Enterprise Bankruptcy Law of the PRC

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Adopted at the 23rd Session of the Standing Committee of the 10th National People's Congress on August 27, 2006
Effective: June 1, 2007

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Chapter I — General Provisions

Article 1 — This Law is enacted to regulate the bankruptcy procedures, fairly settle claims and debts, protect the lawful rights and interests of creditors and debtors, and maintain the order of the socialist market economy.

Article 2 — Where an enterprise legal person is unable to pay off its debts as they fall due, and its assets are insufficient to cover all of its debts or it is clearly insolvent, its debts shall be settled in accordance with the provisions of this Law. Where an enterprise legal person falls under the circumstances specified in the preceding paragraph or is likely to become insolvent, reorganization may be carried out in accordance with the provisions of this Law.

Article 3 — A bankruptcy case shall be under the jurisdiction of the people's court at the place where the debtor is domiciled.

Article 4 — Where this Law contains no provisions regarding the procedures for hearing a bankruptcy case, the relevant provisions of the Civil Procedure Law of the PRC shall apply.

Article 5 — Bankruptcy proceedings commenced in accordance with this Law shall have binding force on the debtor's property located outside the territory of the PRC. Where a legally effective judgment or ruling on a bankruptcy case made by a foreign court involves the debtor's property within the territory of the PRC and the party concerned applies for or requests the people's court to recognize and enforce it, the people's court shall examine it in accordance with the international treaties concluded or acceded to by the PRC or the principle of reciprocity and, if it does not violate the basic principles of the laws of the PRC, does not prejudice the sovereignty, security, or social and public interests of the State, and does not prejudice the lawful rights and interests of creditors within the territory of the PRC, shall rule to recognize and enforce it.

Article 6 — When hearing a bankruptcy case, a people's court shall protect the lawful rights and interests of the employees of the enterprise in accordance with law and pursue the legal liability of the management of the bankrupt enterprise in accordance with law.

Chapter II — Application for and Acceptance of a Bankruptcy Case

Article 7 — A debtor that falls under the circumstances specified in Article 2 of this Law may apply to the people's court for reorganization, compromise, or bankruptcy liquidation. Where a debtor is unable to pay off its debts as they fall due, a creditor may apply to the people's court for the debtor's reorganization or bankruptcy liquidation. Where an enterprise legal person has been dissolved but has not been liquidated or its liquidation has not been completed, and its assets are insufficient to pay off its debts, the person legally responsible for liquidation shall apply to the people's court for bankruptcy liquidation.

Article 8 — When applying to the people's court for bankruptcy, the applicant shall submit a bankruptcy application and relevant evidence. The bankruptcy application shall state the following: (1) basic information on the applicant and the respondent; (2) the purpose of the application; (3) the facts and grounds for the application; (4) other matters that the people's court deems necessary to state. Where the debtor submits the application, it shall also submit to the people's court statements of its financial position, a schedule of its debts, a schedule of its claims, relevant financial and accounting reports, a plan for the placement of its employees, and information on the payment of employees' wages and social insurance premiums.

Article 9 — Before the people's court accepts a bankruptcy application, the applicant may request to withdraw the application.

Article 10 — Where a creditor applies for bankruptcy, the people's court shall, within five days from the date of receiving the bankruptcy application, notify the debtor. Where the debtor objects to the application, it shall, within seven days from the date of receiving the notice from the people's court, submit its objection to the people's court. The people's court shall, within 10 days from the date of expiration of the time limit for submitting objections, rule on whether to accept the application. Under any other circumstance other than those specified in the preceding paragraph, the people's court shall, within 15 days from the date of receiving the bankruptcy application, rule on whether to accept it. Where an extension is necessary under special circumstances, the ruling may be extended for 15 days subject to the approval of the people's court at the next higher level.

Article 11 — After the people's court accepts a bankruptcy application, it shall serve a copy of the ruling on the applicant within five days from the date of making the ruling. Where a creditor submits the application, the people's court shall serve a copy of the ruling on the debtor within five days from the date of making the ruling. The debtor shall, within 15 days from the date of receiving the ruling, submit to the people's court statements of its financial position, a schedule of its debts, a schedule of its claims, relevant financial and accounting reports, and information on the payment of employees' wages and social insurance premiums.

Article 12 — Where the people's court rules not to accept a bankruptcy application, it shall, within five days from the date of making the ruling, serve a copy of the ruling on the applicant with reasons stated. If the applicant is dissatisfied with the ruling, it may, within 10 days from the date of receiving the ruling, appeal to the people's court at the next higher level. After the people's court accepts a bankruptcy application and before a declaration of bankruptcy is made, if it discovers that the debtor does not fall under the circumstances specified in Article 2 of this Law, it may rule to reject the application. If the applicant is dissatisfied with the ruling of rejection, it may, within 10 days from the date of receiving the ruling, appeal to the people's court at the next higher level.

Article 13 — The people's court shall, when ruling to accept a bankruptcy application, simultaneously designate an administrator.

Article 14 — The people's court shall, within 25 days from the date of ruling to accept a bankruptcy application, notify known creditors and make a public announcement. The notice and public announcement shall state the following: (1) the name of the applicant and the respondent; (2) the case number of the people's court accepting the bankruptcy application; (3) the time limit for, location of, and matters requiring attention in declaring claims; (4) the name of the administrator and the address where it handles affairs; (5) the requirement that the debtor's debtor or the holder of the debtor's property pay off debts or deliver property to the administrator; (6) the time and place for convening the first creditors' meeting; (7) other matters that the people's court deems necessary to notify and announce.

Article 15 — From the date of service of the people's court's ruling accepting the bankruptcy application to the date on which the bankruptcy proceedings are concluded, the relevant personnel of the debtor shall bear the following obligations: (1) properly safekeeping the property, seals, account books, documents, and other materials occupied and managed by them; (2) working at the request of the people's court and the administrator and truthfully answering inquiries; (3) attending the creditors' meeting and truthfully answering creditors' inquiries; (4) not leaving their place of domicile without the permission of the people's court; (5) not newly assuming positions as directors, supervisors, or senior managers of other enterprises. "Relevant personnel" as used in the preceding paragraph means the legal representative of the enterprise; and may include the financial management personnel and other operational management personnel of the enterprise upon a ruling by the people's court.

