

10 QUESTIONS TO A LAWYER ABOUT BANKRUPTCY

In a volatile economy, many organizations encounter financial difficulties, and bankruptcy may become the least-evil solution. Furthermore, counterparties of debtor organizations may also encounter the necessity to initiate a bankruptcy procedure to protect their property interests and implement legal mechanisms allowing to recover debts.

The issues pertaining to the bankruptcy procedure give rise to numerous practical difficulties. We have prepared answers to 10 most frequently asked questions about the bankruptcy procedure and its stages, consequences and potential risks. This publication will help business gain an understanding of the key aspects of the process, avoid mistakes and get the idea of what actions may be taken to minimize negative consequences.

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1. What is bankruptcy and what is the purpose of bankruptcy?

According to provisions of the Civil Code¹ and the Bankruptcy Law², bankruptcy is a debtor's insolvency recognized by a court judgment, which serves as a ground for the bankrupt liquidation. In other words, bankruptcy is the debtor's inability to satisfy the creditors' claims on account of property that belongs to the debtor.

Debtor's insolvency is established by court subject to a financial stability opinion drafted in accordance with legislation (Article 52 of the Civil Code).

Under conditions of economic instability, bankruptcy may become the least-evil solution for the debtor that encountered the inability to satisfy the creditors' claims.

¹ Civil Code of the Republic of Kazakhstan (General Part) adopted by the Supreme Council of the Republic of Kazakhstan on 27 December 1994.

² Law No. 176-V of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" dated 7 March 2014, as amended.

As regards a creditor, the bankruptcy procedure may serve as an attempt to recover the debtor's debt, because initiation of a bankruptcy procedure grants access to the creditor to primary documents and business operations of the debtor, which allows to evaluate real financial situation of the debtor, identify any signs of deliberate bankruptcy, as well as to challenge shady transactions entered into to the detriment of the creditors' interests.

2. How can a debtor be recognized as a bankrupt?

The bankruptcy recognition procedure may be initiated both voluntarily and forcibly (Article 4 of the Bankruptcy Law).

In case of voluntary procedure, a court may recognize as a bankrupt based on an application from the very debtor. In turn, the basis for such application is the established invariable insolvency.

Insolvency is deemed to be invariable in case obligations of the debtor exceed the value of the debtor's assets not only at the moment of applying to court, but also at the end of the current and previous calendar year (if the application has been filed in the first quarter).

The opinion on the debtor's financial situation is made and the fact of the debtor's insolvency is established by an interim administrator.

The debtor may be recognized as a bankrupt under the enforcement procedure based on an application from creditors.

A creditor may apply to court in case of presence of an outstanding financial obligation confirmed by a judicial act, which has already entered into force, enforcement document or in case the very debtor acknowledges the debt.

3. What are the stages of the bankruptcy procedure for a company?

The bankruptcy procedure is highly regulated by legislation and the following stages of the bankruptcy procedure may be distinguished.

(1) Preparation to initiation of the bankruptcy procedure

Prior to filing of an application to court, a debtor/creditor contemplating to initiate the bankruptcy procedure must enter into agreement with an interim administrator. The interim administrator is selected from the persons included in the register of notices to be sent to persons entitled to carry out activities as an administrator, which register is kept by an authorized agency (Ministry of Finance of Kazakhstan).

The interim administrator is a mandatory participant of the bankruptcy procedure who drafts the register of claims of creditors and makes an opinion on financial stability of the debtor during the period of considering the bankruptcy case in court, and handles the bankruptcy procedure until appointment of a bankruptcy manager.

(2) Initiation of the bankruptcy procedure

Proceedings in a bankruptcy case are initiated by court on the basis of an application from the very debtor or a creditor(s) in case of presence of grounds for such application.

The court considers the application and issues a ruling within 3–5 business days. The bankruptcy procedure is deemed as to have been initiated from the date the court issues a relevant ruling (Article 38.3 of the Rehabilitation Law).

(3) Analysis of the financial situation of the debtor

Once the court issues the ruling on initiation of the bankruptcy procedure, the interim administrator starts a comprehensive audit of the financial and economic activities of the debtor. Data on financial situation of the company are collected and analyzed in the course of the audit and serve

as a basis for drafting the financial stability opinion. This opinion contains one of the following conclusions:

- 1) debtor is referred to financial stability class I, application for bankruptcy is groundless;
- 2) debtor is referred to financial stability class II, and there are no grounds to recognize the debtor as a bankrupt, but there are grounds for application of the rehabilitation procedure;
- 3) debtor is referred to financial stability class III, and there are grounds to recognize the debtor as a bankrupt (Article 49.4 of the Bankruptcy Law).

