PROCEDURE OF BANKRUPTCY SETTLEMENT (VIETNAM LAW ON BANKRUPTCY 2014)

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Sending requests (01-07 days)

Enterprise/ Cooperative (Entity) is insolvent → Any creditor, employee, representative of Trade Unions, shareholder, group of shareholders, member of cooperative, cooperative member of cooperative unions has the right/ insolvent entity has the obligation to make requests for the initiation of bankruptcy process (Art.5)

Handling the request for initiation of bankruptcy process (116 - 121 days)

Receiving, appointing a judge or a group of 03 judges and handling the request (Art. 31, 32)

- Unsatisfactory request → Requests for amending requests (Art. 34)
  - Not amending → Dismissing requests (Art. 35)
  - Amending: 10-15 working days → Receiving satisfactory request
- Satisfactory request → Receiving satisfactory request

Receiving satisfactory request (03 working days) → Requesting creditors and insolvent entity negotiating on withdrawing request (Art. 37)

- Successful → Dismissing requests (Art. 35)
- unsuccessful → Notifying of the bankruptcy fee, bankruptcy advance (15 days) → Paying the bankruptcy fee, bankruptcy advance (Art. 38)
  - Paid → Receipt of requests (Art. 39)
  - The requester is the insolvent entity and it cannot afford the bankruptcy fee and bankruptcy advance → Declaration of bankruptcy by simplified procedures (Art. 105)

The requesters are employees, representative of Trade Unions or circumstances prescribed in Art. 105 is exempt from paying this fee

Dismissing requests (Art. 35) → Requester/ People's Procuracy at the same level requesting for reconsidering the dismissal
- Cancelling the dismissal
- Upholding the dismissal

Requesting the executive judge of the higher People's Court for reconsideration → Upholding the dismissal

Transferring request and related documents and evidences to a competent People's Court (Art. 33) (03 working days) → Petitioner/ Designated People's Court request executive judge of the higher People's Court to directly reconsider (03 working days) → Executive judge of the higher People's Court shall directly reconsider the move

- The requester is not prescribed in Article 5; or
- Another People's Court has made a Decision

Not paying → Receipt of requests (Art. 39)

Receipt of requests (Art. 39)
- CAN afford → Temporarily suspensing the financial obligation of insolvent entity (Art. 41)
- The insolvent entity cannot afford the bankruptcy cost → Declaration of bankruptcy by simplified procedures (Art. 105)

Temporarily suspensing the financial obligation of insolvent entity (Art. 41)
- 30 days → Making decision on the initiation of bankruptcy process with insolvent entities (Art. 42)
- 30 days → Refusing to initiate bankruptcy process with solvent entities (Art. 42)

Temporary suspension is guided in the Joint Circular No. 07/2018/ TTLT-BTP-VKSNDTC-TANDTC

Making decision on the initiation of bankruptcy process with insolvent entities (Art. 42) → (Involving entities) requesting reconsideration the Decision/(People's Procuracy at the same level) appealing against the Decision → (Court giving the Decision) Sending the dossier on the case to the superior People's Court for settlement.
- Upholding the Decision
- Cancelling the Decision, notifying the People's Court given the Decision and the involving entities.

Refusing to initiate bankruptcy process with solvent entities (Art. 42) → Continuing to handle the entities' fulfillment the financial obligations (Art. 42.5) → (Involving entities) requesting reconsideration the Decision/(People's Procuracy at the same level) appealing against the Decision → (Court giving the Decision) Sending the dossier on the case to the superior People's Court for settlement.
- Upholding the Decision
- Cancelling the Decision, requesting the Court to make a Decision on the initiation of bankruptcy process

Executive judge of the higher People's Court shall directly reconsider the move → Appointing asset management officers and asset management enterprises → Implementing measures for preserving assets (suspension of civil execution, temporary emergency measures...) (Chapter V)

Legend:
- Process by enterprises, cooperatives (entities)
- Process by the People's Court
- Process by the civil execution authorities
- Process by asset management officers and asset management enterprises
- Line for compulsory process
- Line for optional process

Creditors' meeting (108 – 110 days)

