

THE LEGAL STATUS OF THE LIQUIDATOR ACCORDING TO BANKRUPTCY LAW AND ENFORCEMENT PRACTICE

O ESTATUTO JURÍDICO DO LIQUIDANTE DE ACORDO COM A LEI DE FALÊNCIAS E PRÁTICAS DE EXECUÇÃO

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ABSTRACT

Objective: the aim of this study was to the legal status of the liquidator according to bankruptcy law and enforcement practice.

Methods: This is descriptive research in which the researchers have examined documents related to the subject and have used bibliographic sources.

Results: the results show that the liquidator is essentially an intermediary institution, a person who has no rights and interests related to the bankruptcy procedures of enterprises and cooperatives before being appointed to participate in that procedure. This institution has an independent legal status, is recognized by the subjects, and carries out bankruptcy procedures for businesses and cooperatives on behalf of the subjects. In particular, the main tasks are management and liquidation of bankrupt assets and debt liquidation for creditors. The basis for the liquidator to perform his or her duties is the provisions of the law, so the recognition by bankruptcy law of the legal status of the liquidator plays a core role in establishing the position, and the role of this institution in bankruptcy proceedings. However, until now, after being established by law, the legal status of the liquidator is still incomplete.

Conclusion: according to result we said that to clarify theoretical issues about the legal status of liquidators under bankruptcy law; and the legal status of the liquidator according to bankruptcy law and implementation practices; from there, we propose to improve the law and improve the legal status of liquidators according to current Vietnam's bankruptcy law.

Keywords: Legal status. Liquidator. Bankruptcy law. Enforcement practice. Vietnam



RESUMO

Objetivo: o objetivo deste estudo foi conhecer a situação jurídica do síndico segundo a legislação falimentar e a prática executiva.

Métodos: Trata-se de uma pesquisa descritiva em que os pesquisadores examinaram documentos relacionados ao tema e utilizaram fontes bibliográficas.

Resultados: os resultados mostram que o síndico é essencialmente uma instituição intermediária, uma pessoa que não possui direitos e interesses relacionados aos processos de falência de empresas e cooperativas antes de ser nomeado para participar desse procedimento. Esta instituição tem personalidade jurídica independente, é reconhecida pelos súditos e realiza processos de falência de empresas e cooperativas em nome dos súditos. Em particular, as principais tarefas são a gestão e liquidação de ativos falidos e a liquidação de dívidas de credores. A base para o síndico exercer as suas funções são as disposições da lei, pelo que o reconhecimento pela lei de falências do estatuto jurídico do síndico desempenha um papel fundamental no estabelecimento da posição e do papel desta instituição no processo de falência. Porém, até agora, depois de estabelecido por lei, o estatuto jurídico do síndico ainda está incompleto.

Conclusão: de acordo com o resultado dissemos que para esclarecer questões teóricas sobre a situação jurídica dos síndicos no âmbito da lei de falências; e o estatuto jurídico do liquidatário de acordo com a lei de falências e práticas de implementação; a partir daí, propomos melhorar a lei e melhorar o estatuto jurídico dos liquidatários de acordo com a atual lei de falências do Vietname.

Palavras-chave: Estatuto jurídico. Liquidatário. Lei de falências. Prática de execução. Vietname.

INTRODUCTION

Bankruptcy procedures have the ultimate purpose of helping the process of withdrawing from the market of an enterprise or cooperative take place in an orderly manner and the payment of debts to creditors is carried out according to the principles of fairness and equity. fair and reasonable. The authority to declare bankruptcy is normally given to the Court with the participation of the debtor and creditors. Each of the above subjects has a different purpose in the legal relationship on bankruptcy, so an intermediary institution is needed to coordinate common interests on behalf of all of them. That institution is called the liquidator or liquidator depending on the jurisdiction.

In Vietnam, asset liquidators have been legalized since 2014 with the Bankruptcy Law (2014) to replace the Asset Management and Liquidation Team that existed in previous legal documents on bankruptcy. The legal status of the liquidator is also relatively detailed in the Bankruptcy Law (2014) and the documents guiding the



implementation of regulations, creating conditions for establishing a new profession, and also being the basis for expressing the position and role of the liquidator. liquidator in resolving bankruptcy procedures in Vietnam today.

However, in the Bankruptcy Law (2014), many important legal status components of liquidators are missing or have not been clarified such as the order of performing operations of the liquidator has not been developed; The mechanism to ensure remuneration for liquidators is not solid; some rights and obligations of liquidators are still general and have not been guided by legal documents; the conditions for being appointed to participate in bankruptcy proceedings of the liquidator are not detailed, there are still emotional factors, there is no unit of measurement, etc. This lack of completeness of the legal status of the liquidator causes The implementation of this status in practice to face many limitations.

