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Bankruptcy reorganization by Sale: a comparative study from a global perspective

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ABSTRACT
This article aims to explore the sale bankruptcy reorganization system, an increasingly prominent corporate bankruptcy solution in the global economic environment. With market volatility and economic integration, the risk of bankruptcy for enterprises has increased, making sale bankruptcy reorganization an important legal and economic issue. By analyzing the urgent needs of enterprise bankruptcy reorganization under the background of global economic changes, this paper emphasizes the important role of bankruptcy reorganization for sale in the redistribution of resources, the protection of creditors' interests and the maintenance of market order, discusses the theoretical basis of bankruptcy reorganization for sale, and analyzes the importance of bankruptcy reorganization for sale in the improvement of legal system, economic efficiency and social stability. This paper reveals the diversity and characteristics of different countries and regions in the implementation of sale-type bankruptcy reorganization system, and provides valuable experience and enlightenment for China's local legal policy formulation and legal practice.

KEYWORDS
Bankruptcy reorganization; Bankruptcy reorganization by sale; Comparative study

1 Introduction

With the global economic integration and market fluctuations, more and more enterprises are facing the risk of bankruptcy, and bankruptcy reorganization by sale has become an important solution. Studying the bankruptcy reorganization system for sale can help improve the relevant legal system and provide clear guiding principles and procedures for bankruptcy reorganization, thus improving the transparency and predictability of the legal system. As a bankruptcy treatment method, the steps of sale-type bankruptcy reorganization system include: first, bankruptcy application, the enterprise or its creditors apply to the court for bankruptcy protection. The second is asset appraisal, in which professional institutions evaluate the assets of enterprises to determine their market value. The third is to find potential buyers who are interested in the enterprise's assets. The fourth is to identify the best buyer through a competitive bidding process in order to obtain the highest asset value. The fifth is court approval, where the sale proposal is reviewed by the court to ensure that it complies with all relevant laws and procedures. The sixth is to complete the asset transfer and debt repayment after the court approves it.

This system exists in Section 363 of the U.S. Bankruptcy Code, and the key is to quickly realize the liquidity of assets, reduce the time of disruption of business operations, while protecting the interests of creditors. However, this system also has some disadvantages, such as it may have a great impact on the original shareholders and management, and in some cases, creditors may not be able to fully recover their debts. Therefore, it is necessary to consider the interests of all parties and the possible impact when adopting the bankruptcy reorganization by sale.

2 A comparison of sale bankruptcy reorganization systems from a global perspective

By quickly liquidating or transferring the assets of the insolvent business, the sale-type bankruptcy system aims to maximize the value of the assets and reduce the time and cost of the insolvency process.

2.1 The theoretical underpinnings of a sale bankruptcy reorganization

The core of the bankruptcy for sale system is to maximize the value of the assets by quickly liquidating or transferring the assets of the bankrupt enterprise. This speedy approach reduces the duration of bankruptcy proceedings and the associated costs, thereby improving overall economic efficiency. For example, a business's assets can depreciate rapidly during the bankruptcy process, especially for businesses that rely on brand reputation or market position. A sale-style bankruptcy system reduces the risk of this loss of value by speeding up the process. In addition, such a regime frees assets more quickly for use by the rest of the market, facilitating efficient allocation of resources.

In institutional economics, predictability and stability are essential to the decision-making of market participants. The sale bankruptcy regime provides this predictability through clear legal provisions. When businesses and investors know the specific rules of the insolvency process, they can better plan and make decisions. It also ensures fair treatment of the interests of all parties in the insolvency process, including safeguarding the rights of creditors and ensuring that they receive a fair return from the sale of assets, while also taking into account the interests of employees, suppliers and customers.

2.2 A general overview of major country and regional systems

Chapter 11 of the U.S. Bankruptcy Code sets out the procedures and requirements for a corporate reorganization, allowing a business to restructure its debts while maintaining operations. It provides debtors with an "automatic stay" protection that prevents creditors from taking any debt recovery action during the bankruptcy proceedings. One prominent case is the bankruptcy reorganization of General Motors in 2009. Facing a severe financial crisis, General Motors used Chapter 11 bankruptcy protection for a quick reorganization. The company's assets were sold to a new entity, "New GM," while most of the debt and bad assets remained in "Old GM." This process was supported by the U.S. government, including substantial financial aid [2].

The EU's insolvency legal framework is largely based on the domestic laws of each member state, but is influenced and harmonized by EU law. The European Insolvency Regulation, which came into force in 2019, has an important impact on cross-border insolvency cases, although it focuses mainly on issues of jurisdiction and applicable law [3] rather than detailed insolvency proceedings.

A typical case is the insolvency reorganization of the German airline Air Berlin. In 2017, Air Berlin declared bankruptcy and restructured itself by selling assets to competitors such as Lufthansa and EasyJet. This process is governed by German law, as well as issues within the framework of European law, such as competition law and cross-border asset transfers. The EU's sale-style bankruptcy reorganization model is significantly influenced by the laws of each member state, reflecting the legal traditions and market structures of different countries.

