Analysis of the Issue of Real Rights for Security in the Perspective of Bankruptcy Law

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Objectives: China's opening to the outside world is getting higher and higher, which effectively promotes China's economic development. Under such economic development background, more and more different kinds of economic situations appear in the market.Methods: The continuous progress and development of society has provided good conditions for the perfection of bankruptcy law and guarantee law. In the process of dealing with collateral in bankruptcy law, the complexity of its environment leads to the interaction between bankruptcy law and guarantee law. Results:From the perspective of law enforcement, there are still some incompatibilities between China's guarantee law and bankruptcy law to be solved. This paper discusses the real right for security from the perspective of bankruptcy law, and analyzes the issues related to the development of bankruptcy law and security law that affect the real right for security, aiming at providing assistance for the healthy and orderly development of the industry.Conclusion: In the research, we need to pay close attention to the various processes of bankruptcy procedure and the implementation methods of real right for security, so as to ensure the responsibility system of real right protection.

Keywords: bankruptcy law; security interest; responsibility system; complexity
Tob Regul Sci.™ 2021;7(5-2): 4722-4727
DOI: doi.org/10.18001/TRS.7.5.2.37

Facing the new economic situation, the innovative economic model came into being. While getting more development opportunities, it is also facing great development challenges [1]. With the development of society, China's bankruptcy law and guarantee law are also constantly improving. When dealing with the collateral in the bankruptcy law, it will be affected by the interaction of the bankruptcy law and the security law at the same time. Therefore, the core of dealing with such problems mainly lies in the mortgage and pledge [2]. Under the background of supply side structural reform, the development of China's economic market changes with each passing day, but in the process of economic development, it will also be affected by the development of economic enviro nment [3]. Bankruptcy law plays an important role in the development of China's market economy. Its main role is to limit and deal with economic affairs and ensure the normal development of the whole market [4]. During the implementation of China's bankruptcy law, property right is highly valued in the bankruptcy law, and the security interest holder will have a direct impact on the operation of the whole procedure. The significance of the security interest to the security interest holder is that when the debtor fails to perform the due debt or the situation of realizing the security interest agreed by the parties occurs, the security interest holder can have priority to be compensated for the collateral [5]. With the development of China's socialist market economy, the economic relations between citizens and legal persons in the form of debt are becoming more and more frequent. The establishment of security interest plays an important role in ensuring the effective performance of debt, especially contractual debt, maintaining the order of commodity circulation and protecting the legitimate rights and interests of citizens and legal persons [6].

Security interest and bankruptcy are two important systems that compete and interact with each other. Although both are to help creditors realize their creditor's rights, the original intention of creditors to require the debtor to provide collateral is usually to worry that the debtor will fall into bankruptcy and cannot pay off its debts in full [7]. The purpose of the bankruptcy system is to fairly clean up the relationship between all creditor's rights and debts, so that all creditors can be paid equally. The purpose of establishing the security real right system in the property law is to ensure the smooth realization of the creditor's rights. When the debtor is lazy in performing the due debts, the creditor has the right to auction the collateral and receive priority compensation with its price [8]. The treatment of security interest in bankruptcy law should pay attention to the interaction between security law and bankruptcy law, and the core lies in the restriction and protection of mortgage and pledge in bankruptcy proceedings. To explore the security interest in the perspective of bankruptcy law, we should focus on the limitation and protection of mortgage in the process of operation procedure. How to solve the economic disputes in the old model to the greatest extent, protect the existing interests and realize the redistribution of resources in the market has become one of the main problems in the current market development. This paper discusses the issue of security interest in the perspective of bankruptcy law, and analyzes the relevant impact between the development of bankruptcy law and the development of security law, in order to provide assistance for the healthy and orderly development of the industry.

The Influence of the Development of Guarantee Law on Bankruptcy Law

From the aspect of real right for security, the future development trend of real right for security mainly presents diversified characteristics, and the scope of the existing real right security system is gradually expanding, including mortgage and lien, etc. Moreover, the diversification of real right for security is embodied in the form of right and the scope of collateral. Typical guarantee generally refers to the form of guarantee stipulated in the Property Law and Guarantee Law, while we call the financing method which is not clearly stipulated in the law but has the nature of guarantee as atypical guarantee [9-12]. The appearance of atypical guarantee breaks the framework constraint of traditional typical guarantee, and has simpler and more convenient operation form and more flexible realization mode, so it is widely used in real life. From the perspective of legal scope and implementation application, the content of guarantee law is more stable and its operation forms are more abundant. In the process of development, guarantee law has gradually formed a wider application scope and simplified implementation application program system, which will have different influences on bankruptcy law[13,14]. The scope of the real right for security is getting wider and wider, and both the form of rights and the scope of collateral show a diversified development trend. Our current real right guarantee system involves various rights systems such as mortgage, lien and pledge, and the requirements for collateral and pledge are getting wider and wider.