In fact, up to now, being an asset manager is still not considered a profession, instead it is only a part-time activity; many bankruptcy cases last for more than ten years due to not being able to find a solution to the liquidator's remuneration; the situation where liquidators refuse to participate when a court appointment occurs but there is no resolution mechanism; people with certificates to practice as asset managers lack interest, commitment to the job, etc. (Bliss, Robert & Kaufman, George, 2006). These shortcomings make the activities of liquidators in reality not highly appreciated and bankruptcy procedures for businesses and cooperatives are difficult and time-consuming, prolonged, causing a loss of effort and money for debtors, creditors, and the state (Couwenberg, Oscar, 2001). This practice requires thorough scientific research on the legal status of liquidators and the current practice of implementing the legal status of liquidators, to have comprehensive assessments and proposals to improve the legal status of this institution. To clarify these issues, this study focuses on answering the following questions:

What are the theoretical issues about liquidators and the legal status of liquidators?

In practice, how are the provisions of Vietnam's bankruptcy law regarding the legal status of the liquidator expressed specifically?

What are the limitations and problems in Vietnam's bankruptcy law regarding the legal status of liquidators?

What solutions help improve the law and enhance the legal status of asset liquidators according to current Vietnam's bankruptcy law?



LITERATURE REVIEW

The concept of a liquidator

In production and commercial activities, subjects (individuals and organizations) also follow market rules. Accordingly, most production and business entities also have a process of formation, development, and decline. When the recession process reaches a state where it cannot pay its due expenses and loans, the entity will end up having to settle its debts and end its existence. This result is called bankruptcy.

The nature of bankruptcy is the joint debt settlement of the debtor - the entity in bankruptcy. Therefore, bankruptcy procedures in most countries around the world are carried out through judicial proceedings. Accordingly, the court will act as an intermediary to distribute the common debt to be paid based on the liquidation of the remaining assets of the subject falling into bankruptcy. During the bankruptcy resolution process, the Court will authorize a legal entity to represent the management and liquidation of assets, and at the same time act as an intermediary to pay general debt to the debtor's creditors - the entity currently in bankruptcy. fell into bankruptcy (Ben S. Bernanke, 2013). That legal entity can be an organization or individual with different names depending on the legal regulations of each country, such as an organization with the names: Debt Management Company (China); Bankruptcy Asset Management Company (Korea) (Hang, 2015); Asset management and liquidation enterprises (Vietnam); or individuals with the following names: liquidator (China, Japan); Asset manager (Korea); Liquidator (Vietnam), etc (Hang, 2020). Within the research scope of the Project, this subject is an individual and is used consistently with the name Asset liquidator.

The liquidator is a legal institution, so the legal status of the liquidator completely depends on the recognition of each different country. This characteristic has caused liquidators to not have uniform names and legal properties around the world (Ben Bernanke, 2013). However, when researching liquidators in general, it can be seen that regardless of legal background, liquidators still have several concurrent issues as follows:

First, the liquidator is an individual. Most countries in the world, including Vietnam, practice this practice with both natural and legal entities. In particular, unlike a liquidator who is an individual, legal entities practicing this profession in different countries have different names. In Vietnam, it is called an asset management and



liquidation enterprise. The biggest difference between an asset liquidator and an asset management and liquidation enterprise is the legal nature of these two entities. Accordingly, a liquidator is an individual who participates in the practice of asset management and liquidation, so he is not subject to the legal conditions on the establishment and operation of a business. Besides, the liquidator only performs his duties on behalf of that individual, so the legal responsibility will be direct and concentrated. In contrast, an asset management and liquidation enterprise is essentially an economic organization. Therefore, the establishment and operation of asset management and liquidation enterprises are governed by the law on enterprises in addition to the regulation of bankruptcy law and legal documents related to management activities liquidation and liquidation of assets.

The laws of some countries that recognize the presence of both a liquidator and an asset management and liquidation enterprise have regulations to determine which cases choose a liquidator and which cases choose an enterprise. Management and liquidation of assets involved in resolving bankruptcy procedures. In the case of China, for example, the Court, based on the actual conditions of a debtor and after consulting with the relevant intermediary, will appoint a person with the necessary expertise. and obtain professional qualifications to work as a liquidator (Hang, 2020). In Korea, there are also regulations on scale standards and the complexity of bankruptcy cases to decide whether to choose an individual or organization to practice asset management (Hang, 2015). However, in Vietnam's legal environment, this has not been stipulated in detail, so the right to self-determination is given to the person with the authority to appoint the liquidator - the Court. This characteristic can be seen between the liquidator and the asset management and liquidation enterprise, they can replace each other in carrying out bankruptcy procedures.

Second, the liquidator practices asset management and liquidation. The words "management" and "asset" in the name of this institution are themselves two abbreviations: "management" and "assets". From that, it can be inferred that the profession of an asset liquidator is asset management. However, assets managed by a liquidator are not assets in a normal state (such as family asset management or trust asset management), but assets managed by a liquidator are assets. assets of debtors - individuals and organizations that are falling into bankruptcy and the management of these assets serves the purpose of repaying creditors. Thus, the first characteristic not



only shows that the liquidator performs the asset management profession but also shows the scope of that professional activity of the liquidator.

