

The Enterprises Bankruptcy Law of the People's Republic of China

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Disclaimer:

This version is translated by Dr. Jingxia Shi, Professor of law, Law School, China University of International Business and Economics (UIBE). This translation is only for the purpose of academic reference. The translator does not undertake any legal responsibility resulting from the misunderstanding of the Law.

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Chapter I General Provisions

Article 1 The Law is enacted in order to standardize the procedures of enterprise bankruptcy, to ensure fair liquidation of claims and obligations, to protect the legal rights and interests of creditors and debtor and to maintain economic order of socialist market economy.

Article 2 When an enterprise legal person is unable to pay its due debts and all its assets is insufficient to pay off its total liabilities, or it manifestly lacks abilities to pay its debts, all its debts shall be liquidated in accordance with the provisions in the Law. The enterprise legal person provided in the preceding paragraph, or an enterprise legal person with visible possibility of losing ability to pay its debts, may conduct reorganization in accordance with the provisions in the Law.

Article 3 A bankruptcy case shall be subject to the jurisdiction of local People's Court where the debtor has its domicile.

Article 4 The provisions of the Civil Procedure Law apply *mutatis mutandis* to a bankruptcy case hearing wherever there is no provision available in the Law.

Article 5 A bankruptcy proceeding initiated in accordance with the Law shall have effects upon the debtor's assets located outside of the territory of the People's Republic of China.

In the case that a peoples' court is asked or requested to recognize and enforce an effective bankruptcy judgment or decision made by a foreign court which involves the debtor's assets located within the territory of the People's Republic of China, the People's Court shall examine the case. The People's Court, after the examination of the case in accordance with the international treaties to which the People's Republic of China is a party or reciprocity principle, may make a decision to recognize and enforce a foreign bankruptcy judgment or decision, based upon the facts that such recognition and enforcement is not in violation of basic legal principles of the People's Republic of China, not detrimental to the national sovereignty, security and social public interests and without prejudice to the legal rights and interests of the creditors located within the territory of the People's Republic of China.

Article 6 In handling a bankruptcy case, the People's Court shall, as provided by the

relevant laws and regulations, safeguard the legal rights and interests of the enterprise's employees, and impose legal responsibilities on operational management personnel of the bankrupt enterprise.

Chapter II Application and Acceptance

Section I Application

Article 7 The debtor as provided in article 2 of the Law may apply to the People's Court for reorganization, composition or bankruptcy liquidation.

A creditor may apply to the People's Court for conducting a reorganization or bankruptcy liquidation of a debtor when such debtor is unable to pay its due debt.

The person who bears liquidation responsibility of a dissolved enterprise legal person without liquidation yet or without completing its liquidation, which falls into the position that its all assets is insufficient to pay off its total liabilities, shall apply to the People's Court for accepting a bankruptcy case.

Article 8 A bankruptcy petition shall be filed with the relevant documents and evidence in order for the People's Court to accept a bankruptcy case.

The petition shall state the following particulars:

- (1) the basic facts of the applicant and the respondent;
- (2) the purpose of the application;
- (3) the reason and grounds for the application;
- (4) other matters that the People's Court deems necessary on documentation.

If the petition is filed by a debtor, the debtor shall submit with its petition the statement of its assets, the lists of its obligations, the lists of its claims, the relevant financial statements, the prearrangement plan of the employees' relocation, the payment of the employee's wages and the contribution of the employees' social insurance premium.

Article 9 The applicant may ask for withdrawal of a petition after it has been filed but prior to the acceptance by the People's Court.

Section II Acceptance

Article 10 If a bankruptcy petition is filed by a creditor, the People's Court shall

notify the debtor within 5 days from the date on which such petition is received. If the debtor dissents with the petition, it shall submit to the People's Court with its objection within 7 days from the date on which it receives the notification from the People's Court. The People's Court shall decide whether to accept such a bankruptcy petition within 10 days from the date on which the period of objection expires.

Except the circumstance as provided in the preceding paragraph, the People's Court shall make a decision on whether to accept a bankruptcy petition within 15 days from the date on which such petition is received.

Should some special circumstances present, rendering it necessary to postpone the deadline for making a decision on whether to accept a bankruptcy petition as provided in the preceding two paragraphs, the deadline may be postponed for 15 days subject to the approval of the next higher-level People's Court.

Article 11 When the People's Court decides to accept a bankruptcy petition, it shall serve its decision to the applicant within 5 days from the date on which such decision is made.

In the case that a creditor files the petition, the People's Court shall serve its decision to the debtor within 5 days from the date on which such decision is made. The debtor shall, within 15 days from the date on which such decision is served, submit to the People's Court with the statement of its assets, the lists of its obligations, the lists of its claims, the relevant financial statements, the prearrangement plan of the employees' relocation, the payment of the employee's wages and the contribution of the employees' social insurance premium.

Article 12 If the People's Court makes a decision rejecting to accept a bankruptcy petition, it shall serve its decision with stated reasons to the applicant within 5 days from the date on which such decision is made. The dissenting applicant may appeal to the next higher-level People's Court within 10 days from the date on which such decision is served.

After a bankruptcy petition is accepted by the People's Court and prior to the adjudication of bankruptcy, if the People's Court, after the review and examination, finds that the debtor does not conform to the conditions as provided in article 2 of the Law, may make a decision to turn down the petition. The dissenting applicant may file an appeal to the next higher-level People's Court within 10 days from the date on which such decision is served.

Article 13 The People’s Court shall appoint an administrator at the same time when it makes a decision to accept a bankruptcy petition.

Article 14 The People’s Court shall notify the known creditors and promulgate its decision within 25 days from making a decision to accept a bankruptcy petition.

The notice and promulgation shall state the following matters:

- (1) the name of the applicant and the respondent;
- (2) the time when the People’s Court accepts a bankruptcy petition;
- (3) the time of period, venue and other matters necessary to be heeded for filing claims;
- (4) the names and business address of the administrator;
- (5) the requirements that the debtor’s obligors and holders of the debtor’s property shall pay off the debts or give the property back to the administrator;
- (6) the date and venue of the first creditors’ meeting;
- (7) other matters that the People’s Court deems necessary to notify and promulgate.