With the improvement and development of relevant laws, the process and procedure of realizing the real right for security has become more simplified, which can effectively improve the efficiency of guarantee behavior and promote market development. However, as far as bankruptcy law is concerned, there is still controversy about the use of the right to suspend the exercise of real right after bankruptcy liquidation in China, which is also a problem that needs to be solved in the development of relevant laws[15,16]. The valuation of collateral will change with the development of guarantee law, and this valuation will play an important role in bankruptcy liquidation, whether it can realize the key measures for the protection of human rights of collateral. In the process of bankruptcy reorganization, the richer forms of security rights and the scope of collateral will have an important impact on its further development. Although the execution procedure of real right for security is getting simpler, there are still some problems in the handling of real right for security in bankruptcy liquidation. For example, after bankruptcy liquidation, whether you have the right to exercise real right. How to choose a correct bankruptcy liquidation time has also become a key node in the realization of real right for security. For the bankruptcy reorganization process of the company, only by having more abundant forms of security rights and a wider range of collateral can it promote the reorganization and development of the company and benefit the development of the whole market.

The Influence of the Development of Bankruptcy Law on Security Law

With the continuous development of China's market economy, the legislative purpose of China's bankruptcy law has changed. The original legislative purpose of bankruptcy law is to protect the interests of creditors of bankrupt enterprises, which is similar to the legislative purpose of guarantee law. Compared with the general procedure, China's bankruptcy law is mandatory and final. Once the bankruptcy procedure is initiated for an enterprise, the enterprise must thoroughly clear its debts. Bankruptcy law is mandatory. Compared with the conventional bankruptcy procedure, when an enterprise starts bankruptcy liquidation, due to judicial intervention, when dealing with creditor-related debts, it means final settlement. At present, it is a key principle in the implementation of bankruptcy law to give necessary respect to guarantors and comply with relevant laws and regulations of real rights for security. Generally speaking, if the debtor does not have the ability to repay debts, the failure to pay off debts can be regarded as bankruptcy. By analyzing the nature of the debtor and the purpose of the guarantee in bankruptcy law, we know that the superiority of the real right for security is directly reflected in the protection of creditors, the market and the balance among enterprises in the market. Compared with the general bankruptcy procedure, the bankruptcy law is mandatory and final because of judicial intervention. Generally, when we start the bankruptcy procedure, it means that we will thoroughly clean up all the debts and bonds related to debtors.

In the case of rescuing the bankrupt enterprise, the application of the relevant provisions of bankruptcy law can play a certain role in limiting the real right for security under different environmental backgrounds. On the one hand, the appearance of the real right for security is to realize the financing in the process of the company's development; on the other hand, it is to reduce the risk of enterprise bankruptcy, realize the risk transfer and prevention, realize the sustainable development of the economic market, and endow the enterprise with stronger viability. When the property is paid off in order, the comprehensive characteristics of bankruptcy law have become an important factor in determining priority. If a legal person applies for bankruptcy according to a fixed procedure, it means that the debtor of the enterprise no longer has legal obligations to the enterprise. If the funds held by an enterprise as a legal person can't repay the debts due, it will usually refer to the relevant regulations and then clean up the existing assets. For debts that have not yet expired, once an enterprise starts bankruptcy proceedings, it means that debts that have not yet expired have been terminated. In the established fact of enterprise bankruptcy, only by safeguarding the real right for security through the guarantee law can the economic loss of the enterprise be reduced. China's bankruptcy law has undergone changes in different economic development periods, and these changes have also affected the development of guarantee law.

METHODS

From the legislative point of view, the conflict between bankruptcy law and real right for security exists at the beginning of legislation, and the biggest conflict lies in the priority conflict of real right for security. One view is that if there is no corresponding collateral asset, the principle of priority in sequence should be upheld, that is, the labor creditor's rights still occupy the first important position. In this context, the priority of the real right for security will not be affected by any factors. Another view is that labor creditor's rights are an important part of legal priority, which can meet the specific requirements of the first priority legal level by dividing them into different levels. According to the relevant provisions of the bankruptcy law, when an enterprise starts bankruptcy proceedings, the employee pension, medical care and pension expenses owed by creditors are classified as employee compensation, and their priority is lower than the security interest [17]. The fundamental purpose of raising the priority of labor creditor's rights and making it higher than the real right for security is to protect the fundamental interests of workers from infringement. Looking at the existing laws for the protection of workers' rights and interests, we can find that imperfection is still its most prominent feature, and the way of safeguarding workers' interests by relying on the labor security law is still a relatively effective measure at present. According to the legislative idea of labor law, workers not only pay their own labor in the process of work, but also have dependency, so it is reasonable to put them in the first place in bankruptcy liquidation. However, from the perspective of bankruptcy law, its legislative purpose is to protect the basic rights and interests of creditors, which cannot be sacrificed blindly. Therefore, when dealing with the above conflicts, we should base ourselves on the premise of harmonious social development, and protect the basic rights and interests of workers by using social security law and labor law.