In addition to managing bankruptcy assets, the liquidator also carries out the sale of those assets under the authorization of the debtor and the permission of the Court. As stated above, the assets managed by the liquidator are the bankruptcy assets of the debtor, the ultimate goal of management activities is to protect the status quo by preventing acts of dissipation. and other protective measures to avoid wear and tear or the effects of nature. And if possible, asset management activities also contribute to increasing asset value during bankruptcy procedures. Meanwhile, the purpose of this management is to resolve common debt peacefully and fairly according to the law for creditors. To achieve that goal, assets must be valued - converted to a certain value, usually money, by selling that asset to allocate debt. Therefore, it can be said that the liquidator performs the profession of asset management and also liquidates the assets that are the bankruptcy assets of the debtor - the entity that is falling into bankruptcy to fulfill its debt payment obligations. for that debtor - and also collect debt for creditors.

Third, the liquidator is an intermediary institution with relative independence. The liquidator does not perform personal duties. This is based on: (1) participation in bankruptcy proceedings does not stem from the interests of the liquidator; (2) objects of management – assets that are not the assets of the liquidator himself; (3) the results of professional activities do not directly benefit the liquidator. (1) indicates the liquidator's participation in the bankruptcy proceedings as an intermediary – with no direct interest in the bankruptcy activity. (2) shows that the liquidator is a legal representative authorized to manage and liquidate the assets of others. The rights and obligations of management and liquidation are fiduciary and temporary. (3) shows that liquidators are compensated for their work results without directly benefiting from the results of bankruptcy operations.

Fourth, liquidators often practice in a part-time capacity. Although there is no uniformity in the conditions for practicing bankruptcy management and liquidation of bankruptcy liquidators many countries have requirements that liquidators must be lawyers or auditors. An accountant, an accountant, etc. who has experience in the above occupations for a certain period can be qualified to apply to become a liquidator. In other words, the financial liquidator is a concurrent title of one of the above occupational titles. This characteristic shows that the standards to become a liquidator



are very complex, first of all, the criteria of the original professions (lawyers, accountants, auditors, etc.) must be met, and then the standards specifically for practicing management and liquidation of bankruptcy assets.

Besides, this also shows that the management and liquidation of bankruptcy assets of an asset liquidator is a seasonal activity and not an independent profession. Seasonality is shown in the fact that the liquidator participates in a certain bankruptcy case when appointed by the Court and ends his or her role when the bankruptcy procedure ends. The duties of the liquidator are closely linked to the bankruptcy process of each specific case, so if not appointed by the Court, the liquidator will have no job. This interruption is the clearest manifestation of the seasonality in the operations of the liquidator.

Thus, from the above analysis, the concept of a liquidator can be defined as follows: a liquidator is an individual authorized by law to participate in bankruptcy procedures to temporarily manage and liquidate the bankruptcy assets of the company. insolvent entities. The liquidator is responsible for verifying, collecting, and managing documents and evidence; prepare a list of assets and a list of creditors; prevent the sale or transfer of assets without the judge's permission... the liquidator begins participating in the case when appointed and ends when the decision to declare bankruptcy is completed.

Concept of the legal status of the liquidator under bankruptcy law

From the concept of legal status and the concept of a liquidator, it can be seen that considering the legal status of a liquidator is to consider the provisions of law on the position, role, and relationship between the liquidator and the liquidator. members with other legal entities in bankruptcy proceedings. Thus, the concept of the legal status of the liquidator needs to clarify the following internal issues:

First, the legal status of the liquidator shows the liquidator's position and role in bankruptcy proceedings. This is a central content in researching the legal status of liquidators. Accordingly, a liquidator participating in bankruptcy proceedings is participating in a legal relationship as a subject. That subject will have a specific legal position and play roles that determine the existence and operation of that legal relationship. Lack of legal status means there is a lack of basis to determine the position and role of the liquidator in bankruptcy proceedings. This determination of



legal status helps identify the liquidator from other legal entities in bankruptcy proceedings.

Second, the legal status of the liquidator shows the rights and obligations of the liquidator in bankruptcy proceedings. The presence of the liquidator in bankruptcy proceedings as analyzed in the first point demonstrates its role and significance. To concretize that role and meaning, the liquidator must have certain rights and obligations. The value of the liquidator is expressed through these rights and obligations. The legal status of the liquidator will regulate and detail these two contents to limit the scope of activities of the liquidator.

Third, the legal status of the liquidator shows the relationship between the liquidator and the remaining subjects in the bankruptcy procedure. In bankruptcy proceedings, many entities participate, including the liquidator. The legal status of the liquidator not only shows the liquidator's position, role, rights, and obligations but also shows the liquidator's relationship with the remaining entities. This determination is also intended to clarify the position and role of the liquidator in bankruptcy proceedings. In addition, this relationship will determine the coordination mechanism between subjects in legal relations on bankruptcy and is the basis for determining the authority of other subjects.