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Article 16 — After the people's court accepts a bankruptcy application, the repayment of debts owed to individual creditors by the debtor shall be void.

Article 17 — After the people's court accepts a bankruptcy application, the debtor's debtor or the holder of the debtor's property shall pay off debts or deliver property to the administrator. Where the debtor's debtor or the holder of the debtor's property intentionally pays off debts or delivers property to the debtor in violation of the provisions of the preceding paragraph, causing losses to the creditors, it shall not be exempted from the obligation to pay off debts or deliver property.

Article 18 — After the people's court accepts a bankruptcy application, the administrator shall have the right to decide to rescind a contract concluded before acceptance of the application that has not yet been fully performed by both the debtor and the counterparty, or decide to continue to perform the contract, and shall notify the counterparty of such decision. If the administrator fails to notify the counterparty within two months from the date of acceptance of the bankruptcy application, or fails to respond within 30 days from the date of receiving the counterparty's demand notice, the contract shall be deemed rescinded. Where the administrator decides to continue to perform the contract, the counterparty shall perform the contract; but the counterparty shall have the right to require the administrator to provide security. Where the administrator fails to provide security, the contract shall be deemed rescinded.

Article 19 — After the people's court accepts a bankruptcy application, measures taken for the preservation of the debtor's property shall be lifted and execution procedures shall be suspended.

Article 20 — After the people's court accepts a bankruptcy application, any civil lawsuit or arbitration relating to the debtor that has been commenced but has not been concluded shall be suspended; such lawsuit or arbitration may continue after the administrator takes over the debtor's property.

Article 21 — After the people's court accepts a bankruptcy application, any civil lawsuit brought against the debtor shall be filed only with the people's court that accepted the bankruptcy application.

Chapter III — Administrator

Article 22 — The administrator shall be designated by the people's court. Where the creditors' meeting considers that the administrator is unable to perform its duties in accordance with law, in a fair manner, or in any other case where it cannot serve as administrator, it may apply to the people's court to replace the administrator. The measures for designating and deciding the remuneration of the administrator shall be formulated by the Supreme People's Court.

Article 23 — The administrator shall perform its duties in accordance with the provisions of this Law, report on its work to the people's court, and be subject to the supervision of the creditors' meeting and the creditors' committee. The administrator shall attend the creditors' meeting as a non-voting participant and report on the performance of its duties and answer inquiries.

Article 24 — The following persons may serve as administrators: (1) liquidation teams composed of relevant personnel of the relevant departments and institutions; (2) law firms, accounting firms, bankruptcy liquidation firms, and other social intermediary institutions that have been lawfully established; (3) persons with the requisite specialized knowledge who have obtained practice qualifications, who are personnel of the institutions mentioned in the preceding subparagraph. No person shall serve as an administrator under any of the following circumstances: (1) having been subjected to criminal punishment for an intentional crime; (2) having had a relevant professional practice certificate revoked; (3) having an interest in the case; (4) other circumstances under which the people's court deems it inappropriate to serve as an administrator. Where an individual serves as administrator, he or she shall participate in professional liability insurance.

Article 25 — The administrator shall perform the following duties: (1) taking over the debtor's property, seals, account books, documents, and other materials; (2) investigating the debtor's financial position and

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preparing a financial position report; (3) deciding on the debtor's internal management affairs; (4) deciding on the debtor's routine expenses and other routine expenses; (5) deciding whether to continue or stop the debtor's business before the first creditors' meeting is convened; (6) managing and disposing of the debtor's property; (7) representing the debtor in lawsuits, arbitrations, or other legal proceedings; (8) proposing to convene a creditors' meeting; (9) other duties that the people's court deems the administrator should perform. Where this Law provides otherwise with respect to the duties of the administrator, such provisions shall prevail.

Article 26 — Before the first creditors' meeting is convened, where the administrator decides to continue or stop the debtor's business or commits any act specified in Article 69 of this Law, the administrator shall obtain the permission of the people's court.

Article 27 — The administrator shall be diligent and faithful in performing its duties.

Article 28 — The administrator may, with the permission of the people's court, employ necessary working personnel. The remuneration of the administrator shall be determined by the people's court. Where the creditors' meeting has an objection to the remuneration of the administrator, it shall have the right to raise it with the people's court.

Article 29 — The administrator shall not resign from its position without justifiable reasons. Where the administrator resigns, it shall obtain the permission of the people's court.

Chapter IV — Debtor's Property

Article 30 — The debtor's property at the time when the bankruptcy application is accepted and the property obtained by the debtor during the period from the acceptance of the bankruptcy application to the conclusion of the bankruptcy proceedings shall be the debtor's property.

Article 31 — Within one year before the people's court accepts a bankruptcy application, the administrator shall have the right to request the people's court to revoke the following acts relating to the debtor's property: (1) transferring property free of charge; (2) trading at a manifestly unreasonable price; (3) providing property as security for debts that were originally unsecured; (4) paying off undue debts in advance; (5) waiving claims.

Article 32 — Within six months before the people's court accepts a bankruptcy application, where the debtor falls under the circumstances specified in the first paragraph of Article 2 of this Law but still makes repayment to an individual creditor, the administrator shall have the right to request the people's court to revoke such repayment, unless the individual repayment benefits the debtor's property.

Article 33 — The following acts relating to the debtor's property shall be void: (1) concealing or transferring property to evade debts; (2) fabricating debts or acknowledging untrue debts.

Article 34 — Where any property of the debtor is acquired by another person as a result of an act specified in Articles 31, 32, or 33 of this Law, the administrator shall have the right to recover such property.

Article 35 — After the people's court accepts a bankruptcy application, where any of the debtor's capital contributors has failed to fulfill its capital contribution obligation, the administrator shall require the capital contributor to contribute the capital it has subscribed for, regardless of the time limit for capital contribution.

Article 36 — Where any non-income property of the enterprise is obtained by the debtor's directors, supervisors, or senior managers by taking advantage of their positions, or property of the enterprise is misappropriated by them, the administrator shall recover such property.

Article 37 — After the people's court accepts a bankruptcy application, the administrator may retrieve pledged or lien-encumbered property by paying off debts or providing security acceptable to the creditor. The payment of debts or provision of security provided for in the preceding paragraph shall be made for pledged

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or lien-encumbered property at a level not lower than the value of the collateral at the time the security interest was established, or at the current market value of the property. Where the value of the collateral is lower than the amount of the secured claim, the value of the collateral shall be used as the limit for debt repayment or provision of security.

