

# Brief Discussion of Creditor's Interest Protection before Corporation Division

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**Abstract:** In our country, the company's creditors are usually passive in obtaining information related to the corporation division with their low participation. Therefore, it is important to construct and improve the relevant system of the creditor's right to know before the corporation division..

**Keywords:** corporation division, creditor's interest protection, creditor meeting

## 1. INFORMATION DISCLOSURE SYSTEM OF CORPORATION DIVISION

### (1) The meaning of information disclosure

Information disclosure can effectively regulate the corporation division. Corporation division is not only related to the survival and development of the company, but also to the realistic interests of each company's creditors. In economic activities, the shareholders and executives of the company use their own holdings or control the production information and other conditions. They have an obvious advantage by manipulating the separation process, manipulating assets and dividing the debt. It is often accompanied with publishing false information, selling company assets at low prices, holding down company stock prices, conducting related transactions and insider trading. Creditors are often in a passive position because they are not directly involved in the operation of the company. The information disclosure enables the creditors to obtain more information, so as to regulate the corporation division to a certain extent.

Information disclosure is beneficial to the creditor's realization of creditor's rights. The right to know is an important right of the company's creditors. The company operation determines whether the creditor's rights can be realized. The corporation division fundamentally changes the business model and organizational structure of the original company, which will have a significant impact on the creditors. The timely information disclosure during the corporation division makes the whole process more transparent, which is beneficial to the creditors to raise objections in time and maintain their legal rights. Therefore, the information disclosure plays an important role in creditors' realization of the creditor's rights during the corporation division.

Information disclosure facilitates creditors to supervise the corporation division. This process is often accompanied by the loss of assets, insider trading and other phenomena that harm the interests of creditors. However, when the creditors realize their own rights and interests through litigation, they not only waste time and money, but also have a difficult to proof. The information disclosure is a good solution of the proof, so as to better supervise the corporation division.

### (2) The present situation of corporation division information disclosure in China

The current company law has made provisions on the information disclosure of corporation division from the following aspects.

#### (a) The time of information disclosure

The time required for information disclosure is in article 176, paragraph 2, of the Corporate Law. According to this provision: during corporation division, the company should prepare the company's balance sheet and property list. The relevant creditors shall be notified within 10 days from the division date. At the same time, it is important to announce the division resolution and the relevant content within 30 days.

#### (b) The content and form of information disclosure

The law only regulate the company should prepare the company's balance sheet and property list [1]. The relevant creditors shall be notified within 10 days from the division date. At the same time, it is important to announce the division resolution and the relevant content within 30 days. However, only disclosure of the balance sheet and the property list cannot guarantee the right to know of creditors.

From the article 176, paragraph 2 of the Corporate Law we can find out the current form of information disclosure in our country is the form of notice and announcement.

There is no further detailed regulation on the content and form of information disclosure, and the Corporate Law has no relevant legal provisions of further explain.

### (3) Suggestions on perfecting the information disclosure system of corporate division

#### (a) The time of information disclosure

Based on the current regulation of information

disclosure, the writer believes we can learn from the relevant provisions -- Commercial Code of Japan. We can increase the time of the creditors to inquire and copy relevant information, and it will be brought for the two weeks before the director submits the split proposal or the split contract to the shareholders' meeting. It is extended to the next six months and extend the time limit for the creditors' right to know the corporate division.

(b) The content of information disclosure

In order to ensure the smooth realization of the creditors' interests, we should break through the present form. We can learn from Japan. When we disclose the company's split plan (or the company's split contract) to the creditor, it should also voluntarily disclose the reasons for the corporate division of scheduled obligations, the company's balance sheet and the assets income statement. Attached to these documents are opinions from independent third-party experts such as accountants, lawyers or securities dealers to improve the information content.

(c) Take network notification as one of the forms of information disclosure

In the form of public announcement, the creditor's right to know has its limitations. Many creditors of the company have lost the opportunity to claim their legal claims in the first place because of missing the notice. In order to better protect the creditors' right, China may consider introducing the Internet notification. Compare with the traditional notification, the network notification has its own advantages: wide range of use, high frequency of use, strong timeliness and so on. The number of Internet users in China is expected to exceed 800 million by 2015, according to a recent report released by the Chinese social science literature press. The number of Internet users in China rose 10.9 percent from a year earlier to 538 million on June 30. This means that 40% of the Chinese people are visiting the Internet [32]. China has officially entered the Internet age. In the past, letters and telephone calls are costly and difficult to obtain. It is not only efficient and cost saving, but also can solve the problem in the time of notifying creditors by using the Internet. Therefore, in the Internet age, it is a good form to use the network to carry out the notification of corporate division.

