

Research on the Construction of Personal Bankruptcy System in China

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Abstract: With the continuous development of China's social economy, the call for the establishment of personal bankruptcy system is also stronger and stronger. The existing bankruptcy law is called "half bankruptcy law", because the current situation of our country's personal bankruptcy law is in the legislative blank. However, looking at the international community, the establishment and development of relatively mature individual bankruptcy system is not a few, and also has a relatively long history. From the basic overview of personal bankruptcy system, this paper discusses the feasibility and necessity of establishing personal bankruptcy system in our country, and explore the representative of the international community's personal bankruptcy system of the status quo and related regulations, to provide experience and enlightenment, and finally from the build system of personal bankruptcy system entities and procedures two aspects put forward some personal point of view. This paper provides some suggestions for the establishment of personal bankruptcy system in China.

1. Overview of the personal bankruptcy system

In the current Bankruptcy Law of China, the definition of "bankruptcy" is limited to the bankruptcy of "corporate legal person" and does not include the bankruptcy of "individual".¹ At present, China's personal bankruptcy system is still under discussion at the academic and legislative levels, and it has only gradually become known to the public in recent years. The so-called personal bankruptcy refers to the inclusion of natural persons within the scope of the bankruptcy law. When the natural person as the debtor has debts that are far beyond assets and cannot be repaid, the individual is allowed to apply for bankruptcy in accordance with legal procedures. After the court declares bankruptcy, the individual's debt can be At the same time as obtaining an exemption, certain restrictions are imposed on it. The personal bankruptcy system is a system that regulates and regulates personal bankruptcy.

2. The necessity of China's construction of personal bankruptcy system

Comply with the value objectives of modern bankruptcy laws and make up for legislative gaps. The role of the bankruptcy law is to balance the creditor's rights and the debtor's relationship, so that the creditor will not be damaged by the debtor's individual liquidation and malicious transfer of assets. The design helps encourage the debtor to repay the debt, and will also promote social economic development in the process of the debtor's re-operation and development.

The practical needs of market economy development encourage entrepreneurship and innovation to promote entrepreneurship. China urgently needs to provide institutional exports for many failed entrepreneurs, use individual bankruptcy to share entrepreneurial risks to the whole society, further stimulate entrepreneurship, and ensure the effective implementation of the "mass innovation, mass entrepreneurship" policy.²

3. The feasibility of constructing a personal bankruptcy system in China

¹ Article 2 of the "Enterprise Bankruptcy Law of the People's Republic of China": "If an enterprise legal person cannot pay off its due debts, and its assets are insufficient to pay off all debts or obviously lack solvency, the debts shall be cleared in accordance with this Law.

² Shen Junsen. Research on China's Individual Bankruptcy System. Financial Law Court, 2018 (9): 39

With the continuous improvement of the personal credit system, the personal credit reporting system and the personal bankruptcy system can progress together and promote each other. The personal credit system and the personal bankruptcy system are two systems that are mutually causal, and are an integral part of safeguarding the normal operation of the economy and society.

The rapid improvement of citizens' legal awareness, coupled with a high degree of recognition of the market economy, makes the market economy a rule of law economy, and the equality of market subjects is the need to implement the principle of fair competition. Citizens' legal consciousness has generally increased, which has provided ideological preparation for the establishment of China's personal bankruptcy system.

4. Construction of China's personal bankruptcy system

(1) Set up pre-procedures for individual bankruptcy applications

The necessary pre-procedures can effectively filter individual bankruptcy applications, prevent the proliferation of individual bankruptcy proceedings, and provide a more comprehensive debt solution based on the specific problems faced by the debtor. Regarding the design of pre-procedures, the individual bankruptcy laws of all countries in the world are based on the settlement of debtors and creditors. By conferring stronger legal force on settlement agreements, enhancing enforcement power, and attaching importance to the irreplaceable role of pre-procedures in personal bankruptcy, the burden of judicial organs can be effectively reduced.³

(2) Free property system

The construction of the personal free property system can maintain basic material support for the debtor's renewal, increase the debtor's enthusiasm and initiative to apply for bankruptcy, and help promote the widespread application of the personal bankruptcy system. The author believes that when establishing a personal free property system, China can directly transplant the relevant provisions of the current Civil Procedure Law and the Implementation Regulations, thereby saving legislative costs and avoiding potential conflicts with existing laws.⁴

(3) Individual bankruptcy exemption system

The personal bankruptcy exemption system refers to a system in which the debtor has been actively repaid but still has unliquidated debts, and the system will be exempted from liquidation liability after the end of the bankruptcy proceedings. From the perspective of the evolution of the personal bankruptcy system worldwide, the lack of bankruptcy exemption legislation will not help solve the problem of personal bankruptcy, and the personal bankruptcy system will therefore lose the nature of the bankruptcy law. The legislation centered on bankruptcy exemption is the rational choice of modern society. However, it should be recognized that too lax bankruptcy exemption may induce moral hazard, making people more inclined to borrow money, and a large number of personal bankruptcy cases will therefore flock to the courts and become a huge social problem.