Article 38 — After the people's court accepts a bankruptcy application, the right holder may retrieve property that the debtor possesses and that does not belong to the debtor through the administrator, unless otherwise provided by this Law.

Article 39 — At the time the people's court accepts a bankruptcy application, where the seller has sent the subject matter of a sale to the debtor as the buyer and the debtor has not yet received and paid the full price, the seller may retrieve the subject matter in transit. However, the administrator may pay the full price and request the seller to deliver the subject matter.

Article 40 — A creditor owed a debt by the debtor before acceptance of the bankruptcy application may offset the debt against a debt owed to the debtor; however, no offset may be made under any of the following circumstances: (1) after acceptance of the bankruptcy application, where a debtor of the debtor acquires another person's claim against the debtor; (2) where a creditor becomes aware that the debtor is unable to pay off its debts as they fall due or has filed a bankruptcy application, but still assumes a debt to the debtor; unless the creditor assumes the debt as required by law or assumes a debt that occurred one year before the bankruptcy application was filed; (3) where a debtor of the debtor becomes aware that the debtor is unable to pay off its debts as they fall due or has filed a bankruptcy application, but still acquires a claim against the debtor; unless the debtor of the debtor acquires the claim as required by law or acquires a claim that occurred one year before the bankruptcy application was filed.

Chapter V — Bankruptcy Expenses and Community Debts

Article 41 — The following expenses incurred after the people's court accepts a bankruptcy application shall be bankruptcy expenses: (1) litigation costs of the bankruptcy case; (2) expenses for the management, revaluation, and distribution of the debtor's property; (3) expenses for the administrator's performance of duties, the administrator's remuneration, and expenses for employing working personnel.

Article 42 — The following debts incurred after the people's court accepts a bankruptcy application shall be community debts: (1) debts arising from a contract the performance of which the administrator or the debtor requests the counterparty to continue; (2) debts arising from the negotiorum gestio of the debtor's property; (3) debts arising from the unjust enrichment of the debtor; (4) labor remuneration for the debtor's continued business operations, social insurance premiums payable, and other debts arising therefrom; (5) debts arising from damage caused by the administrator or relevant personnel in the performance of their duties; (6) debts arising from damage caused by the debtor's property to another person.

Article 43 — Bankruptcy expenses and community debts shall be paid out of the debtor's property at any time. Where the debtor's property is insufficient to pay all bankruptcy expenses and community debts, the bankruptcy expenses shall be paid first. Where the debtor's property is insufficient to pay all bankruptcy expenses or all community debts, they shall be paid in proportion. Where the debtor's property is insufficient to pay the bankruptcy expenses, the administrator shall request the people's court to conclude the bankruptcy proceedings. The people's court shall, within 15 days from the date of receiving the request, rule to conclude the bankruptcy proceedings and make a public announcement.

Chapter VI — Declaration of Claims

Article 44 — A creditor holding a claim against the debtor before the people's court accepts a bankruptcy application shall exercise its rights in accordance with the procedures prescribed by this Law.

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Article 45 — The time limit for declaring claims shall be determined by the people's court upon accepting a bankruptcy application, which shall not be less than 30 days and not more than three months, counting from the date of the people's court's announcement of acceptance of the bankruptcy application.

Article 46 — A claim that has not fallen due shall be deemed to have fallen due upon acceptance of the bankruptcy application. Interest on a claim with interest shall stop accruing upon acceptance of the bankruptcy application.

Article 47 — A creditor may declare a conditional claim or a claim subject to a time limit, as well as a claim pending determination in a lawsuit or arbitration.

Article 48 — A creditor shall declare its claim to the administrator within the time limit for declaring claims determined by the people's court. Wages, subsidies for medical treatment, disability benefits, and survivors' pensions owed by the debtor to its employees, basic old-age insurance premiums and basic medical insurance premiums that should have been transferred to the employees' individual accounts, and other expenses that shall be paid to employees as required by laws and administrative regulations need not be declared; the administrator shall, after investigation, prepare a schedule and make it public. If an employee has an objection to the contents recorded in the schedule, it may request the administrator to make corrections; if the administrator refuses to make corrections, the employee may bring a lawsuit in a people's court.

Article 49 — When declaring a claim, a creditor shall state in writing the amount of the claim and whether it is secured by property and submit relevant evidence. Where the claim declared is a joint and several claim, the declaration shall state so.

Article 50 — A joint and several creditor may have one person represent all the joint and several creditors in declaring the joint and several claim, or they may jointly declare the claim.

Article 51 — Where the debtor's guarantor or any other joint and several debtor has paid off debts on behalf of the debtor, it may declare its claim against the debtor based on its right of recourse. Where the debtor's guarantor or any other joint and several debtor has not paid off debts on behalf of the debtor, it may declare its claim against the debtor based on its future right of recourse, unless the creditor has already declared all its claims against the debtor to the administrator.

Article 52 — Where a joint and several debtor is ruled by a people's court to enter bankruptcy proceedings, its creditors shall have the right to declare their claims against it in the bankruptcy proceedings for the full amount of their respective claims.

Article 53 — Where the administrator or the debtor rescinds a contract in accordance with the provisions of this Law, the counterparty may declare its claim based on the right to claim compensation for damage caused by the rescission of the contract.

Article 54 — Where a debtor is an agent of an entrustment contract and is ruled by a people's court to enter bankruptcy proceedings, and the principal is unaware of this fact and continues to handle the entrusted affairs, the principal may declare its claim based on the expenses incurred as a result of the continued handling of affairs.

Article 55 — Where a debtor is the drawer of a negotiable instrument and is ruled by a people's court to enter bankruptcy proceedings, and the payer of the instrument continues to pay or accepts the instrument without being aware of this fact, the payer may declare its claim against the debtor based on the right arising from such payment or acceptance.

Article 56 — Where a creditor fails to declare its claim within the time limit for declaring claims determined by the people's court, it may make a supplementary declaration before the final distribution of the bankruptcy property; however, no distribution shall be made for the portion already distributed, and the expenses incurred for examining and confirming the supplementary declaration of claims shall be borne by the

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supplementary declarant. Where a creditor fails to declare its claim in accordance with the provisions of this Law, it shall not exercise its rights in accordance with the procedures prescribed by this Law.

