

The Issue of Handling Assets for Bankrupt Enterprises Under Law of Bankruptcy in Vietnam

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Abstract: Bankruptcy law is always an open and evolving system to adapt to the requirements of each economy at different stages. However, the rapid formation of multinational companies along with globalization in today's conditions demands economies to have a unified view of bankruptcy phenomena and close cooperation between countries to ensure collective economic security by minimizing disadvantages stemming from bankruptcy. In this article, we will delve deeper into asset handling issues for bankrupt businesses and suggest some contributions to perfecting the bankruptcy law for enterprises.

Keywords: bankruptcy law, enterprise, market economy.

1. Introduction

In a market economy, due to the impact of economic laws, including the law of competition, new relationships have emerged that economic planning itself cannot contain. This is the phenomenon of bankruptcy.

However, bankruptcy is a problem that requires theoretical and practical understanding and research. When a business is declared bankrupt, it significantly affects the economy, especially the rights of workers who may experience disruptions such as unpaid wages, job loss, and other negative issues, as well as the debts of the business.

When a business falls into bankruptcy, it generates many complex relationships that need to be addressed. These include the debts between creditors and the indebted business, as well as the relationship between the indebted business and its employees due to the inability to repay debts. Therefore, timely resolution of these issues is crucial to establish necessary order, promote economic development, and ensure the rights of the parties involved.

In order to deepen understanding and enhance professional awareness, analysis, and overall evaluation of the "The issue of handling assets for bankrupt businesses in Vietnam", we delve into it.

2. Current Situation - Issues in Bankruptcy Resolution Under the Law

A. Definition of Bankruptcy Law

Bankruptcy law can be understood as the entirety of legal provisions issued by the State, regulating social relations arising in the process of resolving bankruptcy requests of enterprises,

cooperatives.

Bankruptcy law is a specific provision within commercial law. Its specificity lies in encompassing both substantive legal provisions and procedural legal provisions. As substantive law, bankruptcy law regulates property relations between creditors and debtors. As procedural law, bankruptcy law regulates procedural relations between competent state authorities and creditors, debtors, and related parties, specifying the litigation rights and obligations of the entities, procedures, and processes for resolving bankruptcy requests of enterprises, cooperatives.

B. Contents of Bankruptcy Law

These are recorded in documents such as the 1993 Enterprise Bankruptcy Law, the 2004 Bankruptcy Law, and implementing documents. Among these, the most important is the 2004 Bankruptcy Law with 6 chapters, 52 articles.

C. General Awareness of Bankruptcy

Compared to the Bankruptcy Law of 1993, the Bankruptcy Law of 2004 has introduced many new provisions regarding the bankruptcy procedures of enterprises and cooperatives. In this essay, we will only address some of the new content in the amendments between the 2004 and 1993 laws.

According to Article 5 of the Bankruptcy Law of 2004: Bankruptcy Procedures:

Bankruptcy procedures are applicable to enterprises, cooperatives facing bankruptcy, including:

- a) Submitting a request and initiating bankruptcy proceedings;
- b) Restoring business activities;
- c) Liquidating assets and debts;
- d) Declaring bankruptcy of enterprises, cooperatives.

Thus, bankruptcy procedures can be understood as a major procedure comprising many constituent procedures (sub-procedures), and among these constituent procedures, there are interrelationships following various principles. The sequence and continuity between the constituent procedures are not compulsory factors. This represents a development in the theoretical framework of bankruptcy law in our country.

The 1993 Enterprise Bankruptcy Law also had provisions regarding restoring business activities and liquidating enterprise assets, but the law did not recognize these as independent constituent procedures, nor did it acknowledge the

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specific nature of the relationship between these procedures. In the 1993 law, restoring business activities was almost a mandatory activity preceding liquidation. Only after unsuccessful restoration - when implementing a business reorganization plan did not yield results, the debtor breached commitments, or creditors' meetings did not accept the restoration plan, or the debtor had no plan - could the court decide to declare bankruptcy and liquidate its assets. Resolving the relationship between the two procedures of restoration and liquidation in this way is rigid and mechanical.

In reality, in many cases at the time of handling bankruptcy petition requests, many debtors had ceased operations and had no ability to restore, but due to legal regulations, judges still had to sequentially implement the provisions of the restoration procedure. This only prolonged the futile time, without any significance.