## 2. MEETINGS OF BONDHOLDERS SYSTEM

### (1) Meaning

In the Enterprise Bankruptcy Law, all creditors shall participate in the provisional institution of the right to self-government of the insolvency proceedings based on their claims to the company. Generally speaking, the creditors' meeting is held in order to guarantee the realization of the creditors' common interests and the exercise of the right to participate in the bankruptcy proceedings so as to facilitate the fair and smooth proceeding of the

bankruptcy proceedings. Relative to company bankruptcy, the risk of corporate division is less than bankruptcy. But based on the process, there is a risk that the company's property will be subject to major changes and even losses. Therefore, introduce the creditors' meeting system before the corporate division in the Corporate Law has certain positive significance to the creditors' interests.

### (2) The present situation

Usually the company's creditors have no chance to participate in the company's affairs. During the division process, the creditors have no chance to participate in the division, division form and how to divide the assets. This is very unfavorable to the creditor's timely and effective protection of their rights. In addition, from the current practice of our country, there is also a lack of smooth communication opportunities and communication channels among the creditors. Creditors have a weak sense of right to protect themselves, and they cannot actively and effectively communicate with each other to maintain and realize their claims. Meetings of bondholders system is a good platform and supplement to the protect creditor's interests. Unfortunately, our country has not yet formally established the system in the legislation. Creditors have no chance to raise their own opinions, and their rights may be undermined by the division.

### (3) Meetings of bondholders system in other countries and regions

Taiwanese company law stipulates in article 263: A company that issues new corporate bonds (usually corporate bonds issued by listed companies), creditors' principal or creditors who have more than 50 percent of the company's debt, they can hold the meeting for the same interests. The written resolution produced by the meeting shall be valid for all the creditors of the company and shall be executed by the trustee of the company's creditors. If the creditors' meeting has otherwise specified, it shall be given priority 2. In the Article 319 commercial code of Japan there regulates the creditors may hold a meeting of creditors to make resolutions in advance with the permission of the court. This exercise of the right of resolution to convene a meeting of creditors and the shareholders' rights of the shareholders of the company is not substantially different. Therefore, some scholars refer to this behavior as the stock ownership of corporate debt [3]. In the merger process, article 415 commercial code of Japan stipulates that the creditors have the right to decide on major issues such as merger and separation of the company. The decision of the company's creditors on matters such as the merger and separation of the company in law is mainly reflected in the creditor's meeting. They can examine the proof material of the creditor's rights, confirm whether the creditor's right of the divided company has the property guarantee

and its amount, discuss the adoption of the draft settlement agreement, and discuss the disposal and distribution plan of the bankruptcy property.

(4) Suggestions on improving the meetings of bondholders system in China

(a) Introduce the meeting system during the corporate division.

The meetings of bondholders system is an extremely important system in the modern enterprise system, and the company legislation in most countries and regions of the world has detailed provisions on the system. In China, we only introduce the meeting system in the bankruptcy and liquidation stage of the company, which is not enough to protect the interests of creditors. Therefore, it is necessary to introduce the system during in order to expand the protection scope of creditor's interests.

(b) The composition of meeting system

In the bankruptcy law of our country, the creditors of the bankrupt enterprise are determined mainly in accordance with the time limit of the people's court to accept the bankruptcy application. The corporate division is filed with the court. The composition may be determined according to the way the creditors of the company voluntarily declare to the separate company. In addition, the staff and enterprise representatives of the separate company are the stakeholders of the enterprise. The discrete activities of the company are closely related to their work and life. They should be allowed to participate and express their opinions on matters related to the division of the company.

(c) The functions and powers of the meeting system

The core center of the meeting system is to prevent the occurrence of damage to creditors' interests during the division process. Therefore, the creditors' meeting formed at this time should be more inclined to supervise the operation process of the corporate division. It is necessary to avoid the occurrence of assets loss, insider trading and other damages to creditors. Compare with the Bankruptcy Law, the meeting is only related to the bankruptcy of the company. The meetings of bondholders system should pay attention to the accounting books of the company, the balance sheet, the list of fixed assets and assets, the reasons for the scheduled debt performance, and the asset income statement and other aspects of the review and discussion. Moreover, they should listen to the opinions of lawyers, certified public accountants and other professionals on the above information.

## SUMMARY

The creditor's interest protection system before the corporate division is in the fundamental position. In Japan and Taiwan, information disclosure has

longer periods of time, more rich content, and more participation of creditors. In China, this information disclosure is slightly lagging behind and insufficient. In addition, the current Corporate Law in China is still short of the stipulations of the creditors' meeting. Therefore, it is necessary to draw on the mature legislative experience of other countries to further improve the existing information disclosure system based on China's national conditions, and introduce the company creditors' meeting system in due course.

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