It is important that the financial stability class of the debtor is determined by calculating the coefficients characterizing the efficiency of financial and economic activities.

(4) Preparing the case for judicial proceedings

Starting from the date the court issues the ruling in initiation of proceedings in a bankruptcy or rehabilitation case, significant restrictions are imposed on the debtor and debtor's property.

Thus, the debtor will be prohibited to dispose of property beyond the ordinary commercial operations, previously issued judgments and administrative resolutions will be suspended, except for payments under obligations in connection with the fact of causing harm to life or health.

Furthermore, fines and penalties are no longer accrued, other sanctions in connection with debts are no longer imposed, and creditors' claims are only allowed in the framework of bankruptcy or rehabilitation procedure.

It is no longer allowed to recover funds from bank accounts, initiate recovery proceedings against the debtor's property, or alienate shares or participatory interests in the charter capital.

(5) Judicial proceedings in connection with the bankruptcy procedure

Following the bankruptcy case consideration outcome the court issues one of judicial acts. Among others, this may be a judgment on recognition of the debtor as a bankrupt and the debtor liquidation with initiation of the bankruptcy procedure, or a judgment on refusal to recognize the debtor as a bankrupt.

If issuing a judgment on recognition of the debtor as a bankrupt and debtor liquidation with initiation of a relevant procedure, it must also contain information on transfer of the right to manage the debtor to the interim administrator, and amounts of claims of the creditors stated before issuing the judgment.

(6) Completion of the bankruptcy procedure

After satisfying the creditors' claims, the bankruptcy manager submits to court a final report on his/her activities agreed with the meeting of creditors, attaching the liquidation balance-sheet and report on the use of property remaining after satisfying the creditors' claims.

According to legislation, creditors' claims, which have not been satisfied in connection with insufficient debtor's property, are deemed as to have been repaid. On the basis of a court ruling on completion of the bankruptcy procedure, such amounts must be written off the creditor's balance.

Liquidation of the bankrupt is deemed as to have been completed, and the bankrupt – as to have ceased to exist, after making a record in the state registers of legal entities.

4. How can a bankruptcy application be filed?

We previously mentioned that proceedings in a bankruptcy case are initiated in court on the basis of an application from the very debtor or a creditor subject to grounds for such application.

The Kazakhstan legislation provides for requirements to the form and content of the application and documents to be attached to the application.

The debtor's application signed by an authorized person is filed to court in writing or in the form of an electronic document (Article 41.1 of the Bankruptcy Law).

In addition to general information regarding the applicant and the name of court, the application must also contain substantiation of the failure to satisfy the creditors' claims, full information on all available property, information on obligations, which have not become due yet, and information regarding the interim administrator.

The application must also attach the supporting documents, specifically, a corporate resolution on recognition of the debtor as a bankrupt, document confirming payment of the state duty to file the application to court, document confirming invariable insolvency of the debtor, financial statements, copies of constitutional documents, etc. (Article 42.1 of the Bankruptcy Law).

The application may also be filed by a creditor. Such application must contain, among other things, information on the debtor's obligation to the creditor, information regarding the due date for such obligation, as well as the subject and amount of claims of such creditor to the debtor, information on the amount of debt under the application and interest accrued on such amount, forfeit (fine, penalty) and losses to be recovered from the debtor, including information on the established legal grounds of the creditor's claims, for example, judicial act or enforcement document on recovery of money from the debtor, which has entered into legal force. The application must also attach the documents supporting such information.

5. How are the creditors' claims satisfied and under what procedure?

The Kazakhstan legislation provides for the following order of priority for satisfying the creditors' claims:

1st priority – claims for compensation for harm caused to life or health, alimony claims, claims for payment for labor and payment of compensations to persons who have been working under employment contracts with payment of debts for social contributions, claims for payment of fees to authors for employee inventions, utility models, industrial samples.

2nd priority – claims from secured creditors.

3rd priority – claims for tax debts, debts for tax payments, special, anti-dumping, compensatory duties, interest.

4th priority – claims from other creditors under civil and other obligations.

5th priority – claims from creditors for compensation for losses and collection of forfeits (fines, penalties).

6th priority – claims from creditors submitted upon expiration of the established period for submission of claims by creditors.

It is worth mentioning that claims of each priority are satisfied after full satisfaction of claims of the previous priority.