Article 15 From the date on which the People’s Court serves the debtor with its decision of accepting a bankruptcy petition to the date of closing the bankruptcy case, the debtor-related personnel shall undertake the following duties:

- (1) appropriately take care of all the properties, seals and account books, documents, files and other materials in its possession and management;
- (2) carry out the affairs according to the order of the People’s Court or at the request of administrator, and answer their inquiries truly and faithfully;
- (3) be present at the creditors’ meeting and answer the creditors’ inquiries truly and faithfully;
- (4) not leave the domicile unless permitted by the People’s Court;
- (5) not take the position of director, supervisor or other high-rank management personnel of any other enterprise.

The “debtor-related personnel” as provided in the preceding paragraph refers to the legal representative of bankruptcy enterprise; the person in charge of financial management and business operation of bankruptcy enterprise may be included in this category subject to the decision made by the People’s Court.

Article 16 The debt repayment made by the debtor to any creditor individually shall be null and void after the acceptance of bankruptcy case by the People’s Court.

Article 17 After the acceptance of bankruptcy case by the People’s Court, the obligors of debtor and the holders of debtor’s property shall pay off their debts or give the property back to the administrator.

If the obligors of debtor pay off their debts, or the holders of debtor’s property return the property, to the debtor in violation of the preceding paragraph on purpose, thereby causing losses to the creditors, they shall not be exempted from the duties to continue paying off their debts or returning property to the administrator.

Article 18 After the People’s Court accepts a bankruptcy case, the administrator has the power to decide whether to assume or reject a contract entered into prior to the acceptance of bankruptcy case by the People’s Court but fulfilled neither by the debtor nor by the counterparty of the contract. Such decision shall be notified to the counterparty of the contract. The contract shall be deemed to have been rejected if the administrator fails to notify the counterparty of the contract within two months from accepting the bankruptcy petition by the People’s Court or the administrator fails to reply inquiry from the counterparty of the contract within 30 days from receiving such inquiry.

If the administrator decides to assume the contract, the counterparty of the contract shall execute the contract. The counterparty of the contract, however, is entitled to require the administrator to provide surety. The contract shall be deemed to have been rejected if the administrator fails to provide such surety.

Article 19 After the People’s Court accepts a bankruptcy case, any preservation measure against the debtor’s property shall be cancelled and any enforcement procedure against the debtor’s property shall be suspended.

Article 20 After the People’s Court accepts a bankruptcy case, any civil litigation or arbitration against the debtor initiated but without closure shall be suspended; the pending litigation or arbitration is supposed to continue after the administrator has taken over the control of debtor’s assets.

Article 21 After the People’s Court accepts a bankruptcy case, a civil litigation against the debtor may only be initiated in the People’s Court which accepts the bankruptcy case.

Chapter III Administrator

Article 22 An administrator shall be appointed by the People's Court.

If the creditors' meeting considers an administrator incapable of fulfilling his duties legally and fairly or there exist other circumstances under which he is incompetent to fulfill his duties, the creditors' meeting may apply to the People's Court for the replacement of an administrator.

The procedures regarding the appointment of an administrator and the amount of remuneration for the administrator shall be formulated by the Supreme Court.

Article 23 The administrator shall carry out his duties in accordance with the Law, and report to the People's Court and receive supervision from the creditors' meeting and creditors' committee.

The administrator shall attend the creditors' meeting, report the performance of his mission to the meeting and answer inquiries.

Article 24 An administrator shall be occupied by a liquidation committee comprised by the personnel from relevant authorities or agencies or by such a social intermediary as law firm, accounting firm or bankruptcy liquidation firm established in accordance with the laws.

The People's Court, in the light of specific conditions of the debtor, may appoint the person with the relevant professional knowledge and certified license from a social intermediary as an administrator after consultation with such intermediary.

Anyone who falls into the following categories shall not serve as an administrator:

- (1) those once given criminal punishment due to an intended crime;
- (2) those whose relevant certified license was once revoked;
- (3) those who have interests with the case;
- (4) other people whom the People's Court may consider unqualified as an administrator.

An individual serving as an administrator shall enroll in insurance plan for professional liabilities.

Article 25 The administrator shall carry out the following duties:

- (1) taking over the control of all assets, seals and account books, documents and files of the debtor;
- (2) investigating the status of the debtor's property and draft a report on the debtor's property;

- (3) determining the internal management affairs of the debtor;
- (4) deciding the day-to-day expenditure and other necessary spending of the debtor;
- (5) deciding whether the debtor shall continue or cease to operate prior to the first creditors' meeting;
- (6) managing and disposing the debtor's property;
- (7) participating in lawsuits, arbitration or other legal proceedings on behalf of the debtor;
- (8) proposing to summon the creditors' meetings;
- (9) other duties which the People's Court deems necessary for the administrator to carry out.

Other provisions regarding the duties of an administrator as provided in the Law shall apply.

Article 26 Prior to the first creditors' meeting, the decision made by the administrator with regard to continuing or ceasing the debtors' business operation or the acts of the administrator that fall into one of the situations as provided in article 69 of the Law shall be subject to the approval of the People's Court.

Article 27 An administrator shall be diligent, duteous and faithful in performance of his duties.

Article 28 Subject to the approval of the People's Court, the administrator may retain necessary working staff to perform his duties.

The amount of an administrator's remuneration shall be determined by the People's Court. The creditors' meeting is entitled to submit dissenting opinions on the amount of remuneration to the People's Court.

Article 29 An administrator shall not resign without justifiable warranty. The resignation of the administrator shall be subject to the approval of the People's Court.

Chapter IV Debtor's Property

Article 30 The debtor's property consists of all assets that belong to the debtor at the time of the acceptance of a bankruptcy case by the People's Court and the assets obtained by the debtor after the acceptance of a bankruptcy case by the People's Court but prior to the closure of this case.

Article 31 Within one year prior to the acceptance of a bankruptcy case by the People's Court, the administrator shall be entitled to ask for the People's Court to revoke the following acts concerning the debtor's properties:

- (1) unrequited transfer of property;
- (2) transactions at distinctly unreasonable prices;
- (3) pledging property as security for satisfaction of a formerly unsecured debt;
- (4) paying off the debts immature ahead of time;
- (5) giving up obligatory claims.

Article 32 Within 6 months prior to the acceptance of a bankruptcy case by the People's Court, if the debtor has already fallen into the positions as provided by the first paragraph of article 2 of the Law, but still pays to any individual creditor, the administrator shall have power to ask for the People's Court to rescind the relevant transactions. The repayment to any individual creditor, however, is in the interests of debtor's property serves as an exception.