In summary, from all the related concepts that have been operationalized and the issues that need to be clarified about the legal status of the liquidator as analyzed above, it is possible to define the concept of "legal status of the liquidator". "The legal status of the liquidator is the totality of the legal rights and obligations of the liquidator, thereby establishing and limiting the liquidator's abilities in bankruptcy and bankruptcy proceedings" shows the position and role of the asset liquidator to other subjects when participating in bankruptcy procedures.

METHODS

Group of theoretical research methods

Secondary document research method: By collecting secondary documents including Books, newspapers, scientific reports, and actual laws, the author conducts research, filters, and gathers secondary information. provided to create input information materials for research activities. This is the basic method of collecting



information in the group of theoretical research methods. This method is mainly applied to clarify theoretical issues about the legal status of liquidators under bankruptcy law.

Analysis and synthesis method: After obtaining input information from the secondary document research method, the author uses the analysis and synthesis method to deepen the theoretical information. Then, along with his scientific research thinking, the author will proceed to synthesize the theoretical arguments of the topic into research issues that need to be clarified. This method is applied throughout the entire research process.

Comparative jurisprudence method: This method used by the author focuses mainly on the actual status of the legal status of liquidators according to Vietnam's bankruptcy law and its implementation, by studying the practice legal regulations of several countries around the world and comparing them with each other to find differences.

Historical method: This method is used to clarify the historical and theoretical issues of the research process. By collecting statistics, and analyzing and evaluating that historical process, the author will draw theoretical values that need to be inherited in this research.

Group of practical research methods

Secondary document research method: By collecting and studying practical reports, theses, theses and scientific articles that refer to the issue of legal practice and implementation of the law on the legal status of the liquidator, the author obtained secondary information, along with scientific observation methods, complete the data system on practical research by the needs of this topic.

Analytical and statistical methods: Based on the available data, the author analyzes to deepen the practical issues of the topic. From there, we conduct statistics on practical issues that need to be compared to clarify and make assessments on both legal practice and implementation of the law on the legal status of asset liquidators.

Scientific observation method: The observation method is one of three data collection methods for the topic. Accordingly, the author visually observed the activities of the liquidator in several typical bankruptcy cases to draw case-specific conclusions about the practice of implementing the law on the legal status of the assets factio liquidator.



Expert method: The expert method is implemented through forms such as attending conferences, and seminars and consulting with experts on the issue to be researched to enrich theoretical awareness. and the actual legal status of the liquidator. This method is used throughout the research process.

RESULTS

Practical provisions of Vietnam's bankruptcy law on the legal status of liquidators

Practice regulating conditions for practicing as an asset liquidator under bankruptcy law:

Bankruptcy Law 2014 and Decree 22/2015/ND-CP issued on February 16, 2015, detailing the implementation of several articles of the Bankruptcy Law on asset management and asset management and liquidation practice, stipulates that liquidators must meet specific conditions for practice. The author analyzes the current situation of this regulation into 02 main contents including conditions for being granted a certificate to practice as an asset liquidator and conditions for being appointed to participate in resolving a bankruptcy procedure.

Practical regulations on rights and obligations of liquidators under bankruptcy law:

Compared to the institution of asset management and liquidation teams in the Bankruptcy Law (2004), the liquidator as a practicing individual will easily determine and enforce his or her rights and obligations. Because rights and obligations are at the heart of legal status, this determination is very important. The asset management and liquidation team is a collective with many representatives of the parties participating in the bankruptcy procedure. The regulation of rights and obligations is not centralized. The exercise of rights and obligations also faces many obstacles because members of the team are part-time so they are not interested in obligations. At the same time, because they are part-time, when they have problems with the work schedule of the position they are holding, members delay meeting the group to exercise their rights and obligations, causing the group's activities to be unstable, thereby prolonging the incident. bankrupt.

Practical regulations on legal responsibilities of liquidators under bankruptcy law:



The legal liability of the liquidator is also determined in Vietnam's bankruptcy law to serve as a basis for imposing adverse legal consequences on the liquidator when committing acts that violate the law. At the same time, it also aims to create a deterrent for this subject's performance of its duties. The legal liability of the liquidator is not only regulated in the Bankruptcy Law (2014) but also recognized related aspects in other documents such as Decree No. 110/2013/ND-CP dated September 24, 2013, of the Government regulating penalties for administrative violations in the fields of judicial assistance, judicial administration, marriage and family, and civil judgment enforcement; bankruptcy of enterprises and cooperatives and amended and supplemented in Decree No. 67/2015/ND-CP dated August 14, 2015, of the Government, amending and supplementing some articles of Decree No. 110/2013 /ND-CP dated September 24, 2013, of the Government regulating penalties for administrative violations in the fields of judicial assistance, judicial administration, marriage and family, civil judgment enforcement, and corporate bankruptcy, Cooperative.

