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Original Paper

"Green Bankruptcy": A Study on the Legal Mechanisms for Priority Satisfaction of Environmental Claims in Corporate Bankruptcy Reorganization

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Abstract

The priority-of-repayment right for environmental claims is vital to protecting environmental interests and advancing ecological conservation. Nevertheless, China's Enterprise Bankruptcy Law contains no specific rules on environmental claims, and the ongoing revision of the Bankruptcy Law has not adequately addressed this issue, which misaligns with the country's ecological-civilization drive and green socioeconomic transition. In judicial practice, people's courts usually classify environmental tort claims as ordinary bankruptcy claims. Ranked low in the repayment hierarchy, such claims frequently see low recovery rates. This fails to redress losses suffered by environmental tort creditors and may enable enterprises to dodge environmental liabilities via bankruptcy. Against this backdrop, it is imperative to explore and build a legal mechanism guaranteeing effective satisfaction of environmental claims in corporate bankruptcy. It will protect environmental creditors' rights, refine the bankruptcy legal system, and underpin ecological-civilization construction for a "Beautiful China."

Keywords

corporate bankruptcy reorganization, environmental claims, priority of payment

1. Introduction

With the development and prosperity of the market economy, as well as the public's demand for and aspiration toward a better life, a high-quality economic development model characterized by "environmental protection, green development, and low-carbon practices" has gradually become the goal pursued by China's market economy. However, amid today's rapid industrialization, various factories often discharge large amounts of wastewater and exhaust gases during their operations, severely affecting the physical health and daily lives of nearby residents and damaging the ecological environment. Furthermore, due to mismanagement—or even environmental pollution incidents or ecological damage—enterprises often find themselves unable to bear the high costs of environmental tort damages and remediation, potentially leading to bankruptcy. Once an enterprise enters bankruptcy proceedings, various legal liabilities arising from environmental issues—particularly damages for environmental torts—are converted into corresponding bankruptcy claims and must be settled in accordance with the liquidation procedures stipulated by bankruptcy law. In this context, environment-related claims face a high risk of being only partially satisfied, or even remaining entirely uncollectible.

Although Article 55 of the "Provisions of the Supreme People's Court on the Trial of Enterprise Bankruptcy Cases" outlines a framework for classifying bankruptcy claims, it contains no specific provisions regarding claims arising from environmental torts. Only in Article 11 and Item 12 do these provisions broadly cover the debtor's liability for damages caused to another party's property due to tortious acts or breaches of contract prior to the declaration of bankruptcy, as well as other types of claims recognized by the court as falling within the scope of bankruptcy claims. In the judicial practice of bankruptcy law, claims arising from environmental torts are classified as ordinary claims based on these two broad provisions and thus participate in the distribution of bankruptcy assets. Under the current statutory order of priority for the settlement of bankruptcy claims, ordinary claims are settled after priority claims such as secured claims, bankruptcy expenses, debts for the common benefit, employee claims, and tax claims. This order results in a relatively low recovery rate for ordinary claims, and the amount creditors can recover is consequently significantly limited. This situation highlights the disadvantaged position of environmental tort claims in bankruptcy settlements, underscoring the urgent need for further refinement and improvement at the legal level. The causes of this phenomenon are complex and varied, but can be summarized in the following three points: First, the current Bankruptcy Law, as amended in August 2006, struggled to incorporate the concept of green development within its framework, given the lack of environmental awareness and the insufficient concept of environmental rule of law in China at that time. Second, although environmental pollution was already quite severe at the time, the environmental legal liabilities borne by enterprises were relatively light, and the number of environmental claims involved in bankruptcy cases was limited; consequently, this issue did not receive sufficient attention. Finally, as a branch of market economy law, the core purpose of the Bankruptcy Law lies in regulating corporate bankruptcy procedures, ensuring the fair settlement of claims and debts, safeguarding the legitimate rights and interests of creditors and debtors, and maintaining the stability of the socialist market economy order. Maximizing the realization of environmental claims and protecting the ecological environment are not the primary legislative intentions of the Bankruptcy Law; there exists a certain degree of tension and potential conflict between the two, reflecting differing priorities in legislative objectives.

Humankind and nature form a community with a shared future. To realize the Chinese Dream of the great rejuvenation of the Chinese nation, we must establish a robust legal framework to protect the ecological environment, elevate the rule of law in ecological civilization to a higher level, and continuously consolidate the foundation while refining relevant systems. In a market economy, enterprises, as core participants, bear environmental responsibilities that are undoubtedly the focus of our attention. Therefore, ensuring that environmental claims against enterprises are prioritized during bankruptcy proceedings has become an urgent need in social practice at the intersection of bankruptcy law and environmental law.

2. Overview of Environmental Claims in Corporate Bankruptcy

2.1 Definition of Environmental Tort Claims in Bankruptcy Proceedings

2.1.1 Definition of Environmental Tort Claims

Currently, academic circles hold the following main views on the definition of environmental tort claims: First, Professor Wang Mingyuan argues that environmental tort claims are claims arising from an enterprise’s environmental torts. A company’s environmental torts, its production and business operations plans, and other human factors lead to pollution of the natural environment and destruction of ecosystems, thereby causing harm to public property and the rights and interests of others in terms of personal health, property value, and environmental rights. Second, Professor Yang Lixin argues that environmental tort claims arise when perpetrators of environmental pollution and ecological destruction cause harm to the ecological environment through acts or omissions. Regardless of whether the perpetrators are at fault, they should bear corresponding liability as long as damage has occurred. Third, Zhang Qinyu argues that an environmental tort claim refers to the right of a victim of environmental harm to demand that the debtor assume liability for environmental harm caused by the debtor’s environmental tortious conduct. In bankruptcy proceedings, the enforcement of this right involves the debtor asserting a claim against creditors for the repayment of the environmental tort claim.