Article 33 The following acts concerning the debtor's property shall be null and void:

- (1) concealment or transfer of property in order to evade debts;
- (2) fabrication or acknowledgement of an unauthentic debts.

Article 34 The administrator shall be entitled to recover the debtor's assets acquired through the acts as provided in article 31, article 32, article 33 of the Law.

Article 35 After the acceptance of a bankruptcy case by the People's Court, if an investor of the debtor has not fully honored its obligation to contribute capital, the administrator shall require the investor to contribute its subscribed capital without subject to any time limitation of subscribing capital.

Article 36 The administrator shall recover the abnormal income of directors, supervisors and other high-rank management personnel of the enterprise, and enterprise's properties misappropriated by directors, supervisors and other high-rank management personnel through taking advantage of their positions.

Article 37 After the acceptance of a bankruptcy case by the People's Court, the

administrator may retrieve a collateral by paying off the debt or rendering a substituted surety for creditors.

If the value of the collateral is lower than the amount of the secured claim, the paying off the debts or rendering a substituted surety, as provided in the preceding paragraph, shall be limited to the then market value of the collateral.

Article 38 The proprietor of an asset possessed but not owned by the debtor may get it back through the administrator after the acceptance of a bankruptcy case by the People's Court except as otherwise provided by the Law.

Article 39 If a seller has shipped the goods to the debtor as a buyer at the time of the acceptance of a bankruptcy case by the People's Court, while the debtor has not received the goods and has not paid full price, the seller may take back the goods in transit. The administrator, however, may pay in full and request the seller to deliver the goods.

Article 40 A creditor indebted to the debtor prior to the acceptance of a bankruptcy case by the peoples' court may apply to the administrator for set-off. The set-off, however, shall not apply under any of the following circumstances:

- (1) An obligor of the debtor obtains a claim against the debtor from anyone else after the acceptance of a bankruptcy case by the People's Court;
- (2) A creditor becomes indebted to the debtor with knowledge of the fact that debtor is unable to pay its due debts or there exists a bankruptcy petition; the circumstance under which that a creditor becomes indebted to the debtor due to legal provisions or some causes occurred one year earlier prior to the bankruptcy petition, however, could serve as an exception.
- (3) An obligor of the debtor obtains an obligatory claim against the debtor with knowledge of the facts that debtor is unable to pay its due debts or there exists a bankruptcy petition; the circumstance under which an obligor of the debtor becomes indebted to the debtor due to legal provisions or some causes occurred one year earlier prior to the bankruptcy petition, however, could serve an exception.

Chapter V Administration Expenses and Debts of Common Benefit

Article 41 Administration expenses refer to the following expenses occurring after the acceptance of a bankruptcy case by the People's Court:

- (1) the litigation costs in the bankruptcy case;
- (2) the costs necessary for the management, disposition and distribution of the debtor's property;
- (3) the administrator's expenses for carrying out duties, retaining working staff and its remuneration.

Article 42 Debts of common benefit refer to the following debts occurring after the acceptance of a bankruptcy case by the People's Court:

- (1) debts arising from the performance, at the request of the administrator or the debtor, of an executive contract by the counterparty of the party;
- (2) debts arising from negotiorum gestio in favor of the debtor's property;
- (3) debts arising from unjust enrichment of the debtor;
- (4) the payment for labors, social insurance premiums and other debts produced thereupon necessary for the continuance of debtor's business operation;
- (5) liabilities for damages caused by carrying out duties of the administrator and relevant personnel;
- (6) liabilities for damages caused by the debtor.

Article 43 Administration expenses and debts of common benefit shall be paid off at any time from the debtor's assets.

If the debtor's property is insufficient to pay off all administration expenses and debts of common benefit, administration expenses shall be paid off first.

If the debtor's property is insufficient to pay off administration expenses or debts of common benefit, they shall be repaid on a pro rata basis.

If the debtor's property is insufficient to pay off administration expenses, the administrator shall submit a request to the People's Court for a decision to close the bankruptcy case. The People's Court shall make a decision and promulgate its decision on the closure of the bankruptcy case and within 15 days from receiving such request.

Chapter VI Filing of Claims

Article 44 The claims against the debtor established prior to the acceptance of a bankruptcy case by the People's Court shall be enforced in accordance with the

procedures as provided in the Law.

Article 45 After the acceptance of a bankruptcy case, the People's Court shall determine the deadline for filing claims by creditors. The deadline shall be no shorter than 30 days and no longer than 90 days, computing from the date on which the decision on the acceptance of a bankruptcy case is promulgated by the People's Court.

Article 46 An immature claim shall be deemed as a mature claim at the time of acceptance of a bankruptcy case.

A claim with interests shall stop calculating its supposed interests from the date accepting a bankruptcy case by the People's Court.

Article 47 Creditors may file conditional claims, immature claims and pending claims in a litigation or an arbitration.

Article 48 A Creditor shall file its claim to the administrator within the deadline for filing claims determined by the People's Court.

The administrator, after investigation, shall compile the employees' wages, salaries, medical care, pension, basic hospitalization insurance and pension insurance premium which shall be directly transferred into the personal account of the employees and compensation fees provided by the laws and administrative regulations owed by the debtor, into a record list. There is no need to file employee's claims. If employees have objection to the record list, they may request the administrator to make corrections. The employees may bring a lawsuit to the People's Court if the administrator refuses to make corrections.

Article 49 Creditors shall state in writing the amount of their claims, and the availability of secure interest where applicable, with the relevant evidence in filing claims. If a filed claim belongs to a joint one, such a fact shall be clearly stated.

Article 50 Joint creditors may be represented by one of them in filing claims, or they may file claims together.

Article 51 Debtor's guarantors or other joint debtors may file obligatory claims with respect to their rights of recovery, in the case that they have performed their guaranty or joint obligations of repayment.

Debtor's guarantors or other joint debtors may file obligatory claims with respect to their future rights of recovery, in the case that they have not performed their guaranty or joint obligations of repayment, unless the creditors have filed all relevant claims to the administrator.

Article 52 If more than two joint debtors become subject to the procedures of the Law simultaneously or successively, their creditors has the right to file claim at its total amount in each of bankruptcy cases.

Article 53 The counterparty to the contract may file claim at the amount of compensatory damages caused by rejecting contract by the administrator or the debtor in accordance with the Law.

