision on handling the petition.

Section 58 (new) Handling petition for bankrupt settlement pursuant to the decision of the appellate court

Within 7 days since the receipt of the decision of the appellate court setting aside the decision on not handling the petition for bankrupt settlement, the court of first instance shall handle the petition.

Chapter II

Legal effects of the decision on handling the petition for bankrupt settlement

Section 59 (Old section 18.1 revised). Supervision of the indebted merchant's operation.

Since the date on which the court has issued the decision on handling the petition for bankrupt settlement, power to manage the indebted merchant's asset shall be vested on the Asset Management Team; all of the indebted merchant's business activities can be ordinarily carried out, but are subjects to the supervision and monitoring by Judge and the Asset Management Team

Section 60 (Old section 18.2 revised) Cease of the indebted merchant' payment.

1- On the first date when the Court's decision on handling the petition for bankrupt settlement is published on the local and central daily newspaper, the indebted merchant shall cease the payment of any indebted merchant's debt. Any payment required for ordinary course of the indebted merchant's business or production should be checked and verified by the Judge responsible for bankrupt settlement.

2- If after the date prescribed in the subsection 1 of this Section, the indebted merchant pays continuously for some of the indebted merchant's creditors or does any activities listed in Section 33 of this Law, the power of avoidance shall be applied.

Section 61 (new) Duties of bank where the indebted merchant has accounts.

Since the date prescribed in subsection 1, Section 60 of this Law, bank where the indebted merchant has accounts is prohibited:

- 1- to make payments of debts for the indebted merchant, except the payments verified by the Judge responsible for the bankrupt settlement.

2- to do any activity to set off or to pay the debts of the indebted merchant owned to the bank itself.

Section 62 (new) The indebted merchant's employees' and officials' duties

1- Immediately after the receipt of the decision on handling petition for bankrupt settlement, the indebted merchant shall publicly inform all of the indebted merchant's employees and officials.

2- Since having been publicly informed the decision on handling the petition for bankrupt settlement, all of the indebted merchant's employees and officials should preserve the indebted merchant's assets and be prohibited to do any activities to conceal, to disperse or to secretly transfer the indebted merchant's assets. Any person who does not perform this duty shall compensate for the loss. If the activity establishes a crime, criminal liability shall be imposed.

Section 63 (new) Cease of the power to dispose the secured asset.

Since the date when the Court has issued the decision on handling petition for bankrupt settlement, the indebted merchant's power to dispose the secured asset shall be temporarily suspended.

Section 64 (new) Exercise of the suspension or temporary suspension of asset disputes.

Since the date when the Court has issued the decision on handling the petition for bankrupt settlement, the suspension and temporary suspension as provided for in Section 4 of this Law for the asset dispute case to which the indebted merchant is a party, should be exercised as follows:

1- If the judgement did take effect, the enforcement shall be suspended. Person who entitles to the enforcement will be paid as a creditor in the bankrupt case.

2- If the case is pending and no another person with joint liability is involved, the case shall be suspended. Another party to the case have the power to submit that party's claim, with a clear statement about the value of the claim, to the Court as a creditor in the bankrupt case.

3- If the case is pending and it involves another person with joint liability, the case shall be suspended or temporarily suspended, depending on another party's requirement to participate in bankrupt case as a creditor, or to continuance of proceeding by the Court after the termination of bankrupt settlement procedure.

Section 65 (new) Incorporation of other cases into bankrupt case.

1- After the Court has issued the decision on handling the petition for bankrupt settlement, if the asset dispute to which the indebted merchant is the creditor has not been handled by the Court or has been handled by Court, but will not be settled within 3 months, the Court shall settle that dispute in bankrupt settlement. If such a dispute has been handled by

another Court, the Court handling bankrupt case shall require the transfer the dispute to it by the another Court.

