

# Information Disclosure System of Enterprise Bankruptcy Reorganization

FanJun Zeng

Economic law, School of law, Anhui University of Finance and economics, Bengbu, 233000, China

## Abstract

In today's information age, because the bankruptcy law on the reorganization of information disclosure provisions are not perfect, resulting in the practice of creditors because of incomplete information disclosure and fraud phenomenon. In China's current information disclosure system, there are some problems, such as limited subject of information disclosure, unclear content scope and disclosure time node, and lack of legal liability of the subject who violates the obligation of disclosure. Based on this, we should expand the subject of information disclosure obligation, clarify the scope of disclosure content, clarify the time point of information disclosure, and increase the legal liability of the subject who violates the disclosure obligation to improve the information disclosure system of bankruptcy reorganization in China.

## Keywords

Bankruptcy reorganization; Information Disclosure; American Information Disclosure System.

## 1. The necessity of information disclosure in the process of enterprise bankruptcy reorganization

The purpose of enterprise bankruptcy reorganization is to improve the operating difficulties of enterprises, stimulate the vitality of enterprises and promote the development of zombie enterprises. In our judicial practice, the debtor infringing on the interests of creditors under the name of "bankruptcy reorganization" occurs from time to time, and the main reason is that there is no perfect and systematic information disclosure system in our bankruptcy law.

### 1.1. Asymmetric information damages the rights and interests of creditors

The so-called information asymmetry means that due to different social division of labor, different groups have different mastery of the same kind of information. The subjects in the information advantage position often have more choices and decisions than those in the information disadvantage position. Modern society is also an information society. Generally speaking, the more effective information you get, the more benefits you will get. In the development of enterprises, the emergence of professional managers has led to the separation of managers and investors. Compared with business managers, investors of enterprises have a single way to obtain enterprise information. Generally, they can only know the business management status through the information disclosed by business managers. Secondly, the investors of enterprises are at a disadvantage compared with the managers in terms of professional knowledge and skills, which leads to their inability to obtain effective enterprise information in time. In today's business activities, enterprises are always in an information dominant position compared with investors. If there is no effective information disclosure supervision, enterprises will use their own information advantages to carry out selective information disclosure to protect their own interests, which will greatly harm the interests of investors.

The essence of enterprise bankruptcy reorganization is "the regeneration of the company". By introducing new assets, we can obtain the substantial control of the company's creditor's rights and management. On the one hand, it can enable the company to regain the ability to operate. On the other hand, creditors can obtain a higher repayment rate by transferring part of their interests. If one party of the enterprise does not actively disclose the information, other subjects (including the reorganizer and the creditors of the enterprise) other than the business managers will basically be unable to obtain the business information.

## **1.2. The realization of the value of freedom and justice requires information disclosure**

The human nature of law essentially reflects its public attribute. In the process of enterprise bankruptcy and reorganization, in order to protect the creditors and enterprise shareholders' right to choose the follow-up development of the enterprise and reduce the occurrence of excessive information gap, as the enterprise and reorganization manager in an information dominant position, they should actively, timely and fully disclose the relevant information of the enterprise to the information inferior party. Only when creditors, enterprise shareholders and other interested parties obtain effective information of the enterprise timely and fully, can they evaluate the reorganization plan and the reorganization plan, so as to make choices beneficial to their own rights and interests.

## **2. Problems of information disclosure in reorganization procedure in China**

China has basically formed a system of legal regulations on information disclosure in the securities field. Relevant provisions have been made on information disclosure in the securities law, the company law, the Interim Regulations on the administration of stock issuance and trading, and the measures for the administration of information disclosure of listed companies specially issued by the CSRC. In contrast, in the field of bankruptcy, only the enterprise bankruptcy law has made simple and scattered provisions on information disclosure in reorganization proceedings. For example, Article 15 of the bankruptcy law stipulates that the debtor needs to cooperate with the court and the bankruptcy administrator and truthfully answer their inquiries, and that the debtor needs to accept the inquiries of creditors.

### **2.1. Restricted subject of information disclosure obligation**

According to Article 15 of China's bankruptcy law, most of the subjects of information disclosure in China are debtors. In practice, it generally refers to the legal representative of the enterprise. In special cases, the relevant manager of the enterprise is decided by the court. The British bankruptcy law stipulates that in the bankruptcy reorganization stage, the so-called "official receiver" is mainly responsible for information disclosure. The receiver may require certain persons to provide him with financial statements of the company in accordance with the provisions of the law. The official receiver mainly includes: the previous responsible persons before the liquidation of the company, the personnel who participated in the establishment of the company, the current employees of the company, the personnel who worked in the company and other personnel who the official receiver believes can provide the information they need. Compared with the provisions of the British bankruptcy law, the scope of the subject of the obligation of information disclosure stipulated in the bankruptcy law of our country is narrow, which makes some subjects who actually control the enterprise information and should disclose the information fail to perform their obligations, thus making the information disclosure system an empty shelf, which leads to the failure of the reorganization process.