Convening creditors' meetings (Art. 75, Art. 79)
- Invalid → 1st deferring creditors' meetings (Art. 80) → 30 days → 2nd Convening creditors' meetings
  - Invalid → Declaration of bankruptcy (Art. 80.3)
  - Valid → Proposing the resolution (Art. 81)
- Valid → Proposing the resolution (Art. 81)

Proposing the resolution (Art. 81)
- → Not passing the resolution (Art. 81.2) → Declaration of bankruptcy (Art.83.4)
- → Passing the resolution (Art. 83) → Declaration of bankruptcy (Art. 83.1.c)

Passing the resolution (Art. 83)
- → Proposing to suspend the handling of the procedure of bankruptcy (Art. 83.1.a) → Suspending the procedure of bankruptcy (Art. 86.1) (15 days) → (Involved entities) Sending a request for the reconsideration/ (People's Procuracy at the same level) Sending a petition (Art. 86.2)
  - Upholding the Decision
  - Cancelling the Decision on suspension, assigning the Judge to handle the bankruptcy.
- → (Persons having the right/obligation to attend creditors' meeting) Submiting a written request/(People's Procuracy at the same level) Requesting the Executive judge of the Court handling the bankruptcy to reconsider the resosulation; the Executive judge disapproves the request or reorganizes the creditors' meeting (Art. 85)
- → Proposing to allow the entity to recover its business operation → 30 days → Making plans to recover business operations (Art. 87)
  - Failed → Declaration of bankruptcy (Art. 107.2.a)
  - Succeeded → Convening creditors' meetings
    - → Invalid → Convening (Art. 91.4) → 2nd Convening creditors' meetings
      - Fail to organize → Declaration of bankruptcy (Art. 91.7)
    - → Valid (Art. 90.1)
      - Not passing plans to resume business operations → Declaration of bankruptcy (Art.91.7)
      - Passing plans to resume business operations → Implementing plans to resume business operations (Max 03 years – Art. 89.2)

(Notified persons: requester, insolvent entity, creditors... as prescribed in Art. 43.1) sending a request for reconsideration/ (People's Procuracy at the same level) appealing against the Decision to declare the entity bankrupt (Art. 111)
- Cancelling the Decision, Transferring the dossier to the inferior People's Court for reconsideration
- Affirming the Decision
- Chan-ging the Decis-ion

Plans to resume business operations (Max 1110 days)

Implementing plans to resume business operations (Max 03 years – Art. 89.2)
- → Completely executing the plan to resume the business operation → Suspending of plans to resume business operations (Art. 95) → Notifying the end of the rights/ obligations of the asset management officer and asset management enterprise (Art. 96.1) → Normally functioning
- → Still insolvent after the deadline for the execution of the plan to resume the business operation → Suspending of plans to resume business operations (Art. 95) → Declaration of bankruptcy (Art.96.2)
- → Cannot execute the plan to resume the business operation → Suspending of plans to resume business operations (Art. 95) → Declaration of bankruptcy (Art.96.2)

Implementation of Decisions on declaration of bankruptcy (approx. 773 – 788 days)

Implementing of Decisions on declaration of bankruptcy → 03 working days from the issuance of an Decision on declaration of bankruptcy → (Head of civil execution authorities) issuing the Decision on implementation, assign the bailiff (Art. 120.1)
- → (Bailiff) Requesting asset management officer, asset management enterprise to conduct the asset liquidation (Art. 121) (02 working days) → IAs implement asset valuation (Art. 122, 123) → IAs sell the assets (Art. 124) → (Bailiff) Enforcing the asset confiscation, transferring the assets to the buyers (Art. 120.2.c) → (Bailiff) Redistributing the assets (Art. 120.2.d) → (Head of civil execution authorities) suspending the implementation of Decision on declaration of bankruptcy (Art. 126) → Handling of complaints about implementation of Decisions on declaration of bankruptcy (Art. 128)
- → IAs discover that the transaction is invalid transaction after the declaration of bankruptcy (Art. 59, Art. 127.1) → (Court) Declaring the invalid transaction and redistributing the assets (Art. 127.1)
- → Court discovers that assets not redisstributed after the declaration of bankruptcy (Art. 127.2) → (Bailiff) Redistributing the assets (Art.127.2)

The process and conducting time of asset valuation and the sale of asset is guided in the Joint Circular No. 07/2018/TTLT-BTP-VKSNDTC-TANDTC