

BANKRUPTCY

WHY NOT



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In which cases should you file for bankruptcy?

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Who can file for bankruptcy and what are the requirements for filing?

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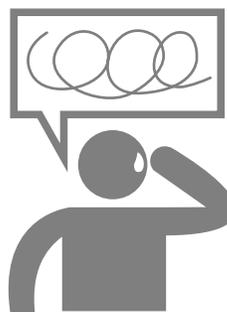
Restructuring, declaring the company bankrupt and debts repayment

1. In which cases should you file for bankruptcy?



1.1. If you are a creditor

Creditors often file normal lawsuits to collect the debts instead of using bankruptcy proceedings, because:



Bankruptcy is very complicated (it involves many parties, many legal issues, etc.)



It will invite other creditors and you will need to share the collected assets with them

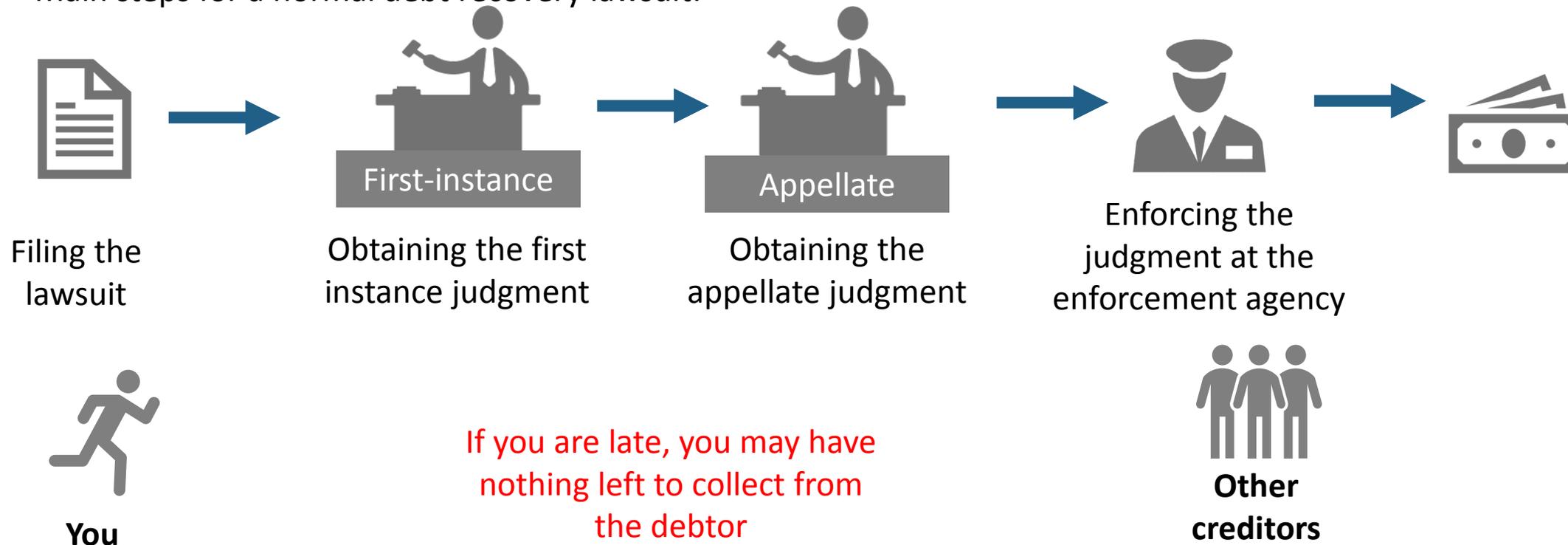
1. In which cases should you file for bankruptcy?