(4) The system of personal bankruptcy loss and reinstatement

The purpose of creating a powerless system is, on the one hand, to protect the interests of creditors, on the other hand, to deter and educate the debtor, avoid the debtor's use of personal bankruptcy to evade debt maliciously, and encourage the debtor to develop a simple lifestyle. According to whether the debtor's loss of power requires a court decision, the system of loss of power can be divided into expropriation and power loss. Due to the overall lack of China's bankruptcy culture, the whole society's awareness of bankruptcy and power loss needs to be improved. In order to alert the existence of the debtor's loss of power system, and to regulate the debtor's behavior after the bankruptcy application, a ruling power loss legislation model should be adopted.

The system of personal bankruptcy resumption corresponds to the system of losing power, that is, the bankrupt meets the conditions stipulated by law and goes through legal procedures to remove

³ Zhang Qian. On the Construction of China's Personal Bankruptcy Legal System. Legal Expo, 2019 (4): 201

⁴ Wen Xiufeng. Research on Personal Bankruptcy Legal System and the Construction of Personal Bankruptcy System in China. People's Public Security University Press, 2006

the system restricting his consumption behavior and qualifications. Natural person debtors cannot be in a state of loss of power all the time, otherwise they will lose their humanitarian care and will not be conducive to incentivizing them to actively repay debts and achieve rehabilitation.⁵

5. Improvement of supporting systems and systems

(1) Improve the construction of personal credit reporting system

The personal credit information system currently implemented is more focused on personal finance and other business fields, and there are still obvious deficiencies in cooperating with the personal bankruptcy system. Its importance in the construction of the personal bankruptcy system has not been fully reflected, even in relatively independent state of being. Therefore, to build an individual bankruptcy system, it is necessary to improve the personal credit information system, increase the value of personal credit information in the personal bankruptcy system, and further expand the coverage and sharing of personal credit information.

(2) Improve the construction of personal property registration system

The personal property registration system and the personal bankruptcy system are complementary and mutually reinforcing. Therefore, we must focus on improving the construction of the personal property registration system to provide a key reference for the effective construction and implementation of the personal bankruptcy system. Although China has implemented a real estate registration system, it is limited to a single aspect of real estate, with relatively inadequate coverage, and cannot fully and intuitively reflect the advantages of the personal property registration system. For this purpose, a special department can be set up to effectively promote the declaration of personal property and cover the business scope to the whole society.

(3) Improve the social welfare and security system

After an individual goes bankrupt, in order to protect his basic living standard, fully respect the key position of the person in the economy and society, and effectively protect human rights, it is necessary to improve the social welfare and security system and resolve the worries of the debtor after the bankruptcy is executed. Relevant departments can organize social employment training to improve the reemployment skills of bankrupts, and timely and high-quality and efficient psychological intervention to prevent bankrupts from falling apart, encourage them to inspire their spirits, and grasp the hope of future survival and life.⁶

Conclusion

With the rapid development of the commodity economy, the universal establishment and improvement of the personal bankruptcy system in the international community has become the mainstream trend of international bankruptcy legislation. Bankruptcy legislation has a long history of development in the international community. The modern bankruptcy system is gradually established, developed, and perfected on the basis of the individual bankruptcy system. At present, most of the bankruptcy systems of major countries in the international community include relatively complete personal bankruptcy systems.

In our country, with the establishment and development of the market economy, individuals have gradually become an important part of the main body of the socialist market, and like corporate legal persons, they have become an equal market competition main body in the socialist market economy. China's current "Corporate Bankruptcy Law" only allows corporate legal persons to be the subject of bankruptcy, excluding individuals as an important market subject, which is really a regret for the "half bankruptcy law", and it is difficult to adapt to the current situation of the large number of market economy participants in China. Comprehensively inspecting all aspects of China's economic and social conditions, drawing on the representative personal bankruptcy legislation experience of the international community, and extracting its essence for my use, based

⁵ Sun Yulian. Research on the International Bankruptcy System. Northwest University Law School, 2008: 47

⁶ Ying Chengyi. Discussion on Several Issues of Personal Bankruptcy System. Legal System Expo, 2019 (11): 3

on China's national conditions, exploring and establishing the establishment of a personal bankruptcy system in China, is to seek future social and economic development The inevitable trend. The construction of a personal bankruptcy legal system is indispensable for the improvement of the current bankruptcy law, the regulation of credit consumption behavior and the acceptance of execution procedures. The construction of this system requires the construction of a coordinated social security system, and more mutual promotion of the legal and cultural environment. The construction of the personal bankruptcy system does not completely depend on maturity with other conditions, but on a process of mutual promotion. Despite the long way to go, for the improvement of China's legal system and the healthy and stable development of the socialist market economy, consideration should be given to building an individual bankruptcy system in China. The construction of personal bankruptcy system with local characteristics in China is necessary and feasible.

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