Article 57 — After receiving the materials for the declaration of claims, the administrator shall register them in a register, examine the declared claims, and prepare a schedule of claims. The schedule of claims shall be preserved for the inspection of interested parties. The schedule of claims and the materials for the declaration of claims shall be preserved by the administrator for the inspection of interested parties.

Article 58 — The schedule of claims prepared in accordance with the provisions of Article 57 of this Law shall be submitted to the first creditors' meeting for verification. Claims that the debtor and the creditors have no objection to shall be confirmed by a ruling of the people's court after the schedule has been verified by the creditors' meeting. Where the debtor or a creditor has an objection to the claim recorded in the schedule, it may bring a lawsuit in the people's court that accepted the bankruptcy application.

Chapter VII — Creditors' Meeting

Article 59 — Creditors who have lawfully declared their claims shall be members of the creditors' meeting and shall have the right to attend meetings of the creditors' meeting and to vote. A creditor whose claim has not yet been confirmed shall not exercise the right to vote unless the people's court is able to temporarily determine the amount of its claim for the purpose of exercising the right to vote. A creditor holding a claim secured by specific property of the debtor that has not waived the priority right to be repaid shall not have the right to vote on the matters specified in subparagraphs (7) and (10) of the first paragraph of Article 61 of this Law. A creditor may attend the creditors' meeting through an agent. When attending the creditors' meeting through an agent, the agent shall submit a power of attorney to the people's court or the chairman of the creditors' meeting. The creditors' meeting shall have a chairman. The people's court shall designate a chairman from among the creditors who have the right to vote. The people's court's representatives and representatives of the employees of the debtor, as well as the enterprise's trade union representatives, may attend the creditors' meeting as non-voting participants and may express opinions on relevant matters.

Article 60 — The creditors' meeting shall have one chairman, who shall be designated by the people's court from among the creditors who have the right to vote. The chairman of the creditors' meeting shall preside over the creditors' meeting.

Article 61 — The creditors' meeting shall exercise the following functions and powers: (1) verifying claims; (2) applying to the people's court to replace the administrator, and reviewing the administrator's expenses and remuneration; (3) supervising the administrator; (4) selecting and replacing members of the creditors' committee; (5) deciding whether to continue or stop the debtor's business; (6) adopting a reorganization plan; (7) adopting a compromise agreement; (8) adopting a plan for the management of the debtor's property; (9) adopting a plan for the revaluation of the bankruptcy property; (10) adopting a plan for the distribution of the bankruptcy property; (11) other functions and powers that the people's court deems the creditors' meeting should exercise. Where the creditors' meeting shall exercise the functions and powers specified in the preceding paragraph in writing, the people's court shall make a ruling on whether to do so.

Article 62 — The first creditors' meeting shall be convened by the people's court and shall be held within 15 days from the date of expiration of the time limit for declaring claims. Subsequent creditors' meetings may be convened by the people's court when it deems necessary, or when proposed by the administrator, the creditors' committee, or creditors whose claims account for one quarter or more of the total amount of claims, the chairman of the creditors' meeting shall convene a meeting.

Article 63 — When convening a creditors' meeting, the administrator shall notify known creditors 15 days in advance.

Article 64 — A resolution of the creditors' meeting shall be adopted by the affirmative vote of creditors present at the meeting who have the right to vote, provided that the creditors voting in favor hold claims

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accounting for more than one half of the total amount of unsecured claims, unless otherwise provided by this Law. Where a creditor believes that a resolution of the creditors' meeting violates the law or harms its interests, it may, within 15 days from the date the resolution is made, request the people's court to rule to revoke the resolution and order the creditors' meeting to make a new resolution in accordance with law. A resolution of the creditors' meeting shall be binding on all creditors.

Article 65 — Where the matters specified in subparagraph (8) or (9) of the first paragraph of Article 61 of this Law are not adopted by a resolution of the creditors' meeting, they shall be ruled on by the people's court. Where the matter specified in subparagraph (10) of the first paragraph of Article 61 of this Law is not adopted after two votes by the creditors' meeting, it shall be ruled on by the people's court. The people's court may make a ruling on the matters specified in the preceding two paragraphs and may announce it at the creditors' meeting.

Article 66 — Where a creditor is dissatisfied with a ruling made by the people's court in accordance with the first paragraph of Article 65 of this Law, or where the number of creditors whose claims account for more than one half of the total amount of unsecured claims are dissatisfied with a ruling made by the people's court in accordance with the second paragraph of Article 65 of this Law, they may, within 15 days from the date the ruling is announced or the notice of the ruling is received, apply to the people's court that made the ruling for reconsideration. Execution of the ruling shall not be suspended during the period of reconsideration.

Article 67 — The creditors' meeting may decide to establish a creditors' committee. The creditors' committee shall consist of creditor representatives selected by the creditors' meeting and one representative each of the debtor's employees and the trade union. The creditors' committee shall have no more than nine members. Members of the creditors' committee shall be subject to a written confirmation decision of the people's court.

Article 68 — The creditors' committee shall exercise the following functions and powers: (1) supervising the management and disposal of the debtor's property; (2) supervising the distribution of the bankruptcy property; (3) proposing to convene a creditors' meeting; (4) other functions and powers entrusted by the creditors' meeting. When the creditors' committee performs its duties, it shall have the right to require the administrator and the relevant personnel of the debtor to explain the matters within the scope of their duties or provide relevant documents. Where the administrator or the relevant personnel of the debtor refuse to accept supervision in violation of the provisions of this Law, the creditors' committee shall have the right to request the people's court to make a decision on supervision matters on its behalf, and the people's court shall make a decision within five days.

Article 69 — Before the first creditors' meeting is convened, the administrator shall promptly report to the creditors' committee upon committing any of the following acts: (1) the transfer of immovable property such as land and buildings; (2) the transfer of exploration rights, mining rights, intellectual property rights, and other property rights; (3) the transfer of all inventory or business operations; (4) the provision of loans; (5) the creation of a security interest over property; (6) the transfer of claims and securities; (7) the performance of contracts that have not been fully performed by both the debtor and the counterparty; (8) the waiver of rights; (9) the retrieval of pledged or lien-encumbered property; (10) other acts concerning the disposal of property that have a significant impact on the interests of creditors. Where no creditors' committee is established, the administrator shall promptly report to the people's court upon committing any of the acts specified in the preceding paragraph.