Practice regulations on the relationship of the liquidator with other entities according to bankruptcy law:

The liquidator and the People's Court: The Bankruptcy Law (2014) stipulates that the Court is the only agency with authority to resolve bankruptcy cases of businesses and cooperatives that fall into bankruptcy. The Court is the center, on behalf of the State, making legal decisions to serve the management and liquidation of debtors' assets, on the other hand, helping creditors, debtors, and related entities reach an agreement on restoring production and business activities of enterprises and cooperatives or dividing assets of enterprises and cooperatives according to the provisions of law. The relationship between the Court and the liquidator throughout the bankruptcy procedure is regulated by many provisions of the Bankruptcy Law (2014) and Decree 22/2015/ND-CP. In particular, it mainly recognizes the one-way relationship of the Court with the liquidator through the mechanism of appointing, supervising, and receiving reports from the liquidator. In the opposite direction of this relationship, the liquidator mainly has the right to request the Court to exercise its authority related to collecting information and evidence; declare the transaction invalid; apply emergency measures, etc., which has been analyzed as constituting the rights and obligations of the liquidator.



The liquidator to creditors: The liquidator represents creditors when performing their duties. The purpose of the liquidator's activities is to recover debts for creditors. After being appointed by the Court, asset management and liquidation activities, which are the work of creditors, are transferred to this entity. During that process, the coordination between these two entities is very important. The liquidator has the right to request creditors to present evidence to prove debts and provide information about the debtor's financial situation and assets; In addition, it also has the right to convene creditors to attend the Creditors' Conference to discuss and approve plans to restore production and business activities and other important issues when necessary. Although this relationship is not regulated in detail in a specific legal regulation, it is expressed through the rights and obligations of the liquidator in Article 16, Bankruptcy Law of 2014.

The liquidator and the insolvent enterprise or cooperative: The liquidator and the insolvent enterprise or cooperative have a relationship with each other throughout the bankruptcy procedure. If an insolvent enterprise or cooperative is also the applicant, that enterprise or cooperative has the right to propose the appointment of a liquidator according to the provisions of Clause 4, Article 28, Bankruptcy Law of 2019: In case there is a proposal to appoint an asset liquidator or asset management and liquidation enterprise, the petition to open bankruptcy procedures must clearly state the name and address of the asset liquidator or asset management and liquidation enterprise asset. This is the first relationship established between these two subjects.

The liquidator and executor: The relationship between the liquidator and the executor is recognized by current law in the direction that the executor plays the role of supervising the activities of the liquidator. Accordingly, the executor and the liquidator are both the ones conducting bankruptcy procedures. However, while the executor represents the authority of the civil judgment enforcement agency, the liquidator represents the individual and represents all parties participating in the bankruptcy procedure. The relationship between these two institutions is recognized by the Bankruptcy Law (2014) in the aspects that the executor has the right to request the liquidator to organize asset valuation, and liquidation of assets and supervise these activities of the liquidator tablets

Practical implementation of regulations on conditions for practicing as an asset manager:



Implementing Decree No. 22/2015/ND-CP of the Government detailing the implementation of some articles of the Bankruptcy Law on liquidators and practice of asset management and liquidation, and the issuance of Practicing Certificates to liquidators and operating registration for asset management and liquidation enterprises has been done quickly and smoothly, creating conditions for the formation of a team of liquidators members in a short time. According to statistics from the Ministry of Justice, as of July 2020, the whole country had 277 active individual liquidators practitioners. The liquidator are mainly distributed in two large cities: Hanoi and Ho Chi Minh City with 124/277 liquidator, accounting for 44.7% of the total number of liquidator nationwide. Every year, the number of new members increases by an average of 46 members per year. If this number of liquidators stands alone, it is insignificant, especially when compared to the national population ratio of only 0.000277%. That means 361,000 people will have one liquidator. However, if you compare the total number of liquidators with the total number of cases opened for bankruptcy procedures, the ratio is 1:1. This is again a large percentage. This is explained by the deficient number of bankruptcy cases accepted and opened in Vietnam.

Limitations, problems and causes

Besides the results achieved, the legal regulations and implementation of legal regulations on the legal status of asset liquidators also have the following limitations and problems:

Firstly, some issues regarding the legal status of liquidators are not regulated by current law or are not detailed in detail, leading to a lack of basis for implementation in practice. This limitation is expressed in the following contents:

The legal regulations on conditions and procedures for registering to practice as an asset manager are still complicated. Current regulations on asset management practice standards are still general and large in number. Besides, the procedures for registering to practice have many unreasonable constraints. These are the things that make the accessibility of this profession still limited.

