

Practice and Legal Path of Personal Bankruptcy in Dongguan

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ABSTRACT. This paper explores how to explore the construction of personal bankruptcy procedure through the judicial practice of personal bankruptcy procedure in grass-roots cases, intends to provide practical experience with grass-roots practice for legislation and establishment of system, and analyzes the formation of the legal rules of personal bankruptcy in China according to the logic of question, exploration, revelation and path.

KEYWORDS: Personal Bankruptcy, Trial Case, Legal Path

Introduction

Li Shuguang, Professor, defines the concept of "personal bankruptcy law" as "the legal norms of personal bankruptcy law that means when a natural person who is a debtor cannot pay off his or her debts when they fall due, the court declares him or her bankrupt according to law, and liquidates and distributes his or her property or adjusts his or her debts, exempts his or her debts, and determines the rights and obligations of the parties in the bankruptcy process." [1]From this definition, the subject of personal bankruptcy law is a natural person who, as a debtor, is declared bankrupt by the court. In declaring bankruptcy, in addition to liquidating and distributing his property, it also contains the legal norms of debt adjustment, exemption and determination of the rights and obligations of creditors and debtors. Through the contents of the "Fifth Five-Year Reform Outline" of the Supreme People's Court, it is determined to push forward the establishment of the personal bankruptcy system. The key point of this paper is how to explore the procedural assumption in the construction of individual bankruptcy procedure through specific cases and carrying out the grass-roots judicial experiment of individual bankruptcy procedure, try to provide practical experience for the establishment of legislation and system based on grass-roots practices.

1. Questioning: Status of the Case of the Individual Subject to Execution

1.1 Cases where the individual is the person subjected to enforcement account for a high proportion of the enforcement cases.

Based on the judicial practice, this paper makes a statistical analysis of the cases handled and executed by Judge Huang Qingsheng in 2019. In 2019, Huang Qingsheng's team handled a total of 986 enforcement cases, of which 658 were cases in which natural persons acted as persons to be executed, 186 cases were cases in which companies acted as persons to be executed, and 142 cases were cases in which companies and individuals jointly acted as persons to be executed. In detail, the proportion of cases involving individuals as executors accounted for 66.73%. If the cases where companies and individuals were collectively regarded as executors were added, the proportion of cases involving individuals as executors would be as high as 81.13%.

1.2 The implementation rate of cases in which individuals are executed is low

The implementation rate of 658 cases of individuals acting as executors was only 26.37%, and that of 142 cases in which companies and individuals acted together as the executed persons was 28.59%.

1.3 The execution procedure cannot distinguish between "the individual has money and does not repay" or "really cannot repay the money"

In the absence of an individual bankruptcy law, the court will be unable to distinguish in the course of enforcement between "the inability to enforce the judgment with effort" and "the resistance to enforce the judgment", but to uniformly limit the high consumption of the persons subject to enforcement and include them on the list of dishonesty in cases where enforcement is not possible, and give them the "Laolai" logo [2].

2. Exploration: Feasibility Analysis of the Alternative System of Personal Bankruptcy

In order to solve the above-mentioned problems of execution for an individual as the person subjected to execution, in the absence of the provisions of the personal bankruptcy law, the creditor-debtor relationship shall be balanced as far as possible. The Supreme People's Court has formulated and promulgated corresponding rules and regulations as a temporary alternative system for the case of the person subject to enforcement, including participation in the distribution system, restrictions on high consumption, inclusion of the list of discreditable persons to be executed and interim policies, high-intensity, specific civil enforcement measures. The implementation and implementation of the alternative system make up for the lack of personal bankruptcy system in the new stage of the implementation of the legal basis for the defects. However, this series of alternative system cannot completely replace the individual bankruptcy system.

3. Path: Dongguan Practice of Personal Bankruptcy

Relying on the pilot "individual bankruptcy" cases of the basic-level courts, based on my country's current laws, regulations, and departmental rules, the experience of basic-level practical cases is summarized as follows:

3.1. Keep personal bankruptcy procedures simple

One of the characteristics of the Corporate Bankruptcy Law being implemented in our country is that the procedures are complicated, which is reflected in judicial practice and bankruptcy procedures, which is the long period of corporate bankruptcy.

Long and complex procedures will place an additional financial burden on individual debtors, incurring unnecessary costs and rendering insolvent debtors simply unable to afford the high costs of bankruptcy. Therefore, it is very necessary to resolve disputes between creditors and debtors in a short time, legally and clearly through summary procedures.

3.2. Prevent personal bankruptcy

Through the judicial case pilot, in the personal bankruptcy proceedings to promote the real process mainly based on the debtor's good faith. In order to regulate the loss of rights in the bankruptcy system of malicious individuals and the bankruptcy revocation system can reduce the probability of malicious bankruptcy, it is to be ensured that dishonest debtors do not have the opportunity to discharge their remaining debts through a personal insolvency regime.

3.3. Free choice of liquidation procedures and debt restructuring procedures

According to the legislation and judicial practice of countries and regions with mature personal bankruptcy systems, both liquidation procedures and debt restructuring procedures are included in personal bankruptcy procedures. Although complex procedures were designed to prevent individual debtors from abusing insolvency proceedings in order to avoid debt relief, they placed an additional burden on individual debtors and did not benefit creditors. The manner in which the individual debtor chose which procedure to apply should therefore be taken into account.

3.4. Settlement procedure

After the bankruptcy case is accepted by the court, the insolvency proceedings may be terminated by agreement between the debtor and the creditor on the issue of deferment and relief of the debt before the conclusion of the insolvency proceedings. This is one of the fastest and most convenient bankruptcy procedures. It should play an important role in personal insolvency proceedings where the number of creditors is relatively small and the bankruptcy assets are relatively small [3].

3.5. Bankruptcy exemption

One of the important contents of the personal bankruptcy system is the debtor's bankruptcy exemption. The bankruptcy exemption system is aimed at the honest debtor who cannot pay all the debts after the end of the bankruptcy procedure, a system of cancellation of their remaining debts to the extent provided for by law. But after the pilot case with creditors, debtors contact discussions, at this stage should be careful to use bankruptcy exemption.

But the whole procedure is based on the idea of personal bankruptcy. what we need to think about is how to reverse society's negative perceptions of personal bankruptcy and achieve the goal of "debt is no longer worthy of attention in this country, and a fresh start is of great significance"[4].

References

- [1]Li Shuguang. Basic Contents and Best Practices of Personal Bankruptcy System", in "China Investment in Science and Technology. Issue 19, 2016. p. 22.
- [2].See "Report of the Supreme People's Court on the People's Court on Solving " Difficult Enforcement" Work" by Zhou Qiang, President of the Supreme People's Court on October 24, 2018. Law Press. November 2018. p. 2.
- [3].Xu Ke. A Review of Russian Personal Bankruptcy Legal System. Shanghai International Studies University. 2018 Master's Thesis. p. 28.
- [4].According to American Professor Luo Zhenqi, his main research area is bankruptcy law.