Chapter VIII — Reorganization

Article 70 — The debtor or a creditor may, in accordance with the provisions of this Law, directly apply to the people's court for reorganization of the debtor. Where a creditor applies for bankruptcy liquidation of the debtor, after the people's court accepts the bankruptcy application and before the debtor is declared

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bankrupt, the debtor or a capital contributor whose capital contribution accounts for one tenth or more of the debtor's registered capital may apply to the people's court for reorganization.

Article 71 — Where the people's court, upon examination, deems that the application for reorganization complies with the provisions of this Law, it shall rule to reorganize the debtor and make a public announcement.

Article 72 — The period of reorganization shall run from the date the people's court rules to reorganize the debtor to the date the reorganization proceedings are terminated.

Article 73 — During the period of reorganization, the debtor may, upon application to the people's court and with the approval of the people's court, manage its property and business affairs on its own under the supervision of the administrator. Where the situation specified in the preceding paragraph occurs, the administrator who has taken over the debtor's property and business affairs shall hand over the property and business affairs to the debtor, and the administrator's duties under this Law shall be exercised by the debtor.

Article 74 — Where the administrator is responsible for managing the debtor's property and business affairs, the administrator may appoint the debtor's operational management personnel to be responsible for business affairs.

Article 75 — During the period of reorganization, the exercise of a security interest over specific property of the debtor shall be suspended. However, where the pledged or lien-encumbered property is likely to be damaged or its value markedly reduced, sufficient to harm the rights of the security interest holder, the security interest holder may apply to the people's court to resume the exercise of the security interest. During the period of reorganization, where the debtor or the administrator borrows money for the continuation of business operations, it may create a security interest over such loan.

Article 76 — Where the lawful possession of another person's property by the debtor is not based on a contractual relationship, and the property is transferred during the period of reorganization on a compensated basis, the right holder may request the return of the substituted property; where the property is transferred free of charge or the right holder suffers losses from the failure to return the property in a timely manner, it may claim damages based on the losses actually caused. Depending on the circumstances, the people's court may accept the claim as a community debt. Where the debtor lawfully possesses another person's property based on a contractual relationship, and the contract is rescinded upon the expiration of the contract term or for any other reason during the period of reorganization, the right holder may request the return of the property in accordance with the contract.

Article 77 — During the period of reorganization, the debtor's capital contributors shall not request distribution of investment income. During the period of reorganization, the debtor's directors, supervisors, and senior managers shall not transfer the debtor's equity to a third party, unless approved by the people's court.

Article 78 — During the period of reorganization, under any of the following circumstances, the administrator or an interested party may request the people's court to rule to terminate the reorganization proceedings and declare the debtor bankrupt: (1) the debtor's operational or financial condition continues to deteriorate and there is no possibility of recovery; (2) the debtor engages in fraud, maliciously reduces the debtor's property, or commits other acts that are manifestly disadvantageous to creditors; (3) an act of the debtor causes the administrator to be unable to perform its duties.

Article 79 — The debtor or the administrator shall, within six months from the date the people's court rules to reorganize the debtor, simultaneously submit a draft reorganization plan to the people's court and the creditors' meeting. Where the time limit specified in the preceding paragraph expires and the time limit may be extended for three months upon the request of a petitioner with justifiable reasons, where the debtor or the administrator fails to submit a draft reorganization plan on schedule, the people's court shall rule to

terminate the reorganization proceedings and declare the debtor bankrupt.

Article 80 — Where the debtor manages its property and business affairs on its own, the draft reorganization plan shall be prepared by the debtor. Where the administrator is responsible for managing the property and business affairs, the draft reorganization plan shall be prepared by the administrator.

Article 81 — The draft reorganization plan shall contain the following: (1) the debtor's business plan; (2) the classification of claims; (3) the plan for adjusting claims; (4) the plan for repaying claims; (5) the plan for implementing the reorganization plan; (6) the time limit for implementing the reorganization plan and the time limit for supervision; (7) other contents conducive to the debtor's reorganization.

Article 82 — Creditors attending the meeting to discuss the draft reorganization plan shall be divided into the following voting groups according to their claims: (1) the group of creditors holding claims secured by specific property of the debtor; (2) the group of creditors holding claims for employees' wages, subsidies for medical treatment, disability benefits, and survivors' pensions owed by the debtor to its employees, basic old-age insurance premiums and basic medical insurance premiums that should have been transferred to the employees' individual accounts, and other expenses that shall be paid to employees as required by laws and administrative regulations; (3) the group of creditors holding claims for taxes owed by the debtor; (4) the group of creditors holding ordinary claims. Where the people's court deems it necessary, it may decide to establish a separate group for small-amount creditors to vote on the draft reorganization plan within the ordinary claims group.

Article 83 — The reorganization plan shall not provide for the reduction of social insurance premiums other than those specified in subparagraph (2) of the first paragraph of Article 82 of this Law that the debtor owes; the creditors holding claims for such premiums shall not participate in voting on the draft reorganization plan.

Article 84 — The people's court shall, within 30 days from the date of receiving the draft reorganization plan, convene a creditors' meeting to vote on the draft reorganization plan. Where a voting group at the creditors' meeting adopts the draft reorganization plan by the affirmative vote of creditors present at the meeting who hold claims accounting for more than one half of the total amount of claims of that group, the draft reorganization plan shall be deemed adopted by that group. The debtor or the administrator shall explain the draft reorganization plan to the creditors' meeting and answer inquiries.

Article 85 — Representatives of the debtor's capital contributors may attend the meeting to discuss the draft reorganization plan as non-voting participants. Where the draft reorganization plan involves adjustment of the capital contributors' rights and interests, a capital contributors group shall be established to vote on such matters.

Article 86 — Where each voting group has adopted the draft reorganization plan, the reorganization plan shall be deemed adopted. The debtor or the administrator shall, within 10 days from the date the reorganization plan is adopted, apply to the people's court for approval of the reorganization plan. The people's court shall, upon examination and deeming it to comply with the provisions of this Law, rule within 30 days from the date of receiving the application to approve and terminate the reorganization proceedings and make a public announcement.