A notable advancement in the Bankruptcy Law of 2004 is precisely the provisions regarding the specific relationship between the constituent procedures in bankruptcy proceedings. This allows the court to handle bankruptcy declaration requests flexibly depending on specific situations. The court may decide to declare bankruptcy for the debtor immediately without the need to handle a bankruptcy declaration petition (Article 87, Paragraph 1 of the Bankruptcy Law of 2004: Within thirty days from the expiration of the deadline for depositing the bankruptcy fee determined by the court, if the debtor or its legal representative has no money and other assets to deposit the bankruptcy fee, the court shall issue a decision declaring the bankruptcy of the enterprise, cooperative).

D. Declaration of Enterprise Bankruptcy and Asset Distribution

Bankruptcy assets are assets of enterprises, cooperatives that are declared bankrupt and are determined from the time the court accepts the bankruptcy petition. However, to protect the rights of creditors against the debtor's unlawful acts, the time for determining the assets of the enterprise or cooperative entering bankruptcy can be pushed up to three months before the date the court accepts the bankruptcy petition.

E. Cases for the Decision to Initiate Asset Liquidation Proceedings

Decision to initiate asset liquidation proceedings in special cases.

In cases where a business operation incurs losses and the state has applied special measures to restore business operations, but the business still cannot recover and cannot pay off debts when requested by creditors, the court will decide to initiate asset liquidation proceedings for the enterprise without convening a creditors' meeting to consider the application of the restoration procedure.

Decision to initiate asset liquidation proceedings when the creditors' meeting fails.

The judge issues a decision to initiate asset liquidation proceedings when the creditors' meeting fails in the following cases:

The enterprise owner or legal representative does not attend

the creditors' meeting without valid reasons or after the creditors' meeting has been postponed once if the petitioner requests to initiate bankruptcy proceedings.

There are not enough creditors attending the creditors' meeting after the creditors' meeting has been postponed once if the petitioner requests to initiate bankruptcy proceedings.

Decision to initiate asset liquidation proceedings after the first creditors' meeting resolution. After the first creditors' meeting passes a resolution agreeing with the proposed business reorganization measures, debt payment plans for creditors, and requests for the enterprise to develop a business recovery plan, if any of the following cases occur, the court will decide to initiate asset liquidation proceedings for the enterprise:

The enterprise fails to develop a business recovery plan within the specified period.

The creditors' meeting does not approve the enterprise's business recovery plan.

The enterprise fails to implement or improperly implements the business recovery plan, except in cases where the related parties agree otherwise.

F. Cases Declared Bankrupt

Decision to declare bankruptcy for enterprises and cooperatives. The judge issues a decision to declare bankruptcy for enterprises and cooperatives simultaneously with suspending the asset liquidation procedure. The decision to declare bankruptcy for enterprises and cooperatives in special cases

Within thirty days from the expiration of the deadline for depositing the bankruptcy fee determined by the court, if the enterprise owner or its legal representative submits a petition to initiate bankruptcy proceedings and has no money or other assets to deposit the bankruptcy fee, the court will issue a decision declaring the bankruptcy of the enterprise or cooperative.

After accepting the bankruptcy petition and receiving documents and papers sent by related parties, the court will issue a decision declaring bankruptcy for the enterprise or cooperative if the enterprise or cooperative is bankrupt and has no assets or has assets but is insufficient to pay the bankruptcy fee.

Notice of the decision to declare bankruptcy for the enterprise or cooperative. Within fifteen days from the date of the decision to declare bankruptcy for the enterprise or cooperative, the court must send and publicly announce the decision. Within ten days from the effective date of the decision to declare bankruptcy for the enterprise or cooperative, the court must send the decision to the business registration agency to remove the name of the enterprise or cooperative from the business registration list; in case the Supreme People's Court issues a decision to settle complaints and appeals, the deadline is not more than twenty-five days.

G. Complaints and Resolution of Complaints

Complaints and appeals against the decision to declare bankruptcy for enterprises and cooperatives. The same-level

People's Procuratorate has the right to appeal the decision to declare bankruptcy for enterprises and cooperatives. The deadline for complaints and appeals is twenty days from the last date of the announcement of the decision to declare bankruptcy for enterprises and cooperatives.

