

Legal Risk Management for Bankruptcy Liquidation of Listed Companies

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Abstract: *In the context of economic globalization, competition among enterprises is becoming increasingly fierce. Once listed companies have problems such as deteriorating financial conditions and insolvency, they may fall into bankruptcy. Bankruptcy is a market exit mechanism. Under the market economy, once an enterprise has insolvency and other problems, it may choose to apply for bankruptcy to protect the legitimate rights and interests of enterprise creditors and shareholders. Therefore, understanding the constituent elements of legal risks in bankruptcy liquidation of listed companies, analyzing their legal risks, and proposing corresponding risk control measures are the key to preventing legal risks for listed companies.*

Keywords: *Listed Company; Bankruptcy liquidation; Legal Risk Management*

1. Introduction

Bankruptcy liquidation is a special financial risk, for listed companies, its bankruptcy liquidation will be strictly regulated and concerned by the public. The bankruptcy and liquidation of listed companies will not only damage the interests of the company's shareholders and creditors, but also cause serious negative impact on the market [1]. In addition, in the process of bankruptcy liquidation, there may be some legal risks, such as litigation risk, illegal risk, etc. [2]. Therefore, listed companies need to develop appropriate bankruptcy liquidation risk management strategies to reduce the occurrence of relevant risks and ensure that the interests of the company and investors are protected.

In practical operation, the bankruptcy liquidation of listed companies involves different legal provisions and provisions, including bankruptcy law, securities law, company law, and other laws and regulations. If not dealt with reasonably, it may lead to a large number of legal disputes and litigation risks, harm the interests of the company and investors, and thus affect the stability and healthy development of the market. Therefore, for listed companies, establishing a sound bankruptcy liquidation risk management mechanism is a necessary measure to protect enterprises, maintain market stability, and enhance investor confidence.

2. Overview of bankruptcy Liquidation

Bankruptcy liquidation refers to the legal system in which an enterprise, when unable to repay its debts, accepts a debtor's bankruptcy case by the court, liquidates and distributes all the debtor's assets in accordance with legal procedures, and terminates the bankruptcy proceedings. Compared with ordinary civil litigation, bankruptcy liquidation has its own characteristics in terms of litigation subjects, trial procedures, and confirmation of creditor debt relationships. Due to the high professionalism, complexity, and policy nature of bankruptcy liquidation, in order to protect the legitimate rights and interests of creditors and shareholders, China's Enterprise Bankruptcy Law has made special provisions for bankruptcy liquidation. According to the Enterprise Bankruptcy Law of the People's Republic of China (hereinafter referred to as the "Bankruptcy Law"), the bankruptcy liquidation of listed companies includes four stages: the first stage is the bankruptcy application, from the court's acceptance of the debtor's bankruptcy application to the end of the bankruptcy proceedings. In general, bankruptcy applications can be filed by creditors, debtors, or courts. The applicant shall submit the bankruptcy application to the court of jurisdiction and provide relevant evidence, such as evidence that the enterprise is unable to perform its debts; The second stage is the liquidation of assets, between the court accepts the debtor's bankruptcy petition and the end of the bankruptcy proceedings. After the bankruptcy procedure is determined by the court, the bankruptcy administrator shall check, evaluate and liquidate the property of the enterprise. The liquidation of property mainly includes checking

accounts, appraising assets, disposing of property and settling debts. ; The third stage is the discharge of debt, following a court ruling to end the bankruptcy proceedings. During bankruptcy liquidation, creditors need to submit their creditor's rights declaration to the court, and the approval and confirmation of the creditor's rights declaration is an important link in the bankruptcy procedure. After approval and confirmation, debt repayment will be carried out according to the priority order of debt. From high priority to low priority, they are divided into bankruptcy liquidation expenses, priority to be paid, general creditor's rights and shareholders' rights and interests. The fourth stage is the liquidation of the bankruptcy organization, after the debtor is declared dissolved or revoked according to law. In the process of bankruptcy liquidation, the liquidator needs to complete the legal relationship of the bankrupt enterprise and organize the liquidation and distribution of property. Ultimately, the court makes a ruling that ends the bankruptcy process.

From this, it can be seen that bankruptcy liquidation is a process in which a bankrupt enterprise liquidates its assets in accordance with legal procedures, in order to repay debts and terminate its legal personality. Property liquidation, debt repayment, and bankruptcy organization liquidation are important links in bankruptcy liquidation. When applying the Bankruptcy Law, Chinese listed companies must clarify whether they meet the conditions stipulated in the Bankruptcy Law.

3. Legal risks in bankruptcy liquidation

Analyze the legal risks that may be involved in bankruptcy liquidation, such as labor disputes, disputes between creditors and asset disposal problems in the bankruptcy reorganization of state-owned enterprises.

