

## **New law defines bankruptcy proceedings**

 After 10 years from the issuance of the 2004 bankruptcy law, a new Law on Bankruptcy (the Bankruptcy Law) was passed on June 19, 2014, by the 13th National Assembly with bankruptcy proceedings separated into the two concepts - insolvency and bankruptcy.

In addition, the new law clearly defines rights and obligations of involved parties in bankruptcy proceedings; changed the composition of the team of management and liquidation; prescribed shortened proceedings for bankruptcy, and procedures for bankruptcy of credit institutions; provided for suspension for settling cases related to the implementation of the financial obligations of enterprises unable to dissolve debts and resolve legal consequences; and re-arranged the stage of asset liquidation in bankruptcy proceedings, etc.

The new law creates a new title of trustee with the rights and obligations similar to the team for the management and liquidation of assets, which is responsible for managing the operation and liquidating assets of the enterprise in bankruptcy during the proceedings (including the management and liquidation of assets; representing the enterprise in the absence of a legal representative; reporting on the status of assets, financial liabilities and operations of the enterprise; participation in making a business recovery plan; provision of proposals for the court to carry out the following works: collecting evidence, declaring a transaction invalid and recovering asset sales or transfers that were conducted illegally, applying interim urgent measures and applying administrative sanctions).

Under the new Bankruptcy Law, a minimum period in which creditors can lodge a petition for bankruptcy proceedings against debtors is three months from the due date of financial obligations. In addition, the law also grants to other individuals and organisations the right to inform the entities who have the right and obligation to file a request for bankruptcy proceedings when they discovered the enterprise was unable to dissolve its debts.

The court with jurisdiction to resolve bankruptcy proceedings is transferred to the people's court of the district where the head office of the enterprise is located, except in certain cases where the people's court of the province has jurisdiction under the provisions of Article 9.1 of the Bankruptcy Law. A petition for bankruptcy proceedings will not always result in initiation of bankruptcy proceedings as a petitioner has the right to actively negotiate the withdrawal of the petition through a separate agreement with the debtor.

With the new regulations, information of an enterprise initiating bankruptcy proceedings (Insolvent Debtor) can be easily accessed via notification to the petitioner, Insolvent Debtor, creditors, the Procuracy, the authority of civil judgment enforcement, tax agency, business registration agency where the head office of the enterprise is located and the national business registration portal, the portal of the court and two consecutive issues of local newspapers. This allows other creditors, or other entities with financial issues against the enterprise a better ability to know and take the next steps to protect their own rights and legitimate interests.

In avoidance of dispersing and hiding assets, some transactions, shortly before initiation of bankruptcy proceedings can be considered to be invalid in the following cases: (i) transactions relating to asset

transfers but not at market prices; (ii) the transfer of unsecured debt into secured debt or partially secured debt; (iii) payment or balance to a creditor for debts not yet due or for a larger amount than due debts; (iv) transfer of property without payment; (v) transactions for purposes other than business activities of the enterprise; (vi) other transactions with the purpose of dispersing the assets of the enterprise. The court with jurisdiction will consider the transactions at the various periods depending on the engaged entities. The time period for entities in a relevant relationship to the Insolvent Debtor is 18 months, and for others it's six months.

An enterprise is declared bankrupt if (i) the enterprise is unable to pay official fees or advance bankruptcy costs; (ii) the creditors meeting was postponed but still unsatisfied for being reconvened; (iii) a resolution of the creditors meeting is not passed; or (iv) a business recovery plan is not made within the time-limit, a business recovery plan cannot be implemented, or debts cannot be dissolved even after the performance of the business recovery plan.

This new Bankruptcy Law enters effect on January 1, 2015.