
BANKRUPTCY LAW OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA FOR FOREIGN-INVESTED ENTERPRISES

Adopted by Decree No. 1504 of the Presidium of the Supreme People's Assembly on April 19, 2000 and amended by Decree No. 2050 of the Presidium of the Supreme People's Assembly on December 21, 2011

Chapter 1 Fundamentals

Article 1 (Objective)

This Law is enacted for the purpose of providing strict guidelines for bankruptcy administration of foreign-invested enterprises, thereby ensuring accurate liquidation of debts and claims of a bankrupt enterprise

Article 2 (Definition)

In this Law *bankruptcy* means an act by a court of distributing the assets of an insolvent enterprise to its creditors and dissolving it.

Article 3 (Conditions of bankruptcy)

An enterprise may be declared bankrupt in case it fails to repay its debts within the prescribed period, the debts of the business exceed its assets, or the enterprise can no longer continue its operation due to a grave loss, or the enterprise cannot be dissolved through normal procedures.

Bankruptcy of an enterprise shall be declared by the judgment of a court.

Article 4 (Discontinuation of bankruptcy)

An enterprise may not be declared bankrupt in case it can receive financial assistance in the DPRK or when there is a guarantee that the overdue debts can be cleared within 6 months of the application for bankruptcy.

Article 5 (Discontinuation of bankruptcy by compromise)

Where the parties agree to compromise with each other after an application has been made for bankruptcy, the bankruptcy procedures under way may be discontinued.

Article 6 (Jurisdiction of court)

Cases of enterprise bankruptcy shall be dealt with and settled by the provincial (or municipality directly under the central authority) court in the seat of the enterprise concerned.

Cases of enterprise bankruptcy in the special economic zones shall be dealt with and settled by the court having jurisdiction thereof.

Article 7 (Applicability)

This Law shall be applicable to foreign-invested enterprises and banks.

Chapter 2 Application for and Declaration of Bankruptcy

Article 8 (Applicant)

An application for bankruptcy shall be submitted by an enterprise that has become insolvent, and its creditor.

The liquidation committee that is in charge of handling the dissolution of an enterprise may also make an application for bankruptcy

An application for bankruptcy shall be submitted in writing to the competent court.

Article 9 (Application by creditor)

A creditor may, upon finding that repayment of his claim within the term prescribed in the contract is impossible, apply for the declaration of bankruptcy of the enterprise concerned for the purpose of collecting his credit. In this case, he shall obtain an approval from at least one creditor in case the enterprise has more than three creditors.

The application for bankruptcy shall state the title (or name) and address of the creditor, name and address of the legal representative and his agent, description, amount and term of the claim, name and address of the enterprise to be declared bankrupt, accompanied by documents explaining the reason for non-repayment of the claim and certifying that approval has been obtained for the bankruptcy application.

Article 10 (Application by enterprise)

An enterprise that has become insolvent may, for the purpose of being exempted from its obligations, apply for bankruptcy subject to a decision of the board of directors or joint consultative board.

The application for bankruptcy shall state the name and address of the enterprise, a description of the loss of the enterprise and the reasons for its inability to repay its debts, accompanied by such document as a list of debts and assets.

Article 11 (Application by liquidation committee)

The liquidation committee that is organized in accordance with the procedures for the dissolution of a foreign-invested enterprise may apply for bankruptcy where, in the course of handling the dissolution, declaration of bankruptcy is proved appropriate.

The application for bankruptcy shall state the name and address of the enterprise, its assets and debts and the reason for impossibility of dissolution through normal procedures.

Article 12 (Cancellation)

An applicant for bankruptcy may revoke the application before the enterprise is declared bankrupt. In this case the application for revocation shall be submitted to the competent court.

Article 13 (Approval, rejection)

A court shall decide whether to approve or reject an application for bankruptcy within 30 days of receipt thereof. In this case investigation may be undertaken as required.

Article 14 (Judgment concerning bankruptcy)

Where a court is of the view that an application for bankruptcy is reasonable, it shall declare the enterprise bankrupt by making a judgment to that effect and send certified copies of the written judgment to the applicant and the enterprise concerned.

The written judgment shall state the name of the enterprise declared bankrupt, name of the legal representative, reason for bankruptcy, date of bankruptcy and the like

Article 15 (Suspension of business of an enterprise declared bankrupt)

An enterprise declared bankrupt shall suspend its accounting, property transactions and business operation from the day of receipt of a certified copy of the written judgment.

