Research on Survival Guarantee of Natural Persons after Bankruptcy

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Abstract: *Exploring the survival situation and social problems of natural persons after bankruptcy is of great significance to protecting the rights and interests of natural persons after bankruptcy. Relevant results show that China is still in a blank field in the research on the protection of personal survival after the bankruptcy of natural persons. This may be related to the failure to implement the "Natural Person Bankruptcy Law". We also found that in addition to the relief of the state-implemented individuals after bankruptcy, the most important guarantee for survival lies in their personal ability. Therefore, there are some social laws that can be followed, but the focus is still to achieve the unity of social macro policies and personal abilities. Only under such coordination can natural persons still have a good survival guarantee after bankruptcy, and it also reflects the superiority of China's system.*

Key words: *Natural person bankruptcy; Survival guarantee; Individual ability*

On the Bankruptcy System of Natural Person

What is the bankruptcy system of natural person

The bankruptcy system of natural person is also called personal bankruptcy system, which is called consumer bankruptcy system in developed countries, especially in the United States. It is generally the same in nature: personal bankruptcy refers to the legal norms of the court declaring bankruptcy after a certain procedure when the natural person who is the debtor can not pay off the debts due. The court will carry out liquidation, redistribution or debt adjustment of the property in the name of the individual, so as to exempt the personal debt in the later stage, and determine the rights and obligations of the parties in the whole bankruptcy process. Looking back on its development history, the personal bankruptcy system originated in ancient Rome and developed in England in the middle ages.

Analysis on the development of international natural person bankruptcy system

Throughout the world, especially in the western developed countries, they have entered the stage of market economy very early, so they have a good standard management mechanism for individual operation in the market economy. Of course, it includes the improvement and development of natural person bankruptcy system. So far, natural person bankruptcy law has become an important part of all countries with market

economy. In particular, the United Kingdom and the United States are the most obvious, followed by other countries. The British personal bankruptcy system was born in 1542, which is hundreds of years earlier than China. After more than 400 years of changes, a generally applicable bankruptcy system for enterprises and individuals was finally formed in 1986. The United Kingdom ranked 8th in the Doing Business Assessment Report released by the World Bank in 2019. The major reason that led to such achievements in the UK is that the it has a sound personal bankruptcy law system as a support and mature market-oriented practices. Compared with the United Kingdom, the United States only provides relevant content in Chapter 7 and Chapter 13 of the Bankruptcy Law. In the subsequent bankruptcy laws of Australia, Germany, and Japan, there is no doubt that the personal bankruptcy law is the most important content.

The process of the bankruptcy system for natural persons in China

Compared with developed countries, China is stepping out of the history of poverty and weakness, and the market economy is also slowly recovering and developing. In 1986, China had the first "Corporate Bankruptcy Law (Trial)". After many experts' arguments and feedback from social practices, China finally officially promulgated the "Corporate Bankruptcy Law" in 2006. However, the personal bankruptcy legal system was not introduced at the same time, so it was called the "half bankruptcy law." Faced with the fact that the personal bankruptcy law has not yet been promulgated, we should also continue to study and explore how individuals as debtors can obtain a better guarantee of survival, and give those individuals who are bankrupt in good faith a chance.

The Necessity of Survival Guarantee for Chinese Natural Persons after Bankruptcy

The necessity of a natural person's survival guarantee after bankruptcy can be explained from the following three aspects:

First, at the macro level, developed countries in the world have issued comprehensive bankruptcy laws for natural persons, which have made specific regulations and studies on a series of survival guarantees for individuals after bankruptcy. In this way, it can not only protect the debtor to live with dignity, but also incentivize the debtor to earn income through social labor, pay off the debt as soon as possible, and protect the rights of creditors.

Second, from the meso level, society is the center of group activities assembled by people, and it is also the space on which every family depends. If natural persons cannot get social relief after bankruptcy, they may use improper means, which is not conducive to social stability, and in serious cases may cause social unrest and conflict. There is no sense of security between people, causing everyone to be at risk. If this scene persists, it will undoubtedly reduce the safety of the society as a whole, which is totally unfavorable to the development of the national economy, and it will also damage China's international image.

Third, from the micro level, as individuals in society, all behaviors are for better survival. Some debtors may

be in debt for some objective reasons, not out of their own subjective malice. So, out of humanitarianism, we can give them appropriate opportunities. The debtor should be full of confidence, believe that he can survive after bankruptcy, and believe that he can repay the debt through hard work and re-enter the market economy, adding another positive energy to the country's economy. In the case of debts or remaining damage, individuals can apply for bankruptcy protection and debt relief according to law, so that they will not bring more hidden dangers to the society.

Problems in the Survival Guarantee of Chinese Natural Persons after Bankruptcy

Social security refers to a country or government as the main body, through the redistribution of national income in accordance with laws and regulations, to help some citizens who have difficulties in life due to temporary or permanent loss of work ability, so as to guarantee their basic daily life.

Survival security is a small category belonging to social security. However, the "survival guarantee" problem arising from the bankruptcy of a natural person is different from other general guarantees in society. At the same time, the challenges are different.

