

## Brief Overview on Bankruptcy Proceeding

### Description

By Geda Yoseph, Associate at DMLF



### Introduction

Bankruptcy is the death of a business organization. Just like a human being, business organizations pass through different stages from establishment through registration, development, and bankruptcy due to losses. Like entry, exits from businesses or activities for which they are licensed are also subject to rules and regulations. When a business organization suffers losses or is declared bankrupt, the law regulates how such an organization exits from the business. Bankruptcy law under the Commercial Code provides the rules and procedures through which business organizations go when they are declared bankrupt. A business organization is established by registration upon their exit from business due to bankruptcy or any other reason registration of that business organization is canceled. This material (Brief) is prepared to give a brief on bankruptcy law under the new commercial code, which was adopted on March 25, 2021, by the Ethiopian Parliament. This brief also gives an overview of existing rules, and regulations under the new commercial code.

### Bankruptcy

Bankruptcy is the judicial process by which the debtor is found not able to meet his commitments

towards his creditor. On the other hand, the Black's Law Dictionary defines winding up as: "process of settling the accounts and liquidating the assets of a partnership or corporation, for the purpose of making distribution of net assets to shareholders or partners and dissolving the concern." What one can infer from this definition is that winding up presupposes a company or another business organization where there are shareholders or partners. The Commercial Code did not define the concept of bankruptcy. It simply dealt with the conditions of bankruptcy. There are two important conditions that need to be fulfilled for the existence of bankruptcy. The two conditions are suspension of payments and declaration of bankruptcy. In the absence of any of these two conditions there is no bankruptcy. In other words, the two conditions are cumulative rather than alternative. The objective of bankruptcy proceedings is to timely, efficiently and effectively organize the liquidation of the debtor's business, whether by piecemeal liquidation or by a sale of business as a going-concern, in order to maximize the value of the assets available for recovery by creditors, to ensure for honest debtors a fresh start after a full discharge of their debts and to provide for sanctions against debtors and their management as well as creditors that are responsible for its bankruptcy.

### **Conditions of bankruptcy**

Any trader who has suspended payments and has been declared bankrupt shall be deemed to be bankrupt. Suspension of payments shall result from any fact, act, or document showing that the debtor is no longer able to meet the commitments related to his commercial activities.

### **Opening of Bankruptcy Proceedings**

Bankruptcy proceedings shall be opened upon the application of a debtor who has been in cessation of Payments. Debtors who have been in cessation of payments shall at the latest within forty-five days apply to court for the opening of bankruptcy proceedings unless the debtor has already applied for the opening of reorganization proceedings. Bankruptcy proceedings may also be opened upon the application of: a) persons who are jointly and severally liable with the debtor; b) one or more creditors whose claim against the debtor is due and payable; c) a liquidator appointed to liquidate the debtor's business outside bankruptcy proceedings. In addition to his application, **debtors shall submit documents listed under Article 637(1) of commercial Code. These documents are:**

- The last three balance sheets or financial statements of the business organization;
- A profit and loss account;
- A cash flow statement in order to demonstrate that the debtor is able to finance the observation period.
- A list of commercial credits and debts to be collected, with the names and address of the Creditors and debtors.

Where the debtor is not in a position to provide the Court for a complete set of documents, the debtor shall explain the reasons in the petition. The Court may ask the debtor to submit any further relevant documents and may ask any third party to provide such documents, in particular banks and public administrations. The court may also initiate bankruptcy proceedings on its own motion where, as a result of proceedings against the debtor, it is apparent that the debtor is in cessation of payments. The court which has ascertained the debtor's cessation of payments shall refer the case to the court that has jurisdiction to order judgment of bankruptcy, which is the Federal High Court, in light of Article 11 Sub Article (2) of Federal Court Proclamation No. 1234/2021. In addition to their application, creditors shall submit documents listed under Article 637 Sub-Article (4) of commercial code and may suggest

the name of the person to be appointed as trustee in bankruptcy. These documents are:

- Evidence that creditors have a due and payable claim that has not been paid;
- Evidence showing why the debtor was unable to effect payments;
- Evidence showing the reasons why the creditor, using ordinary civil procedures could not or was no longer in a position to enforce his claims against the debtor;
- Evidence showing that the debtor is in a situation of cessation of payments.

### **Judgment of Bankruptcy**

At first hearing, or, where appropriate, on receiving the report from the investigator the Court shall:

1. declare the debtor bankrupt;
2. appoint the supervisory judge
3. appoint the trustee in bankruptcy for the conduct of the bankruptcy proceedings
4. fix the date of cessation of payments, where the date has not been fixed in the context of reorganization proceedings

A judgment of bankruptcy against a business organization comprising joint and several liability partners shall result in the bankruptcy of partners; the assets of the firm and of the partners shall be dealt with separately and the bankruptcy proceedings shall be conducted separately.

### **Notice to Creditors**

Where an application for bankruptcy is filed by creditors, partners with joint and several liabilities or a public prosecutor, the Court shall notify the debtor of the application within seven days from the application. The debtor shall, within twenty days from the receipt of the application, submit his reply indicating his agreement with or opposition to the application of bankruptcy. The debtor shall submit the documents listed above and other supporting documents indicating whether he is in cessation of payments. Where the debtor admits the cessation of payments, the debtor shall indicate whether his business can still be eligible for reorganization proceedings or should go to bankruptcy proceedings.

### **Opening of Bankruptcy Proceedings after Death**

A debtor, whose registration has been struck off the commercial register may be declared bankrupt where such trader has been in cessation of payments within one year from the date he was struck off from the register. Where the trader was not registered in the commercial register, he may be declared bankrupt at any time after the cessation of payments.

### **Publication of Judgments**

Bankruptcy judgments shall be publicized according to Article 648 of the commercial code. The judgments rendered on bankruptcy shall be publicized by the registrar of the court by means of notices posted at the entrance of the Court and by an exact publication in a newspaper of wide circulation in Ethiopia. The court's registrar shall ensure that the judgment rendered for opening reorganization proceedings is entered in the commercial register in accordance with the relevant laws.

### **Conclusion**

Ethiopian Bankruptcy Law is the least known and hence the least practiced in Ethiopia. There have been relatively few bankruptcy cases since the Commercial Code went into effect in 1960. This brief provided a general overview of Ethiopian bankruptcy law under the new commercial code. Bankruptcy, as a judicial process, passes through several stages and processes until the final process is finalized. Different parties and bodies also participate in and conduct this judicial process; each of these parties has their own respective duties and responsibilities in this process. This brief highlights the duties and responsibilities of these different parties and bodies during this judicial process under the new commercial code. Like entry, exit from business is also subject to regulation because, unless it is strictly regulated, the interests of different parties may be affected; hence the law provides strict regulation. This brief also provides a general overview of this regulation, procedure, procedure and material required, and duties of each party during this judicial process of bankruptcy.

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By Geda Yoseph, Associate at DMLF Introduction The Federal Supreme Court Cassation Division on Cassation on File No. 185895 dated 24/02/2021, passed a binding decision as to whether an agreement on property of the man and woman made during an irregular union that lasted more than three years is required to be presented to court...

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