2. In the case provided for in subsection 1 of this Section, the Court shall require debtor or the keeper of the indebted merchant's asset to pay debt or to return asset to the Asset Management Team within a time limit. If there is a dispute on the value of debt, or on the difference on the quantity of asset raised by the indebted merchant, the Court shall settle that dispute within 7 days.

Section 66 (*Old section 16.2 revised*) **Requiring the People's Procuracy to prosecute a criminal case.**

Since the handling of the petition for bankrupt settlement, if it is found that a managerial member of the indebted merchant commits a criminal activity, the Court shall notify, and provide the documents to, the competent People's Procuracy for determination of a criminal prosecution. Criminal prosecution by the People's Procuracy shall not lead to suspension or temporary suspension of the bankrupt settlement.

Section 67 (*Old section 22 revised*) **Making the creditors list.**

Within 10 days since the expired date provided for in subsection 3, Section 55 of this Law, the Asset Management Team shall finalize the creditors list. This lists shall clearly state the debt value of each creditor, divided into secured debts and unsecured debts, due debts and undue debts.

Chapter III

Preservation of the indebted merchant's assets

Section 68 (*new*) **Taking inventory of the indebted merchant's assets**

Within 60 days since the date on which the Court has issued the decision on handling the petition for bankrupt settlement, the Asset Management Team shall complete the inventory for all of the indebted merchant's assets.

Section 69 (*new*) **Registration of secured transaction of the indebted merchant**

If the indebted merchant makes a secured loan, but not been registered yet, Head of the Asset Management Team shall immediately register that secured transaction.

Section 70 (*new*) **Application of the provisional measures.**

In cases of necessity, Head of the Asset Management Team may require the judge responsible for the procedure to order the application of one of the following provisional measures to preserve the indebted merchant's assets:

- 1- Selling the indebted merchant's personal assets, if those are easily spoiled products, or need costly maintenance.
- 2- Sealing up funds, shares, books, papers, houses, stores of the indebted merchants and of each member if the indebted merchant has members with absolute liability.

Indispensable asset for daily life and for the continuance of business by the indebted merchant should not be sealed up.

Chapter IV
Creditors' meeting

Section 71 (*Old section 27 revised*) **Convincing the creditors' meeting**

1- First creditors' meeting shall be convinced by the Court, this meeting shall not be convinced later than 75th day since the date when the Court has handled the petition for bankrupt settlement.

2- Subsequent creditors' meetings can be convinced at any time if the Court or the creditors' representative think necessary, or at the request of the Asset Management Team, or Asset Liquidation Team, or of other creditors representing one fourth of the total value of unsecured claims.

Section 72 (*new*) **Presiding the creditors' meeting**

The judge responsible for the bankrupt settlement shall preside creditor's meetings.

Section 73 (*Old sections 25 and 26 revised*) **Participants of the creditors meeting.**

1. All of creditors, whose names are listed in the creditors list, are participants of the creditors' meeting.

Creditor may authorize in writing to another person to participate in creditors' meetings. Authorized person shall have the same rights and duties as the creditor does.

2- Labor union representative, or employees' representative where there is no labor union, should have same rights and duties as another creditor does.

3- Warrantor, after having paid debts on behalf of the indebted merchant, becomes an unsecured creditor and shall have same rights and duties as other unsecured creditors do.

Section 74 (*Old section 28 revised*) **The merchant's duty to attend at the creditors' meetings**

The merchant or the merchant's legal representative shall attend creditors' meetings to present the rehabilitation plan and to answer the creditors' questions. If the merchant or the merchant's representative is unable to attend the creditors' meeting for any reason, [they] shall authorize another person to attend the creditors' meeting in writing. Authorized person shall have the same rights and duties as the merchant or the merchant's representative does. If the merchant or the merchant's representative was an individual or owner of an enterprise who deceased, the legal inheritors of the deceased merchant shall attend the creditors meeting.