Within five days from the expiration date of the deadline for complaints and appeals, the court that issued the decision to declare bankruptcy for enterprises and cooperatives must send the bankruptcy file along with the complaint and appeal decision to the higher-level court directly for review and resolution of the complaints and appeals against the decision to declare bankruptcy for enterprises and cooperatives.

If there are no complaints or appeals against the decision to declare bankruptcy for enterprises and cooperatives, the decision becomes legally effective from the expiration date of the deadline for complaints and appeals. Resolving complaints and appeals against the decision to declare bankruptcy for enterprises and cooperatives. Immediately upon receiving the bankruptcy file along with the complaint and appeal decision, the Chief Justice of the higher-level court directly designates a panel of three judges to review and resolve the complaints and appeals against the decision to declare bankruptcy for enterprises and cooperatives.

Within forty-five days from the date of receiving the bankruptcy file along with the complaint and appeal decision, the Panel of Judges must review and resolve the complaints and appeals against the decision to declare bankruptcy for enterprises and cooperatives. The Panel of Judges has the right to make one of the following decisions:

Not accepting the complaints and appeals and maintaining the decision to declare bankruptcy for enterprises and cooperatives by the lower court;

Canceling the decision to declare bankruptcy for enterprises and cooperatives by the lower court and returning the bankruptcy file to the lower court to continue the bankruptcy proceedings;

The decision of the higher-level court to resolve complaints and appeals directly is the final decision and becomes legally effective from the date of issuance.

3. Reality of Some Issues on Bankruptcy in Vietnam

A. The Reality of Business Bankruptcy in Vietnam

When a company shows sufficient signs of bankruptcy, it should promptly deal with it according to the law to limit the risk losses for investors in the company, minimize negative impacts that could reverberate throughout the entire economy. Debt, capital structure, and bankruptcy issues of enterprises.

In reality, debt not only meets the operational needs of the business but also, for financial management, it's an "art" in determining capital structure to achieve the goal of maximizing the value of the enterprise with analysis to benefit from tax shields.

In Vietnam, financial management in enterprises is sometimes underestimated. Choosing sources of capital to meet business needs is sometimes spontaneous, not based on the basic principles of modern financial management strategy,

coupled with inefficient and misaligned investments like stocks, real estate amidst unpredictable fluctuations in these markets, resulting in inevitable losses. From this reality, the situation of debt and bad debts in enterprises has arisen and is difficult to control.

B. Some Fundamental Causes

There are many causes leading to this situation in enterprises, especially state-owned ones: Lack of transparency in information disclosure, weak capacity, lack of responsibility... leading to management decisions resulting in inefficient investments, and consequently, stacking debts as mentioned above. We believe that the debt situation in enterprises needs to be comprehensively, tightly, and seriously evaluated to control the time when enterprises start facing difficulties in fulfilling debt obligations or, in other words, when enterprises face financial distress so that they can restructure to avoid bankruptcy.

Conversely, if this situation cannot be overcome, there should be bold application of bankruptcy measures to limit risk losses for investors in the enterprise, minimize negative impacts that could reverberate throughout the entire economy, especially in the sensitive phase of the current economy.

However, with the development of the market economy, legislators also recognize that business involves risks, so debtors need to be treated more leniently. On the other hand, although the interests of creditors and bankrupt enterprises seem contradictory, they have a symbiotic relationship. Therefore, modern bankruptcy laws aim not only to protect the rights of creditors but also to protect the rights of bankrupt enterprises. The bankruptcy process is also seen as an opportunity for indebted businesses to recover.

The Bankruptcy Law of 2004 is considered an effort by Vietnamese legislators to improve the effectiveness of legal adjustments for corporate bankruptcies by overcoming the limitations of the Bankruptcy Law of 1993, supplementing new content based on 9 years of practical application of the Bankruptcy Law of 1993, referencing foreign experiences, and institutionalizing the policies of the Party and the State in the new development stage of the country.