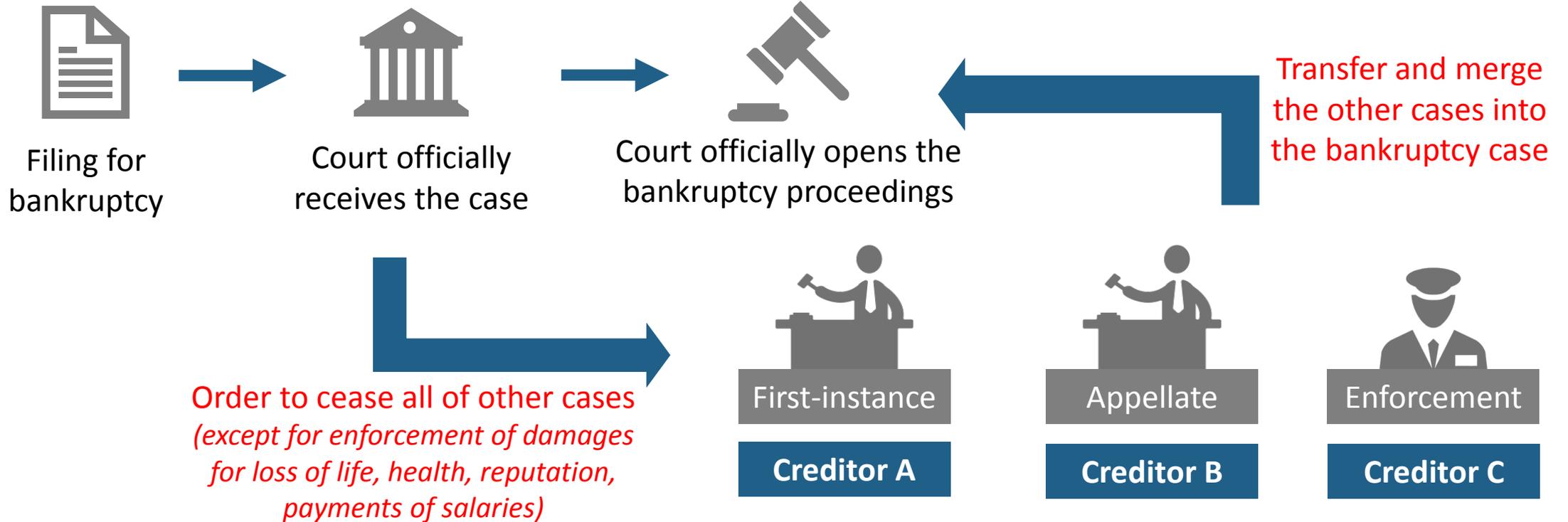
However, bankruptcy may be a good approach in the following situations:

a. You are late in comparison to other creditors in taking legal actions against the debtor

Main steps for a normal debt recovery lawsuit:



