Original Research Article

Research on institutional reform of reorganization rules in the revised draft of the enterprise bankruptcy law

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Abstract: The 2006 Enterprise Bankruptcy Law cannot meet the needs of rescuing distressed enterprises and realizing market-based exit under high-quality economic development. The Revised Draft implements nine systematic optimizations and reconstructions of the reorganization regime. By comparing original and revised statutory provisions, this paper analyzes the revision's driving factors, institutional values and legislative deficiencies, and proposes countermeasures for implementation. The research reveals that the Draft innovates institutions including pre-reorganization and post-reorganization credit repair. Nonetheless, the division of powers and liabilities in pre-reorganization and the balance of creditors' interests require further elaboration. Supporting judicial interpretations should be issued to refine relevant rules and improve China's modern bankruptcy legal system.
Keywords: enterprise bankruptcy law; bankruptcy reorganization; pre-reorganization; market exit

1. Introduction

The 2006 Enterprise Bankruptcy Law establishes a legal framework for distressed enterprise rescue and market exit. Nevertheless, surging market entities and emerging business formats have exposed prominent flaws in the original provisions, including sketchy reorganization procedures, absent statutory linkage for out-of-court restructuring, and unremovable dishonesty records for reorganized enterprises, resulting in long-standing judicial dilemmas over bankruptcy filing and reorganization implementation. Against this backdrop, the Draft comprehensively upgrades reorganization rules and creates new institutions such as pre-reorganization and credit repair. As the core mechanism for rescuing troubled enterprises, reorganization is taken as the research focus. This paper compares old and new statutory provisions based on nine major reorganization reforms in the Draft, analyzes institutional innovations and legislative defects, and offers theoretical references for judicial practice.

2. Historical background and core legislative objectives of the law revision

When the 2006 Bankruptcy Law was promulgated, China's market economy was still in its infancy with limited bankruptcy cases and single types of market entities, and its provisions mainly targeted restructuring of large state-owned enterprises and liquidation of traditional industrial corporations. As China shifts to high-quality development, new conflicts keep emerging: Rapid market turnover creates massive demand for bankruptcy exit for insolvent enterprises unable to settle debts via deregistration; market-oriented reorganization investment lacks supporting legal norms, disconnecting out-of-court restructuring from judicial reorganization; reorganized enterprises remain labeled as dishonest, restricting their financing and business operations. Meanwhile, emerging disputes such as consolidated bankruptcy of affiliated enterprises, risk disposal of financial institutions and personal secured debts of SME operators grow year by year. Without targeted statutory provisions, courts exercise discretionary power relying merely on judicial interpretations and guiding cases, leading to inconsistent judgments and low trial efficiency, which necessitates the revision of bankruptcy law to complete institutional systems.

The revision sets three core objectives covering reorganization optimization: First, to improve the legal mechanism for market exit by refining reorganization admission standards, removing hidden filing barriers and unblocking dual channels of judicial rescue and market-based exit for distressed enterprises; second, to cut time and economic costs of bankruptcy procedures through pre-reorganization negotiation to reduce trial and management expenses; third, to perfect China's bankruptcy legal system by absorbing mature foreign experience and codifying pilot institutions including pre-reorganization, post-reorganization credit repair and personal debt discharge to fill original legislative blanks.

3. Normative analysis of nine systematic optimizations to reorganization regime under the revised draft

Reorganization is the core mechanism for rescuing troubled enterprises. Chapter VIII of the original law only contains 15 general provisions with numerous practical details unregulated. The Revised Draft improves the whole reorganization chain covering nine links: Application and acceptance, out-of-court pre-reorganization, debtor self-administration, information disclosure, investor protection, formulation and voting of reorganization plans, court review and approval, execution supervision, and post-reorganization credit repair, forming a closed-loop legal framework. This section compares old and new rules in three modules.

3.1. Reforms on reorganization admission and debtor self-administration

Current law sets vague admission standards for reorganization, only requiring proof of insolvency or illiquidity without mandatory review of enterprise reorganization value, resulting in inconsistent judicial standards. Many viable enterprises with temporary liquidity crunches are denied reorganization access. The original law contains no pre-reorganization rules, so out-of-court debt agreements cannot be directly converted into judicial reorganization plans and dampen parties' willingness to negotiate. Although debtor self-administration is stipulated, its provisions are too brief. Courts rarely approve self-administration to prevent malicious asset transfer, leaving debtors without self-rescue initiative and lowering reorganization success rates.