## 2.2. The scope of information disclosure is not clear

In the bankruptcy law of our country, the draft of reorganization plan is also stipulated in Article 81 for the contents of information disclosure. The contents of the draft mainly include the future business direction and strategy of the debtor, the current creditor's rights of the creditor and the relevant contents to be implemented after the adoption of the reorganization plan. This legal provision has made corresponding provisions on the contents of the reorganization plan, but there are no provisions on other information to be disclosed except the reorganization plan. However, as far as the reorganization plan is concerned, the legal provisions are also relatively careless, and there is no clear and unified information disclosure standard, which gives judges greater discretion over the information disclosure standard. As a result, it is easy for judges to judge the content of information disclosure when trying bankruptcy cases. Due to the lack of unified information disclosure standards, the party undertaking the obligation of information disclosure is not fully disclosed due to external factors, And then damage the rights and interests of the information inferior party.

## 2.3. The time node of information disclosure is not clear

Information has economic value because of its timeliness. According to their own needs, combined with their own experience, users use scientific methods to analyze and screen the information they need in the information flow. Therefore, the economic value of information depends on its advanced time value. For the same user, information has different economic value at different times. In the reorganization process, the key to maintaining the balance of interests between creditors and enterprises is the content and time of information disclosure. In each stage of the reorganization process, all information that can affect the interests of creditors should be disclosed, including procedural information and substantive information. Procedural information can remind and notify creditors and other stakeholders of the process of enterprise reorganization, while substantive information can affect creditors' decisions. Due to the timeliness of information, and there are no relevant provisions on the content and time point of information disclosure in the enterprise bankruptcy law, in China's judicial practice, the phenomenon that the disclosure time lag of information disclosure obligors causes the interests of creditors and other stakeholders to be damaged is common.

## 2.4. Lack of legal liability for violating the obligation of information disclosure

Any system that does not stipulate legal liability is just justice on paper, which will make the law a mere formality. Any system should have corresponding legal liabilities, and information disclosure is no exception. For the legal liability of the subject who violates the obligation of information disclosure, China's bankruptcy law mainly stipulates in articles 126, 127 and 130. Article 126 stipulates that if a relevant person who is the subject of the obligation of information disclosure violates the provisions of the law and makes untrue or incomplete disclosure of information, the people's court may punish him according to law. Article 127 also stipulates that the people's court may impose a fine on the enterprise's information discloser if the debtor submits false, inaccurate or fails to submit relevant information about the enterprise's property to the court, such as a statement of property status, a detailed list of debts and claims, etc. However, in addition, the law does not have other provisions on the breach of obligations by the information discloser. For example, there is no provision on the liability that the information discloser should bear when causing economic losses to the stakeholders; At the same time, the law has not clearly stipulated the standards and amount of punishment for the subject of information disclosure. Article 130 stipulates that the court may impose a fine if the administrator fails to fulfill his due obligations; If its management behavior causes losses to the beneficiaries of information disclosure, it shall be liable for damages. However, this article does not stipulate whether the duty of diligence and loyalty includes information disclosure, nor does it stipulate the scope of damages.

### 3. Information disclosure in American Bankruptcy Law

The information disclosure system in the United States is mainly stipulated in article 1125 of the bankruptcy code, which divides the information disclosure into two parts: court approval and information disclosure.

#### 3.1. Court approval

The proposer of the plan needs to submit an information disclosure statement to the court within a certain period of time. The statement must be reviewed and approved by the court before it takes effect. In order to ensure that the parties can obtain sufficient and effective information when voting, the court will hold a hearing on the information disclosure statement and invite interested parties to participate in the objection and hearing procedures of information disclosure. This will help stakeholders to master the information they need faster and more comprehensively. On the other hand, it can also supervise the plan proposer to continuously improve the information disclosure, so that the disclosed information can more meet the needs of stakeholders.

