

New Law of Enterprise Bankruptcy in People's Republic of China

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A new enterprise bankruptcy law of PRC (the New Law) was introduced on August 27, 2006 and became effective on June 1, 2007, comprising 12 Chapters as follows:

- * General Provisions;
- * Application and Acceptance;
- * Administrator;
- * A Debtor's Property;
- * Expenses for Bankruptcy Proceedings and Debts Incurred for the Common Good of Creditors;
- * Declaration of Claims;
- * Creditor's Meeting;
- * Reorganization;
- * Compromise;
- * Bankruptcy Liquidation;
- * Legal Liability;
- * Supplementary Provisions.

The New Law involves many significant areas, including how to deal with the company when it becomes bankrupt; how to protect the employee's benefits and what the impact it has on investors. It also includes the ability for a company to be reorganized and turned around.

With 136 articles, the New Bankruptcy Law is more comprehensive and comes closer to incorporating international best practices than did the previous 43-article 1986 Bankruptcy Law.

A more detailed discussion of the key changes of the New Law follows.

* The New Law's Application Scope has been expanded, covering more and different types of insolvent entities. Apart from the State-owned enterprises (SOEs), the new law also includes privately-owned enterprises and foreign investment companies. The new reform has made it possible to meet the demand for the re-allocation of resources amongst enterprises in China for any company becoming bankrupt.

* "Administrator" System is adopted in the New Law, which allows for a third party to become an independent arbiter. Here, the administrator includes professional institutions such as legally registered law and accounting firms and liquidation offices, as well as individual professionals.

* The reorganization process can become a substitute for immediate liquidation. Traditionally, bankruptcy means the corporation that has been declared insolvent through a court proceeding and is relieved from the payment of all debts after the surrender of all assets to a court-appointed trustee. It has to meet a procedure of liquidation and then its business ceases.

Nevertheless, reorganization system has been introduced into the New Law. That is to say, debtor can maintain his/her going-concern status and is given a period of time where it can negotiate to reach an agreement with its creditors. For creditors or investors, it provides a way of possibly gaining future benefits than a than bankrupt enterprise might be able to provide.

* Secured claims prior to staff claims. The old bankruptcy law states that staff claims rank among the first of all creditors. In the New Law, the right of warrantors has precedence over that of employees. The salaries and welfare of employees can only be compensated by unsecured property. Secured property which belongs to warrantors will not be influenced through a bankruptcy situation.

* Cross-border insolvency issues. According to New Law, debtor's property outside the territory of China will also be considered in the case of bankruptcy. Meanwhile, Chinese courts will also admit and execute arbitration of other countries under the principle of mutual benefits or international conventions.