Section 75 (*Old section 24 revised*) **Content of the creditors' meetings**

1- The first creditors' meeting shall cover the followings:

a) Head of the Asset Management Team shall inform the creditors meeting the reasons for the cease of payment by the indebted merchant, recent situation of the merchant and of the bankrupt estate.

b) Creditors meeting shall check the documents, evidence relating to claims and evaluate the values of those claims, notwithstanding whether those claims are secured by assets or not.

If a creditor claims about the creditor list or the values of claims, such a creditor shall have power to claim, and the Court shall settle such a claim within 7 days.

c) Creditors meeting shall vote to appoint from one to three creditors' representatives. If the creditors' representatives voted by the creditors meeting vary from the creditors' representative appointed by the Court to the Asset Management Team, the Court shall decide to replace that creditors' representative.

2. Content of the subsequent creditors' meetings should be decided by the judge responsible for the procedure or by the creditors' representatives during rehabilitation procedure or liquidation procedure against the indebted merchant.

Section 76 (Old sections 29 and 32 revised) Resolution of the creditors meeting

1. Resolution of creditors meeting shall be in writing and be passed by majority of attending creditors.

2. Resolution of creditors meeting shall be binding to all creditors.

Section 77 (new) Abolishment of the resolution of creditors meeting

Head of Asset Management Team, the creditors have power to require the Court's abolishment of the resolution of the creditors meeting if it is found that the resolution is not in accordance with the common interests of the creditors, the Courts also has power to abolish the resolution of the creditors meeting if it finds so.

Chapter V

Procedure to commence bankrupt settlement

Section 78 (new) Trial determining the commencement of bankrupt petition settlement

1- The Court shall held a public trial to determine the commencement of a bankrupt settlement procedure, this trial shall be held no later than 15 days since the fist creditors meeting.

2- The judge responsible for bankrupt settlement shall preside the trial.

Section 79 (new) Participants of the trial

- 1- Creditors' representatives, the indebted merchant shall be convinced to the trial by the Court.
- 2- The court can also convince some additional creditors if the Court needs to hear their opinions.
3. Creditor, who is not convinced by the Court, can actively participate in the trial.

Section 80 (new) Trial in case that the Court actively commences the procedure

- 1- In the case mentioned in Section 13 of this Law, the trial shall be held immediately after the Court has found that the merchant is in bankrupt situation.
- 2- The Court shall convene the indebted merchant to the trial. If the indebted merchant does not appear, the Court shall make a report on the indebted merchant's absence and issue the decision on commencement of the bankrupt procedure against that merchant.

Section 81 (new) Order of the trial

- 1- Presiding judge asks the Head of the Asset Management Team to report the recent financial situation and the inventory, which has been modified, supplemented based on the achievements of the first creditors meeting, for all of the indebted merchant's assets.
- 2- Presiding judge gives the direction to deal with the indebted merchant.
- 3- Indebted merchant and creditors present their opinions, including the opinion about the date on which the indebted merchant has fallen into cease of payment situation.

Section 82 (new) Issuance of the decision on commencement of bankrupt petition settlement.

- 1- The Court shall issue the decision on commencement of bankrupt petition settlement after hearing the opinions of persons mentioned in Section 81 of this Law. The Court's decision is not effected by the creditors' or the indebted merchants' opinions.
- 2- The Court shall issue the decision on commencement the rehabilitation procedure against the indebted merchant if it has found that the indebted merchant has seriously suggested solution to deal with the debts and business, and production reorganization plan; in the contrary, the court shall issue the decision on commencement of liquidation procedure against the indebted merchant.
- 3- Decision on commencement of bankrupt settlement shall be publicly informed in accordance with the provisions in subsection 1, Section 55 of this Law.

Section 83 (new) Contents of the decision on commencement of bankrupt settlement

Besides the contents provided for in subsection 1, 2 and 4 of Section 53 of this Law, the decision on commencement of bankrupt settlement shall contain the followings:

- 1- Debts situation, total value of the merchant's debts;
- 2- Date on which the merchant has fallen in cease of payment situation;
- 3- The Court has decided to commence the rehabilitation procedure or liquidation procedure and the basis for that decision.