The Draft makes three targeted improvements: First, it adds reorganization review provisions, specifies required application materials and authorizes hearings for complex cases to legally examine enterprise viability and reorganization value and unify filing standards; second, it formally establishes pre-reorganization, allowing debtors to negotiate with creditors out of court before case filing, whose agreed debt adjustment schemes can be incorporated into reorganization plans to shorten trial cycles and reduce administrator costs; third, it refines rules for debtor self-administration, clarifying applicable conditions, termination grounds and information disclosure obligations to balance corporate operation autonomy and creditor protection.

These reforms smooth reorganization procedures and boost market-based self-rescue efficiency, yet practical challenges persist: There is no unified quantitative standard to assess reorganization value, which heavily relies on judges' and administrators' interdisciplinary expertise; insufficient whole-process supervision over pre-reorganization may enable debtors to abuse the system to delay debt repayment or transfer assets, calling for refined regulatory rules to prevent institutional distortion.

3.2. Improvements to supporting procedural rules for reorganization

The original law lacks independent information disclosure clauses for reorganization, only imposing scattered liquidation cooperation obligations on debtors. Without mandatory disclosure of operational data, asset changes, investment plans and debt settlement schemes, creditors cannot obtain authentic corporate information and are deprived of adequate rights to know and vote. In addition, the 2006 law contains no provisions on the recruitment, rights and obligations of reorganization investors, triggering frequent disputes such as investor withdrawal, asset fraud and creditor obstruction, which restrain social capital from participating in reorganization. As for voting procedures, the original law requires all creditor groups to vote on reorganization plans, even those whose claims will be fully repaid without losses, leading to cumbersome voting and prolonged trials. The Revised Draft remedies these loopholes:

(1) Special reorganization information disclosure rules are added, requiring debtors and administrators to fully, timely and truthfully disclose financial data, reorganization proposals, asset disposal and capital usage to safeguard creditors' right to information.

(2) Articles 113 and 114 create exclusive norms for reorganization investors, standardizing public recruitment, fund supervision, equity protection and exit restrictions to regulate the reorganization investment

market and attract social capital.

(3) Formulation and voting rules are optimized with statutory mandatory contents for reorganization plans and an innovative voting exemption system. Creditors with unimpaired claims are exempted from voting to streamline procedures and accelerate plan adoption.

These provisions improve bankruptcy law from the dual dimensions of procedural fairness and commercial efficiency. Information disclosure safeguards creditor interests, while standardized investor management and simplified voting cater to market-oriented reorganization demands, embodying the market-driven orientation of the bankruptcy law revision.

3.3. Upgrades to post-reorganization safeguard regimes

Current law contains sketchy provisions on court approval of reorganization plans, lacking statutory criteria, pre-procedures and remedy channels for judicial cram-down, which may trigger improper judicial interference with creditors' substantive rights. The original law only vaguely requires administrators to supervise plan implementation without detailed rules on supervision scope, plan revision and termination of execution. Many debtors arbitrarily adjust business strategies and misappropriate reorganization funds after approval, leading to failed reorganization and secondary bankruptcy with all prior investments wasted. In addition, there is no institutional linkage between bankruptcy rules and the dishonesty punishment system. Successfully reorganized enterprises are burdened with persistent dishonesty records that block financing, bidding and qualification applications, obstructing corporate revival.

The Revised Draft optimizes post-reorganization rules covering approval, execution and follow-up safeguards. First, it defines statutory requirements for ordinary and mandatory approval, introduces hearings prior to cram-down rulings and grants aggrieved parties appellate remedies to constrain judicial discretion. Second, it expands administrators' supervisory obligations and specifies statutory grounds for plan revision and reorganization termination to prevent hollow reorganization. Third, it pioneers a credit repair regime, allowing enterprises fully performing repayment schedules to apply for erasure of dishonesty records.

As a landmark institutional innovation of this revision, the credit repair system bridges bankruptcy reorganization and the social credit system, eliminating unreasonable lifelong restrictions for single dishonesty and embodying the rescue-oriented, humanistic spirit of modern bankruptcy law.