Article 16 (Notification of bankruptcy)

An enterprise notified of the declaration of its bankruptcy shall, within 2 days of the notice, inform the institution that has approved its establishment of the event and make necessary registration.

Article 17 (Duties of legal representative of bankrupt enterprise)

The legal representative of the bankrupt enterprise or his agent shall not leave the seat of the enterprise and his place of residence without the permission of the court until the bankruptcy procedures are completed, and shall provide answers to questions related to the bankruptcy or render cooperation in the bankruptcy procedures.

Article 18 (Invalidity)

Where a bankrupt enterprise has concealed, distributed, transferred at a low price or free of charge its assets 6 months before the application for bankruptcy or after the submission of the application, has waived its claims without legal grounds 30 days before the application for bankruptcy or after the submission of the application or has inflicted losses upon its creditors in anticipation of its bankruptcy, such acts shall be null and void.

Article 19 (Organization of liquidation committee)

The court shall, within 5 days of declaration of bankruptcy, organize a liquidation committee composed of 2~3 members.

The liquidation committee may comprise officials from the institution that has approved the establishment of the enterprise, financial and banking institution and others.

The chairperson of the liquidation committee shall be appointed by the court.

Article 20 (Functions of liquidation committee)

The liquidation committee shall:

1. Decide on the matters necessary for the beginning of bankruptcy procedures, which are; the term of up to 60 days for the declaration of claims, term of investigation and determination of claims, date of the first session of the creditors' meeting within 20 days of declaration of bankruptcy, deadline for the repayment of debts due to the bankrupt enterprise and the deadline for the persons holding assets of the bankrupt enterprise to declare and return them;

2. Forward a notice of bankruptcy to the creditors, debtors and holders of assets of the bankrupt enterprise;

3. Take over the official seal, accounting books, lists of assets and creditors and other documents of the bankrupt enterprise;

4. Appraise the value of the assets of the enterprise in the presence of the legal representative of the enterprise;

5. Settle the outstanding accounts in the ledgers of the enterprise, prepare the balance sheet and the list of assets to be submitted to the court;

6. Put seals, if necessary, on the assets of the enterprise and prepare a protocol;

7. Settle business transactions of the enterprise; and

8. Cancel or suspend the fulfillment of contracts that is not performed by the time the enterprise is declared bankrupt.

Article 21 (First session of creditors' meeting)

The liquidation committee shall convene the first session of creditors' meeting on the prescribed date.

The first session of creditors' meeting shall appoint the head of the creditors' meeting from among the creditors and hear a report from the liquidation committee on the circumstances that led to the bankruptcy and on the current state of the assets and debts of the enterprise.

Article 22 (Decision of creditors' meeting)

The decision of the creditors' meeting shall be valid only when it is approved by more than half of the creditors attending the meeting and the claims held by the approving creditors represent more than half of the total amount of the claims against the bankrupt enterprise.

Decisions of the creditors' meeting shall be equally binding on all the creditors.

Chapter 3 Declaration, Investigation and Determination of Claims

Article 23 (Claims)

A creditor to the bankrupt enterprise shall, upon receipt of declaration of bankruptcy, declare his or her claims in writing to the liquidation committee within the term of claim declaration.

The claim declaration shall state the title (or name) and address of the creditor, description and amount of the claim, the term of claim, the events that gave rise to the claim, and in case he holds other claims, the amount of other claims shall be stated, accompanied by a relevant evidentiary document.

Article 24 (Registration of claims)

The liquidation committee shall register the claims in the order of the declarations made. Claims shall be registered according to a form shown in the document of claim declaration.

Article 25 (Invalidity of declaration of claims)

Any claim that has not been declared during the term of declaration shall be null and void.

Where a creditor notified by the liquidation committee of the bankruptcy fails to make a response, the committee shall make another notification.

Article 26 (Claim investigation by liquidation committee)

The liquidation committee shall investigate the claims within the term of claim investigation on the basis of the contents of the declaration.

The investigation shall be made by making a request to the institution concerned or by direct checking.

Article 27 (Settlement of complaint)

Where any complaint is lodged with respect to a claim, the liquidation committee shall notify the creditor concerned of the complaint.

The creditor may bring a civil action against the complainant before a court handling bankruptcy cases.

The court shall examine the case and notify the liquidation committee of the result.