(1) Labor disputes: In the bankruptcy and reorganization cases of state-owned enterprises, employees' labor rights and interests may be involved. For example, if the enterprise cannot continue to operate through debt restructuring or other means after bankruptcy liquidation, a large number of employees may lose their jobs. At the same time, employees may Sue for unpaid wages, benefits, and other issues.

(2) Creditor's rights disputes: In the process of bankruptcy liquidation, there may be disputes among creditors. For example, one creditor thinks it deserves a higher priority, while others think their rights are being ignored. In this case, these disputes may need to be resolved through legal proceedings.

(3) Asset disposal issues: In bankruptcy liquidation, it may involve issues such as the sale, transfer, and distribution of assets. These issues need to be handled in accordance with legal procedures to avoid violations. For example, in the case of bankruptcy and reorganization of state-owned enterprises, the unfair problem of asset disposal may arise. For example, some assets may be transferred at a price lower than the market price, which will damage the interests of other creditors.

(4) Tax issues: During the bankruptcy liquidation process, tax issues may be involved. For example, after the bankruptcy liquidation of a company, due to various reasons, it may lead to the company not paying taxes in accordance with legal provisions. At this point, the enterprise may face penalties from the tax authorities and pursue unpaid taxes, further increasing the burden on the enterprise.

(5) Contract performance issues: During the bankruptcy liquidation process, enterprises may also face contract performance issues. For example, enterprises may not be able to fulfill corresponding obligations as stipulated in the original contract, such as delivering goods or providing services. At this point, the counterparty to the original contract may file a lawsuit against the enterprise, demanding that the enterprise bear the responsibility for breach of contract.

In order to avoid the emergence of these legal risks, enterprises should take early measures when facing bankruptcy liquidation, formulate a detailed liquidation plan, and fully consider the legal risk factors. At the same time, the enterprise should try its best to negotiate with the defaulting party that causes the enterprise bankruptcy to solve the problem, so as to reduce unnecessary legal fees. If there is a legal dispute that cannot be resolved, be sure to contact a lawyer in a timely manner and solve the problem under the premise of following legal procedures.

4. Risk management means and matters needing attention for bankruptcy liquidation

4.1 Risk management means of bankruptcy liquidation

Bankruptcy liquidation is a complex task that requires a comprehensive assessment and management of various risks in order to ensure the legality, impartiality, and smooth progress of the liquidation work. The following are several common methods for managing bankruptcy liquidation

risk:

(1) Improving internal management mechanisms: Enterprises should establish sound financial and risk management systems, especially when they discover that they may face bankruptcy, they should strengthen control over important asset information such as finance and taxation, provide early warning and judgment, find solutions, and minimize losses as much as possible. In addition, enterprises should strengthen the management of employees and labor relations, and try to avoid additional burdens and legal disputes arising from labor disputes.

(2) Clarify risk responsibilities: During the bankruptcy liquidation process, the management and board of directors of the enterprise should clarify their respective rights and responsibilities and effectively fulfill their responsibilities. At the same time, it is necessary to clarify the risk responsibilities of each work link and related personnel, ensuring that during the bankruptcy liquidation process, the responsible person can clearly understand their scope of responsibility and the risks they bear, so as to take timely measures to avoid risk issues.

(3) Promote judicial supervision: enterprises can use legal means to hold the defaulting party accountable, find and recover losses caused by malicious acts, and reduce the risk of bankruptcy liquidation. At the same time, the enterprise shall fully cooperate with the judicial department and the bankruptcy administrator to promote the process of bankruptcy liquidation in accordance with the law and ensure the smooth proceeding of bankruptcy liquidation. In the process of bankruptcy liquidation, legal procedures should be followed, all kinds of rights and interests should be dealt with fairly, the interests of creditors and laborers should be protected, and enterprises should be reasonably liquidated and reorganized.

In the process of bankruptcy liquidation, it is necessary to attach importance to risk management, adopt appropriate internal control, risk early warning, strengthen legal compliance operations and other legal means to reduce risks, at the same time, strengthen internal and external supervision mechanisms, improve legal safeguard measures to ensure the compliance, fairness and smooth progress of liquidation. In addition to the common techniques mentioned above, here are some other ways to manage the risk of liquidation:

(1) Strengthen investigation and evaluation of asset situation: During the bankruptcy liquidation process, enterprises should comprehensively investigate and evaluate the company's asset situation, including equity, debt, finance, legal, human resources, and other aspects. This helps to accurately evaluate the assets and liabilities of the enterprise during the liquidation process, and is conducive to better planning liquidation strategies and reducing liquidation risks.