(1) Whether the individual has the ability to make a comeback. With the acceleration of China's market economy, personal consumption power has also been greatly improved, and even advanced consumption has occurred. People spend a lot of money on market investments, such as stocks and houses, and then benefit the convenience of credit card loans for consumption, and they are burdened with huge debts in advance. But when the capital chain suddenly broke, personal assets could not be used to repay the debt, and the debtor had to run around to avoid the debt. Even the serious ones may choose to commit suicide due to excessive psychological pressure, bringing huge tragedy to the whole family. Without a mature bankruptcy protection system for natural persons, this kind of social problem will continue to exist.

(2) The disposal of personal evasion of debts after malicious bankruptcy. Due to the uneven personal quality and the imperfection of the whole market procedure, some lawbreakers have the opportunity to take advantage of it. They made a lot of credit loans and overspending consumption in advance, and then released the debt through the protection of bankruptcy procedure, which resulted in the damage to the interests of creditors. Therefore, how to make a better and more effective judgment on the systematic bad behavior of bankruptcy procedure is particularly important.

(3) Whether the country's existing guarantee system is sufficiently complete. At present, China has been learning from the safeguard systems of other countries. However, in the existing social security system, there is still a long way to go to the survival security of natural persons. The country's entire security system includes social insurance, social assistance, social special care, and social welfare. But whether these can effectively intervene in the survival protection of natural persons after bankruptcy remains to be tested. Including from personal bankruptcy to recovery, whether national institutions and other departments can play the largest role in the whole process.

(4) Integrity construction of personal credit system. China is a populous country with a huge population base. According to the 2020 National Census of the National Bureau of Statistics, China has a population of 1.4 billion. The existing technical conditions are currently unable to achieve complete collection and tracking of personal information across the country, which makes it easy for individuals to flee to other areas to evade accountability after malicious bankruptcy, resulting in lower illegal costs and no deterrent effect.

Countermeasures of survival guarantee after personal bankruptcy in China

With the acceleration of the globalization process, China has increasingly integrated into the international perspective, and has subsequently improved various commercial supporting measures at home. After the original corporate "Bankruptcy Law", we must and should speed up the protection of highly active individuals in the market, especially in terms of personal survival protection, and we must serve people with high integrity. Therefore, when facing the above problems, we also need to propose countermeasures to protect the natural person bankruptcy law from being promulgated.

(1) The construction of a personal credit social system. Before any "Personal Bankruptcy Law" is promulgated, it is necessary to improve the construction of the personal credit system in the society and form an all-round pattern of "all villages, cities, and provinces". Avoid the behavior of those individuals who borrow money to forgive their debts by applying for bankruptcy protection. In an era when the Internet is developed, society and the country should leverage Internet thinking and use Internet methods to enable personal credit information to be interoperable regardless of where they are located. And let them not dare to go bankrupt easily.

In addition, it is also very important to introduce personal credit system network into the financial system. At present, China has initially established a national personal credit information system (also known as consumer information system). For example, the People's Bank of China has established personal files through overall planning and induction, which has made personal information more transparent and benign under official supervision. Based on the above measures, gradually establish a personal credit rating standard system, leaving priority for the future social survival security, so as to promote the confidence and ability of the bankrupt to redevelop.

(2) Social security institutions work together to create a new situation. When an individual goes bankrupt because of his mismanagement rather than his supervisor's malice, his credit is not completely overdrawn, so he still has the opportunity to seek new development in the society.

When individuals after bankruptcy re-enter society with good credit, security agencies should give priority to supporting such groups. The specific measures are as follows: First, give priority to enjoying the social minimum living guarantee. For individuals who are temporarily incapable of working and income, they can enjoy social security, have a minimum life guarantee, and receive a certain amount of security. Second, unemployment insurance. Individuals in normal bankruptcy can apply for local unemployment insurance, adding a layer of protection to their lives. Third, a variety of commercial insurances go hand in hand and continue to promote the core concept of “everyone for me, I am for everyone". In order to avoid the dilemma

after bankruptcy, individuals can purchase certain bankruptcy commercial insurance in advance to add a backing for their survival protection.

(3) The government implements a policy to mobilize all people and help each other. Apart from the above systems and social-level measures, at the national level, a separate provincial-level bankrupt natural person's life security management system can also be set up. We must avoid the phenomenon that individuals cannot survive after bankruptcy due to integrity. Through mobilizing the whole people, or asking your relatives and friends for help, through the most difficult period. After the personal financial situation recovers, he will return to repay the people who helped him.

Conclusion

"Personal bankruptcy legislation must be implemented, but it will not be possible in the near future." Li Shuguang said, "The legislation for personal bankruptcy is actually very complicated and requires necessary social conditions, and there are many technical problems facing it." In the face of such a complex social and international environment, if we want to be competitive, we must have firm courage. Only by carrying out better policies with irresistible force of reform can the self-improvement of Oriental civilization be demonstrated in many powerful countries. At present, with the implementation of "Shenzhen Special Economic Zone Personal Bankruptcy Regulations (Draft)", the establishment of natural person bankruptcy law is only a matter of time.

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