Section 84 (new) Legal effects of the decision on the commencement of bankrupt settlement

Decision on commencement of whether rehabilitation procedure or liquidation procedure shall not be appealed or protested, except the claim on the date on which the merchant has fallen into cease of payment situation. The Court shall settle claim within 7 days since the receipt of the claim.

Chapter VI

Rehabilitation procedure against the indebted merchant

Section 85 (new) Agreement on the indebted merchant rehabilitation plan

- 1- Within 15 days since the date when the Court has issued the decision on commencement of rehabilitation procedure, the indebted merchant and creditors meeting shall agree the indebted merchant rehabilitation plan.
- 2- Indebted merchant rehabilitation plan shall clearly state: reasons for the cease of payment situation by indebted merchant, tentative measures to rehabilitate the indebted merchant's situation, specified asset resource for payment of debts, method of payment of debts, duration of payment of debts, values of debts those are suggested to be cut down.
- 3- Indebted merchant rehabilitation plan shall be passed by the votes of:
 - a) Majority of secured creditors presenting two third of the total values of secured debts attend the creditors meeting; and
 - b) Majority of unsecured creditors presenting more than one half of the values of unsecured debts attend the creditors meeting.

Section 86 (new) Confirmation of the agreement on the indebted merchant rehabilitation plan

1. Agreement on the indebted merchant rehabilitation plan shall be confirmed by the Court and be binding all creditors.
- 2- The Court shall publicly inform the confirmation of the agreement on the indebted merchant rehabilitation plan in accordance with provisions in subsection 1, Section 55 of this Law.

Section 87 (new) Supervision of the implementation of the indebted merchant rehabilitation plan

1- After the indebted merchant and the Creditor Meeting has agreed upon the indebted merchant rehabilitation plan, the Asset Management Team has been dissolved.

2- Creditors' representatives should supervise the implementation the rehabilitation plan by the indebted merchant. Once every three months, the creditors' representatives should send to the Court a report on the progress of the implementation of the rehabilitation plan by the indebted merchant.

Section 88 (new) Duration for implementation of the indebted merchant rehabilitation plan

Maximum term for indebted merchant implementation plan is two years.

Section 89 (new) Suspension of the indebted merchant rehabilitation plan

The Court will issue the decision on the suspension of the indebted merchant rehabilitation procedure when the indebted merchant has completed the implementation of the rehabilitation plan.

Section 90 (new) Conversion of procedure

The Court will convert from indebted merchant rehabilitation procedure to indebted merchant liquidation procedure in the following situations:

- 1- Agreements on the rehabilitation plan can not be fulfilled;
- 2- Rehabilitation plan can not be suggested or agreed upon with the Creditors meeting.

Chapter VII
Indebted merchant liquidation procedure.

Section 91 (new) Establishment of the Asset Liquidation Team

Immediately after the receipt of the Court's decision on commencement of the liquidation procedure against the indebted merchant, or the decision on conversion from rehabilitation procedure into liquidation procedure against the indebted merchant, the Asset Liquidation Team shall be established in accordance with the provisions of Section 17 of this Law.

Section 92 (new) Receipt and management of bankrupt assets

Immediately after its establishment, the Asset Management Team must receive the transfer by the Asset Management Team and must implement the provisions of this Law to recover, to manage, and to distribute the bankrupt assets.

Section 94 (new) Distribution of bankrupt assets

- 1- Creditors meeting shall discuss and pass the asset distribution plan and submit it to the judge responsible for procedure for approval.
- 2- Creditor meeting shall also pass the decision in disposing asset at less value those have been impossibility sold by the Asset Liquidation Team.