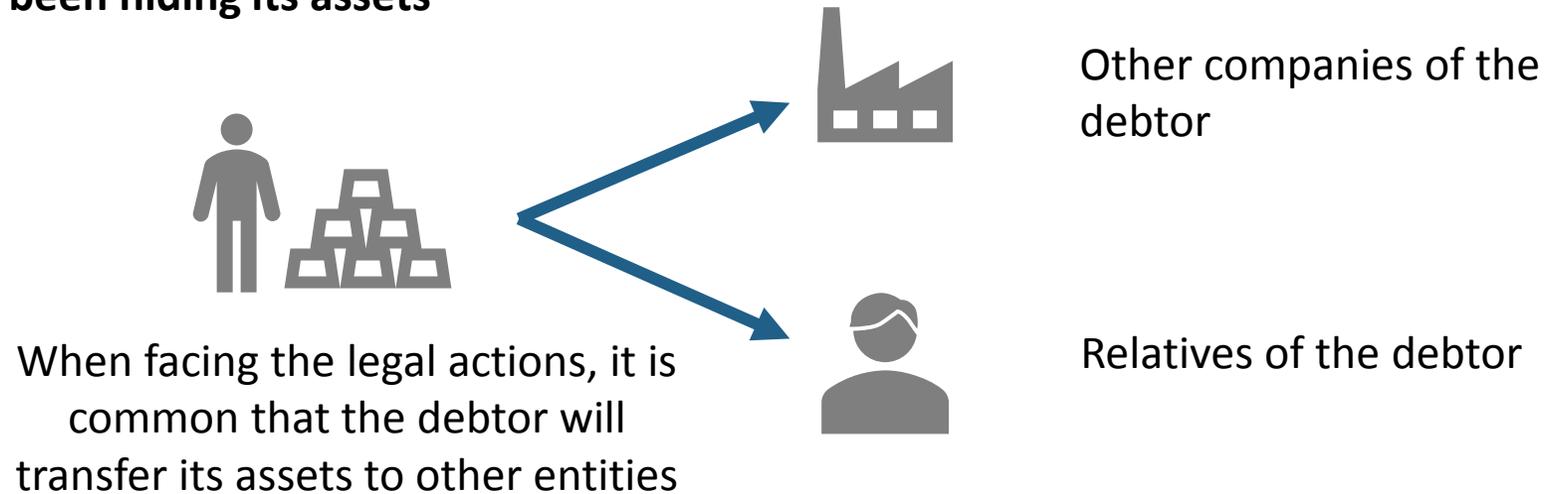
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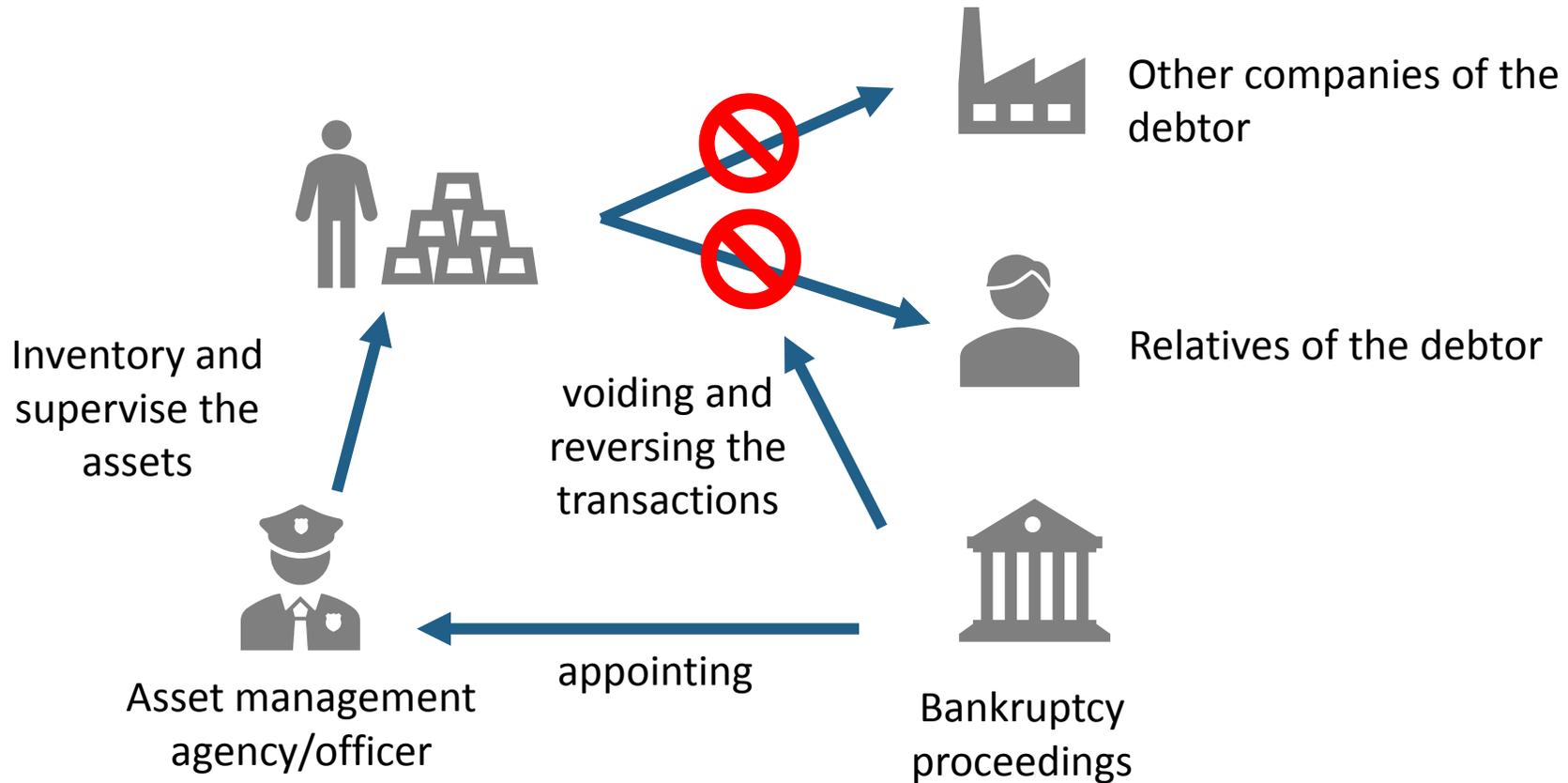


b. The debtor has been hiding its assets



Prevention of such actions is often difficult, as you do not know exactly what assets the debtor has; when, how and to whom they will be transferred.