Article 54 The agent to the commission contract may file claim at the amount of right of recovery from keeping the commissioned task without knowledge of the fact debtor as the principal to the commission contract has been adjudicated to enter into the procedure in the Law.

Article 55 The payer designated by a negotiable instrument may file claim at the amount of its continuous payment or acceptance in the case that debtor as the issuer of the negotiable instrument has been adjudicated to enter into the procedure in the Law.

Article 56 A creditor who has failed to file its claim within the specified period of time by the People's Court may make a supplementary filing prior to the last distribution of bankruptcy estate. But there is no supplementary distribution available against the distributed bankruptcy estate. The costs necessary for the review and determination of the supplementarily filed claims shall be at the expense of the supplementary claimant.

Creditors failing to file their claims in accordance with the procedures as provided by the Law shall not enforce their claims accordingly.

Article 57 After the administrator receives the filing documents, it shall register, keep a record and compile filed claims into a table.

The administrator shall keep the claim table and filing documents in order for the interested persons to consult.

Article 58 The claim table compiled according to Article 57 of the Law shall be submitted to the first creditors' meeting for review and examination.

If the debtor and creditors have no objection to the claims recorded in the claim table, the People's Court shall make a decision to confirm these claims.

The debtor or creditors may bring a lawsuit to the People's Court which accepts the bankruptcy case if they have objection to the claim recorded in the claim table.

Chapter VII Creditors' Meeting

Section I General Provisions

Article 59 All the creditors who have legally filed their claims are the members of the creditors' meeting and entitled to participate in the creditors' meetings and enjoy voting rights.

The creditors whose claims have not been confirmed shall not exercise voting rights unless the People's Court may temporarily determine the amount of their claims for the purpose of exercising voting rights.

If a creditor who enjoys a secured interest against a particular debtor's property gives up no preferential right of repayment, it shall not enjoy voting right on the matters as stipulated in the items (7) and (10) of the first paragraph, article 61 of the Law.

A creditor may ask its proxy to attend the creditors' meeting and exercise voting rights on behalf. The proxy present at the meeting shall submit to the People's Court or the chairman of the creditors' meeting with an entrustment from the creditor.

The employees and representative of trade union of the debtor are entitled to participate in the creditors' meeting and deliver their opinions on the relevant matters.

Article 60 A creditors' meeting shall have one chairman, chosen by the People's Court from the creditors with voting rights.

The chairman presides over the creditors' meeting.

Article 61 The creditors' meeting shall have the following functions and powers:

- (1) investigating the claims filed;
- (2) applying to the People's Court for the replacement of administrator, reviewing and examining the costs and remuneration of the administrator;
- (3) supervising the administrator;
- (4) selecting and replacing the members of the creditors' committee;

- (5) determining the continuance or suspension of debtor's business operation;
- (6) voting on a reorganization plan;
- (7) voting on a composition agreement;
- (8) voting on a scheme for management of the debtor's assets;
- (9) voting on a scheme for disposition of bankruptcy estate;
- (10) voting on a scheme for distribution of bankruptcy estate;
- (11) other matters which the People's Court deems necessary for the creditors' meetings to carry out.

Written resolutions shall be adopted if the creditors' meeting exercises any of the above functions and powers.

Article 62 The first creditors' meeting shall be summoned by the People's Court and held within 15 days from the date on which the deadline for filing claims expires. The subsequent creditors' meetings may be held where the People's Court deems necessary or upon the proposal from the administrator, creditors' committee or creditors who possess not less than one-fourth of the confirmed claims to the chairman of the creditors' meeting for holding such meeting.

Article 63 The administrator shall notify the already known creditors with respect to the summoning of a creditors' meeting 15 days ahead of time.

Article 64 A resolution made by the creditors' meeting shall be adopted by more than one half of the creditors with voting rights present at the meeting, whose amount of claims must account for not less than one half of the total amount of unsecured claims, except as otherwise provided in the Law.

A creditor, who considers a resolution made by the creditors' meeting as illegitimate and detrimental to his interests, may ask for the People's Court to rescind the resolution and request creditors' meeting to make a lawful resolution de novo within 15 days from the date on which such resolution is made.

Resolutions adopted by the creditors' meetings shall be binding on all creditors.

Article 65 If the creditors' meeting can not adopt a resolution on any of the matters listed in the items (8) and (9), the first paragraph, article 61 of the Law, the People's Court shall make a decision on this matter.

If the creditors' meeting still can reach no resolution after the second voting on the matters listed in the item (10), the first paragraph, article 61 of the Law, the People's

Court shall make a decision on this matter.

The People's Court may promulgate its decision made in accordance with the two preceding paragraphs of this article at the creditors' meeting or it may make an additional notification to the creditors afterwards.

Article 66 If the creditors disagree with the decision made by the People's Court in accordance with the first paragraph, article 65 of the Law, or the creditors whose amount of claims accounts for not less than one half of the total amount of unsecured claims disagree with the decision made by the People's Court in accordance with the second paragraph, article 65 of the Law, they may request the said People's Court for reconsideration. The execution of the decision shall not suspend during the period of reconsideration.

Section 2 Creditors' Committee

Article 67 A creditors' meeting may decide to set up a creditors' committee. The creditors' committee is comprised by the creditors' representatives selected and appointed by the creditors' meeting and one employees' representative or trade union representative. The creditors' committee shall be no more than nine members. Members of the creditors' committee shall be approved by the People's Court in its written decision.

Article 68 The creditors' committee shall execute the following functions and powers:

- (1) monitoring the management and disposition of the debtor's assets;
- (2) monitoring the distribution of bankruptcy estate;
- (3) proposing to convene the creditors' meeting;
- (4) other functions and powers commissioned by the creditors' meeting.

In carrying out its duties, the creditors' committee is entitled to require the administrator or the relevant personnel of the debtor to make explanations and provide relevant documents on the matters within their functions and powers.

The creditors' committee is entitled to request the People's Court to make a decision on the supervision matters if the administrator or the relevant personnel of the debtor refuse to accept the supervision; the People's Court shall make a decision within 5 days.

Article 69 The administrator shall timely report to the creditors' committee if he is performing any of the following actions:

- (1) transfer of the ownership of real estate concerning the land or house;
- (2) transfer of such property rights as prospecting, mining and intellectual properties;
- (3) assignment of all goods in stock or the whole business;
- (4) borrowing money;
- (5) pledging property as security;
- (6) transfer of claims and securities portfolios;
- (7) performance of executory bilateral contracts;
- (8) waiver of rights;
- (9) recovery of collateral;
- (10) other acts concerning the disposition of the debtor's property with crucial impacts on the creditors' interests.

