

Regulations of Shenzhen Special Economic Zone on Corporate Bankruptcy

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(Adopted at the Nineteenth Meeting of the Standing Committee of the Second Shenzhen Municipal People's Congress on November 10, 1993.)

Chapter I General Provisions

Article 1 In order to standardize the acts of corporate bankruptcy, protect the lawful rights and interests of debtors and creditors, maintain the order of the market economy of Shenzhen Special Economic Zone (hereinafter referred to as "Special Zone"), these regulations are hereby formulated.

Article 2 These regulations shall be applicable to the enterprise legal persons unless as otherwise as stipulated by laws and regulations:

(1) Enterprises legal persons which registered in the Special Zone; and

(2) Enterprise legal persons, being registered outside the Special Zone, however whose domicile locate in the Special Zone.

Article 3 An enterprise shall be reconciled or declared bankruptcy in accordance with these regulations in case it lacks the ability to repay the debt due for repayment.

The suspension of an enterprise to repay the debt due for repayment shall be regarded as lack of ability to repay such debt.

Article 4 After acceptance of a bankruptcy case, a people's court shall not declare bankruptcy of an enterprise in one of the following circumstances:

(1) Public enterprises and enterprises essentially relevant to the national economy and the people's livelihood, that being financed or whose debts being discharged through other manners by the relevant governmental authority; and

(2) Gaining a guarantee, by which the debts will be repaid within 6 months from the date of application of bankruptcy.

Article 5 A bankruptcy case shall come under the jurisdiction of the people's court at the place where the debtor's domicile locates.

A bankruptcy case of a foreign invested enterprise shall come under the jurisdiction of the intermediate people's court of Shenzhen Municipality.

Article 6 Where there no provisions are specified in these regulations on litigation procedure of a bankruptcy case, provisions of laws of civil procedure shall be applicable.

Article 7 In the case that the title administration authority of a state-owned enterprise, which has been applied by its creditors to go bankruptcy, applies for rectification of the enterprise, national law on bankruptcy of enterprise shall be applicable.

Article 8 The social insurance of employees of a bankruptcy enterprise shall be handled according to relevant provisions of the Special Zone.

Chapter II The Raise and Acceptance of an Application of

Bankruptcy

Article 9 In the case that a debtor lacks the ability to repay the debt due for repayment, the debtee may apply to declare the debtor bankrupt for debt repayment, and the debtor also may apply to declare itself bankrupt for debt repayment.

In the case that a state-owned enterprise lacks the ability to repay the debt due for repayment, however neither the debtor nor the debtee apply to declare the debtor bankrupt, the department in charge of the state-owned enterprise may apply to declare the enterprise bankrupt.

Article 10 During the liquidation of an enterprise other than bankruptcy liquidation, the liquidation group shall apply to a people' s court to declare the enterprise bankrupt in case it find the assets of the enterprise are insufficient for repayment of debts.

Article 11 A bankrupt application shall be submitted to a people' s court in the case of applying for bankruptcy.

In the case of applying for declaration of bankruptcy of a debtor by a debtee, the debtee shall provide proof relevant to the amount and character of the creditors and the proof that the debtor being incapable to repay the due debt.

In the case of applying for declaration of bankruptcy of a debtor by the debtor itself, the state-owned title administrative authority or the liquidation group other than bankrupt liquidation shall submit the description on property situation and a list of credit and debts.

Article 12 A people' s court shall make a determination to accept or dismiss of a case within 10 days upon receiving an application.

In case a bankrupt applicant rejects to the determination of the preceding paragraph, he may proceed with an appeal.

Article 13 A people' s court shall inform the debtor and publish an announcement within 10 days upon accepting a case of bankruptcy. In the case that the creditors apply the bankruptcy, the debtor shall submit the description on property situation and a list of credit and debts to the people' s court within 15 days upon receiving a notice from the court; while the court shall inform the known creditors within 10 days upon receiving the aforesaid materials. The announcement and the notice shall record the following matters:

- (1) the time when placing a case on file;
- (2) the debtor of the case of bankruptcy;
- (3) the time limit and place for declaration of creditors and the legal consequence for overdue declaration of creditor; and
- (4) the date and place for convoking of the first creditors meeting.