The hearing mainly includes four parts: prior notice, objection collection, hearing and review. First of all, with regard to the notification requirements, the United States stipulates that the time for notifying the relevant stakeholders of the hearing shall not be less than 28 days before the hearing, which is the time for the stakeholders to raise objections to the information disclosure statement. And the information of the hearing must be notified to all shareholders, creditors and interested parties. This stakeholder includes the securities and Exchange Commission, the federal custodian, the relevant heads of local tax offices, government lawyers, representatives of the Ministry of Finance and other stakeholders. Secondly, with regard to objections, the notice of hearing must specify the period during which objections can be raised, generally not less than 28 days. If the time when shareholders and creditors can object is not clearly stated, the court will deem it as a violation of due process. In addition to shareholders and creditors, interested parties can also raise objections to the information disclosure statement. Qualified interested parties that can raise objections in the United States are mainly institutions that represent the public interest and have regulatory nature, such as the bankruptcy administrator, CSRC and other institutions. When the objections are collected, the judge will review them at the hearing to check whether the party proposing the plan has made sufficient and necessary disclosure of information. If the disclosure is insufficient, the court will not approve the information disclosure.

#### 3.2. Contents of information disclosure

Article 1125 of the bankruptcy code has made certain provisions on the content of information disclosure, that is, to meet the standard of adequate information disclosure. Compared with the securities law of the United States, the information disclosure of bankruptcy law is mainly for the needs of voting. Different voting groups disclose different information. Section 1125 (a) (1) of the bankruptcy code sets out the sufficient standard for information disclosure, that is, "to provide sufficient detailed information according to the nature and history of the debtor and the status of the debtor's books and records, as far as reasonably practicable". The so-called sufficiently detailed information means that creditors, debtors and relevant stakeholders can fully know the bankruptcy reorganization plan. In determining whether the plan meets the disclosure standard, the court needs to make a specific analysis according to the specific circumstances of the case, so as to balance the benefits and costs of information disclosure.

According to the model of information disclosure statement in Collier's Manual for administrators and operating debtors in the U.S. practice, the content of the information disclosure statement mainly includes two parts: introduction and main body. The introduction includes the law on which the declaration is based, the legal effect of voting, the voting deadline,

the minimum number of votes required for passing and the relevant rules related to voting rights. This part is mainly to inform investors about information disclosure and voting rights, so as to prevent investors from losing their rights and interests because they do not understand the relevant rules. The first part of the declaration body is about the debtor's business status and history, including the debtor's business location, business scope, business status, main property and other information. The second part introduces the reorganization plan, which is mainly a brief description of the reorganization plan, rather than a complete disclosure of the reorganization plan. The third part is about voting. The statement will inform the parties of the minimum number of votes to pass the reorganization plan. If this standard is not met, the information disclosure statement will enter the court compulsory approval procedure. In addition to the above three parts, the main part will also generally disclose the status of different types of creditor's rights, the distribution of creditor's rights and interests, risks and other information.

#### **4. Perfection of information disclosure system in reorganization procedure in China**

The enterprise bankruptcy law of our country has not established a complete and sound information disclosure system for the reorganization procedure, resulting in frequent fraud of creditors, enterprise investors and other stakeholders due to incomplete or inaccurate information disclosure in practice. Therefore, we should improve the information disclosure system in bankruptcy reorganization on the basis of the current system and combined with the excellent foreign experience.

##### **4.1. Expand the scope of obligatory subjects of information disclosure**

The information disclosure obligor is on the side of information superiority, holds all the information of the restructured enterprise, and is the drafter of the restructuring plan. China's bankruptcy law stipulates that the legal representative of the debtor, the financial manager of the restructured enterprise and other managers undertake the obligation of information disclosure, which to a certain extent indulges the restructured enterprise, so that it can make restrictions on the content of information disclosure, resulting in the interests of creditors and other stakeholders being damaged due to incomplete information disclosure. The bankruptcy code of the United States stipulates that the debtor, the manager and the reorganizer can act as information disclosure obligors; The British bankruptcy law stipulates that the current or former responsible person of the company, the person who participated in the establishment of the company in the year before liquidation, the current employee of the company, and the person who worked in the company in the year before liquidation can serve as the information disclosure obligor. Therefore, it is necessary to expand the scope of information disclosure obligors to protect the rights and interests of creditors and other stakeholders. For example, the directors, supervisors and senior managers of the company can quickly and efficiently obtain the latest and most complete information of the enterprise, increase their role as information disclosers, and better ensure that creditors and other stakeholders can understand and obtain the information they need.