C. Legal Consequences of Bankruptcy Declarations and Violation Handling

Based on the nature of bankruptcy, there are two types: Bankruptcy due to economic inefficiency and financial bankruptcy:

Bankruptcy due to economic inefficiency refers to the situation where the net profits from business activities do not correspond to the invested capital. The corresponding profit here is understood as the opportunity profit corresponding to the risk level of that investment. A company may be in a state of economic bankruptcy even if it does not have any debt. Because the main subject referred to in this form of bankruptcy is the business profit measured independently of the interest expense of the company's loans.

Financial bankruptcy refers to a company failing to fulfill its debt obligations as committed to creditors on time. A company

continuously suffering losses in business (economic inefficiency bankruptcy) will bear the burden of mounting debts and lead to financial bankruptcy.

Based on the causes of bankruptcy, there are Honest bankruptcy and Fraudulent bankruptcy. Honest bankruptcy is the objective and direct consequence of the company's failure to adapt to the strict and harsh demands of the market. It originates from objective causes such as natural disasters, enemies, economic crises, wars, exchange rate differences... Fraudulent bankruptcy is entirely the consequence of premeditated actions, deceitful behavior by the indebted business owner taking advantage of bankruptcy mechanisms to seize assets from creditors. For example, fraudulent debtors in signing asset transfer contracts, providing false reports or providing inaccurate information. This is a dangerous competitive behavior and therefore is usually treated very strictly in terms of criminal law.

Thus, bankruptcy, as a negative social phenomenon, needs to be limited and prevented to the maximum extent. To mitigate negative impacts, bankruptcy should be considered as the last and only choice of the government for businesses facing bankruptcy. This requirement needs to be consistently expressed in bankruptcy laws through contents such as criteria for determining when a business is bankrupt, issues of business recovery in bankruptcy, priority order of debt repayment when declaring bankruptcy.

4. Conclusion and Recommendations

Bankruptcy law is not merely about burying or discarding inefficient businesses from the economy; in some aspects, bankruptcy carries its own positive significance. It protects the rightful interests of creditors and workers, compelling entrepreneurs to be cautious, dynamic, and innovative when stepping into the market, with clear business plans and objectives.

Bankruptcy signifies the end of a business, but it does not equate to the complete and permanent removal of business owners from societal business activities. After a certain period, business owners can return to the market to operate.

Bankruptcy laws are always an open and dynamic system to adapt to the requirements of each economy in different stages. However, the rapid formation of multinational companies along with globalization today demands that economies have a unified perspective on bankruptcy phenomena and close cooperation between countries to ensure collective economic security by minimizing disadvantages stemming from bankruptcy.

A. Asset Handling for Declared Bankrupt Enterprises

This needs to be objective and specific to ensure the interests of all parties involved and to clearly demonstrate respect for the law... This concern is not only particular to Vietnam but is of special interest to any country.

B. Some Recommendations for Contributing to the Improvement of Corporate Bankruptcy Laws

To ensure that the Bankruptcy Law truly integrates into life, the following issues need to be addressed:

Firstly, the concept of bankruptcy is still not comprehensive. Article 3 of the Bankruptcy Law of 2004 does not clearly define the amount of debt and the overdue time for non-payment of debts by the debtor. Therefore, in form, a debtor only needs to owe an amount of 1,000 dong and be one day overdue after the creditor's request for repayment to be considered as bankrupt.

Secondly, regarding the types of creditors, the Law only distinguishes between secured creditors, unsecured creditors, and partially secured creditors (Article 6). Different creditors have different legal statuses in the bankruptcy proceedings. Secured and unsecured creditors have different rights and obligations in the bankruptcy process. In principle, the Bankruptcy Law of 2004 has demonstrated a more thorough spirit of protecting the interests of secured creditors compared to unsecured creditors.

However, some provisions of the Bankruptcy Law of 2004 are not in line with this dominant spirit. Specifically, from the moment a decision to accept a petition to initiate bankruptcy proceedings is made, the right to be repaid debts due of secured creditors is restricted, temporarily suspended until a decision on asset liquidation is made (Article 27, Article 35), unless the court permits. Meanwhile, unsecured creditors can still be repaid their due debts after a decision to accept a petition to initiate bankruptcy proceedings is made. The repayment of unsecured debts is only prohibited after a decision to initiate bankruptcy proceedings is made (Article 31).

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