Regulations on the order and operating procedures of asset liquidators have not been issued. Although the components of the legal status of the liquidator have been fully recognized by the Bankruptcy Law (2014) and related documents, its detail is still limited. One of the important shortcomings is that there is no set of practice regulations or specifically, there are no detailed regulations on the order and operating procedures



of the liquidator throughout the bankruptcy procedure, but there are only a few the regulations are scattered throughout the regulations on the contents of bankruptcy procedures. This limitation makes in-practice liquidators confused with the procedures for exercising specific rights and obligations.

Regulations on information content about registered financial liquidators are not complete. Although Decree 22/2015/ND-CP stipulates the content that must be disclosed about asset liquidators in the list issued by the Ministry of Justice, there is still a lack of requirement to disclose the content of expertise, skills, or knowledge. strengths of the liquidator. Specifically, although the Bankruptcy Law (2014) took effect on January 1, 2015, its regulations are only valid in practice since the Ministry of Justice issued a list of liquidators and asset management and liquidation enterprises. From then on, the new force of liquidators officially existed in life. However, after the Ministry of Justice issued a list of liquidators, it was not easy for the Judge to appoint them to participate in each case. The list issued by the Ministry of Justice only lists the liquidator's name, year of birth, etc., without personal information such as living address, field of expertise, phone number, email, etc., to facilitate selection and contact. generation. Based on collecting information about the liquidator, the judge will consider and choose the appropriate one for each case, such as a liquidator specializing in aviation, maritime, credit, metallurgy, etc. This selection is very important. important, plays a role in deciding whether the bankruptcy case can be carried out in the best possible time with the fastest possible time.

Although current law has regulations on the Court's right to appoint a liquidator and the right to request a liquidator for the person filing a request to open bankruptcy procedures, no regulations guide the explanation. Resolve conflicts between these two entities in selecting a liquidator. According to the provisions of the Bankruptcy Law 2014 on the appointment of liquidators and asset management and liquidation enterprises, within 03 working days from the date of issuance of the decision to open bankruptcy procedures, the Judge is responsible for Appointing a liquidator or enterprise to manage and liquidate assets. However, Point b, Clause 2, Article 45 of this Law also stipulates the proposal to appoint a liquidator or enterprise to manage and liquidate the assets of the applicant requesting to open bankruptcy procedures. However, if the Judge appoints a liquidator who is not on the proposed list of the applicant requesting to open bankruptcy proceedings, how will it be resolved? What is the Judge's explanation plan? Or what rights and mechanisms does the applicant have



to ensure the right to disagree with this designation? Have not been guided by any official documents. Therefore, in reality, there has been a situation of not being fully complied with, and not respecting the applicant's right to self-determination, and there is no document to deny the list of liquidators as well as the explanation of the Why did you choose this liquidator to open bankruptcy proceedings? This has also affected the implementation of the deadline for appointing a liquidator in particular and other deadlines in bankruptcy procedures in general.

The liquidator's refusal to participate in bankruptcy proceedings when appointed has no written instructions for resolution. Article 45 of the Bankruptcy Law (2014) stipulates that after deciding to open bankruptcy procedures, the Judge will appoint a liquidator or enterprise to manage and liquidate assets. Decree 22/2015/ND-CP stipulates that liquidators or asset management and liquidation enterprises refuse to participate in bankruptcy cases. However, the law on bankruptcy does not have regulations in case the liquidator asset management or liquidation enterprise refuses to participate, what is the next step? How do judges appoint new people?

Second, the issue of representation in asset inventory has regulations but lacks a mechanism to ensure implementation. According to the provisions of Article 65, of the Bankruptcy Law (2014), insolvent enterprises and cooperatives must conduct an inventory of assets and determine the value of those assets after receiving the decision to open bankruptcy procedures. In case the legal representative of the enterprise or cooperative is absent, the person appointed by the liquidator or asset management and liquidation enterprise to be the representative of the enterprise or cooperative shall perform the inspection work. List and determine the value of assets of enterprises and cooperatives.

In reality, asset inventory faces many difficulties because the representative of the business is absent, and the person designated by the liquidator or the asset management and liquidation enterprise often refuses to do so or does not know. Regarding the situation of businesses and cooperatives, doing this is very difficult. Although the law has provisions on sanctions for non-cooperation in asset inventory (sanctions for administrative violations), however, this sanction is not effective and feasible because there is no mechanism. mechanism to ensure implementation. The problem is that the liquidator cannot perform this task due to a lack of information (the business owner does not hand it over). In this case, the liquidator himself is also in a dilemma, so the Court cannot sanction it. On the other hand, business representatives



are no longer interested in going bankrupt due to insignificant assets or the psychology of abandonment after administrative failure, so they deliberately do not cooperate in transferring information to the liquidator. be representative. At this time, the Court's decision to impose a penalty is meaningless to them. In many cases, they cannot even meet with this representative to serve the decision.