Article 87 — Where some voting groups fail to adopt the draft reorganization plan, the debtor or the administrator may negotiate with the voting groups that did not adopt the draft. The voting groups that did not adopt the draft may vote again after negotiation. The result of the negotiation between the two parties shall not prejudice the interests of other voting groups. Where a voting group that did not adopt the draft reorganization plan refuses to adopt the draft again or fails to adopt the draft again after negotiation, but the draft reorganization plan meets the following conditions, the debtor or the administrator may apply to the people's court for approval of the draft reorganization plan: (1) with respect to the claims of the group of creditors holding claims secured by specific property of the debtor, the full amount of the claims shall be repaid based on the specific property, the creditor shall not suffer any substantive damage from the

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postponement of repayment, or the voting group has adopted the draft reorganization plan; (2) with respect to the claims of the group of creditors holding claims for employees' wages, taxes owed by the debtor, and other claims specified in subparagraphs (2) and (3) of the first paragraph of Article 82 of this Law, the claims shall be fully repaid, or the corresponding voting group has adopted the draft reorganization plan; (3) with respect to ordinary claims, the repayment ratio specified in the draft reorganization plan shall not be lower than the ratio that would be received in a bankruptcy liquidation, or the voting group has adopted the draft reorganization plan; (4) the draft reorganization plan treats members of the same voting group fairly and the order of repayment of claims specified thereunder does not violate the provisions of Article 113 of this Law; (5) the debtor's business plan is feasible. Where the people's court deems upon examination that the draft reorganization plan complies with the provisions of the preceding paragraph, it shall rule within 30 days from the date of receiving the application to approve and terminate the reorganization proceedings and make a public announcement.

Article 88 — Where the draft reorganization plan has not been adopted and has not been approved in accordance with the provisions of Article 87 of this Law, or where a draft reorganization plan that has been adopted has not been approved, the people's court shall rule to terminate the reorganization proceedings and declare the debtor bankrupt.

Article 89 — After the reorganization plan is approved, the debtor shall be responsible for implementing the reorganization plan. After the reorganization plan is approved, the administrator who has taken over the property and business affairs shall hand over the property and business affairs to the debtor.

Article 90 — Within the supervision period specified in the reorganization plan, the debtor shall report to the administrator on the implementation of the reorganization plan and its financial position. The supervision period shall expire upon the expiration of the time limit for implementing the reorganization plan. The administrator may, upon application to the people's court, rule to extend the supervision period.

Article 91 — Upon the expiration of the supervision period, the administrator shall submit a supervision report to the people's court. From the date the supervision report is submitted, the administrator's supervision duties shall terminate. An interested party to the reorganization plan shall have the right to inspect the supervision report submitted by the administrator to the people's court. The administrator may apply to the people's court to extend the time limit for submitting the supervision report.

Article 92 — The reorganization plan approved by the people's court shall be binding on the debtor and all creditors. Where a creditor fails to declare its claim in accordance with the provisions of this Law, it shall not exercise its rights during the implementation of the reorganization plan; after the implementation of the reorganization plan is completed, it may exercise its rights in accordance with the repayment conditions for the same type of claim as set forth in the reorganization plan. The rights of a creditor against the debtor's guarantor and other joint and several debtors shall not be affected by the reorganization plan.

Article 93 — Where the debtor is unable to or fails to implement the reorganization plan, the people's court shall, upon the request of the administrator or an interested party, rule to terminate the implementation of the reorganization plan and declare the debtor bankrupt. Where the people's court rules to terminate the implementation of the reorganization plan, the commitments made by creditors in the reorganization plan regarding the adjustment of claims shall lose effect. The security provided by creditors for the implementation of the reorganization plan shall continue to be effective. Where a creditor has received repayment under the reorganization plan, such repayment shall be effective; however, the portion of the repayment already received by the creditor shall be effective only to the extent that it does not exceed the portion it would receive if the distribution of the bankruptcy property were carried out based on the same order of priority.

Article 94 — Where the debtor is unable to pay off the portion of the debts for which repayment obligations have been reduced or exempted in accordance with the reorganization plan, the people's court may, upon

application by the debtor, rule to approve the reduction or exemption upon expiration of the time limit for implementing the reorganization plan.

Chapter IX — Compromise

Article 95 — The debtor may, in accordance with the provisions of this Law, directly apply to the people's court for compromise; or it may apply to the people's court for compromise after the people's court accepts a bankruptcy application and before the debtor is declared bankrupt. Where the debtor applies for compromise, it shall submit a draft compromise agreement.

Article 96 — Where the people's court, upon examination, deems that the application for compromise complies with the provisions of this Law, it shall rule to compromise and make a public announcement, and convene a creditors' meeting to discuss the draft compromise agreement. A creditor holding a claim secured by specific property of the debtor shall not exercise its rights from the date the people's court rules to compromise.

Article 97 — A resolution of the creditors' meeting to adopt the draft compromise agreement shall be adopted by the affirmative vote of creditors present at the meeting who have the right to vote, provided that the creditors voting in favor hold unsecured claims accounting for more than two thirds of the total amount of unsecured claims.

Article 98 — Where the creditors' meeting adopts the draft compromise agreement, the people's court shall rule to approve it and terminate the compromise proceedings and make a public announcement. The administrator shall hand over the property and business affairs to the debtor and submit a report on the performance of its duties to the people's court.

Article 99 — Where the draft compromise agreement has not been adopted by the creditors' meeting, or where the draft compromise agreement adopted by the creditors' meeting has not been approved by the people's court, the people's court shall rule to terminate the compromise proceedings and declare the debtor bankrupt.

Article 100 — The compromise agreement approved by the people's court shall be binding on the debtor and all unsecured creditors. "Unsecured creditors" as used in the preceding paragraph means creditors holding claims against the debtor that have not been secured by property before the people's court accepts the bankruptcy application. Where a creditor holding a claim secured by property of the debtor waives the priority right to be repaid, or fails to exercise the priority right to be repaid, the provisions of the preceding paragraph shall apply.

Article 101 — The rights of a compromise creditor against the debtor's guarantor and other joint and several debtors shall not be affected by the compromise agreement.

Article 102 — The debtor shall repay debts in accordance with the conditions set forth in the compromise agreement.