In the absence of the creditors' committee, the administrator shall timely report to the People's Court when he performs any of the actions as provided in the preceding paragraph.

Chapter VIII Reorganization

Section I Reorganization Application and Period of Reorganization

Article 70 A debtor or a creditor may directly apply to the People's Court for reorganizing the debtor in accordance with the Law.

If a creditor applies for bankruptcy liquidation of the debtor, after the acceptance of a bankruptcy case by the People's Court and prior to the bankruptcy adjudication, the debtor in itself or the investors of the debtor who hold more than one-tenth of total amount of debtor's registered capital may apply to the People's Court for reorganization.

Article 71 If the People's Court, after review and examination, deems that a reorganization application conforms to the provisions in the Law, it shall make a decision and promulgate its decision to reorganize the debtor.

Article 72 A period of reorganization refers to the period during which commences at the time of opening reorganization procedure decided by the People's Court and terminates at the time of closing reorganization procedure.

Article 73 During the period of reorganization, upon the application of the debtor and subject to the approval of the People's Court, the debtor in itself may manage assets and maintain business operation under the supervision of the administrator.

Under the circumstance as provided in the preceding paragraph, the administrator who has taken over the debtor's assets and business operation according to the Law shall hand over the assets and business operation to the debtor. The functions and powers of the administrator as provided in the Law shall be executed by the debtor.

Article 74 The administrator in charge of the management of assets and business operation of the debtor may retain the operational and management personnel of the debtor to conduct business affairs.

Article 75 During the period of reorganization, a secured creditor shall not enforce its secured interests against a particular debtor's property. If the collateral, however, subject to visible possibility of being damaged or fast depreciation, which is detrimental enough to the interests of secured creditor, the secured creditor may solicit the approval from the People's Court to resume the enforcement of secured interests. During the period of reorganization, the debtor or the administrator may guarantee, with the debtor's property, the loans which are borrowed in order to continue the debtor's business operation.

Article 76 During the period of reorganization, a request from an obligee to retrieve its property possessed by the debtor with legitimate basis shall conform to the previously agreed terms.

Article 77 During the period of reorganization, an investors of the debtor shall not request dividends from its investment.

During the period of reorganization, the directors, supervisors and other management personnel of the debtor shall not transfer their individual shares to the third party unless the People's Court approves such transfer.

Article 78 During the period of reorganization, if there exists any of the following circumstances, the People's Court, upon the application of the administrator or other interested persons, shall make a decision to terminate the reorganization procedure and adjudicate the debtor bankrupt:

- (1) The business and financial conditions of the debtor continue to deteriorate, showing little or no hope of rehabilitation;
- (2) The debtor cheats, reduces the debtor's assets in bad faith or has other acts obviously harmful to the interests of the creditors;
- (3) It is impossible for the administrator to carry out its duties due to the acts of the debtor.

Section 2 Preparation and Approval of Reorganization Plan

Article 79 The debtor or the administrator shall submit draft reorganization plan both to the People's Court and the creditors' meeting within six months from the date on which the People's Court make a decision to reorganize the debtor.

When the deadline as provided in the preceding paragraph expires, the People's Court, upon the application of the debtor or the administrator with justifiable reasons and grounds, may make a decision to extend the deadline to another three months.

If the debtor or the administrator fails to submit the draft reorganization plan within the prescribed period, the People's Court shall make a decision to terminate reorganization procedure and adjudicate the debtor bankrupt.

Article 80 In the case that the debtor in itself takes charge of the management of its assets and business operation, the debtor shall assume the responsibility to prepare the draft reorganization plan.

In the case that the administrator takes charge of the management of the debtor's assets and business operation, the administrator shall assume the responsibility to prepare the draft reorganization plan.

Article 81 A draft reorganization plan shall stipulate the following particulars:

- (1) a scheme for business operation of the debtor;
- (2) the classification of claims;
- (3) a scheme for adjustment of claims;
- (4) a scheme for satisfaction of claims;
- (5) the period of time for execution of reorganization plan;
- (6) the period of time for supervision of the execution of reorganization plan;
- (7) other schemes beneficial to the debtor's reorganization.

Article 82 The creditors who hold the following categories of claims shall

participate in the creditors' meeting and discuss the draft reorganization plan, in accordance with the following classifications, vote on the draft reorganization plan in each group:

- (1) secured claims against a particular the debtor's property;
- (2) the employees' wages, salaries, medical care, pension, basic hospitalization insurance and pension insurance which shall be directly transferred into the personal account of the employees and compensation fees as provided in the laws and administrative regulations owed by the debtor;
- (3) taxes owed by the debtor;
- (4) ordinary claims.

Where necessary, the peoples' court may decide to set up a group of creditors with small amount of claims to vote on the draft reorganization plan.

Article 83 The reorganization plan shall not reduce or exempt social insurance premiums owed by the debtor in addition to the fees provided in the item (2), the first paragraph, the article 82. The creditors who hold the claim against these premiums or fees do not vote on the draft reorganization plan.

Article 84 The People's Court shall summon a creditors' meeting and put the draft reorganization plan into vote within 30 days from receiving such a plan.

A draft reorganization plan is adopted in each group when it is approved by more than one half of the creditors presenting at the meeting within the same group, and whose amount of claims must account for more than two-third of the total amount of confirmed claims in the group.

The debtor or the administrator shall make explanations on the draft reorganization plan to the creditors' meeting and answer inquiries.

Article 85 The representative of investors of the debtor may attend the creditors' meeting and discussion on the draft reorganization plan.

In the case that the draft reorganization plan involves the adjustment of investors' interests, a group of investors shall be established to vote on this matter.

Article 86 The draft reorganization plan is deemed to be adopted only if all voting groups have adopted the plan.

Within 10 days from adopting a reorganization plan, the debtor or the administrator shall apply to the People's Court for approval of the plan. If the People's Court deems,

after review and examination, the application conform to the provisions in the Law, it shall make a decision to approve the plan and terminate the reorganization procedure and promulgate its decision within 30 days from receiving such an application.