4. Legislative deficiencies and potential implementation risks of the revised draft

4.1. Risk of deviating from the fundamental nature of bankruptcy law

As a special commercial law for fair debt settlement and distressed enterprise rescue, bankruptcy law centers on equal liquidation of claims and revitalization of market resources. However, the current revision assigns excessive social governance tasks to the bankruptcy system including employment maintenance, social stability and local hidden debt resolution. Overemphasis on public interests may force creditors to make concessions for corporate survival in extreme cases, violating the principle of equal creditor protection and weakening the neutrality and professionalism of bankruptcy law.

4.2. Insufficient supporting detailed rules

Many key practical provisions are only outlined in principle with massive legislative blanks, including the scope of court intervention in pre-reorganization, division of administrators' powers in pre-reorganization, differentiated SME standards across industries and tiered administrator remuneration rules for simplified procedures. Without supplementary judicial interpretations upon formal promulgation, inconsistent judgments across courts will recur.

4.3. Higher professional thresholds for judicial and industrial practitioners

The nine major reorganization reforms substantially expand the scope of bankruptcy legal norms. Judges are required to master commercial, financial and tax expertise, while administrators need new capabilities in pre-reorganization negotiation, investment due diligence and credit repair application. Grassroots courts face shortages of professional bankruptcy judges, and small and medium-sized administrator institutions have uneven comprehensive competence. Existing judicial and industrial resources cannot rapidly adapt to the new legal standards, likely causing obstacles to nationwide implementation in the short run.

5. Prospects for improvement pathways after the formal implementation of the enterprise bankruptcy law

5.1. Clarify applicable standards for ambiguous statutory clauses

After formal enactment, the Supreme People's Court shall issue supporting judicial interpretations promptly: First, define SME identification criteria for bankruptcy proceedings by supplementing special provisions based on MIIT industrial classification standards; second, elaborate detailed rules on court intervention boundaries in pre-reorganization, conversion conditions between simplified and general procedures, credit repair application workflows and investor fund supervision to eliminate legislative ambiguities.

5.2. Improve supporting cross-administrative coordination mechanisms

Post-reorganization credit repair involves credit reporting, market supervision, taxation and bidding authorities, while personal debt discharge of SME operators requires coordination with financial regulators. Administrative regulations and ministerial rules shall be formulated to clarify statutory inter-departmental cooperation obligations and break institutional barriers between sectoral rules and the Bankruptcy Law.

5.3. Standardize specialized bankruptcy trial teams and administrator industry governance

Local courts shall set up specialized bankruptcy collegial panels and launch targeted training programs for judges on the new law. Bankruptcy industry associations shall establish classified management systems for administrators, deliver regular vocational training covering pre-reorganization and simplified SME bankruptcy, and optimize tiered remuneration standards to reduce service costs for SMEs, consolidating talent and industrial foundations for the implementation of the new law.

5.4. Phased implementation supported by pilot practice to summarize practical experience

For controversial systems including SME classification standards and pre-reorganization abuse prevention, pilot programs shall be launched in provinces and cities with developed private economies and dense SME clusters. Judicial data from pilot cases shall be analyzed to identify operational defects, and detailed rules shall be dynamically revised based on practical feedback to realize unified nationwide implementation.

6. Conclusion

Rooted in the practical demands of China's new-era market economic development, the Revised Draft consolidates the institutional foundation for distressed enterprise rescue through nine optimized reorganization rules, aligning with the national strategy of building a market-oriented and law-based business environment. It achieves leapfrog progress in institutional innovation, systematic improvement and balanced interest protection, marking China's shift from sketchy general bankruptcy legislation to refined, tiered modern bankruptcy rule of law construction. Despite room for improvement regarding SME identification criteria, procedural details and cross-departmental coordination, the revision fundamentally resolves long-standing institutional bottlenecks in bankruptcy judicial practice at the top legislative level, addressing the historical lack of exclusive rules for SMEs and complete reorganization provisions.

With the gradual release of supporting judicial interpretations and administrative rules, the official version of the Enterprise Bankruptcy Law will further unleash the institutional efficacy of bankruptcy rule of law. On one hand, the reorganization regime will revitalize viable distressed enterprises and optimize social resource allocation; on the other hand, simplified SME bankruptcy procedures will smooth market entry and exit channels for private small and micro entities, laying a solid legal guarantee for the high-quality and sustainable development of China's private economy.

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