1. In which cases should you file for bankruptcy?

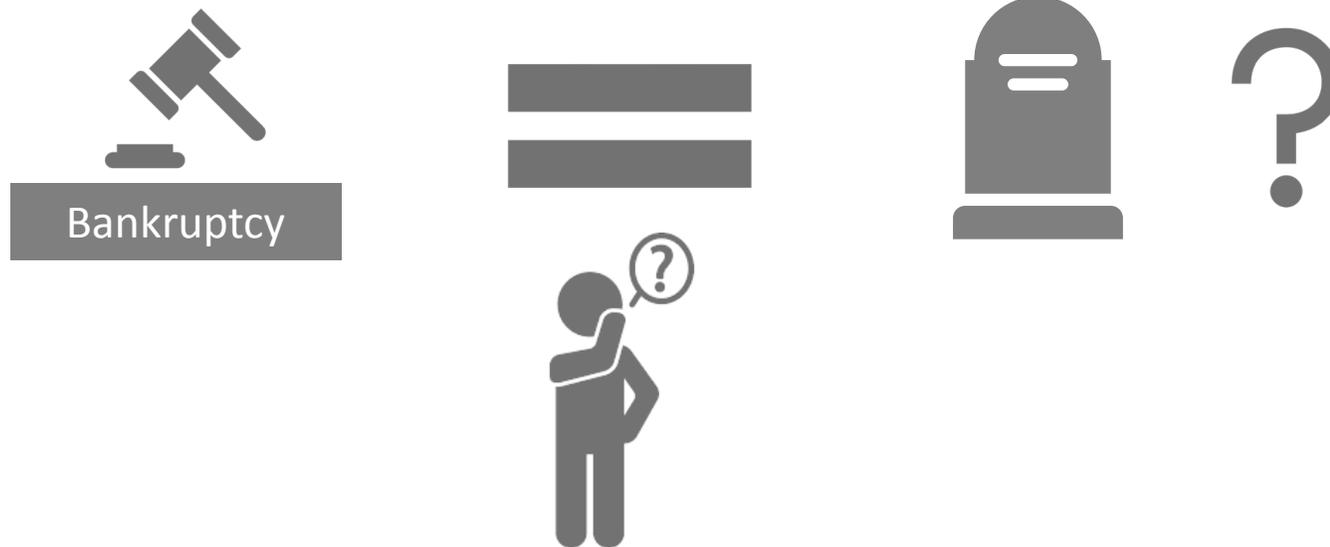


1. In which cases should you file for bankruptcy?



1.2. If you are a debtor

Debtors usually do not consider bankruptcy filing, as it sounds like a suicide action.

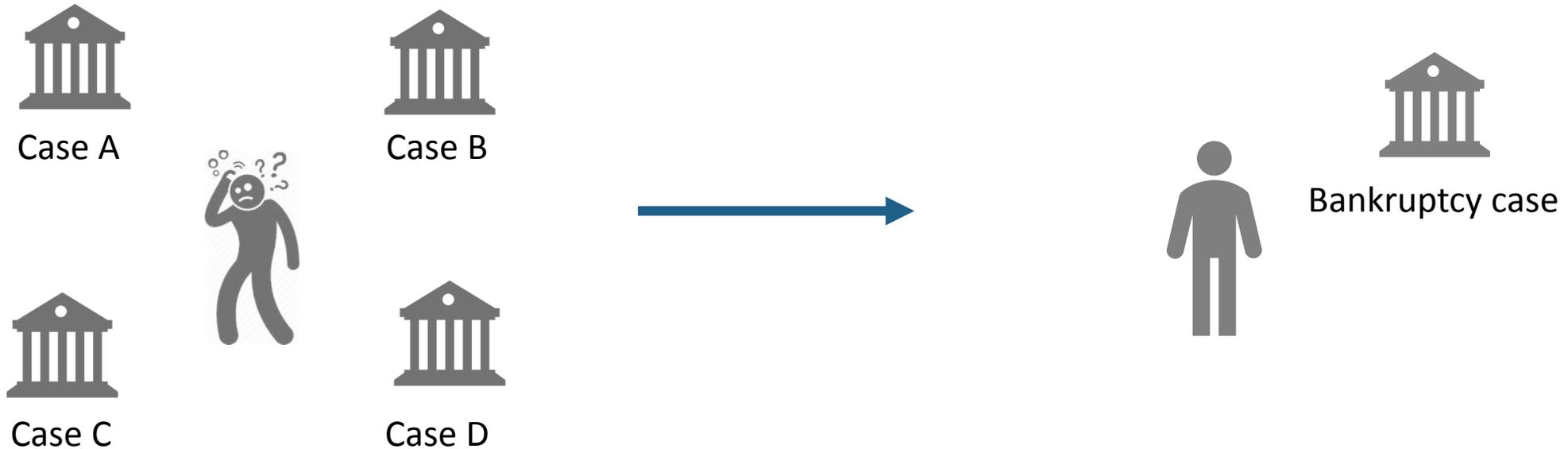


Nevertheless, bankruptcy proceedings do not always result in a dead business, it can also help to restructure and recover the business.

