

Research on the Legal Norm Path of Constructing Personal Bankruptcy System in our Country

Zihao Chang

School of Law, Qingdao University of Science and Technology, Qingdao, China

Abstract

The "Civil Code" created the legitimate premise of taking natural persons as the subject of bankruptcy, and provided a logical basis for the effective introduction of the personal bankruptcy system. In the face of the turbulent socialist market economy environment, there are still many uncertainties in the personal bankruptcy system, which makes it impossible to effectively protect the interests of "honest and unfortunate" bankrupt debtors and creditors. Under the current legal norms system, measures such as determining appropriate legislative models, advancing the construction of related supporting systems, and cultivating professional bankruptcy professional groups, provide ideas for effectively guaranteeing the smooth construction of the personal bankruptcy system, so as to achieve the balance of multiple interests in bankruptcy cases in our country.

Keywords

Personal Bankruptcy; Bankruptcy System; "Civil Code".

1. Raising the Problem

The Shenzhen Special Economic Zone, a pilot demonstration zone for socialism with Chinese characteristics, issued the "Shenzhen Special Economic Zone Personal Bankruptcy Regulations" on August 31, 2020. This move was the first of our country's personal bankruptcy system. Once it came out, it triggered widespread heated discussions and discussions among the people. The formulation and practice of its regulations will undoubtedly provide an important reference for the construction of our country's personal bankruptcy law. Significance and demonstration effect. However, under the current legal background, the applicable subjects of our country's "Enterprise Bankruptcy Law of the People's Republic of China" (hereinafter referred to as the "Bankruptcy Law") since its promulgation and implementation have only been limited to corporate legal persons, but facing an increasingly diversified and complicated social economy. The development trend is that individuals, namely natural persons, have already become important participants in the social and economic market, and the construction of a personal bankruptcy system appears to be particularly necessary. On July 16, 2021, the "first case" since the country's first personal bankruptcy law "Shenzhen Special Economic Zone Personal Bankruptcy Regulations" (hereinafter referred to as "Regulations") was formally implemented has been completed, and it was formulated for the "honest and unfortunate" Mr. Liang. The personal bankruptcy reorganization plan was approved by the Shenzhen Intermediate People's Court. The implementation of this case has practical and far-reaching significance. At the same time, our country's personal bankruptcy laws and regulations are sparse and fragmented, and they lack universal applicability. Therefore, they can only provide directional guidance for personal bankruptcy issues, and cannot truly resolve individual creditor's rights and debt disputes in other regions of our country. Therefore, it is necessary to use the first case of Shenzhen bankruptcy as the starting point to conduct relevant research on the legal norms of our country's establishment of the personal bankruptcy system, and then explore more possibilities for the protection of personal bankruptcy-related subjects.

2. Analysis of the Reasons Why Our Country Urgently Needs to Build a Personal Bankruptcy System

2.1. Effectively Match the Internal Logic of the Civil Code and the Inevitable Requirement to Protect the Equal Status of Market Players

The promulgation and implementation of the "Civil Code" is a major event in the field of civil and commercial law in our country. Its content has laid a new theoretical and realistic basis for the construction of a civil legal system in China. At the same time, its legislative purpose is to promote and protect the civil rights of civil subjects. The focus is on protecting the private rights of citizens. The "Civil Code" stipulates that the classification of civil subjects is mainly "natural persons, legal persons and unincorporated organizations", which is a vivid manifestation of the diversification of civil subjects. According to our country's current legal system, the bankruptcy of corporate legal persons is regulated by the Bankruptcy Law, and the bankruptcy of unincorporated organizations is regulated by Chapter 4 and other chapters of the Civil Code. However, there are no specific and clear regulations on the bankruptcy of natural persons. It is unequal for natural persons. In the context of our country's socialist market economy, the equality of subject status is an important foundation for the healthy operation of the economy and the long-term stability of the society. It not only includes the equality of rights and obligations, but also the equality of opportunities and rules. However, from the perspective of our country's current legal system, there are still many rules restricting equal competition among market players. The original intentions often run counter to the internal logic and the value concept of equality in the Civil Code. For example, when individual debts are accumulated to a certain limit. When faced with a situation of insolvency, our country does not have a complete market exit mechanism to adjust regulations. Therefore, individuals cannot enjoy equal treatment with corporate legal persons under the market exit mechanism. our country should include individuals in the subject protection scope of the "Bankruptcy Law", so that market subjects receive equal legal protection, and gradually build a bankruptcy legal system that matches the classification of civil subjects stipulated in the "Civil Code" to realize corporate legal persons, unincorporated organizations and Protection of equal personality among natural persons. For "honest and unfortunate" debtors who are caused by force majeure such as the new crown epidemic in commercial activities, they should be given the opportunity to make a comeback from the legal system level. This will not only enable natural persons to truly reduce the risk burden of failure in investment or entrepreneurship, but also effectively protect society. The stability, unity and stability of the country will further promote the trend of social innovation and entrepreneurship, inspire more people to participate in market economic activities, and promote the stable and orderly development of the social economy. Therefore, constructing a personal bankruptcy system is an inevitable requirement for effectively matching the internal logic of the Civil Code, perfecting the cohesion between Chinese laws, and maintaining the equal status of market entities.