Article 103 — Where the debtor is unable to or fails to implement the compromise agreement, the compromise creditor may request the people's court to rule to terminate the implementation of the compromise agreement and declare the debtor bankrupt. The people's court that accepts the request specified in the preceding paragraph shall rule to terminate the implementation of the compromise agreement and declare the debtor bankrupt, unless the compromise agreement is not implemented due to force majeure and the implementation has been basically completed. The security provided by a compromise creditor for the implementation of the compromise agreement shall continue to be effective.

Article 104 — Where the compromise agreement is not implemented due to the debtor's fraud or other illegal acts, the people's court shall rule to declare the compromise agreement void and declare the debtor bankrupt. Where the circumstance specified in the preceding paragraph occurs, a compromise creditor who

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has received repayment under the compromise agreement shall return the portion of repayment received in excess of the portion it would receive in a bankruptcy liquidation.

Article 105 — After the people's court accepts a bankruptcy application, where the debtor and all creditors reach an agreement on the settlement of claims and debts on their own, they may request the people's court to rule to approve and terminate the bankruptcy proceedings.

Article 106 — Where the debtor is unable to pay off the portion of debts for which repayment obligations have been reduced or exempted in accordance with the compromise agreement, it may, upon the people's court's ruling to approve the compromise agreement and determine the time limit for implementing the compromise agreement, and upon application by the debtor, have the people's court rule to approve the reduction or exemption.

Chapter X — Bankruptcy Liquidation

Article 107 — Where the people's court declares the debtor bankrupt in accordance with the provisions of this Law, it shall serve a copy of the ruling on the debtor and the administrator within five days from the date of making the ruling, notify known creditors within 10 days from the date of making the ruling, and make a public announcement. After the debtor is declared bankrupt, the debtor shall be referred to as the bankrupt, the debtor's property shall be referred to as the bankruptcy property, and the claims against the debtor existing at the time the people's court accepts the bankruptcy application shall be referred to as bankruptcy claims.

Article 108 — Before a declaration of bankruptcy is made, under any of the following circumstances, the people's court shall rule to terminate the bankruptcy proceedings and make a public announcement: (1) a third party provides security in full for the debtor or pays off all the debts due on behalf of the debtor; (2) the debtor has paid off all its debts due.

Article 109 — A creditor holding a claim secured by specific property of the bankrupt shall have the priority right to be repaid from the specific property.

Article 110 — Where a creditor exercising the right specified in Article 109 of this Law receives priority repayment that is insufficient to cover its claim, the unpaid portion of the claim shall be treated as an ordinary claim; where the priority repayment exceeds the claim, the excess shall be used to repay other bankruptcy claims or community debts.

Article 111 — The administrator shall promptly prepare a plan for the revaluation of the bankruptcy property and submit it to the creditors' meeting for discussion. The administrator shall dispose of the bankruptcy property in accordance with the plan for the revaluation of the bankruptcy property or in any other manner as provided by the resolution of the creditors' meeting or the ruling of the people's court, unless otherwise provided by a resolution of the creditors' meeting.

Article 112 — The revaluation of the bankruptcy property shall be conducted by auction, unless otherwise provided by a resolution of the creditors' meeting. A bankrupt enterprise may be revalued in whole or in part. When the enterprise is revalued, the intangible property and other property therein may be revalued separately. Property that is not suitable for auction or the transfer of which is restricted by the State shall be disposed of in accordance with the methods prescribed by the State.

Article 113 — The bankruptcy property shall, after the bankruptcy expenses and community debts are paid first, be used to repay bankruptcy claims in the following order: (1) the wages, subsidies for medical treatment, disability benefits, and survivors' pensions owed by the bankrupt to its employees, basic old-age insurance premiums and basic medical insurance premiums that should have been transferred to the employees' individual accounts, and other expenses that shall be paid to employees as required by laws and administrative regulations; (2) social insurance premiums other than those specified in the preceding

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subparagraph owed by the bankrupt and taxes owed; (3) ordinary bankruptcy claims. Where the bankruptcy property is insufficient to satisfy the repayment requirements within the same order of priority, it shall be distributed on a pro rata basis. The wages of the bankrupt's directors, supervisors, and senior managers shall be calculated based on the average wage of the enterprise's employees.

Article 114 — The administrator shall promptly prepare a plan for the distribution of the bankruptcy property and submit it to the creditors' meeting for discussion after the revaluation of the bankruptcy property. The plan for the distribution of the bankruptcy property shall state the following: (1) the names and domiciles of the creditors participating in the distribution of the bankruptcy property; (2) the amounts of claims participating in the distribution; (3) the amount of bankruptcy property available for distribution; (4) the order and ratio of distribution of the bankruptcy property; (5) the amount of the distribution of the bankruptcy property to be actually received. After the plan for the distribution of the bankruptcy property is adopted by the creditors' meeting, the administrator shall request the people's court to rule to approve the plan.

Article 115 — After the plan for the distribution of the bankruptcy property is approved by a ruling of the people's court, the administrator shall implement it. Where the administrator distributes the bankruptcy property multiple times, it shall announce the amount of the bankruptcy property distributed and the amount of claims distributed at the time of the final distribution. Under any of the following circumstances, the administrator shall set aside a portion of the distribution: (1) claims that are still pending in a lawsuit or arbitration and the amount of the distribution for which has not yet been determined; (2) circumstances where the creditor fails to receive the distribution.

Article 116 — The distribution of the bankruptcy property suspended due to pending lawsuits or arbitration shall be set aside. From the date the bankruptcy proceedings are concluded, the distribution shall be continued after two years and distributed to other creditors. However, where the lawsuit or arbitration involves a significant amount and the continuation of distribution would prejudice the interests of creditors, the administrator may apply to the people's court to continue to set aside the distribution.

Article 117 — Where a creditor fails to receive the distribution of the bankruptcy property, the administrator shall set aside the distribution amount. Where the creditor fails to collect the distribution amount within two months after the date of the final distribution announcement, it shall be deemed to have waived the right to receive the distribution; the administrator or the people's court shall distribute the amount set aside to other creditors.

Article 118 — Where a creditor holding a claim against the bankrupt that is subject to a condition precedent or a condition subsequent has not yet been determined, the administrator shall set aside and deposit the distribution amount for the creditor. Where the condition is fulfilled within two months after the date of the final distribution announcement, the creditor shall receive the distribution; where the condition is not fulfilled or the fulfillment or non-fulfillment of the condition is still uncertain, the amount set aside and deposited shall be distributed to other creditors.