(2) Establishing a bankruptcy management team: Enterprises should establish a professional bankruptcy management team composed of professionals with relevant knowledge and experience, responsible for all aspects of bankruptcy liquidation, in order to ensure the smooth progress of bankruptcy liquidation.

(3) Regular risk assessment: Enterprises should establish a sound risk assessment mechanism and regularly evaluate and monitor their risk status. This can promptly identify and address risk issues, avoiding losses and legal risks to important assets of the enterprise.

(4) Effectively performing legal obligations: in the process of bankruptcy liquidation, the enterprise shall effectively perform legal obligations, including timely announcement, disclosure of information, protection of creditors' interests, etc. At the same time, the enterprise should actively cooperate with the bankruptcy administrator's work, such as financial information disclosure, providing necessary documents and materials, so as to better complete the liquidation work.

(5) Publicity and preparation for various risks: Enterprises shall strengthen publicity work, enhance the awareness of liquidation risks, and prepare plans and emergency measures to deal with various risks, so as to ensure a foolproof bankruptcy liquidation process.

In short, the bankruptcy liquidation risk management methods are various, enterprises should take multiple measures to deal with. It is feasible and effective to improve the internal control system, clarify risk responsibilities, promote judicial supervision, strengthen assets evaluation, set up bankruptcy management teams, periodically assess risks, effectively fulfill legal obligations, publicize and prepare to deal with various risks.

4.2 Precautions for risk management of bankruptcy liquidation

4.2.1 Declaration and examination of creditor's rights

Declaration of creditor's rights means that the creditor declares his or her creditor's rights to the

bankruptcy administrator, and the administrator examines and confirms it, and then the bankruptcy administrator, on behalf of the debtor, applies to the court for bankruptcy liquidation and transfers the relevant materials to the bankruptcy jurisdiction court. The declaration of creditor's right is the premise for the creditor to participate in the bankruptcy procedure and also the basis for the creditor to exercise the creditor's right.

As a public company, the declaration of creditor's rights of listed companies is directly related to the interests of investors, the stability of the securities market and the social public interests. Therefore, the creditor's rights must be examined to ensure that the legitimate rights and interests of creditors are protected. For the listed company, its creditor's rights examination mainly includes the following two aspects: first, the listed company should submit all its external creditor's rights vouchers to the manager; Second, the listed company should submit to the manager all the external claims to the debtor to prove the documents.

4.2.2 Implementation of the reorganization plan and settlement agreement

During the bankruptcy reorganization period of a listed company, the debtor or administrator shall formulate a reorganization plan and submit it to the court for approval. During the execution of the reorganization plan, the debtor or manager shall strictly submit statements to the creditors' meeting, creditors' committee, and court on time in accordance with the time and content specified in the reorganization plan. At the same time, under the supervision of the court, the debtor or manager should sign a settlement agreement with the creditor committee and creditor meeting respectively. If the debtor fails to submit the statement on time, it shall be deemed as not complying with the settlement agreement. The execution of restructuring plans and settlement agreements is one of the most important aspects of legal risk management in bankruptcy liquidation of listed companies. Therefore, listed companies must strengthen the management of these two types of legal risks.

4.2.3 Administration and distribution of bankruptcy property

The administration of bankruptcy property should include three stages: custody, change of value and distribution of bankruptcy property. The administration of the bankruptcy property shall be in accordance with the provisions of the Enterprise Bankruptcy Law, and the administrator shall be responsible for keeping it, and may entrust special institutions or personnel to be responsible for it. At the stage of bankruptcy property distribution, the administrator shall draw up the bankruptcy property distribution plan and submit it to the creditors' meeting for a vote. If the distribution is made on a pro rata basis, it shall be on the principle of not harming the interests of other creditors; In the case of pro rata distribution, all creditors shall be satisfied.

After the bankruptcy property distribution plan is confirmed by the court ruling, the administrator shall dispose of the bankruptcy property according to the plan. At the execution stage, the administrator shall investigate the debtor's property status and make an inventory of the property; At the same time, the administrator shall timely report to the court and inform all creditors of the execution of the property; For possible risks and problems, timely communicate, coordinate and solve with the court.

5. Conclusion

With the continuous improvement of China's securities market, the number of bankruptcy liquidation cases of listed companies will increase. Due to the lack of unified standards for bankruptcy liquidation of listed companies in China's judicial practice, there are many legal issues in the process of bankruptcy liquidation of listed companies, causing huge losses to investors. Therefore, identifying and analyzing the legal risks that exist in the bankruptcy liquidation process of listed companies, and proposing corresponding risk control measures, can help improve the judicial level of bankruptcy liquidation cases of listed companies in China's judicial practice, protect the interests of investors, and maintain the stability of the securities market.

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