Article 14 Where a debtor act as a guarantor for other unit, he shall inform the relevant party within 5 days upon receiving the circular from the people' s court.

Article 15 Creditors shall declare within 30 days upon receiving the notice, and those who have not received the notice shall declare within 90 days from the date of announcement, their creditor' s rights to the people' s court, describing the amount of the creditor' s rights and whether there are property guarantee and submitting relevant evidence .

It shall be regarded as automatically abandon the creditor' s rights in the case of overdue declaration

of the rights. But it shall be otherwise if such delay of declaration is not attributed to the creditor's liability and the declaration comes before the distribution of the assets of bankruptcy enterprise.

The creditors with a guarantee and those without a guarantee shall be separately booked in by the people's court.

Article 16 Where a people's court accepts a bankruptcy case, any civil procedure for execution of the debtor's assets shall be suspended.

Article 17 After a people's court has accepted a bankruptcy case, any repayment of debt to part of the creditors by the debtor shall be invalid, except otherwise those essential for normal business of the debtor.

Article 18 During the period that six months ahead of a people's court accepting a bankruptcy case to the end of the bankrupt procedure, any following acts conducted by a debtor shall be invalid:

- (1) concealing, partitioning without authorization or transferring assets without any consideration;
- (2) selling assets at a deviant lower price than normal;
- (3) providing a property guarantee for initially unguaranteed debts;
- (4) making payment of undue debts beforehand; and
- (5) abandoning his own creditor's rights.

Chapter III Creditors Meeting

Article 19 A creditors' meeting shall be constituted by all of the creditors.

Members of a creditors' meeting, other than those who have property guaranty and have not given up priority of claim, shall enjoy the voting power. While a guarantor of a debtor, after payment of subrogation for a debtor, may be regarded as a creditor and shall enjoy the voting power.

The chairman of a creditors meeting shall be appointed by a people's court from those creditors with voting power.

Article 20 The legal representative and relevant personnel of a creditor shall attend the creditors' meeting and answer any inquiries.

Article 21 The first creditors' meeting shall be held by the people's court within 15 days upon the expiration date of declaration of creditor. The creditors' meeting afterwards shall be held when the people's court or chairman of the creditors' meeting thinking it is necessary, or upon requested by the liquidation group or more than one fourth of the non-guaranteed creditors.

Article 22 The power of a creditors meeting shall be as follows:

- (1) examining certification materials of relevant creditors and affirming the amount of the creditor's rights and whether any property guaranty involving in;
- (2) discussing and passing a draft reconciliation agreement; and
- (3) discussing and passing scheme for disposing and distributing of bankrupt assets.

A creditors meeting may elect a representative to acquaint with liquidation circumstances of a liquidation group and supervise the proceeding of bankrupt procedure.

Article 23 The decisions as referred to in the Items (1) and (3) of the preceding article shall be adopted by more than half of the voting rights held by the creditors, who represent half of the amount of

the non-guaranteed creditors, presenting at the creditors meeting. While the Item (2) of the preceding article shall be adopted by the creditors, who represent two third of the amount of the non-guaranteed creditors, presenting at the creditors meeting.

Article 24 The decision of a creditors meeting shall be bind to all of the creditors.

In case any creditors reject to the decision of the creditors meeting, they may apply for ruling to a people' s court within 7 days upon the decision being made.

The aforesaid ruling shall be subject to no appeal.

Chapter IV Conciliation

Article 25 In the case that the creditors apply for bankruptcy against a debtor, the debtor may apply for conciliation to the people' s court within the period that after the court accepting the case and before declaring of the bankruptcy.

Article 26 In the case of applying for conciliation, the debtor shall submit the following documents:

- (1) an application for conciliation;
- (2) a description of situation of its properties;
- (3) a list of creditors and debts; and
- (4) a draft agreement on conciliation.

In case there is a guaranty provided by a third party, the debtor shall provide relevant evidence on such guaranty.

Article 27 A draft agreement on conciliation shall include the following matters:

- (1) the names of the enterprise applying for conciliation and the creditors, the amount of creditor' s rights;
- (2) the time limit for delay of repayment of debt or the amount of debt exempted;
- (3) the situation of producing and operating and the reason of losing; and
- (4) the measures to reinforce capability for repaying debts.