Article 87 If the draft reorganization plan fails to be adopted by partial voting groups, the debtor or the administrator may consult with the voting group(s) that has not adopted the plan. The group(s) may vote once again on the plan after consultation. A compromise reached between the two sides shall not impair the interests of other voting groups.

If the voting group that has not adopted the draft reorganization plan refuses to vote once again or the group fails to adopt it in the second voting, the debtor or the administrator may apply to the People's Court for approving the reorganization plan if the draft reorganization plan meets the following requirements:

- (1) According to the draft reorganization plan, secured claims against the debtor's a particular debtor's property listed in the item (1), the first paragraph, article 82 will be fully satisfied, and the losses caused by moratorium will be fairly compensated, and there will be no substantial impairment to the security interests, or this voting group has already adopted the draft reorganization plan;
- (2) According to the draft reorganization plan, claims listed in the item (2) and (3), the first paragraph, article 82 will be fully satisfied, or this voting group has already adopted the draft reorganization plan;
- (3) According to the draft reorganization plan, the ratio of payment obtained by ordinary claims will be no lower than that obtained in bankruptcy liquidation at the time when the plan is submitted for approval, or this voting group has already adopted the draft reorganization plan;
- (4) The adjustment of investors' interests by the draft reorganization plan is fair and equitable, or this voting group has already adopted the draft reorganization plan;
- (5) The draft reorganization plan fairly treats all creditors within the same voting group and the sequence of satisfaction is without violation of article 131 of the Law.
- (6) The scheme of debtor's business operation is of feasibility.

If the People's Court, after review and examination, deems that the draft reorganization plan conforms to the provisions as provided in the preceding paragraph, it shall make a decision to approve the plan, terminate the reorganization procedure and promulgate its decision within 30 days from receiving such application.

Article 88 In the case that the draft reorganization plan fails to be adopted and it fails to be approved in accordance with article 87 of the Law, or an adopted draft reorganization plan fails to be approved by the People’s Court, the people’ court shall make a decision to terminate reorganization procedure and adjudicate the debtor bankrupt.

Section III Implementation of Reorganization Plan

Article 89 The debtor shall take charge of the implementation of reorganization plan.

After the People’s Court makes a decision to approve a reorganization plan, the administrator who has taken over the assets and business operation of the debtor shall hand over the debtor’s assets and business operation to the debtor.

Article 90 During the period of supervision as prescribed in the reorganization plan, the administrator shall supervise the implementation of reorganization plan from the date on which the People’s Court make a decision to approve the reorganization plan. During the period of supervision, the debtor shall report to the administrator on the implementation of reorganization plan and its financial status.

Article 91 When the period of supervision expires, the administrator shall submit the supervision report to the People’s Court. The administrator’s duty of supervision ends on the date on which it submits such a report.

The interested person of reorganization plan shall be entitled to consult the supervision report submitted by the administrator to the People’s Court.

The People’s Court, upon the application of the administrator, may make a decision to extend the supervision period of implementing the reorganization plan.

Article 92 A reorganization plan approved by the People’s Court shall have a binding force on the debtor and all creditors.

A creditor failing to file its claim in accordance with the provisions in the Law shall not enforce its claim during the implementation of reorganization plan. After the implementation of the plan is completed, the creditor may enforce its claim in accordance with the repayment terms for the same class of claims as prescribed in the reorganization plan.

The rights enjoyed by the creditor against the debtor’s guarantors and other joint

debtors shall be unaffected by the reorganization plan.

Article 93 In the case that the debtor is unable or refuses to implement the reorganization plan, the People's Court shall, upon the application of the administrator or interested persons, make a decision to terminate the implementation of reorganization plan and adjudicate the debtor bankrupt.

If the People's Court decides to terminate the implementation of the reorganization plan, the concessions made by the creditors in the reorganization plan are no longer valid. The payments obtained by the creditors in accordance with the reorganization plan are still valid. The unsatisfied balance of claims is enforceable as bankruptcy claims.

Any of the creditors mentioned in the preceding paragraph shall not accept distribution until the payment obtained by other creditors in the same class reaches the equal proportion to that it has obtained.

Under the circumstances as provided in the first paragraph of this article, a guaranty offered by the third party for the implementation of the reorganization plan is still effective.

Article 94 Starting from the date on which the implementation of reorganization plan ends, the debtor is relieved from paying off reduced or exempted portion of claims in accordance with the reorganization plan.

Chapter IX Composition

Article 95 A Debtor may directly apply to the People's Court for composition in accordance with the provisions in the Law. A Debtor may, after the acceptance of a bankruptcy case by the People's Court but prior to adjudicating it bankrupt by the People's Court, apply to the People's Court for composition as well.

A debtor applying for composition shall submit a draft composition agreement to the People's Court.

Article 96 If the People's Court, after review and examination, deems that the composition application conforms to the provisions in the Law, it shall make a decision to approve composition, promulgate its decision and summon creditors' meeting to discuss the draft composition agreement.

The creditor who enjoys a secured interest against a particular debtor's property may

enforce its claim from the date on which the People's Court makes a decision to approve composition.

Article 97 A resolution on the approval of composition agreement at the creditors' meeting shall be adopted by more than one half of the creditors with voting right presenting at the meeting, whose amount of claims must account for more than two-third of the total amount of unsecured claims.

Article 98 In the case that the creditors' meeting adopts a composition agreement, the People's Court may make a decision to confirm the agreement, terminate the composition procedure and promulgate its decision. The administrator shall hand over the debtor's property and business operation to the debtor and submit a report on the performance of its duties to the People's Court.

Article 99 If a draft composition agreement fails to be adopted at the creditors' meeting, or an adopted draft composition agreement fails to be confirmed by the People's Court, the People's Court shall make a decision to terminate composition procedure and adjudicate the debtor bankrupt.

Article 100 A composition agreement confirmed by the People's Court shall be binding on the debtor and all composition creditors.

The composition creditors as provided in the preceding paragraph refer to the creditors who hold unsecured claims against the debtor at the time when the People's Court accepts a composition application.

A composition creditor who fails to file its claim in accordance with the provisions in the Law may not enforce its claim during the implementation of composition agreement. A composition creditor may, however, enforce its claim pursuant to the terms of satisfaction as prescribed in the composition agreement after the implementation of composition agreement is completed.

Article 101 The rights enjoyed by composition creditors against the debtor's guarantors and other joint debtors shall be unaffected by composition agreement.