Article 119 — Where property is discovered after the final distribution of the bankruptcy property, the people's court shall carry out additional distribution in accordance with the plan for the distribution of the bankruptcy property, provided that the property was not discovered at the time of the final distribution and the additional distribution will not cause material damage to the interests of creditors. The expenses incurred for the additional distribution shall be treated as bankruptcy expenses. The additional distribution shall, under the circumstances specified in the preceding paragraph, be carried out upon an application for additional distribution by the administrator.

Article 120 — Where the bankrupt has no property to distribute, the administrator shall request the people's court to rule to conclude the bankruptcy proceedings. After the final distribution is completed, the administrator shall promptly submit a report on the distribution of the bankruptcy property to the people's court, and request the people's court to rule to conclude the bankruptcy proceedings. The people's court

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shall, within 15 days from the date of receiving the request of the administrator to conclude the bankruptcy proceedings, make a ruling on whether to conclude the bankruptcy proceedings. Where a ruling is made to conclude the proceedings, a public announcement shall be made.

Article 121 — The administrator shall, within 10 days from the date the bankruptcy proceedings are concluded, register with the original registration authority of the bankrupt with the people's court's ruling to conclude the bankruptcy proceedings for the cancellation of the bankrupt's registration.

Article 122 — The administrator shall terminate the performance of its duties on the day following the cancellation of the bankrupt's registration, unless there are outstanding lawsuits or arbitration proceedings.

Article 123 — Within two years after the bankruptcy proceedings are concluded in accordance with the provisions of the fourth paragraph of Article 43 or Article 120 of this Law, the creditor may request the people's court to make additional distribution in accordance with the plan for the distribution of the bankruptcy property under any of the following circumstances: (1) property that shall be recovered in accordance with the provisions of Articles 31, 32, 33, or 36 of this Law is discovered; (2) the bankrupt has other property that should be distributed but has not been distributed. Where the circumstances specified in the preceding paragraph occur but the amount of property is insufficient to pay the distribution expenses, no additional distribution shall be made and the property shall be turned over to the State Treasury by the people's court.

Article 124 — The guarantor and other joint and several debtors of the bankrupt shall, after the bankruptcy proceedings are concluded, continue to assume the liability to repay the claims that the creditor has not received repayment for in accordance with the bankruptcy liquidation procedures.

Chapter XI — Legal Liability

Article 125 — Where a director, supervisor, or senior manager of an enterprise violates the duty of loyalty or diligence, causing the enterprise to go bankrupt, he or she shall bear civil liability in accordance with law. A person who falls under the circumstance specified in the preceding paragraph shall not serve as a director, supervisor, or senior manager of any enterprise for three years from the date the bankruptcy proceedings are concluded.

Article 126 — Where the relevant personnel of the debtor who have the obligation to attend the creditors' meeting as non-voting participants refuse to attend the creditors' meeting without justifiable reasons upon being summoned by the people's court, the people's court may impose compulsory appearance and impose a fine in accordance with law. Where the relevant personnel of the debtor violate the provisions of this Law by refusing to cooperate with the investigation or refusing to answer inquiries, the people's court may impose a fine in accordance with law.

Article 127 — Where the debtor fails to submit to the people's court statements of its financial position, a schedule of its debts, a schedule of its claims, relevant financial and accounting reports, and information on the payment of employees' wages and social insurance premiums as required by this Law, or submits untruthful materials, the people's court may impose a fine on the directly liable person in accordance with law. Where the debtor refuses to hand over property, seals, account books, documents, and other materials to the administrator, or fabricates or destroys relevant property evidence materials to make the financial position unclear, the people's court may impose a fine on the directly liable person in accordance with law.

Article 128 — Where the debtor commits an act specified in Articles 31, 32, or 33 of this Law that harms the interests of creditors, the legal representative of the debtor and other directly liable persons shall bear liability for compensation in accordance with law.

Article 129 — Where the relevant personnel of the debtor violate the provisions of this Law by leaving their place of domicile without authorization, the people's court may admonish or detain them, and may

concurrently impose a fine.

Article 130 — Where the administrator fails to perform its duties diligently and faithfully in accordance with the provisions of this Law, the people's court may impose a fine in accordance with law; where losses are caused to the debtor, the creditors, or a third party, it shall bear liability for compensation in accordance with law.

Article 131 — Where a violation of the provisions of this Law constitutes a crime, criminal liability shall be investigated in accordance with law.

Chapter XII — Supplementary Provisions

Article 132 — Where, within the scope prescribed by the State Council, the wages, subsidies for medical treatment, disability benefits, and survivors' pensions owed by the bankrupt to its employees, basic old-age insurance premiums and basic medical insurance premiums that should have been transferred to the employees' individual accounts, and other expenses that shall be paid to employees as required by laws and administrative regulations, which were incurred before the date this Law is promulgated, are insufficient to repay after the repayment of secured claims from the specific secured property, priority repayment shall be made from the unsecured property before the secured claims specified in the first subparagraph of the first paragraph of Article 113 of this Law.

Article 133 — Special matters concerning the bankruptcy of State-owned enterprises within the scope prescribed by the State Council before this Law is implemented shall be handled in accordance with the relevant provisions of the State Council.

Article 134 — Where a financial institution such as a commercial bank, securities company, or insurance company falls under the circumstances specified in Article 2 of this Law, the financial regulatory authority under the State Council may apply to the people's court for the reorganization or bankruptcy liquidation of the financial institution. Where the State Council financial regulatory authority takes measures such as takeover or custody of a financial institution that involves a material business risk in accordance with law, it may apply to the people's court to suspend the civil lawsuit or enforcement proceedings in which the financial institution is the defendant or the person subject to enforcement. Where a financial institution goes bankrupt, the State Council may, in accordance with the provisions of this Law and other relevant laws, formulate measures for implementation.

Article 135 — Where a legal person other than an enterprise legal person is under bankruptcy liquidation, the bankruptcy liquidation procedures provided in this Law may be applied by reference.

Article 136 — This Law shall come into force on June 1, 2007, upon which the Enterprise Bankruptcy Law of the PRC (for Trial Implementation) shall be repealed simultaneously.

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