In case there is a guaranty provided by a third party, the name, domicile of the guarantor and content of the guarantee shall be noted in the draft agreement on conciliation.

Article 28 A people' s court shall make order on approval or disapproval of conciliation within 7 days upon receiving an application.

The aforesaid order shall be subject to no appeal.

Article 29 A people' s court shall not approve the application for conciliation in one of the following cases:

- (1) The application failing to comply with Article 26 of these regulations and has not been rectified within time limit; and
- (2) The legal representative or relevant person in charge, who summoned by a people' s court, failing to appear in the court without warrant, presenting with untrue statement or refusing to provide relevant documents.

Article 30 In case a people' s court approves an application of conciliation, the court shall appoint members of a supervisory group of conciliation among the certified public accountants, lawyers or other

professionals.

A supervisory group of conciliation shall be responsible for and make work report to the people' s court.

Article 31 Upon approving an application of conciliation, the people' s court shall make an announcement within 7 days on the following matters:

- (1) the reasons for approving of an application of conciliation;
- (2) the names and domicile of the members of the supervisory group; and
- (3) the time and place for holding a creditors meeting to discuss a draft agreement on conciliation.

Article 32 The powers of a supervisory group of conciliation shall include:

- (1) supervising the operations of the enterprise which applies for conciliation; and
- (2) examining the account books and documents of the enterprise which applies for conciliation.

Article 33 In case a people' s court approves an application for conciliation of an enterprise, the operations of the enterprise shall be supervised by the supervisory group of conciliation.

The legal representative and relevant person in charge shall accept the examination carried out by the supervisory group of conciliation on relevant books, documents and assets and reply the inquiries relevant to operations raised by the group.

Article 34 The legal representative and the person in charge shall attend the creditors meeting for discussing a draft agreement on conciliation and reply inquiries.

After receiving a notice, in case the legal representative and relevant persons in charge of the enterprise that applies for conciliation fail to attend the creditors meeting without reasonable ground or present at the meeting or refuse to reply any inquiries, it shall be regarded as revoking the application for conciliation and the people' s court shall declare the enterprise to go bankruptcy.

Article 35 The people' s court shall make order on termination of conciliation procedure in case the creditors meeting votes down the draft agreement on conciliation.

The aforesaid order shall be subject to no appeal.

Article 36 The people' s court shall make the order on approval or disapproval of conciliation within 10 days after the draft agreement on conciliation adopted by the creditors meeting.

The aforesaid order shall be subject to no appeal.

Article 37 The people' s court shall not approve the conciliation in one of the following circumstances:

- (1) the decision of the creditors meeting violating laws and regulations; and
- (2) there being some fraud involving in the agreement on conciliation.

Article 38 The people' s court shall publish an announcement within 5 days upon approving the agreement on conciliation, which shall be legally binding as of the date of announcement.

Article 39 An agreement on conciliation shall not affect the rights of the creditor with a property guaranty, except being agreed upon by the creditor.

Article 40 During the period of performing an agreement on conciliation, in case the debtor

commits one of the following acts, the people' s court shall make order on termination of conciliation procedures:

- (1) the debtor refusing to fulfill or without capacity to fulfill the agreement on conciliation;
- (2) the situation of assets of the debtor going worsen, and the creditors meeting applying for termination of conciliation; and
- (3) the debtor committing the acts as listed in Article 18 of these regulations, which results in seriously detriment to the interests of the creditors.

The aforesaid order shall be subject to no appeal.

Article 41 In case the debtor repay the debts according to the agreement on conciliation upon the expiration of the period of conciliation, the people' s court shall make order on termination of bankrupt procedures and publish an announcement thereof.

In case the debtor is incapable of repaying the debts according to the agreement on conciliation upon the expiration of the period of conciliation, the people' s court shall declare the debt to go bankruptcy and afresh registration of creditors.