Article 102 A debtor shall pay off its debts in accordance with the terms in the composition agreement.

Article 103 The People’s Court shall decide that a composition agreement established on the basis of the debtor’s fraud or other illegal acts is null and void and accordingly adjudicate the debtor bankrupt.

Under the circumstances as provided in the preceding paragraph, the payments already accepted by the creditors in accordance with the composition agreement shall be irrevocable within the limit of equal proportion obtained by other creditors.

Article 104 If a debtor is unable or refuse to implement the composition agreement, the People’s Court, upon the request of composition creditors, shall make a decision to terminate the enforcement of composition agreement and adjudicate the debtor bankrupt.

In the case that the People’s Court decides to terminate the implementation of composition agreement, the concessions made by the creditors regarding the claims adjustment in accordance with the composition agreement are no longer valid. The payments accepted by the composition creditors from the implementation of composition agreement are still valid; the unsatisfied balance of composition claims is enforceable as bankruptcy claims.

The creditors as provided in the preceding paragraph shall not accept distribution until the payment obtained by other creditors reaches the equal proportion to that it has obtained.

Under the circumstances as provided in the first paragraph of this article, a guaranty offered in order to implement the composition agreement is still valid.

Article 105 After the acceptance of a bankruptcy case by the People’s Court, if the debtor and all creditors reach an agreement with regard to the disposal of claims and obligations, they may request the People’s Court to decide to confirm the agreement and in the meantime terminate the bankruptcy procedure.

Article 106 Starting from the date on which the implementation of composition agreement is completed, the debtor is relieved from paying off reduced or exempted portion of claims in accordance with the composition agreement.

Chapter X Bankruptcy Liquidation

Section 1 Bankruptcy Adjudication

Article 107 When the People’s Court make a decision to adjudicates a debtor bankrupt in accordance with the Law, the decision shall be served to the debtor and the administrator within 5 days from the date on which such decision is made. The People’s Court shall notify the already known creditors and promulgate its decision within 10 days from the date on which such decision is made.

After the debtor is adjudicated bankrupt, the debtor shall be referred to as the bankrupt, the debtors’ assets shall be referred to as the bankruptcy estate, the claims against the debtor at the time when the People’s Court accepts a bankruptcy case shall be referred to as the bankruptcy claims.

Article 108 The People’s Court shall make a decision to close a bankruptcy case and promulgate its decision where there exists any of the following circumstances prior to the bankruptcy adjudication:

- (1) The third party provides a guaranty to fully satisfy all claims against the debtor or it has repaid all the debtor’s due debts;
- (2) The debtor in itself has already repaid its all due debts.

Article 109 The right holder who owns the secured interest against a particular debtor’s property shall enjoy preferential right of satisfaction against this property.

Article 110 If the creditor who enjoys the right as provided in article 109 of the Law has not been fully repaid through the execution of its preferential right of satisfaction, the unsatisfied balance of claims is enforceable as ordinary claims. If the said creditor gives up its right of preferential right of satisfaction, the total amount of its claim is enforceable as ordinary claim.

Section II Disposition and Distribution

Article 111 The administrator shall timely prepare a disposition scheme of the bankruptcy estate and submit the scheme to the creditors’ meeting for discussion.

The administrator shall dispose and sell the bankruptcy estate at appropriate time in accordance with the disposition scheme of bankruptcy estate either adopted at the creditors’ meeting or decided by the People’s Court in accordance with the first paragraph, article 65 of the Law.

Article 112 The disposition and sale of bankruptcy estate shall be conducted

through auction, unless otherwise provided in the resolution reached at the creditors' meeting.

The bankrupt enterprise may be disposed and sold as a whole or in parcel. When the enterprise is disposed and sold, its intangible property and other properties may be disposed and sold separately.

The properties that are prohibited from auction or subject to transfer restrictions in accordance with the State's regulations shall be disposed in the ways as provided by the State.

Article 113 After the administration expenses and debts of common benefit have been first paid off, the repayment from bankruptcy estate shall be conducted in the following sequence:

- (1) the employees' wages, salaries, medical care, pension, basic hospitalization insurance and pension insurance premium which shall be directly transferred into the personal account of the employees and compensation fees as provided by the laws and administrative regulations owed by the debtor;
- (2) social insurance premiums in addition to the fees as provided in the preceding paragraph and taxes owed by the debtor;
- (3) ordinary bankruptcy claims.

If the bankruptcy estate is insufficient to pay off the claims in the same order, it shall be distributed on a pro rata basis among them.

The wages and salaries of directors, supervisors and other high-rank management personnel of bankrupt enterprise shall be computed on the basis of average level of employee's wages and salaries of the enterprises.

Article 114 The distribution of bankruptcy estate shall be carried out in a monetary manner, except otherwise provided in the resolutions reached at the creditors' meeting.

Article 115 The administrator shall timely draft a distribution scheme of the bankruptcy estate and submit it to the creditors' meeting for discussion.

The distribution scheme of bankruptcy estate shall specify the following particulars:

- (1) the names and addresses of creditors who participate in the distribution of bankruptcy estate;
- (2) the amount of claims in the distribution of bankruptcy estate;
- (3) the amount of the bankruptcy estate available for distribution;

- (4) the sequence, proportion and amount of the distribution of bankruptcy estate;
- (5) the methods for the distribution of bankruptcy estate.

When the distribution scheme of bankruptcy estate has been adopted at the creditors' meeting, the administrator shall submit the scheme to the People's Court for confirmation through its decision.

Article 116 The distribution scheme of bankruptcy estate shall be executed by the administrator after it is confirmed by the People's Court through its decision.

The administrator may carry out the distribution in lump-sum basis or in several times in accordance with the distribution scheme.

If the administrator carries out distributions more than one time in accordance with the distribution scheme of bankruptcy estate, the amount of assets and that of claims involved in present distribution shall be promulgated at each time. The final distribution carried out by the administrator shall be specified in its promulgation, which shall specify the matters set forth in the second paragraph, article 117 of the Law as well.

Article 117 The administrator shall lodge an amount of distribution to those claims both with precedent conditions and with subsequent conditions.

If the condition precedent has unfulfilled or the condition subsequent is fulfilled on the date of promulgation of the last distribution, the amount of distribution lodged by the administrator as provided in the preceding paragraph shall be distributed to other creditors. If the condition precedent is fulfilled or condition subsequent has unfulfilled on the date of promulgation of the last distribution, the amount of distribution lodged shall be delivered to the creditor whose distribution is lodged.