2.2. Improving the Judicial Execution Procedure Mechanism, and Effective Relief to Resolve the "Difficulty in Execution"

At the Sixth Meeting of the Standing Committee of the Thirteenth National People's Congress held in October 2018, Zhou Qiang, President of the Supreme People's Court, delivered an important report on the resolution of "difficulties in enforcement", namely, "The People's Courts Resolving "Difficulties in Enforcement" Work Situation "Relevant suggestions for the establishment of a personal bankruptcy system are among them, because the establishment of a personal bankruptcy system can indeed effectively alleviate the difficulty of execution, and is of great significance to reducing social instability and realizing a fair rule of law. The relevant subject of the effective application of the enforcement procedure is the debtor who is capable

of fulfilling the debt but not fulfilling it. However, this procedure is helpless in cases where there is no property available for enforcement. Therefore, such cases should be "difficult to enforce" in the true sense. When the case has no property to execute, it means that the parties not only need to bear commercial risks, but also need to bear legal risks, and the court has no responsibility or obligation to bear such risks. In our country's long-term judicial practice, the court's solution to "individual bankruptcy" cases is to terminate the procedure, that is, to achieve formal termination of execution. It can be seen that this method does not fundamentally solve the essence of the problem, so the court The judicial authority and credibility in the enforcement process will be greatly compromised. The establishment of a personal bankruptcy system will provide institutional support for the real settlement of disputes between creditors and debtors, guide creditors to obtain more equal and effective repayment under relevant laws and regulations, and use institutional means to implement the applicant's responsibilities. Effectively prevent the commercial and legal risks of the company, and avoid the negative impact caused by illegal acts such as violent debt collection. Therefore, the construction of a personal bankruptcy system is of great value to alleviating the "difficulty in execution": on the one hand, it is beneficial to improve the legal risk awareness of both parties to the transaction. When an individual becomes the subject of the bankruptcy law, the parties will comprehensively consider the counterparty's Factors such as economic status, ability to perform, and personal credit. On the other hand, the establishment of a personal bankruptcy system can provide effective solutions to cases that cannot be enforced. It can not only effectively alleviate the material and spiritual burdens of the enforced, but the efficiency of the court in handling enforcement cases will also be significant. improve.

2.3. The Objective Need to Improve the Personal Integrity System and Improve the Business Environment

With the rapid development of our country's socialist market economy, our country's level of credibility construction is gradually improving, and the social credit system is gradually established and improved. The personal credibility system is an important part of the social credit system, and the conduct of commercial activities is inseparable from credit. Therefore, the importance of the personal integrity system has become increasingly prominent. Honesty is an important concept that our country has always advocated since ancient times. It is not only reflected in the core values of socialism, but also one of the important principles of our country's Civil Code. The principle of good faith is the undisputed emperor in the basic principles of civil law. Clauses are the basis for the effectiveness of civil juristic acts and the guarantee for the orderly development of civil activities. At the same time, commercial entities are inseparable from the personal creditworthiness system in the transaction process, so the continuous improvement of their personal creditworthiness system has a certain promoting effect on the further improvement of our country's business environment. The legal nature of the credit relationship is the relationship between the rights and obligations of both parties to the credit transaction. The construction of the personal bankruptcy law requires a reasonable allocation and effective regulation of the rights and obligations of the parties to the credit relationship, and timely response to the creditor's rights and debt relationships that have a credit crisis. Clean up and terminate, prevent the continued spread of commercial risks and legal risks, so as to achieve the purpose of maintaining a good credit order and improving the business environment. The construction of the personal bankruptcy system requires the soundness of the personal credit system and the improvement of the business environment. Therefore, the personal bankruptcy system and the personal credit system are mutually connected and complementary. On the one hand, a sound personal integrity system is an important foundation for the effective implementation of the personal bankruptcy system, allowing creditors to estimate and judge the debtor's credibility, while effectively protecting