After completion of settlements, obligations of the bankrupt legal entity are terminated.

The Kazakhstan legislation also establishes that, if the debtor's property is insufficient to repay the debts, vicarious liability is borne by the heads or other persons obligated to comply with requirements established by law and those who have been found guilty in deliberate bankruptcy. They are liable for the debtor's obligations to creditors with their own property within the amount of the outstanding debt.

6. What is a rehabilitation procedure?

A rehabilitation procedure is the procedure applied in court whereby certain reorganizational, organizational and economic, management, investment, technical, financial-and-economic, and legal measures intended to restore solvency are applied to the debtor.

The key purpose of rehabilitation is to restore financial stability and continue economic activities of an entity.

Specifically, from the moment the court accepts an application for rehabilitation procedure to the debtor for proceedings, forfeits, penalties and fines for all types of debts stop to accrue. Court judgments, arbitral awards and resolutions of the state revenue authority are suspended.

Furthermore, starting from this moment, it is no longer possible to initiate forced recovery of funds from the bank accounts of the debtor. All creditors' claims may be filed only in the framework of the rehabilitation procedure.

Once the judicial act on application of rehabilitation enters into legal force, interest on previously procured loans and issued obligations is no longer accrued. This reduces the debt burden on the debtor during the period of applying the rehabilitation measures.

The next stage is the approval of a rehabilitation plan. Starting from this moment, all restrictions and encumbrances previously imposed on the debtor's property (including collection orders and attachments) are automatically removed without the necessity to obtain a separate consent or resolution from the governmental agencies that imposed them.

All these measures together allow to suspend the pressure from creditors and create the conditions for the debtor required to restore financial stability and continue economic activities.

The rehabilitation procedure is regulated in detail by legislation and is initiated the same way as the bankruptcy procedure, based on an application to court, which may be filed either by the very debtor or by creditors.

7. What is the role of an administrator in the bankruptcy process?

Administrator is a manager exercising certain powers during the period of the case consideration in court and in the course of the rehabilitation and bankruptcy procedures.

The administrator is responsible for implementation of court judgments or resolutions of the meeting of creditors relating to application of the bankruptcy procedure. The administrator is responsible for the key functions in the course of the rehabilitation and/or bankruptcy procedure: he/she assumes the management of an organization recognized as a bankrupt, conducts comprehensive analysis of its financial situation, organizes identification and subsequent sale of its property forming the bankruptcy assets, and ensures fair distribution of the received funds among the creditors in accordance with the order of priority established by legislation.

The administrator may be an interim administrator, rehabilitation, interim receiver and bankruptcy manager.

The Kazakhstan legislation provides for certain requirements to the administrator. Specifically, the administrator may be an individual (*who has higher education in the sphere of law, economy and business, work experience of at least 3 consecutive years in the law, economic, accounting, financial, auditing or control-and-auditing spheres, not on the books of a psychiatric organization, with no outstanding or unexpunged conviction*) or a professional accountant introduced into the Register of Administrators³.

³ [List of persons entitled to carry out activities of an administrator | State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan.](#)

It is worth mentioning that the administrator receives remuneration for his/her activities. The administrator's remuneration consists of the basic remuneration and additional remuneration.

- Basic remuneration of the **interim administrator and manager** is paid by a debtor or creditor filing an application for bankruptcy. Its amount is established in an agreement and may not be less than the minimum approved by the state.
- Basic remuneration of the **bankruptcy manager** is approved by the meeting of creditors within the limits established by the authorized agency. It becomes lower if the bankruptcy procedure delays.

The additional remuneration is paid out of the debtor's property and depends on the percentage of satisfied claims of creditors.

A bonus on account of satisfied claims may also be paid by a creditor.

8. May the company management bear liability in case of bankruptcy?

According to the general rule, a founder (participant) of a legal entity or an owner of its property is not liable for its obligations.

However, the Kazakhstan legislation provides for the cases where vicarious liability may be imposed on the said persons and on officers of the bankrupt.

Such cases include, among other things, deliberate bankruptcy.

Understood as deliberate bankruptcy is the actions of a founder (participant) committed in personal interests or in the interests of other persons in order to evade from the performance of obligations to creditors by alienating or concealing property within 3 years prior to recognizing the legal entity as a bankrupt.

A founder (participant) and/or an officer found guilty in deliberate bankruptcy under administrative or criminal proceedings bears vicarious liability to creditors by the property, which belongs to him/her, in the amount of the bankrupt's obligations to creditors, which remain outstanding following the results of the bankruptcy procedure.

