

Q&A in case the business counterparty becomes bankrupt

When overseas companies conduct business with Japanese companies, they often find themselves uncertain about how to deal with in case the Japanese business counterpart suddenly files for legal bankruptcy type proceedings such as bankruptcy.

Therefore, this article outlines the practical steps including fundamental matters foreign companies should take when their Japanese business counterpart files for or enters legal bankruptcy proceedings while focusing on bankruptcy proceedings (*Hasan Tetsuzuki*).

Q1. We receive an envelope addressed from the court in Japan, which appears to be a notice of commencement of bankruptcy proceedings. How should we handle this?

First, you need to check the contents. The enclosed documents should include: (i) the notice of commencement of bankruptcy proceedings, (ii) a sample envelope cover and notice of the creditors' meeting, and (iii) the format of proof of claim.

While translation of the documents is often included, this is not mandatory, so sometimes, only the Japanese documents are contained.

Q2. Do overseas creditors need to take any action upon receiving the notice of commencement of bankruptcy proceedings?

Even overseas creditors must file proof of claim to participate in the bankruptcy proceedings and receive a distribution.

Q3. Is it possible to complete and submit the claim form in foreign language?

Article 74 of the Courts Act stipulates that Japanese shall be used in court proceedings. Therefore, unless otherwise specified, the proof of claim must be completed in Japanese and submitted using the Japanese version.

In the bankruptcy cases with many foreign creditors, the bankruptcy trustee may prepare claim forms in both Japanese and a foreign language such as English. It would be advisable to inquire the bankruptcy trustee about how the submission of the proof of claim can be made.

Q4. Is it possible to file a claim online? In addition, is it possible to participate in the creditors' meeting online?

At the time of writing this article, proof of claim must generally be submitted by postal mail, and online participation in creditors' meetings is not possible. However, future amendments to the Code of Civil Procedure will change the rules regarding creditors'

meetings.

Q5. If the deadline for filing proof of claim stated in the notice of the commencement of bankruptcy proceeding has already passed when I came to know the bankruptcy proceedings, is there anything I can do?

Under the Bankruptcy Act, if a creditor was unable to file a claim within the filing period due to reasons not attributable to the creditor, the creditor may file the claim within one (1) month after the reason ceases to exist (Article 112, Paragraph 1 of the Bankruptcy Act). Therefore, depending on the circumstances, it may be still possible to file a claim.

Q6. What kind of procedures will be implemented after filing a claim?

In this section, we presume the normal process at a bankruptcy case in the Tokyo District Court as an example. The creditors meetings are generally held approximately every three (3) months until the completion of the liquidation of assets and other remaining affairs. Once the liquidation of assets and the remaining affairs are completed, the investigation of claims and distribution of dividends will occur if dividends to the bankruptcy creditors are possible.

Q7. Is there notification of whether a distribution is made or not made?

In case the distributions to the bankruptcy creditors are made to bankruptcy creditors, they will receive notification of the distribution amount and request for the remittance information. If no distributions are to be made, the court will decide to discontinue the bankruptcy case and the bankruptcy proceeding finishes. In such cases, no notification is sent to the bankruptcy creditors.

Q8. Is there any hierarchy of claims in the bankruptcy proceedings?

In the bankruptcy proceedings, claims are broadly categorized into: (i) claims on the estate, (ii) preferred bankruptcy claims, (iii) general bankruptcy claims and (iv) subordinate bankruptcy claims. Priority for repayment or distribution increases in order of the lower number assigned to each category.

The highest priority category (i) claims on the estate include, for example, taxes and similar claims where the due date of payment has not yet arrived or has not passed one year since its arrival (Article 148, Paragraph 1, Item 3 of the Bankruptcy Act) and claims for employees' wages for the three (3) months preceding the commencement of bankruptcy proceedings (Article 149, Paragraph 1 of the Bankruptcy Act). There are

also various other types of claims on the estate.

Q9. As an overseas company, is it beneficial to consult with a Japanese attorney?

Under the Bankruptcy Act, certain claims are prioritized as claims on the estate. With respect to this, some claims arising from transactions may be treated as claims on the estate if they relate to certain continuing obligations under executory contracts (Article 55, Paragraph 2 of the Bankruptcy Act).

Furthermore, disputes may arise over the proper completion and submission of proof of claims form, or interpretation over the permissibility of set-off which is restricted under certain circumstances under the Bankruptcy Act (Articles 71 and 72). Therefore, considering the existence of such situation, consulting with Japanese attorneys or requesting representation may be beneficial.

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* We provide legal advice for foreign companies on a daily basis to help them conduct appropriate business activities in Japan and realize their legal rights. If you have any questions regarding the matters described in this article, please feel free to contact us at PG_foregin@mmn-law.gr.jp.