##### **4.2. Specify the specific content and scope of information disclosure**

China's bankruptcy law only provides for the contents of the draft reorganization plan. The bankruptcy court of the United States has stipulated the contents of information disclosure, including the background, history, financial status, future development, outline of reorganization plan, voting rules, etc; The content of information disclosure in Germany is defined in the form of legal provisions mainly through listing. Article 97 of the German bankruptcy law stipulates that the debtor needs to inform other organizations related to the

information, such as the bankruptcy court and the bankruptcy administrator, of all the information related to the bankruptcy proceedings. Article 156 specifies the contents of information disclosure, including the debtor's current enterprise asset status, the possibility of continued existence of the enterprise and the possibility analysis of the reorganization plan, etc. Compared with the United States and Germany, the content of information disclosure in China is too narrow and the operability is poor. Therefore, the content scope of information disclosure should be expanded and clarified, and the information related to creditors and other stakeholders should be disclosed, such as the debtor meeting the conditions of bankruptcy reorganization, analysis of reorganization possibility, list of debts and list of creditor's rights, etc.

#### **4.3. Standardizing the time nodes of information disclosure by obligatory subjects**

The time of information disclosure has not been clearly stipulated in China's bankruptcy law. The U.S. bankruptcy law clearly stipulates that the time stage of information disclosure is the time of applying for reorganization and the first two stages of voting after the submission of the reorganization plan; The British bankruptcy law stipulates that the debtor shall be given a certain time before applying for bankruptcy, so that the creditor can collect and evaluate the relevant information of the debtor. Drawing on the systems of the United States and Britain, China should promote information disclosure in three stages: before the commencement of reorganization proceedings, the debtor should disclose the business information of the enterprise. If the creditor has any objection to the disclosed information or the court deems it necessary, the court shall also hold a hearing so that the creditor can easily obtain the required information. The second stage is before the voting of the reorganization plan, the debtor or the enterprise manager shall regularly disclose the progress of the bankruptcy reorganization, and inform the creditors and other interested parties of the matters related to the reorganization plan ruled and approved by the court. The third stage is that during the execution of the reorganization plan, the debtor, the enterprise manager and other disclosers should have the obligation to regularly report the information about the major disposition of the enterprise's property to the creditors and other stakeholders, such as the debt repayment status of the enterprise. The debtor, the manager and other disclosure subjects should supervise each other to play the real role of information disclosure.

#### **4.4. Perfecting the legal liability of the subject of obligation for violating the obligation of disclosure**

China's bankruptcy law is mainly liable for fines for violating information disclosure. The legal liability for information disclosure in the U.S. bankruptcy law is mainly stipulated before the commencement of reorganization proceedings. If the disclosing subject fails to disclose information as required, the court may directly not approve the disclosure statement, so the reorganization proceedings cannot be successfully commenced. Because the reorganization plan is essentially the result of negotiation between the parties to reach an agreement, the reorganization plan cannot be implemented due to incomplete or inaccurate information disclosure, which is a great damage to the interests of any party. Therefore, China should strengthen the legal liability of the subject of information disclosure, not only limited to criminal liability, but also provide corresponding civil liability to encourage the parties in the reorganization to negotiate independently without violating the legal provisions. The civil liability reached on the basis of mutual agreement is more conducive to urging the disclosure subject to perform its obligations and protecting the right to know of creditors and interested parties.

## 5. Conclusion

Bankruptcy reorganization, as a system that can help enterprises get rid of difficulties and move towards revival, plays a key role in information disclosure. However, due to the late start of China's bankruptcy law, a relatively perfect information disclosure system has not been established, which leads to the repeated phenomenon that the interests of creditors and other stakeholders are damaged due to incomplete information disclosure in practice. Therefore, it is necessary to improve our information disclosure system from the four aspects of disclosure subject, disclosure content, disclosure time node and legal liability on the basis of the existing system and foreign experience. Only a full and comprehensive information disclosure system can effectively protect the party at the information disadvantage, ensure the right to know of creditors and other stakeholders, and promote the smooth progress of the bankruptcy reorganization process.

## References

- [1] Y.X.Gu, P.Ding: Time Theory of Intelligence (Information), Book Knowledge, (1993) No.1, p.9-12.
- [2] R.Cheng, C.X.Tang: On the Specification and Refinement of the Time Node of Enterprise Bankruptcy Reorganization Information Disclosure, Law Forum, (2021) No.2, p.122-129.
- [3] Y.G.Xu, Y.Han: Disclosure of Information In the Bankruptcy Reorganization Proceedings, People's Justice, (2019) No.34, p.21-26.
- [4] S.M.Gao: On the Construction of Information Disclosure System in Bankruptcy Reorganization, Journal of Shanxi University (Philosophy and Social Sciences Edition), (2021) No.3, p.102-112.
- [5] M.L.Cui: Study on the Implementation of Bankruptcy Reorganization Plan, Journal of China University of Political Science and Law, (2018) No.2, p.161-172.