RESULTS

The purpose of real right for security is to promote the financing behavior of enterprise development, and at the same time, it also reflects the application characteristics of reducing risks and avoiding bankruptcy of enterprises. However, when an enterprise goes bankrupt, there will often be property losses beyond the value of collateral, such as the second sale of equipment and the auction of real estate in bankrupt enterprises, which will increase the cost of creditors. In legislative practice, bankruptcy laws in most countries have a bankruptcy administrator system. After the bankruptcy procedure is implemented, the bankruptcy administrator is fully responsible for the management and disposition of the debtor's property, so it is impossible for the debtor to create security interests in all its property. In addition, even though the real right for security was established before the court accepted the bankruptcy case, according to the relevant provisions on the right of revocation, if the debtor provides property guarantee for the debt that was not secured by property within the critical period of bankruptcy, the bankruptcy administrator has the right to request the court to cancel it. The legislative department should gradually unify the bankruptcy liquidation procedure and the guarantee valuation procedure, simplify the procedure, and improve the flexibility and applicability of the procedure. When dealing with collateral and formulating voting rules, we should improve the diversity of the system, and at the same time fully consider the actual needs of society, and further expand the scope of collateral.

Different from bankruptcy liquidation and bankruptcy reconciliation, the limitation of the priority of the real right for security in bankruptcy reorganization procedure is a substantive limitation. That is, in the bankruptcy reorganization procedure, all creditor's rights are equal in nature. The specific contents of the Bankruptcy Law should also fully consider the isolation effect of enterprise bankruptcy under different circumstances, and at the same time, introduce more detailed explanations and explanations on new security rights, so as to promote the development of innovative financing methods and make the real right for security more in line with the actual situation. For the sake of the reorganization of enterprises and the interests of creditors, the forms of security interests in the reorganization procedure should be restricted. If during the reorganization, creditors with security interests still have the right to be paid first for the debtor's specific property, it will lead to the loss of the material basis on which the reorganization system depends, and the production and operation of enterprises cannot continue. In the reconciliation procedure, the excessively loose provisions on the exercise of the rights of the real right holder will lead to the inability to complete the reconciliation in some cases. The reconciliation system should properly restrict the exercise of the rights of the real right holder, so as to ensure the success rate and effectiveness of reconciliation. At the same time, the settlement system should also give the secured party the right to vote on the settlement agreement, so that the rights and obligations are equal, and the secured party which is crucial to the settlement in some cases should not be regarded as an outsider.

DISCUSSION

From the perspective of bankruptcy law, when dealing with the real right for security, we should pay attention to two issues, namely, the characteristics of bankruptcy itself, and the relationship between real right and creditor's right when running bankruptcy procedure. Enterprise bankruptcy law is known as the constitution of market economy in modern society, which is of fundamental significance for protecting market credit, maintaining market order and ensuring the good operation of the market. In order to carry out the bankruptcy procedure effectively, it has become a common phenomenon in bankruptcy legislation of various countries to make necessary restrictions on the real right for security in bankruptcy law. However, there should be differences between the restrictions of real right for security in bankruptcy liquidation and bankruptcy reorganization, and the restrictions should be based on the guarantee. Although the value goal of bankruptcy law is increasingly pursuing the maximization of social interests, it does not mean sacrificing the interests of the other party, but should be achieved on the basis of the relative balance of interests of all parties. When analyzing specific cases, relevant departments should take a reasonable view of the differences between them, strengthen the division of property rights and the definition of bonds, and implement the law of priority in order to protect the legitimate rights and interests of creditors. When dealing with the real right for security, we should adopt the principle that real right takes precedence over creditor's rights, and correctly understand the bankruptcy law as the liquidation principle, so as to further protect the interests of creditors in the process of enterprise bankruptcy liquidation.

Human Subjects Approval Statement

This paper did not include human subjects.

Conflict of Interest Disclosure Statement

None declared.

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