Japan's insolvency regime favours liquidation rather than restructuring. While restructuring has become more common in Japan in recent years, its bankruptcy laws still emphasize the importance of quickly liquidating debtors' assets. This approach reflects the emphasis in institutional economics on resolving debt problems quickly and reducing long-term uncertainty. The Japanese bankruptcy law also places special emphasis on the protection of small creditors, reflecting the balanced consideration of the interests of all stakeholders. Japan's Bankruptcy legal system consists of several laws, including the Bankruptcy Law, the Civil Rehabilitation Law, and the Corporate Reorganization Law4.

2.3 The differences and characteristics of system design

The U.S. sale bankruptcy reorganization system emphasizes debtor-in-possession, provides extensive "automatic cease and desist" protection, prevents creditors from taking action during reorganization, and allows for rapid sale of assets, while the EU sale bankruptcy reorganization system mainly provides a cross-border bankruptcy coordination mechanism, Member states have different bankruptcy laws that emphasize the rights of creditors and the liabilities of debtors. In cross-border insolvency, EU law focuses on harmonizing the laws and procedures of different countries and focuses more on restructuring rather than liquidation of a business. In Japan's sale-style bankruptcy reorganization system, the Civil Regeneration Law and the Corporate Regeneration Law are the main legal bases. It emphasizes corporate survival and debt restructuring, usually involves the support of the government and the private sector, and often seeks to balance the interests of all parties when dealing with the bankruptcy of a large enterprise.

In contrast, the United States has uniform insolvency laws, while the European Union and Japan are influenced by the laws of their member states and their own insolvency laws, respectively. The US system is more debtor-friendly, while the EU and Japan balance the interests of debtors and creditors more. In terms of the orientation of reorganization and liquidation, the US and the EU favor reorganization, while Japan puts more emphasis on the survival of the company. In Japan, the government plays a more prominent role in corporate restructuring, while in the United States and the European Union, the government is less involved, especially in private bankruptcies. These regions show the influence of their respective legal traditions, market structure and cultural values in the design of the sale-style bankruptcy reorganization system.

3 Assessing the effectiveness of a sale bankruptcy reorganization system

The bankruptcy reorganization for sale can sell the assets or business of the bankrupt enterprise as a whole. It usually includes asset evaluation, finding a buyer, negotiating the terms of transfer, and finally the transfer of assets and repayment of debts transfer assets quickly to reduce operational disruption.

In the judicial operation of various countries, the reorganization of enterprises is mainly divided into two categories:

asset sale type and equity sale type. Under the asset sale reorganization mode, the assets of bankrupt enterprises can be sold as a whole. For example, for production enterprises, their factories, equipment and related industrial chain assets can be transferred to investors, and at the same time, the key talents of enterprises can be retained.

Equity sale reorganization, on the other hand, is suitable for those enterprises whose intangible assets dominate. The value of this kind of enterprise mainly lies in its mature operation mode, perfect production qualification and supporting facilities. They often run into difficulties due to market changes or capital chain problems. In the management process of such enterprises, the managers will often retain the core team of the enterprise, such as financial, personnel and business managers, and cooperate with the reorganization party to complete the equity transfer after the reorganization fund is in place, and jointly promote the production and operation of the enterprise. In China, according to articles 25, 26, 69 and 73 of the Bankruptcy Law, the state provides clear policy support for the strategy of "not stopping production in bankruptcy".

From the perspective of creditors, it is necessary to pay attention to the amount of recovery and recovery speed, and to consider risks. A sale bankruptcy reorganization system needs to assess how much creditors can recover from an asset sale, especially lower priority unsecured creditors, and because it is usually faster than a traditional bankruptcy process, it is advantageous for creditors who need to recover their money quickly.

The most important concern for the debtor is to analyze the extent to which the debtor can be relieved of its debt burden through the sale of assets. To assess the debtor's prospects after the loss of control, including its position in the new corporate structure or opportunities to rebuild in other areas. Job security is the most important thing for employees, so the plan should discuss the job security of employees, whether the new owner will retain the existing employees, whether the benefits and pensions of employees are guaranteed, and whether they will have a say in the reorganization process.

4 The practice and challenges of China's sale-type bankruptcy reorganization system

The purpose of China's sale-type bankruptcy reorganization system, that is, bankruptcy reorganization with the sale of the debtor's assets as the main means, is to dispose of the debtor's assets more efficiently, protect the interests of creditors, and keep the debtor's business as open as possible. The development process and challenges of this system in China can be divided into the following aspects.

