

<<破产重整制度的建立和有效性研究>>

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前言

破产制度萌芽于古罗马《十二铜表法》中的“债法”。

随着商品经济的不断发展，地中海沿岸和西欧国家纷纷开始进行破产立法，以达到公平清理债权债务为目的，并兼顾社会公共利益。

进入19世纪后，随着法人破产制度的建立，破产法的立法模式也渐从单一清算型向清算与和解并重的二元化结构转变。

20世纪70年代爆发的石油危机，使西欧国家每年都有数万家企业陷入破产清算程序，原有的和解程序无论从立法思想上还是制度设计上都无法满足拯救困境企业的目的。

企业破产引发的连锁反应，诸如职工失业和银行坏账的剧增等，使立法者必须思考如何在清算与和解程序之外设计一套制度，以企业复兴为目的，通过设立自动冻结等制度，使债务人在一定的保护期内不被债权人追讨，并由破产执业者主持或协助起草企业重整方案，交付债权人会议讨论和通过。

重整结果约束各利益集团，以利企业重生。

美国1978年《联邦破产法典》（2005年修订）第11章（“重整”）为世界各国破产重整立法提供了一个很好的范本，确立了以债务人为中心的重整模式。

不久前的美国次贷危机使众多大企业陷入困境，如2009年通用汽车进入了破产保护，第11章为企业恢复生机发挥着重要作用。

英国于上世纪70年代末成立了柯克委员会（Cork Committee），审查当时的破产立法和实践，为1986年“破产法案”提供了两个有代表性的程序：公司自愿安排程序（CVAs）和管理程序（administration）。

进入21世纪后，英国重整程序也进行了一系列改革，建立了与美国相对应的以破产管理人为中心的重整模式。

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内容概要

本书以破产重整制度为主题，比较分析了英国、美国和中国的制度。

本书首先通过借鉴英、美学者的观点，重点解释“重整”的概念、特征等根本性问题。

在进入具体的实体和程序论述前，作者探究了三个国家的破产立法制度的根本差异，包括人的思想观念、企业的运转模式等，其中特别突出介绍了中国经济体制的转轨、国有企业改革、银行业改革和社保制度的不断完善。

在论述实体和程序性内容时，作者结合立法背景阐述法律条文背后的含义，并结合英美法的判例加以适当的佐证。

在全方位比较的基础上，指出了中国重整程序中存在的不足，并提出了借鉴英、美相关制度的理由。

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作者简介

张海征，2004年毕业于中国政法大学国际法学院，获法学学士学位；2005年9月毕业于英国莱特斯大学法学院，获法学硕士学位；2008年10月毕业于英国莱特斯大学法学院，获法学博士学位；2008年10月至2008年12月在英国诺丁汉特伦特大学法学院担任客座讲师；2009年5月至今在北京

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章节摘录

Corporate rescue has become increasingly a fashionable topic, which has long been a subject of global interest. The most notable formal corporate rescue regime was established by Chapter 11 of the US Bankruptcy Code in 1978, which has had far-reaching influence on the bankruptcy law reforms of other countries. During the past thirty years, a series of reforms to domestic corporate bankruptcy and rescue laws have been scheduled into the legislative agenda of many countries, and aimed at building up a well-tailored and efficacious corporate rescue system by way of summarizing the experiences and lessons from other countries and taking full consideration of their own unique domestic situations. In the present decade, a widerange of jurisdictions in different legal systems have considered the reformulation of their bankruptcy legal frameworks towards a rescue culture.

Conceptually, corporate rescue is a well-functioning method which can provide a ground for financially distressed but potentially still viable companies to take a breath from the deadly enforcement of individual creditors, to negotiate with all the stakeholders and eventually to rehabilitate to its former healthy operation. Even where the attempt to rescue is not successful, the business of the insolvent company can be sold as a going concern, and this may enable the creditors' claims to be satisfied to a greater extent than would be possible in an immediate liquidation in which the assets of the debtor are usually disposed by a piecemeal sale for the purpose of a quick realization to creditors.

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编辑推荐

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