1. In which cases should you file for bankruptcy?

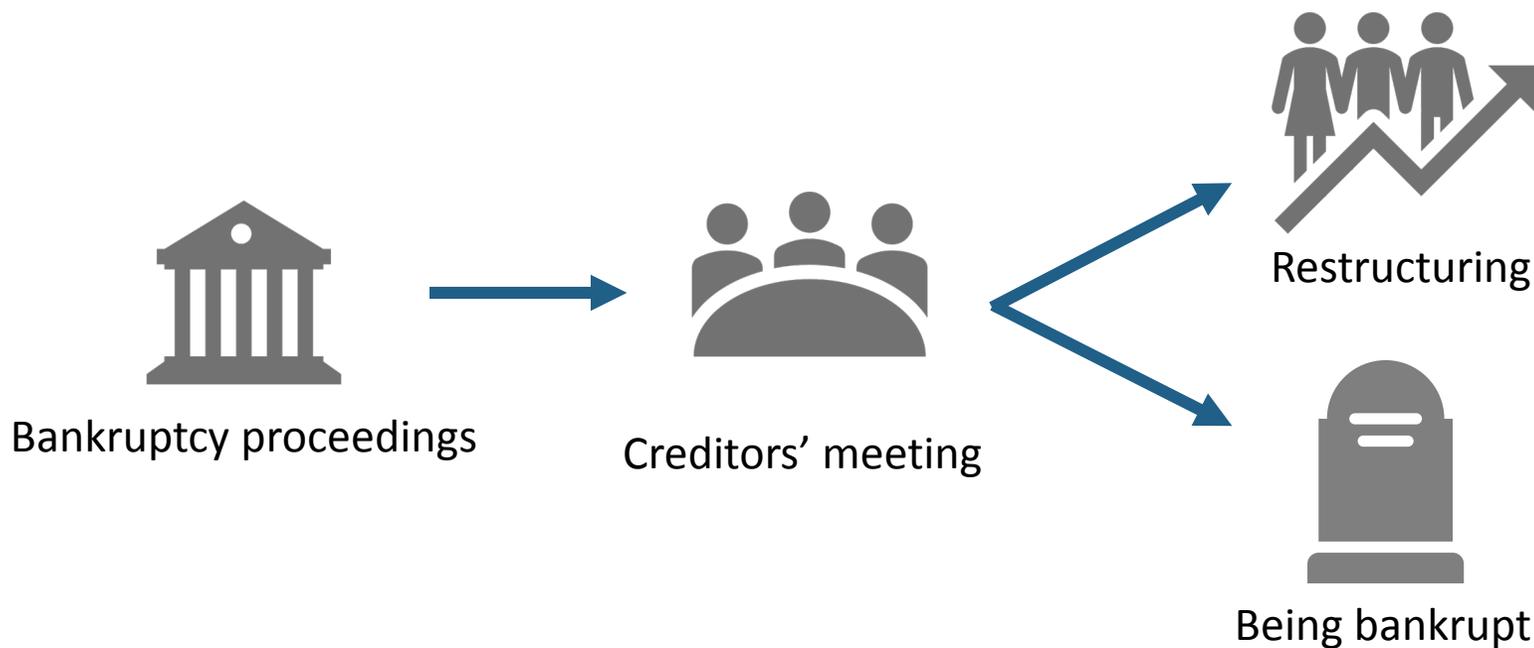


The bankruptcy proceedings will make all lawsuits against your company be transferred and merged into the bankruptcy proceedings.



This means that instead of facing multiple lawsuits in multiple courts, you only need to join a single bankruptcy case in a single court, which is less stressful.

1. In which cases should you file for bankruptcy?



You can use the bankruptcy to convince the creditors to agree with your restructuring/payment plan.

If the company is bankrupt, all assets of the company will be liquidated to pay the debts as much as possible. In the end, both the debts and the company will cease to exist. Normally, there will be no personal responsibility and you can start the business again.

1. In which cases should you file for bankruptcy?



Officials/owner of the company being bankrupt can be banned from establishing or holding manager positions in any companies for 03 years if



Being late in filing for bankruptcy when the company becomes insolvent.



Conducting transactions that are banned after the opening of the bankruptcy proceedings (e.g. gifting assets, waiving debts, etc.).



Disobeying the orders of the judge, asset management agency/officer, enforcement agency.

2. Who can file for bankruptcy and what are the requirements for filing?



2.1. Who can file for bankruptcy?



Unsecured creditors.

Secured creditors cannot file for bankruptcy, unless the value of the debts exceed the value of the collaterals.



Employees and trade union.



Company officials, including: legal representative, owner of a private enterprise or a limited liability company having only one member, chairman of the board of directors of a joint-stock company, chairman of the members' council of a limited liability company having two or more members and general partner(s) of a partnership.