the legal rights of the creditors themselves; on the other hand, the personal integrity system The construction of the business environment is due to the improvement of the business environment. The construction of the personal bankruptcy system will gradually increase the cost of personal untrustworthiness in transactions, highlight the core socialist values of honesty and trustworthiness, and play a great role in the soundness and development of the personal integrity system. The promotion role will also escort the improvement of our country's business environment and the development of the market economy.

3. Constructing a Standardized Path for Our Country's Personal Bankruptcy System

3.1. Determine the Appropriate Legislative Model and Regulate the Application of Law in Bankruptcy Cases Across the Country

Choosing an appropriate legislative model is conducive to the improvement of our country's legal system. Therefore, in the process of constructing a personal bankruptcy system, the application of the legislative model should first be clarified. Based on the rapid development of our country's current socialist market economy and the perfection of China's socialist legal system, a gradual model should be selected for the legislative model in the construction of the personal bankruptcy system. Commonly faced problems, starting from local pilot projects, and then rising to national legislation, become an effective mechanism for eliminating the conflict between reform and the rule of law. The provisions of Article 13 of our country's "Legislative Law" and the "List of the First Batch of Authorized Items for the Pilot Comprehensive Reform of the Pilot Zone for the Construction of Socialism with Chinese Characteristics in Shenzhen" provide an effective mechanism for the resolution of conflicts between reform and the rule of law, and a gradual legislative model for personal bankruptcy The advancement provides basic ideas. The "Regulations" are the first to make detailed regulations on personal bankruptcy. Whether in terms of legislative design, procedural norms, system construction, or value orientation, they have provided reference and played an exemplary role for other regions and our country's future personal bankruptcy legislation. Secondly, all localities actively conduct individual bankruptcy legislative trials on the basis of legal evidence. Based on the experience of Shenzhen's pilot projects, combined with the actual local economic situation and legal environment, formulate corresponding personal bankruptcy laws and regulations, and implement individual bankruptcy trials. In addition, unified legislation at the national level can provide important support and basic guarantee for the construction and implementation of a new system. Because local legislation does not have a universal nature, there is an imbalance between legislation and judicial enforcement in the relevant legislative regions and un-legislated regions in our country. Therefore, the relevant departments of our country should speed up the formulation of high-level national-level laws, and then gradually improve the relevant content of the personal bankruptcy system, and form a more complete, more scientific, and more reasonable personal bankruptcy legal standard system. our country's "Bankruptcy Law" has been issued and implemented more than ten years ago. The system construction of this law has a high degree of completeness and maturity, and has a strong sense of reference. Therefore, the excellent procedures and system design in the "Regulations" can be introduced. , Adding the relevant content of personal bankruptcy to our country's current bankruptcy law, expanding the subject of bankruptcy to cover specific individuals, and finally forming a unified "Bankruptcy Law", which can not only effectively save our country's judicial resources, but also conform to our country's legal resources. Legislative tradition can effectively regulate the application of law in bankruptcy cases in our country.