Third, funding and remuneration for liquidators still have many gaps that have not been overcome. The provisions of the Bankruptcy Law do not mention the issue of providing information about the overall case as well as the situation of the enterprise opening bankruptcy procedures to the liquidator, which makes it difficult for the liquidator to estimate the time and effort to carry out the case, making it difficult to determine costs. The Bankruptcy Law stipulates that the decision to appoint a liquidator must include information about advance payments. However, in reality, when participating in cases at many people's courts in provinces and cities, the decision to appoint a liquidator to participate in the management and liquidation of assets of enterprises is forced to open bankruptcy procedures. products do not mention this issue. Therefore, if the liquidator participating in the case wants to advance expenses, they must send a written request and if approved, it will take a long time to receive the money. In particular, there are cases where a liquidator is appointed but no advance payment of expenses is mentioned.

However, the liquidator still prepares a list of creditors and a list of debtors for the business opening bankruptcy procedures and sends it to the court. But when the superior court decided to cancel the decision to open bankruptcy proceedings, it did not mention payment of fees to the liquidator. There are cases where the liquidator has to verify assets in many different provinces and cities, even abroad, at which time the advance payment is not enough. Reimbursement will now be difficult if the judge does not allow the auction or liquidation of assets to offset those actual costs.

Fourth, the liquidator cannot directly exercise the right to apply emergency measures in urgent situations to preserve bankruptcy assets but only has the right to request the judge to apply, thus losing the timeliness of the action. In fact, despite participating in bankruptcy procedures, representatives of businesses and cooperatives still have the mentality of liquidating and appropriating the company's assets to pay off their debts or make it their own. These acts have been recognized by law, allowing competent entities to apply emergency measures to prevent them, however, because the procedure includes a series of acts: the liquidator has a written



request for the judge to review. consider applying emergency measures; the judge considers and decides to apply emergency measures; the liquidator receives the decision and takes emergency measures. This process takes a lot of time, so the urgency of the action is not guaranteed.

The time to carry out the above procedure is enough for the subjects carrying out the act of dispersing assets to complete their actions. Meanwhile, while waiting for a decision from the judge, the liquidator must not arbitrarily take actions to end or suspend the business owner's asset dispersal activities, which would lead to the assets being lost in liquidation. Although these subjects may then be punished, it is insignificant and not enough to deter the subjects from their behavioral intentions. This has made the bankruptcy procedure more complicated. Many bankruptcy cases have to be temporarily suspended for many years because assets that have been dispersed or appropriated during this period have not been recovered, or disputes arising over assets that have been dissipated due to operations cannot be resolved. The act of buying and reselling after the act of dispersal causes many entities to participate in disputes.

Fifth, the presence of a liquidator in bankruptcy proceedings is not high. Although the number of bankruptcy cases with the presence of a liquidator increases each year, compared to the total number of bankruptcy procedures, the number of enterprises and cooperatives that stop production and business activities is not big. Although it has been in effect for more than 6 years, this is not a long enough period for lawmakers and society to be fully aware of the liquidator. This does not simply come from the ability to think about that issue but is also due to culture and the adaptation and change of psychology and beliefs about the financial management of the subjects. History has proven that new institutions always encounter difficulties in legal recognition and enforcement. Therefore, this is considered an objective and inevitable reason for the legal status of the liquidator.

Besides, in reality, there is still a situation where relevant agencies, organizations, and individuals, even bankrupt businesses, do not coordinate with the liquidator in verifying, collecting, and managing assets. documents and evidence related to operations, making asset lists, lists of creditors, lists of debtors, especially recovering and preventing the dispersal of assets of bankrupt enterprises. This causes difficulties in asset management and liquidation of assets. There are even situations where liquidators and asset management and liquidation businesses do not continue



to perform their obligations or refuse when appointed by the judge to participate in the bankruptcy case.

Solution to perfect and enhance the legal status of liquidators according to current Vietnam's bankruptcy law

Firstly, centralize the liquidator's operating procedures in detail. There are two implementation options for this issue: either collect it immediately in the new Bankruptcy Law when researching to amend the Bankruptcy Law (2014); or gather it in a legal document - possibly in a new Decree replacing Decree 22/2015/ND-CP or in a Circular issued by a managing ministry. The second option is given the highest priority because up to now there has not been any Circular providing specific guidance on the legal status of asset liquidators.

Second, record specifically and in detail, the reporting procedures and processes and information exchanged between the liquidator and the subjects. Currently, regulations that only limit reporting time and reporting forms are not enough. According to the author, the more important issue is that the regulations on regular and extraordinary reports as well as the response mechanism for these reports need to be regulated in detail for each different reporting object. Regarding this context, the author proposes regulations allowing the formation of bankruptcy information centers in each locality. This center allows subjects within bankruptcy procedures to share and exploit general information from the opening of bankruptcy procedures to the implementation of bankruptcy decisions of enterprises and cooperatives. At that time, the reporting process was also regulated based on the operating mechanism of this information center.