Chapter V Declaration of Bankruptcy and Bankrupt Liquidation

Section I The Declaration of Bankruptcy and its Effect

Article 42 The people' s court shall make order on declaration of bankruptcy of an enterprise in one of the following circumstances:

- (1) the debtor having not applied for conciliation after the people' s court accepting the case of application of bankruptcy raised by the creditors;
- (2) the application for conciliation being disapproved according to Article 29 of these regulations;
- (3) the draft agreement on conciliation being voted down by the creditors meeting according to Article 35 of these regulations;
- (4) the agreement on conciliation being disapproved according to Article 37 of these regulations;
- (5) the conciliation procedures being terminated according to Article 40 or these regulations; and
- (6) the debtor being incapable of repaying debts according to the agreement on conciliation upon expiration of the period of conciliation.

Article 43 During the procedures of civil litigation or civil execution, the people' s court may declare the debtor to go bankruptcy according to its authority in case it finds out that the debtor being incapable to repay the due debts and it cannot satisfy the conditions for conciliation.

Article 44 After being declared to go bankruptcy, a bankrupt enterprise shall lose the right to administrate and dispose of the assets of bankruptcy.

Article 45 The people' s court shall establish a group of liquidation and take over the bankrupt enterprise within 15 days upon the date of declaration of bankruptcy by the people' s court.

The members of a liquidation group shall be appointed by the people' s court among the relevant government authority and the professionals such as certified public accountants and lawyers.

Article 46 The liquidation group shall be responsible for and make work report to the people' s court. The people' s court may replace members of the liquidation group in case the court thinks it being necessary.

The liquidation group shall attend the creditors meeting and accept its supervision.

Article 47 The liquidation group shall be in charge of the preservation, liquidation, evaluation, disposal and distribution of assets of the bankruptcy enterprise.

A liquidation group may carry out essential civil acts according to the law.

Article 48 After being declared to go bankruptcy, the liquidation group may make the decision on cancellation or continuous performance of the unperformed contracts of the bankruptcy enterprise.

Article 49 After being declared to go bankruptcy, the debtors or holder of properties of the bankrupt enterprise shall repay the debts or deliver the properties to the liquidation group.

Article 50 After being declared to go bankruptcy, the legal representative and relevant persons in charge shall carry out their work according to the request of the people' s court and shall not leave their posts without permission.

Section II Assets of Bankruptcy and Its Management

Article 51 The assets of bankruptcy shall include:

- (1) the assets being managed by a state-owned enterprise or of another bankrupt enterprise at the time of declaration of bankruptcy;
- (2) the assets being acquired by a bankrupt enterprise during the period that after the declaration of bankruptcy but before the end of bankrupt procedure; and
- (3) other property rights which shall be enjoyed by the bankrupt enterprise.

The assets being used to provide a guarantee shall be excluded from the assets of bankruptcy; but if the value of those assets exceed the amount of the guaranteed debt, the residual part shall belong to the assets of bankruptcy.

Article 52 In case a bankrupt enterprise commits the acts as listed in Article 18 of these regulations, the liquidation group shall apply to the people' s court to recover those assets, which shall be reckoned in the assets of bankruptcy.

Article 53 The legal representative and relevant persons in charge shall hand over those books, documents and materials relevant to the assets and the assets managed by them to the liquidation group and reply inquiries relevant to those assets raised by the liquidation group.

Article 54 A liquidation group shall not sell off the assets of bankruptcy before the investigation of creditors being finished.

The liquidation group may sell off those assets with the authorization of the people' s court in case the delay of selling off those assets will lead to gross loss to the assets of bankruptcy.

Article 55 A liquidation group shall have the authorization of the people' s court to conduct the following acts:

- (1) transferring of real properties;
- (2) transferring of intangible properties;
- (3) lending money;

- (4) transferring of creditor's right and securities;
- (5) allowing to perform recall right and setoff right;
- (6) abandoning of rights; and
- (7) any litigations of disputing on assets of bankruptcy.

Article 56 The acts of disposing assets of bankruptcy carried out by a liquidation group in violation of these regulations shall not affect any third parties without fault.

Article 57 A liquidation group may take back the guaranty of the bankrupt enterprise after repaying the debt with a property guarantee.

Article 58 After the assets of bankruptcy being liquidated, a liquidation group shall draw balance sheets, catalogue of the assets and list of creditors and debts.

Section III Creditor's Rights of Bankruptcy

Article 59 The creditor's rights without a property guarantee before the declaration of bankruptcy shall be regarded as the creditor's rights of bankruptcy.

The undue creditor's rights at the time of declaration of bankruptcy shall be regarded as a due one, but the undue interest shall be subtracted.