Article 118 The distributed amount of bankruptcy estate which has not been taken by the creditors shall be lodged by the administrator.

If a creditor has not taken its distribution amount within 2 months from the date promulgating the last distribution, the creditor is regarded as giving up its right to distribution. The administrator or the People's Court shall distribute the lodged amounts to other creditors.

Article 119 In the distribution of bankruptcy estate, an amount distributed to a controversial claim, or to a claim unsettled in litigation or arbitration, shall be lodged by the administrator. The People's Court, however, shall distribute the lodged amount

to other creditors if the amount has not been taken within two years from closing a bankruptcy case.

Section III Closure of Bankruptcy Case

Article 120 The administrator shall ask for the People's Court to make a decision to close a bankruptcy case if the debtor has no assets available for distribution.

After the conclusion of the last distribution, the administrator shall timely submit a distribution report of bankruptcy estate and ask for the People's Court to make a decision to close the bankruptcy case.

The People's Court shall decide whether to close the bankruptcy case or not within 15 days from receiving the request from the administrator to close the bankruptcy case. The People's Court shall promulgate its decision when it decides to close the bankruptcy case.

Article 121 Within 10 days from the date the bankruptcy case is closed, the administrator shall bring the decision to close the bankruptcy case made by the People's Court to the registrar with which the bankrupt originally registered for cancellation of registration.

Article 122 The administrator shall end its mission from the next date after the cancellation of registration is completed, unless there exists a pending litigation or arbitration case.

Article 123 Within 2 years from closing the bankruptcy case in accordance with the fourth paragraph, article 43 or article 120 of the Law, the creditors may request the People's Court to carry out additional distribution pursuant to the distribution scheme of bankruptcy estate under any of the following circumstances:

- (1) Any of the properties supposed to be recovered in accordance with article 31, 32, 33 or 36 of the Law has been discovered;
- (2) Other properties of the bankrupt which shall be subject to distribution have been discovered.

Under the circumstances as provided in the preceding paragraph, if the amount of the properties is insufficient to cover distribution costs, additional distribution shall not be carried out. The People's Court shall hand in these properties to the State's Treasuries.

Article 124 After the bankruptcy case is closed, the guarantors or other joint debtors of the bankrupt shall continue to undertake liabilities of repayments to the creditors with regard to their unsatisfied claims through the bankruptcy liquidation procedure.

Chapter XI Legal Responsibilities

Article 125 If any of the directors, supervisors or high-rank management personnel of the enterprises violates fiduciary duty or duty of diligence and loyalties and renders the enterprise bankrupt, he shall be subject to the civil liabilities in accordance with the laws.

The personnel as prescribed in the preceding paragraph shall be prohibited from assuming the position of director, supervisor or high-rank management personnel of any enterprise within 3 years from closing a bankruptcy case.

Article 126 If a debtor-related personnel obliged to attend a creditors' meeting refuses, without justifiable reasons, to appear at the meeting despite a summon of the People's Court, the People's Court might issue a warrant to compel the appearance of the personnel and impose a fine on him according to laws. In the case that the debtor-related personnel in violation of the provisions of the Law refuse to present a statement or an answer or provide a false statement or answer, the People's Court might impose a fine on him according to the laws.

Article 127 If a debtor violates the provisions in the Law and refuses to submit, or submits a false property statements, information of debt, information of claims, the relative financial statements, the status on the payment of employees' wages and salaries and social insurance premium to the People's Court, the People's Court might impose a fine on directly responsible personnel according to the laws.

If a debtor violates the provisions in the Law and refuses to hand over the property, seals, the account books, documents, files and other materials to the administrator or fabricates even destroy the relevant financially evidentiary materials relevant to the property and thus making the property status unclear, the People's Court might impose a fine on directly responsible personnel according to the laws.

Article 128 If a debtor has committed any of the acts prescribed in article 31, 32 and 33 of the Law, detrimental to the interests of the creditors, the legal representative and other directly responsible personnel of the debtor shall undertake liabilities of

compensation according to the laws.

Article 129 The debtor-related personnel in violation of the provisions in the Law leaves its domicile without permission, the People's Court might impose an admonition or a detention on him, with a fine in addition applicable according to laws.

Article 130 The administrators fails to carry out his duties in a diligent, duteous and faithful matter in violation of the provisions in the Law, the People's Court might impose him a fine according to the laws. In the case that the administrator's acts cause losses to the creditors, the debtor and third parties, he shall be subject to the compensation liabilities according to the laws.

Article 131 If an act in violation of the provisions of the Law constitute crimes, criminal responsibilities shall be investigated according to the laws.

Chapter XII Supplementary Provisions

Article 132 After the Law comes into effect, if the employees' wages, salaries, medical care, pension, basic hospitalization insurance and pension insurance which shall be directly transferred into the personal account of the employees and compensation fees as provided by the laws and administrative regulations owed by the debtor prior to the promulgation of the Law have not been fully repaid from the bankruptcy estate in accordance with article 113 of the Law, the employees take a priority right of satisfaction with respect to its unsatisfied balance against a particular debtor's property prescribed in article 109 of the Law over the right holders who enjoys secured interest against a particular debtor's property.

Article 133 The specific matters regarding the bankruptcy of state-owned enterprises which fall into the terms and scopes as provided by the State Council prior to the implementation of the Law shall be dealt with in accordance with the relevant stipulations by the State Council.

Article 134 A commercial banking, securities company, insurance company and other financial institution which has fallen into the positions as provided in article 2 of the Law, a financial supervision and regulatory agencies of the State Council may submit to the People's Court an application for reorganizing or liquidating such a

financial institution. If the financial supervision and regulatory agencies of the State Council, in accordance with the laws, takes over or impose mandatory measure on a financial institution which has ran into severe business risks, it may apply to the People's Court for suspending a civil procedure or enforcement action against the said financial institution.

The State Council may issue the implementation rules on the bankruptcy of financial institutions in accordance with the Law and other relevant laws and regulations.

Article 135 The bankruptcy liquidation of the non-enterprise legal person as provided by other laws may refer to the procedures in the Law.

Article 136 The Law shall come into force as of June 1, 2006. The Enterprise Bankruptcy Law of the People's Republic of China (for trial implementation, 1986) shall be annulled as of the same date.