3.2. Accelerate the Construction of Related Supporting Systems to Achieve Effective Connection between Procedures and Entities

On the one hand, although our country's personal credit information system is constantly improving, there are still some hidden loopholes in it. For example, the nationwide personal credit investigation linkage mechanism has not yet been established in our country, which brings certain difficulties to the specific application of the personal bankruptcy legal system. However, due to the rapid development of our country's Internet and big data technology, it is possible to make full use of the beneficial functions and significant advantages of big data technology to apply it to the collection, analysis and follow-up supervision of personal credit information in cases. When we can collect and analyze the data and information left by the bankrupt debtor on the Internet, we can also have a scientific grasp of its consumption capacity and financial status, which is beneficial to the court whether it is an honest and unfortunate debtor. Comprehensive and effective estimation and judgment; at the same time, it can also make a reasonable analysis of the living consumption level and personal consumption habits of the place where it is located to realize the prediction of the necessary expenditure after bankruptcy, and reasonably determine the bankrupt's The scope of free property; in addition, the personal bankruptcy system will inevitably involve the loss of power system such as behavior restriction orders, and the application of big data technology and the Internet can continuously track and supervise the online consumption behavior of bankrupt debtors. On the other hand, related measures such as improving the social security system and meeting the basic production and living needs of bankrupt debtors can provide the basic prerequisites for the smooth implementation of the personal bankruptcy system. First of all, it is necessary to provide legislative guarantees for the basic life of the bankrupt debtor after declaring bankruptcy to protect its basic survival rights; at the same time, in order to meet the needs of the bankrupt debtor to maintain its basic life, the social welfare system for the bankrupt debtor must be further improved. Refer to their performance and attitude after bankruptcy, give them job opportunities as appropriate, and use state finances to subsidize them. In addition, commercial and social insurance can be used to provide protection for the survival and development of bankrupt debtors. Therefore, the improvement of related supporting systems is a powerful guarantee for the personal bankruptcy system and is conducive to the effective connection of procedures and entities.

3.3. Cultivate Professional Bankruptcy Professional Groups and Improve the Level of Bankruptcy Trials

As the world's most populous country, our country has its own special national conditions and market environment. Under this background, talents are the core element in the process of building a personal bankruptcy system. Therefore, it is necessary to cultivate professional bankruptcy professional groups and improve court trials. The working standards of bankruptcy cases help to establish and improve the personal bankruptcy system. First of all, set up strict bankruptcy practice access conditions and employment qualification assessment standards, and link up with the corporate bankruptcy administrator system, intercept practitioners who do not meet the requirements and standards from the bankruptcy team, and improve the professionalization of bankruptcy practitioners as a whole Level, for example, set up a special bankruptcy practice qualification examination, and only after passing the examination and receiving a practice certificate can you engage in related industries. At the same time, it is necessary to strengthen the strict management and daily supervision of bankruptcy professional groups to prevent them from violating industry standards. For example, the establishment of a bankruptcy practitioners industry association to supervise and manage relevant practitioners, and provide them with regular professional training and education. In addition, although there are already bankruptcy courts in some areas of our country, the

number is not large and the level of specialization is uneven. Therefore, in the process of constructing a personal bankruptcy system, it is possible to set up more on the basis of the experience of existing bankruptcy court trials. A bankruptcy court with a professional level will facilitate the trial of more personal bankruptcy cases in the future. For bankruptcy judges across the country, while cultivating professionalism, they should strengthen their policies and salary guarantees based on the actual local conditions to ensure the fairness and justice of individual bankruptcy cases. Moreover, in order to ease the trial pressure of bankruptcy judges and improve the efficiency of bankruptcy cases, consideration should be given to establishing a communication and coordination operation mechanism that connects judges with lawyers, accountants, arbitrators, or relevant social intermediary organizations, so as to solve the problems caused by information differences. A series of issues promote the smooth trial of bankruptcy cases.

4. Conclusion

Facing our country's special national conditions and the ever-developing socialist market economy, multi-stakeholders compete with each other. How to achieve a balance of interests between bankrupt debtors and creditors has become a popular topic in academic circles and practice. The personal bankruptcy system provides us with a logical approach to balance the interests of multiple parties. Bankruptcy creditors can protect their claims to the greatest extent, and "honest and unfortunate" bankruptcy debtors can reduce a series of adverse effects caused by the bankruptcy crisis, and Being guaranteed by the country and society in many aspects, it increases the confidence and courage to continue to live and work. The promulgation of the Shenzhen Regulations and the successful conclusion of the first case of personal bankruptcy have provided a lot of valuable experience for our country to build a nationwide personal bankruptcy system and realize the universal application of national personal bankruptcy laws and regulations. However, we must continue to explore what is suitable for our country's national conditions. The personal bankruptcy system contributes to the prosperity of our country's economy and social stability.

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