Article 60 The creditor's rights with a property guarantee, which has been given up of priority of compensation, shall be regarded as the creditor's rights of bankruptcy.

The uncompensated part of the guaranteed creditor's rights, whose value exceeds that of the guaranty, shall be regarded as the creditor's rights of bankruptcy.

Article 61 Where a liquidation group decides to rescind an unperformed contract through which incurs detriment to another party of the contract, the amount of compensation for damages shall be regarded as the creditor's rights of bankruptcy.

Article 62 The amount of compensation with subrogation paid by the guarantor for the debt of the bankrupt enterprise shall be regarded as creditor's right of bankruptcy.

Article 63 The creditor's rights of bankruptcy shall not be exercised except otherwise through bankrupt procedure.

Article 64 The follows shall not be regarded as creditor's rights of bankruptcy:

- (1) the interest of the creditor's rights after the declaration of bankruptcy;
- (2) the costs paid by the creditors during the bankrupt procedure;
- (3) the creditor's rights which failing to be declared in time;
- (4) the creditor's rights whose limitation of action expired; and
- (5) the overdue fine, fine, pecuniary fine and confiscation property which being unexecuted.

Article 65 The creditor of the creditor's right with a property guarantee which established before the declaration of bankruptcy shall be compensated in priority with the guaranty.

Article 66 The assets which belong to others in a bankrupt enterprise shall be taken back through the liquidation group by their owners.

Article 67 At the time of declaration of bankruptcy, the debt that owned by a creditor to the debtor may be set off before the bankrupt liquidation. But it shall not be set off in one of the following circumstances:

- (1) the debt incurred by the creditor after the declaration of bankruptcy;
- (2) the creditor's rights acquired by the debtor of the bankrupt enterprise after the declaration of bankruptcy; and
- (3) the creditor's right acquired by the debtor, who having known about the suspension of payment or application of bankruptcy, of the bankrupt enterprise.

Section IV Distribution of Assets of Bankruptcy and Termination of Bankruptcy

Article 68 The following bankrupt expenditures shall be paid in priority by the assets of bankruptcy:

- (1) the costs of managing, selling off and distributing assets of bankruptcy, including the cost for appointing workers ;
- (2) the litigation fees of the bankrupt case;
- (3) the rewards for members of the liquidation group; and
- (4) other costs, which are for the common interests of the creditors, incurred during the bankrupt procedure.

The liquidation group shall announce the situation of expenditure of bankrupt costs to the creditors meeting; such expenditures shall be decided by the people's court in case there is any objection raised by any of the creditors.

Article 69 After repaying the bankrupt costs, the assets of bankruptcy shall be used to clear off debts according to the following order:

- (1) the wages and social insurance fees owned by the bankrupt enterprise to its employees;
- (2) the taxes owned by the bankrupt enterprise; and
- (3) the creditor's right of bankruptcy.

The assets of bankruptcy shall be prorated in case they are insufficient for compensation of an identical order.

Article 70 The scheme for distribution of assets of bankruptcy, which is raised by the liquidation group and adopted by the creditors meeting, shall be carried out after being ruled by the people's court.

In case the creditors meeting fails to make resolution on the scheme for distribution of assets of bankruptcy for two continuously times, the scheme shall not be implemented until it has been submitted to the people's court by the liquidation group and has been ruled by the people's court.

Article 71 The liquidation group shall make a table of distribution within 30 days after the scheme for distribution of assets of bankruptcy being approved by the people's court.

Article 72 The table of distribution shall be announced after being approved by the people's court.

Any objection to the table of distribution shall be raised to the people's court within 15 days upon the date of announcing.

Article 73 In case there is any dispute to the creditor's rights or the creditor's rights is unable to join in the distribution because of litigation, an equivalent amount of assets shall be drawn from the assets of bankruptcy at the time of distribution by the liquidation group.

Article 74 After the assets of bankruptcy being distributed, the liquidation group shall apply to the people's court for making order on termination of bankrupt procedure and publishing an announcement

thereof.

The aforesaid order shall be subject to no appeal.

Article 75 The distributive assets of the bankrupt enterprise, which are found within two years from the date the bankrupt procedures being ruled to end , shall be added to supplementary distribution by the people' s court.