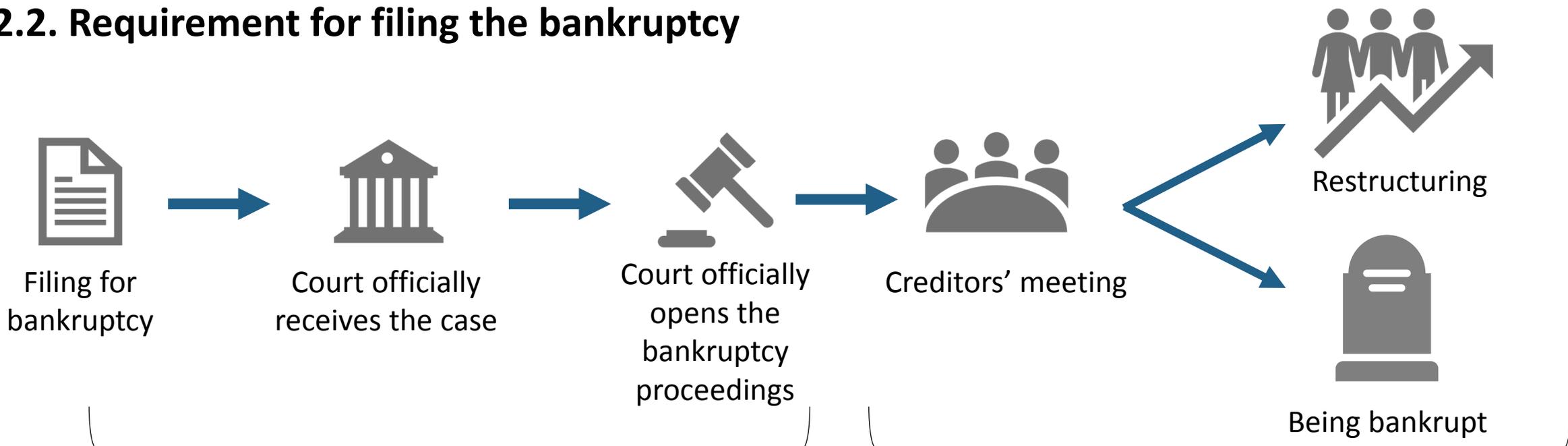


Shareholder(s) of a joint-stock company holding 20% ordinary shares for 06 consecutive months or more (unless the charter provides lower conditions).

2. Who can file for bankruptcy and what are the requirements for filing?



2.2. Requirement for filing the bankruptcy



The condition for filing is that the company fails to pay any debt within 03 months from the due date. This means that any single unsecured creditor (regardless of whether the debt is big or small) can trigger this part of the proceedings.

This part of the proceedings is controlled by all creditors based on their debt value, so a single small creditor may have little control.

2. Who can file for bankruptcy and what are the requirements for filing?

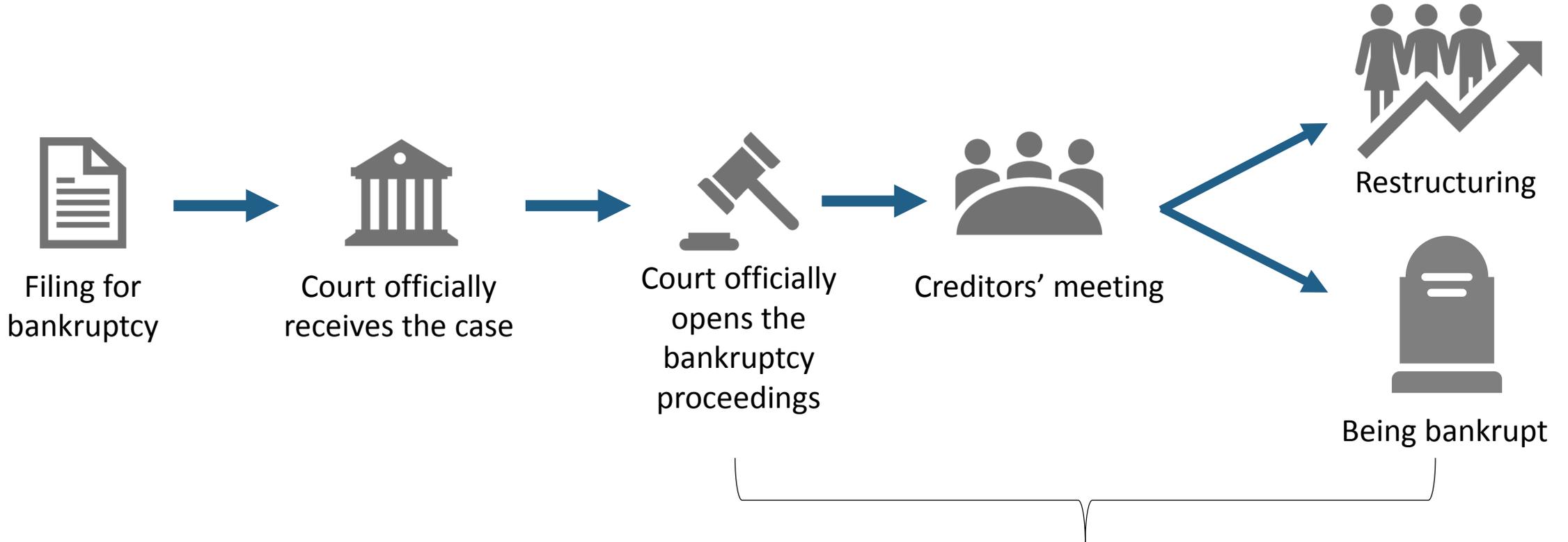


“Failure to pay any debt within 03 months from the due date” seems like an easy condition, but in practice, the Court often requires that the debt must be clear and unarguable.