Article 28 (Determination of claims)

The claims whose contents of declaration and findings of the investigation are discrepant and claims against which a complaint has been lodged but no civil lawsuit has been instituted shall be determined by the liquidation committee.

Article 29 (Preparation of list of claims)

The liquidation committee shall, upon completion of the investigation and determination of the claims, prepare a list of claims as follows:

1. Claims shall be classified in the order of priority and recorded in the order of their amount;
2. Claims other than credits shall be recorded after classifying them by interest, damages, penalties, fines, fees and litigation costs;
3. Claims that have not yet become due shall be recorded by calculating the amount that are payable for the period up to the time of the declaration of bankruptcy; and
4. Amount of claims and any matter raised during the period of investigation and determination of the claims shall be recorded by each claim.

Article 30 (Validity of list of claims)

The liquidation committee shall submit the list of claims to the court for endorsement after obtaining an approval thereof from the creditors' meeting.

The list of claims so endorsed shall be equally binding on all creditors.

Article 31 (Retention of and access to claim declarations and list of claims)

Claim declarations and the list of claims shall be retained by the court.

The court may permit parties related to the bankrupt enterprise to have access to the relevant documents upon their request.

Chapter 4 Distribution of Assets of a Bankrupt Enterprise

Article 32 (Classification of assets)

Assets of a bankrupt enterprise shall be distributed to the creditors thereof.

Assets of a bankrupt enterprise shall include monetary property, property in kind and intellectual and other property right of an enterprise declared bankrupt.

Assets acquired in the course of bankruptcy procedures shall also be included in the assets of the bankrupt enterprise.

Article 33 (Securing of assets)

The liquidation committee shall be responsible for the securing of assets of the bankrupt enterprise to be distributed.

The committee shall call for outstanding contributions and collect the repayments of the corporate debts due to the bankrupt enterprise. In this case, the corporate debts that have not yet become due shall be the amount payable for the period up to the date of the declaration of bankruptcy.

Article 34 (Offsetting)

Where a debtor to a bankrupt enterprise holds a claim against the same enterprise, the liquidation committee may allow the debt to be offset against the claim.

The offset shall be based on the exchange rate quoted by the Foreign Trade Bank on the given date.

Article 35 (Conversion into cash)

The liquidation committee may, for the purpose of distribution, convert into cash the products, machinery and equipment, intellectual property rights or other assets.

Article 36 (Order of distribution)

Assets of a bankrupt enterprise shall be distributed in the following order:

1. State charges and the expenses for bankruptcy procedures;
2. Salary, wage and insurance premium;
3. Payments due to the State including tax;
4. Penalties incurred due to cancellation of contracts in the course of bankruptcy procedures;
5. Secured credits;
6. Unsecured credits; and
7. Claims other than credits

Article 37 (Notification of payment of State charges, expenses for bankruptcy procedures)

The liquidation committee shall notify the head of the creditors' meeting of the status of payment of the State charges and the expenses for the bankruptcy procedures.

Any complaint filed as to the notice of the liquidation committee shall be settled by an award of the court.

Article 38 (Priority claim)

Any unsecured credits that fall into the category of a priority claim shall qualify for distribution before other ordinary unsecured credits.

Article 39 (Distribution schedule)

The liquidation committee shall prepare a schedule for the distribution of assets on the basis of the list of claims and the order of distribution.

The assets distribution schedule shall state the total amount to be distributed, the actual amount of distribution, the titles (or names) and addresses of the creditors qualified for distribution, the amount of distribution to each creditor and the like.

Article 40 (Interest on secured claims, calculation of distribution amount in case of shortfall)

The liquidation committee shall add to the amount of distribution of the secured credits in the assets distribution schedule the interest payable for the period from the date of declaration of bankruptcy to the date of distribution.

Where, in the course of determining the amount of distribution in the order specified in Article 36 of this Law, it is found that the remaining assets are not sufficient for any further distribution, the amount of distribution for the remaining claims with lower priorities shall be determined at a uniform rate.

Article 41 (Validity of distribution schedule)

The liquidation committee shall present the assets distribution schedule to the creditors' meeting.

The distribution schedule shall, upon being approved by the creditors' meeting, be endorsed by the court, or in case it is not approved, shall be subject to the award of the court.

The assets distribution schedule may be prepared again pursuant to the award of the court.

Article 42 (Distribution of assets, preparation of bankruptcy report)

Distribution of the assets of the bankrupt enterprise shall be undertaken by the liquidation committee according to the assets distribution schedule endorsed by the court.