Section 94 (new) Distribution of the bankrupt assets

- 1- Creditors meeting shall discuss and pass the distribution plan and submit it to the Judge in charge of procedure for decision;
- 2- Creditors meeting shall also pass the decision to dispose assets at less value those Asset Management Team have not been able to sell.

Chapter 95 (new) Issuance of the decision on suspension of the indebted merchant liquidation procedure

1. During liquidation process, if it is found that there is no asset remained for distribution, the Court will issue decision on suspension of the bankrupt procedure and declare the indebted merchant bankrupt.
- 2- If, after having handled the petition for bankrupt settlement, the Court has found that there is no asset remained for liquidation, the Court will issue decision on suspension of the bankrupt procedure and declare the indebted merchant bankrupt.

Section 96 (Old section 48 revised) Decision on termination of the enforcement of the decision on commencement of indebted merchant liquidation procedure

- 1- Having completed the liquidation, the Chief of Judgement Enforcement Office shall issue decision on termination of the enforcement the decision on commencement of the indebted merchant liquidation procedure. This decision must be sent to the Business Registration Office to delete the merchant's names in business registration books.
- 2- Decision on termination of the enforcement of the liquidation procedure does not discharge the liabilities of the merchant, who is individual or owner of private enterprise, and the merchant shall pay continuously to the creditors for the unpaid part of debt after the termination of the liquidation process due to the fact that the estate is insufficient to pay in full, except the parties otherwise agree upon, or laws otherwise provide.

Chapter VIII
Dealing with Breaches

Section 97 (Old section 49 revised). Liabilities for breaches during the bankrupt petition settlement procedure.

1- Any person who commits the following breaches shall, depending on the seriousness of the breach, be punished administratively, liable for payment of compensation, or criminally prosecuted in accordance with the law:

- a) carrying out any of the prohibited activities stipulated in sections 60, 61 and 62 of this Law, or engaging in other fraudulent conducts during the process of a bankruptcy proceeding;
- b) use of threats or other forms of coercion to force the merchant to lodge a bankrupt petition;
- c) intentionally causing damage to, or destroying the merchant's assets.

2- Judges, Head of the Asset Management Team, member of the Asset Management Team, Head of Asset Liquidation Team, members of the Asset Liquidation Team who breach the provisions of this Law and other provisions of laws during the process of a bankrupt settlement shall, depending on the seriousness of the breach, be disciplined or criminally prosecuted in accordance with the law.

Section 98 (Old section 50 revised) Prohibition of holding office after the merchant is declared bankrupt

1- The directors, the President, and the members of the board of management of a bankrupt merchant shall be prohibited from holding similar positions in any other enterprise merchants within one to three years from the date on which the merchant is declared bankrupt.

2- The provisions of subsection 1 of this Section shall not apply to the directors, the president, and the members of the board of management of a bankrupt merchant in the following circumstances:

- a) the business is bankrupt due to *force majeure*;
- b) the directors, the president, and the members of the board of management are not directly responsible for the reasons of the enterprise's bankruptcy;
- (c) the directors or the president of the board of governance have voluntarily lodged a bankruptcy petition against the business in accordance with the law and have fully paid the creditor.

Chapter IV
Enforcement Provisions

Section 99 (Old section 51 revised)

This Law shall be applicable to bankruptcy, which involve foreign individuals and organizations except where an international treaty of which the Socialist Republic of Vietnam is a signatory otherwise provides.

Section 100

This Law shall be of full force and effect as of...

This Law supersedes the Bankruptcy Law passed by the National Assembly on 30 December 1939.

The Government, the Supreme People's Court and the Supreme People's Procuracy, within their functions and powers, by itself or in cooperation, shall examine the rules or regulations guiding the application of the 1993 Bankruptcy Law to repeal, to amend or to enact the new ones to guide the application of this Law.

This Law was passed by Legislature ... of the National Assembly of the Socialist Republic of Vietnam at its ... Session on