If the debt is still in dispute, the Court will refuse to open the bankruptcy proceedings, and the parties must resolve such dispute via a normal lawsuit before filing for bankruptcy again.



3. Business operation during the bankruptcy proceedings



In this part of the proceedings, there will be significant impact on the operation of the company

3. Business operation during the bankruptcy proceedings



3.1. Supervision of the Court and asset management agency/officer

After the Court officially opens the bankruptcy proceedings, the company can continue its operation, but will be supervised by the Court and the asset management agency/officer



Transactions that are banned

- Hiding, dispersing, gifting assets;
- Paying unsecured debts, except for debts arising after opening the bankruptcy proceedings and salaries of employees;
- Waiving debts; and
- Changing unsecured debts into secured debts by using assets of the company.



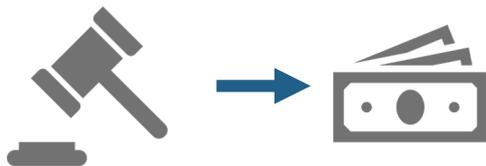
Transactions that must be approved by the asset management agency/officer

- Loan, mortgage, guarantee, purchase or sale, transferring or lending assets;
- Selling, changing the company shares;
- Change of asset ownership;
- Terminating effective contracts; and
- Paying debts arising after opening the bankruptcy proceedings and salaries of employees.

3. Business operation during the bankruptcy proceedings



Basically, any transactions relating to the assets of the company will need the approval of the Court or the asset management agency/officer appointed by the Court.



The banks will not proceed any payments for the company, unless approved in writing by the Court.



Transactions conducted without approval can be void and reversed.



If considering that the legal representative is not competent, the Court can also replace the legal representative.

3. Business operation during the bankruptcy proceedings



3.2. Checking the assets of the company

The company will need to work with the asset management agency/officer and the Court frequently to check and evaluate the total remaining assets of the company.

As an unsecured creditor, you will want to maximize the assets to have better chance of getting money. As the bankrupting company, you may also want to maximize the assets to have better chance of getting approval for a restructuring and surviving the bankruptcy.



3. Business operation during the bankruptcy proceedings



To maximize the assets, you can:



Request the Court to void and reverse suspicious transactions;



If there is anyone retaining the assets of the company to offset with their debts, you can request the Court to take back such assets because any offsets must be approved by the asset management agency/officer;



Request the Court to terminate/suspend the ongoing contracts in which the company is a party if such contract may hurt the assets of the company; and/or



Stop the secured creditors from liquidating the collaterals under the ground that the collaterals are necessary for the restructuring.

4. Power of creditors in the bankruptcy proceedings



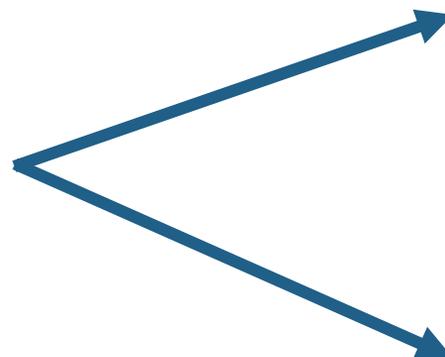
The creditors will decide whether the company will be bankrupt or can proceed with a restructuring plan.



Creditors' meeting

Will be hold after finishing the list of creditors and list of assets.

The quorum for starting the meeting is having creditors representing at least 51% value of the total unsecured debts.



Restructuring

The quorum for passing any resolutions is more than 50% of the number of unsecured creditors being present, and at least 65% value of the total unsecured debts.