Third, add regulations on disclosing information about expertise and operations. This is the most important information to disclose. According to current law, people with expertise in the professions of Lawyer, Auditor, Accountant, etc., are eligible to be granted a certificate to practice as an asset manager if they wish. Thus, a certified liquidator may have the skills and expertise of one of the above professions. Each of the above professions has different professional skills, so it is necessary to clearly understand the exact training information of the liquidator to make a choice that suits the requirements and nature of the bankruptcy case.

Fourth, add regulations on disclosing information about experience participating in bankruptcy procedures. This is also equally important content as the first content



because, for some complex, large-scale bankruptcy procedures affecting many subjects in society, the appointment of a liquidator is not only based on expertise but also necessarily on the liquidator's previous experience of going through bankruptcy procedures. This will help the Judge select or appoint a liquidator more accurately.

Fifth, add regulations on publishing information about the practice points of asset liquidators. The author proposes to soon supplement regulations on scoring liquidators and publish this score in the liquidator's profile. Accordingly, local Departments of Justice need to annually use the common data system (Big Data) of bankruptcy procedures to monitor and determine the score of the liquidator. The detailed regulations on rating scales are analyzed in the proposal to complete the regulations on professional ethical standards of asset managers.

Sixth, bankruptcy law needs to supplement specific regulations on cases where Judges and Execution Agencies are allowed to request reports from liquidators. The Bankruptcy Law (2014) and its guiding documents only provide general provisions on the right to request the liquidator to fulfill the reporting obligations of the Judge and Executor without clearly defining how this right of request is implemented in What situations will cause difficulties for liquidators in performing their duties. Because, if understood according to the provisions of Circular 01/2015/TT-CA regulating the working regulations of Judge Teams during the process of resolving bankruptcy cases, the Judge has the right to request the liquidator to report reporting in necessary cases is very difficult to determine, because the level of necessity here often depends on the views of the Judge and Executor; And when a situation occurs where both the Judge and the Executor exercise the right to request reports multiple times, it will cause difficulties and pressure for the liquidator in the process of performing their duties and powers. Therefore, the bankruptcy law needs to specifically supplement cases where Judges and Executors are allowed to request liquidators to report; or clarify necessary cases in current regulations.

Seventh, the bankruptcy law needs to supplement regulations on determining the reporting period of the liquidator in some specific cases. The Bankruptcy Law (2014) and guiding documents have quite specific provisions on the reporting responsibilities of the liquidator to the Judge and the Civil Judgment Enforcement Agency but do not thoroughly address when determining the actual time limit. comply with this reporting obligation. Circular 01/2015/TT-CA stipulates the time limit for the liquidator to report to the Judge, but only for periodic reports and reports at the request



of the Judge; As for other reporting cases to Judges and Civil Judgment Enforcement Executives, there are no regulations clearly defining the time limit. So, in those cases, what deadline will the liquidator report or will it be at the discretion of the supervisory subject?

For the provisions of bankruptcy law to be synchronized and perfected, the Bankruptcy Law and guiding documents need to supplement regulations on the time limit for implementing the reporting obligations of the liquidator in the remaining cases; which can be determined according to the regulations on reporting time limit as required by the Judge in Circular 01/2015/TT-CA as 03 working days from the date of receipt of the reporting request; because the number of 03 working days is quite reasonable for reporting obligations, and ensures consistency between legal documents.

Eighth, Bankruptcy Law needs to add additional methods to monitor the activities of liquidators. It can be seen that supervision of the activities of the liquidator is carried out through the act of reporting this subject and the right to request reports of the supervisory subjects such as Judges and Civil Judgment Executors. This means that the effectiveness of monitoring activities depends mainly on the sense of responsibility as well as the honesty of the liquidator in his or her reporting.

CONCLUSION

The research results of the project show that the legal status of a liquidator is the totality of the liquidator's legal rights and obligations, thereby establishing and limiting the liquidator's abilities in procedures bankruptcy and demonstrating the position and role of the liquidator regarding other entities based on the provisions of bankruptcy law. The laws of most countries in the world have recorded this institution with different natures and content. The legal status of an asset liquidator is composed of the following four components: conditions for practicing as an asset liquidator; rights and obligations of the liquidator; the legal responsibilities of the liquidator and the relationship between the liquidator and other entities in bankruptcy proceedings. The legal recognition of the legal status of an asset liquidator has an important purpose and meaning when establishing an independent profession and plays a huge role in the management and liquidation of assets and property intermediaries in general debt settlement of bankruptcy proceedings.



However, detailed regulations on the legal status of liquidators have not yet been clarified or recorded, making the legal records comprehensive, in terms of details and specifics. There may still be many shortcomings in recording the legal status of liquidators. Based on these shortcomings in legal records, it is inevitable that the implementation of the legal status of the liquidator still has many problems and limitations. This is the main reason why the number of liquidators in Vietnam is currently not large; the presence of liquidators in bankruptcy proceedings is not high and those who are registered to practice as liquidators lack interest in the profession. Based on those limitations, the Project proposes solutions to improve the law and enhance the legal status of liquidators in bankruptcy procedures in Vietnam today.

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