4.1 Case study

In 1998, GITIC declared bankruptcy, a major event in the history of China's financial industry. GITIC

founded in the 1980s, GITIC is one of the first international trust and investment companies in China. Due to missteps and mismanagement in overseas investments, the company fell into serious financial crisis. In 1998, the Guangdong provincial government declared GITIC bankrupt, the largest bankruptcy of a financial institution since China's reform and opening up. A large number of creditors at home and abroad were involved in the bankruptcy handling, which was complex and had international implications. In the end GITIC's assets were liquidated and some of them sold to pay off debts. The case had a major impact on China's financial system, prompting the government and financial regulators to strengthen supervision and risk management of financial institutions.

The case exemplifies how China protects the interests of creditors in the face of the bankruptcy of a large enterprise or financial institution through a sale-style bankruptcy reorganization while trying to preserve the operation and value of the enterprise. Through these cases, China's bankruptcy legal system has been tested and developed in practical operation, providing important legal and practical experience for subsequent similar cases.

4.2 The main challenges and problems it faces

The Enterprise Bankruptcy Law of 2006 applies not only to state-owned enterprises but also to non-state-owned enterprises, including foreign-funded ones, marking the formal establishment of China's bankruptcy legal system. The law provides a legal basis for bankruptcy reorganization, but its provisions on sale-type bankruptcy reorganization are not clear enough. The Law on Enterprise Bankruptcy clarifies the procedures and principles of bankruptcy reorganization and provides a clearer legal framework for sale-style reorganization. Subsequent judicial interpretation and practice is that after the implementation of the Enterprise Bankruptcy Law, with the increase of bankruptcy cases, Chinese courts gradually began to form specific practices on sale-style bankruptcy reorganization.

In the process of selling assets, maintaining the continuous operation of the enterprise and protecting the interests of employees is another important consideration. Due to the large scale of restructured enterprises and the diversification of investment business, it is difficult to find a suitable strategic investor to take over the whole. Therefore, in the process of reorganization, we can take the main adjustment measures for the debtor such as enterprise merger and division, and first effectively integrate the debtor's high-quality assets to form a core business segment with market competitiveness, including technical qualification, inventory real estate, self-owned real estate and foreign investment equity, and so on Higher operating value to attract strategic investors to buy, so that it can continue to operate in the new enterprise, to maintain the survival of the production and business of the enterprise.

4.3 The reference of international experience and localization practice

Diversified legal practices provide different perspectives on how to effectively deal with enterprise bankruptcy. When formulating and improving its bankruptcy law, China needs to make reference to the framework of international bankruptcy law and the mature international bankruptcy legal system, such as Chapter 11 of the United States, especially in the aspects of reorganization procedures and creditor protection. And the standards for asset valuation and disposal need to be clear. On cross-border bankruptcy cases involving international creditors or multinational companies, China has studied and applied the relevant principles of international bankruptcy law to handle cross-border legal issues and international creditor relations. At the same time, however, China also needs to adapt to its unique market environment.

In the practice of localization, China's bankruptcy laws need to take into account the particularities of the domestic market, such as the status of state-owned enterprises, the stage of development of the market economy, and the importance of social stability. The Enterprise Bankruptcy Law requires the creditors' meeting to set up a voting group for small claims, so that the repayment of debts is appropriately tilted toward small creditors, which is conducive to the smooth passage of the reorganization plan. To this end, we can fully learn from the segmented compensation mechanism of the deposit insurance system, implement the debt repayment plan of progressive payment of the difference of ordinary claims, and delineate the specific standards for full and partial repayment.

5 Conclusion

Although the Enterprise Bankruptcy Law provides the basic framework, there are still many ambiguities or deficiencies in the specific operational details of sale-style reorganization, such as specific provisions on asset evaluation, sale procedures, and protection of creditors' rights and interests. In a sale-style reorganization process, the market reaction can be very variable. How to balance interests and ensure fairness and transparency in the sale of assets and the distribution of proceeds is an important challenge. China's sale-type bankruptcy reorganization system still needs to be continuously improved and developed in practice. This includes strengthening the legal framework, improving the capabilities of market participants, strengthening the protection of creditors' rights and interests, optimizing the role of the government and regulators, and effectively managing the expectations and reactions of society and the public.

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References

[1] United States Code. (n.d.). Title 11: The Bankruptcy Code.

[2] Warren E. (1987). Bankruptcy policy. The University of Chicago Law Review, 54(3), 775-814.

[3] European Company and Financial Law Review. (2020). European insolvency regulation: The framework of cross-border insolvency in the EU.

[4] Asia Business Law Journal. (2011). Japan Airlines' civil rehabilitation: A test case for Japanese corporate governance.

[5] Liu J., & Liu Y. (2018). Innovation in disposal of non-performing assets through sale bankruptcy reorganization. Shanghai Finance, (1), 55-59. DOI:10.13910/j.cnki.shjr.2018.01.009.

[6] Song Y., Li Z., & Zhou M. (2018). U.S. experience and local practice of the "sale reorganization" model. Modern Management Science, (1), 103-110.