Being bankrupt

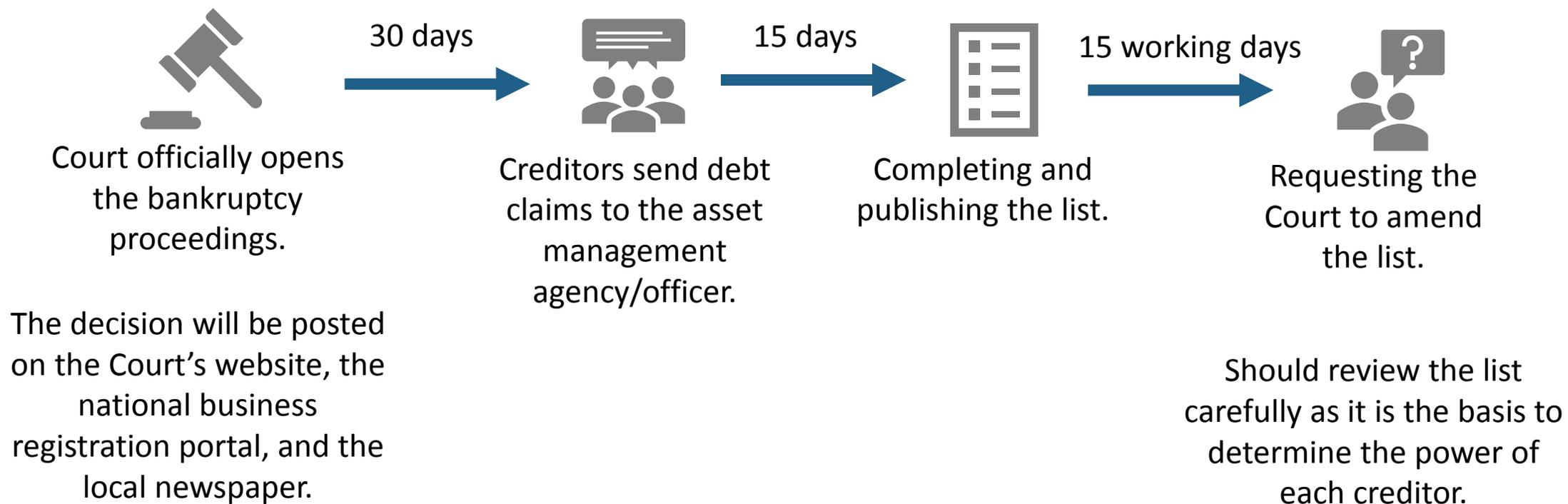
-> Secured creditors can join the meeting but have no voting power.

4. Power of creditors in the bankruptcy proceedings



The quorum in the creditors' meeting will be based on the list of creditors approved by the Court. If you are not in the list, you will not have creditor's rights in the proceedings.

How to be included in the list of creditors?



4. Power of creditors in the bankruptcy proceedings



The top priority for creditors is ensuring the recovery of the debts, rather than ensuring the creditor status in the process:



If you have sold goods to the bankrupting company and they have not paid, you may claim back the goods and waive the payment, instead of being a creditor.



If the bankrupting company owes you money and you also owe the bankrupting company money, you may request the asset management agency/officer and the Court to offset the debts. This is important because otherwise, the Court will collect money from you for the bankrupting company; but you may not get anything from the bankrupting company in the end if they have too many debts to pay (as you need to share with other creditors).



If you are in the process of enforcing a judgment against the bankrupting company before the bankruptcy proceedings start, should try to get the decision on seizing the assets from the enforcement agency as soon as possible. With that decision, you will be treated as secured creditor over the assets. Otherwise, you will be treated as a normal unsecured creditor.

5. Restructuring, declaring the company bankrupt and debts repayment



The restructuring plan proposed by the company can include any measures (as long as they are legal), and last for any necessary period of time, provided that the company can meet the quorum for approval, i.e. more than 50% of the number of unsecured creditors being present at the meeting, and at least 65% value of the total unsecured debts.



Secured creditors do not have voting power, but if the restructuring plan involves using the collaterals, the consent of the corresponding secured creditors is required.



After the restructuring plan is passed by the creditors and approved by the Court, the strict supervision and restriction to the business operation (due to the bankruptcy proceedings) will be lifted. The company will only be supervised in relating to its compliance with the plan and be required to report on the implementation progress every 06 months.

5. Restructuring, declaring the company bankrupt and debts repayment

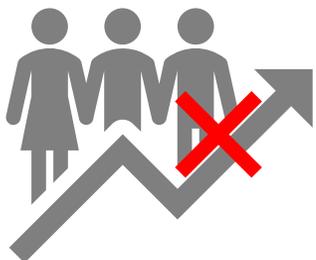


The Court will declare the company bankrupt when:



The creditors' meeting fails

- It could not meet the quorum to start (having creditors representing at least 51% value of the total unsecured debts), despite being re-summoned for a second time.
- The creditors could not meet the quorum to pass any resolutions (more than 50% of the number of unsecured creditors being present, and at least 65% value of the total unsecured debts).



The restructuring fails

- The creditors choose to bankrupt the company instead of applying the restructuring procedure.
- The creditors choose to apply restructuring procedure, but the company fails to submit the final restructuring plan for voting.
- The company submits the restructuring plan, but the creditors do not pass such plan.
- The creditors pass the plan, but the company fails to implement the plan.

5. Restructuring, declaring the company bankrupt and debts repayment



When the company is declared bankrupt, its assets will be liquidated to pay, in the following order:



Expenses for the bankruptcy proceedings



Payments for the employees (salaries, compulsory insurances, etc.)



Debts arising after opening the bankruptcy proceedings, for the purpose of restructuring



Debts toward the State (e.g. taxes) and unsecured creditors

Secured creditors will be paid by liquidating the corresponding collaterals, if the collaterals are not enough, the remaining debts will be treated as unsecured debts.

After the company is declared bankrupt, all debts will not incur any additional interest, although it may take years to fully liquidate the assets.

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