Article 76 After the declaration of bankruptcy, in case the assets of bankruptcy are insufficient for repaying the bankrupt costs, the liquidation group may apply to the people' s court for declaration of termination of bankrupt procedure and an announcement thereof.

Article 77 After the termination of bankrupt procedure, the uncompensated creditor' s rights shall not be compensated any more.

Article 78 After the termination of bankrupt procedure, the liquidation group shall apply for cancellation of registration of the bankrupt enterprise to the authority originally registered the enterprise.

Chapter VI Petty Bankruptcy

Article 79 Provisions in this chapter may be applied where a people's court handles a petty bankruptcy case in which the facts are clear, creditor' s rights and debts are clearly specified and the assets of bankruptcy or amount of debts are less than RMB 500,000.

Article 80 The creditors who have received a notice shall declare the creditor' s rights within 15 days upon the date the people' s court accepting the bankrupt case and publishing an announcement, while those have not received a notice shall declare within 30 days.

Article 81 Where a people' s court handles a petty bankruptcy case, it may make the decision on whether a creditors meeting shall be held according to concrete circumstances. The powers of a creditors meeting shall be exercised by the people' s court in case it makes a decision that a creditors meeting shall not be held.

Article 82 Where a people' s court accepts a petty bankrupt case, a liquidation group may not be established. The powers of a liquidation group, if no such group established, shall be exercised by the people' s court.

Article 83 Where a people' s court accepts a petty bankrupt case, the assets of bankruptcy shall be distributed in a lump sum.

Article 84 Relevant provisions of these regulations shall be applicable to other matters which are not prescribed in this chapter.

Chapter VII Punishment Provisions

Article 85 After the state-owned enterprise being declared to go bankruptcy, the relevant governmental authorities and auditing authority shall be in charge of finding out the liabilities for the bankrupt enterprise and shall give administrative sanctions to the relevant persons with primary responsibility, and the persons responsible shall be prosecuted for criminal responsibility according to law in case it constitutes a crime.

Article 86 Relevant persons, in violation with the provisions of these regulations, refuse to make explanations , replies ,statements ,records to the people' s court ,creditors meeting ,conciliation supervision group ,or liquidation group without reasonable grounds ,or make false explanations, replies, statements, records ,or refuse to submit relevant explanation, books, or refuse to hand over assets, books

or documents, shall be imposed a fine of no less than 1,000 but no more than 10,000. If there are crimes, they shall be prosecuted for criminal responsibilities.

Article 87 In case the legal representative or relevant responsible person of the conciliation or bankrupt enterprise commits any one of the acts listed in Article 18 of these regulations, he shall be imposed a fine of no less than RMB 10 thousand but no more than RMB 100 thousand other than compensating for the damage, and shall be prosecuted for criminal liability according to the law in case it constitutes a crime.

Article 88 The legal representative or relevant responsible person, who deserts without the permission of the people's court, shall be imposed a fine of no less than RMB 10 thousand but no more than RMB 50 thousand.

Article 89 In case the members of the liquidation group and the supervisory group of conciliation, the bankrupt creditors and their representatives take a bribe or make an agreement on illegal benefit, they shall be confiscated of their illegal gains and be imposed a fine of no less than RMB 10 thousand but no more than RMB 50 thousand, and shall be prosecuted for criminal liability according to the law in case it constitutes a crime.

Article 90 Anyone, who is liable for offering a bribe or illegal benefit for the members of the liquidation group and the supervisory group of conciliation, the bankrupt creditors and their representatives, shall be confiscated of illegal gains and be imposed a fine of no less than RMB 10 thousand but no more than RMB 50 thousand, and shall be prosecuted for criminal liability according to the law in case it constitutes a crime.

Article 91 The position of legal representative or other leader shall not be held by a legal representative or other relevant functionary of a bankrupt enterprise who beard direct liability therefore and not more than three years have elapsed since the date of end of bankruptcy.

Chapter VIII Supplementary Provisions

Article 92 The Shenzhen Municipal People's Government may formulate the detailed implementing measures in accordance with these regulations within the limits of its functions and powers.

Article 93 These regulations shall take effect as of March 1, 1994.

(Translated by Ruixin Lin)