The liquidation committee shall, within 10 days of completion of distribution of assets, prepare an enterprise bankruptcy report for submission to the court.

Article 43 (Examination of bankruptcy report, termination of bankruptcy process by award)

The court shall examine the enterprise bankruptcy report of the liquidation committee and terminate bankruptcy by an award. In this case, it shall notify the liquidation committee of the termination, which, in turn, shall inform the parties to the bankruptcy of the termination of the case.

No appeal shall be made against the award on the termination of the bankruptcy case.

Article 44 (Disposal of outstanding claims and assets identified after termination of bankruptcy)

Any claim outstanding due to a shortage of the assets of the bankrupt enterprise shall be null and void.

Any asset identified after the termination of the bankruptcy shall be disposed by the court that dealt with the case through a bank.

Chapter 5 Compromise

Article 45 (Applicant)

An enterprise declared bankrupt may apply for compromise after discussing the matter at the board of directors or joint consultative board.

Article 46 (Application)

An enterprise declared bankrupt and wishing to apply for compromise shall, within the term of investigation and determination of claims, submit to the liquidation committee a written application for compromise stating the reason for the application, method of repayment of the debts, securities and the like.

Terms of compromise shall be set in such a way that it can be acceptable to all the creditors.

Article 47 (Examination of application for compromise)

The liquidation committee shall, within 5 days of receipt of the application for compromise, notify the court thereof and have it examined and decided by the creditors' meeting in accordance with the recommendations of the court.

The creditors' meeting held for the examination of compromise shall be attended by creditors, applicant for compromise and members of the liquidation committee. Upon request of the creditors, the meeting may also be attended by a person who will repay the debts of the bankrupt enterprise on behalf of the enterprise.

Article 48 (Explanation of applicant, variation of terms of compromise)

The applicant for compromise shall, at the creditors' meeting, give an explanation as to the reason for the application and terms of compromise and give answers to the questions of the creditors. In this case, the terms of compromise may be varied within the limit of not encroaching upon the interests of the creditors.

Article 49 (Passing of compromise)

An application for compromise shall be passed only when it is approved by more than half of the creditors attending the meeting and the amount of the claims held by the approving creditors represent not less than two thirds of the total amount of claims against the bankrupt enterprise.

Article 50 (Award of court)

The court shall, by an award, either approve or reject the compromise that has been approved at the creditors' meeting.

The award of the court on compromise shall be equally binding on the creditors and the applicant.

Article 51 (Notification of award, revocation of compromise)

The court shall notify the applicant of an award approving the decision of the creditors' meeting within 5 days of making the award.

The enterprise notified of the award shall perform timely and accurately the obligations stated in the terms of compromise.

Where the enterprise defaults on its obligations, the creditor may request the court to revoke the compromise.

Article 52 (Award on application for revocation of compromise)

The court shall, within 10 days of receipt of an application for revocation of compromise, give an award approving or rejecting the application.

Where an award is given approving the revocation of compromise, the bankruptcy procedure under suspension shall be resumed.

Chapter 6 Sanction

Article 53 (Indemnity, fine)

The liquidation committee may, subject to the approval of the court, impose indemnity or fine in the following cases:

1. Legal representative of the bankrupt enterprise or his agent has failed to attend the creditors' meeting, or give explanation or answers to the questions raised by the liquidation committee or creditors, or given a misleading explanation or answer;

2. Bankrupt assets have been concealed, debt documents fabricated, or false debts approved;

3. Accounting books or vouchers have been fabricated, destroyed or their contents have been made illegible, or the accounting book settled by the liquidation committee has been interpolated;

4. Legal representative of the bankrupt enterprise or his agent has moved from the seat of the enterprise or his place of residence, or contacted or exchanged correspondence with others without an approval of the court, thus causing hindrance to bankruptcy procedures;

5. A debtor of the enterprise or a holder of bankrupt assets has failed to repay debts or return the assets of the bankrupt enterprise within the period prescribed by the court, thus causing hindrance to bankruptcy procedures; or

6. Bankruptcy procedures have been impeded or creditors suffered a loss in other ways.

Article 54 (Administrative or penal liability)

Officials of the institutions, enterprises and organizations, and individual citizens who have caused grave consequences in bankruptcy procedures through their violation of this Law shall, depending on the gravity of the offence, be liable to administrative or penal liability.