It is worth mentioning that in order to impose vicarious liability for deliberate bankruptcy it is necessary to have judicial acts confirming the guilt for deliberate bankruptcy issued under administrative proceedings on the basis of Article 182 of the Administrative Code of Kazakhstan or criminal proceedings on the basis of Article 238 of the Criminal Code of Kazakhstan.

According to the Bankruptcy Law, the following persons may be referred to officers – member of the Board of Directors of a joint stock company, CEO (deputy CEO) of a debtor legal entity, and any other person being a member of the collective executive body of the legal entity entrusted with permanent or temporary powers to manage the legal entity, chief accountant of the debtor legal entity, same as any other person temporarily performing his/her duties (Article 1.20 of the Bankruptcy Law).

As regards the type of liability, according to Article 182 of the Administrative Code of Kazakhstan, deliberate bankruptcy (if no signs of a criminal offense are detected) entails liability in the form of a fine in the amount of 200 MCI⁴.

The Criminal Code provides for liability under Article 238 in the form of a fine in the amount of up to 3,000 MCI or in the form of correctional labor in the same amount, or community work for a term of up to 800 hours, or personal restraint for a term of up to 3 years, or imprisonment for the same term with deprivation of the right to hold certain positions or engage in certain activities for a term of up to 3 years.

⁴ MCI is the monthly calculation index. According to the Law No. 141-VIII of the Republic of Kazakhstan "On National Budget for the Years 2025-2027" dated 4 December 2024, as of 1 January 2025, 1 MCI = KZT 3,932.

9. May the debtor's transactions entered into prior to bankruptcy be challenged?

According to the general rule of the Bankruptcy Law, transactions may be invalidated if entered into by a debtor within 3 years prior to initiation of a bankruptcy case based on certain grounds (Article 7.1 of the Bankruptcy Law).

In addition to general grounds for invalidation of transactions established by the Civil Code of Kazakhstan, the Bankruptcy Law provides for specific grounds for invalidation of transactions. For example:

- price of an effected transaction and/or other conditions significantly worsening the debtor's condition differ from the price and/or other conditions applied in similar transactions in case such transaction resulted in financial losses;
- transaction fails to meet the restrictions on the debtor's business activities established by the Kazakhstan legislation or constitutional documents of the debtor, or a transaction has been effected in violation of the competence stipulated by the charter of the debtor;
- property has been transferred (including transfer into temporary use): free-of-charge or at a price, which significantly differs from the price of identical goods or goods of the same kind under similar economic circumstances to the detriment of the debtor, or without any grounds to the detriment of creditors of the debtor;
- transaction, which has been entered into 6 months prior to initiation of the bankruptcy and/or rehabilitation case and resulted in preferential satisfaction of certain creditors' claims to the detriment of other creditors' claims;
- transaction is a gift agreement with respect to the debtor's property, except for those effected in the course of ordinary commercial transactions in case such agreement significantly differs from the transactions, which had been entered into 1 year prior to initiation of a bankruptcy case and/or rehabilitation proceedings; and/or
- transaction has been effected without intention to create relevant legal consequences for such transaction to the detriment of the interests of creditors of the debtor (Article 7.2 of the Bankruptcy Law).

In case of invalidation of a transaction, a defendant that is a counterparty to the debtor under such transaction must return everything received under the transaction and, if it is not possible to return in kind – compensate the cost of the property subject to return, cost of using the property, work performed or services provided in the form of money.

10. What are the consequences for a debtor after completion of the bankruptcy procedure?

After the court recognizes a debtor as a bankrupt, the liquidation procedure commences. Management of the company transfers to the interim administrator who gets the right to dispose of property and handle all bankrupt's affairs.

A court judgment must specify the key aspects:

- fact of liquidation;
- scope of the creditors' claims;
- procedure for transferring the documents, seals, property and record documents to the interim administrator within strictly determined timeframes.

The interim administrator also files an application for removal of all attachments and encumbrances from the debtor's property — this happens without any additional resolutions from governmental agencies or courts.

Information on recognition of bankruptcy is published on the website of the State Revenue Committee of the Ministry of Finance of Kazakhstan⁵ in the Kazakh and Russian languages. The publication includes information on the court judgment, bankrupt's details (full name or name, IIN/BIN, address) and information on state registration.

Thus, completion of the bankruptcy procedure means official liquidation of the debtor, cessation of its activities and transfer of all powers to the interim administrator until final completion of all settlements with creditors.

⁵ [State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan](#).