2.1.2 Classification of Environmental Tort Claims

Based on differences in the objects of the infringement, environmental tort claims can be subdivided into two major categories: claims for damage to personal rights and claims for damage to property rights. Among these, claims for damage to personal rights primarily cover claims for compensation resulting from infringements on individual personal rights, such as the right to life and the right to health; whereas claims for damage to property rights are primarily related to the diminution of the victim’s property interests, such as property losses resulting from the destruction of farmland or the inability to use soil normally.

2.1.2.1 Claims for Personal Injury

Claims for personal injury arising from environmental torts stem from bodily harm caused by environmental infringements committed by bankrupt enterprises. Examples include the leakage of chemical raw materials into the environment during the production process at a chemical plant, or pollution of the environment in areas adjacent to the factory, which results in environmental harm to individuals exposed to the chemicals or residents living near the chemical plant, causing damage to their physical health or even posing a serious threat to their lives. According to Article 1,179 of the Civil Code, liability for compensation for personal injury primarily includes reasonable expenses incurred for treatment and rehabilitation—such as medical expenses, nursing care costs, transportation costs, and nutritional expenses—as well as lost income due to time off work. In the event of disability, compensation must also be provided for assistive devices and disability damages; in the event of death, compensation must be provided for funeral expenses and death damages. In addition, depending on the severity of the personal injury and the degree of mental anguish suffered by the victim, the victim may also claim compensation for mental distress and other losses to personal rights.

2.1.2.2 Claims for Property Damage

Claims for property damage arising from environmental infringements stem from the bankruptcy enterprise's infringement of property rights and are manifested in the corresponding liability for damages that the bankruptcy enterprise must bear. For example, when a bankruptcy enterprise discharges pollutants onto land, rendering it unusable for farming and thereby causing economic losses to the land user, the bankruptcy enterprise is liable for such damages. China's Civil Code stipulates that compensation for property damage shall primarily take the form of monetary compensation, covering both direct and indirect losses to property. This includes loss of property value, facility repairs, depreciation costs, and other expenses incurred by the victim as a result of the property damage.

3. Challenges in Protecting Claims for Environmental Torts in Corporate Bankruptcy Proceedings

3.1 Unequal Legal Standing in Environmental Torts

There are significant differences in the composition of parties involved in environmental torts compared to general torts. The primary parties liable for environmental tort debts are typically enterprises or corporate groups, while the victims are widely distributed among the general public. Compared to powerful enterprises or corporate groups, these victims often find themselves in a relatively disadvantaged position, lacking sufficient capacity to defend against environmental harm. Furthermore, victims of environmental torts are relatively dispersed, and their identities are highly uncertain—a stark contrast to the relatively concentrated and clearly identifiable nature of victims in ordinary torts.

3.2 The Broad Scope and Indeterminacy of Creditors in Environmental Torts

Environmental torts affect a wide range of people, and the resulting harm is extremely severe. The impact of such torts is broadly non-specific; that is, the harm is not limited to a specific area or group of people but exhibits a diffuse nature. Take China's first public interest lawsuit involving air pollution—the case brought by the China Environmental Protection Federation against Dezhou Jinghua

Group Zhenhua Co., Ltd.—as an example. Due to the significant mobility and pervasiveness of air pollution, the exact number of victims is incalculable. As air pollutants spread and disperse, more potential unspecified victims are able to seek legal remedies after the Supreme People's Court publicly announces its judgment. Such air pollution cases often infringe upon the rights to life, health, property, and other legitimate rights and interests of numerous unspecified individuals; if handled improperly, they can easily trigger social instability and pose a potential threat to the country's long-term stability and harmonious development.

3.3 The Long-Term, Cumulative, and Latent Nature of Environmental Tort Claims

Environmental tort claims exhibit characteristics of long-term persistence, gradual accumulation, and latent concealment. Given the unique nature of environmental pollution, its harmful effects do not manifest immediately but rather require a prolonged process of accumulation and repeated exposure within the human body, presenting a latent and non-immediate hazard. The manifestation of such hazards often occurs with a time lag and is not easily detected immediately, thereby exacerbating the complexity and urgency of addressing environmental claims. In the case of Wu Guojin v. China Railway Fifth Bureau Co., Ltd., regarding a dispute over liability for noise pollution, the court ultimately relied on scientific methods—such as expert testimony and data models—to determine the amount of compensation for environmental damage, recognizing that the harm caused by noise pollution to human health does not manifest as a short-term illness. Similarly, in the case of the Fukushima nuclear power plant leak in Japan, the harm caused by the released radioactive materials far exceeded our imagination. Nuclear contamination not only caused irreversible damage to the environment but also had far-reaching negative impacts on the health of future generations, highlighting the importance and urgency of establishing mechanisms for environmental damage assessment and compensation.

4. Analysis of the Justification for Prioritizing Environmental Claims in Corporate Bankruptcy

4.1 Putting the Concept of Green Development into Practice

With the ongoing implementation of ecological civilization, the continuous advancement of green development concepts and actions, and the proposal and implementation of the "dual carbon" goals, China's national governance and socio-economic development have embarked on a significant and far-reaching shift toward green development. In 2015, the Central Committee of the Communist Party of China and the State Council jointly issued the "Guiding Opinions on Accelerating the Advancement of Ecological Civilization," explicitly requiring a comprehensive review and revision of provisions in the current legal and regulatory framework that are inconsistent with ecological civilization, and strengthening the coordination among various laws and regulations. Against this backdrop, the entire legal system is undergoing a profound green transformation. In this context, bankruptcy law should regard environmental interests—particularly public environmental interests—as key objects of protection. On this basis, it should establish green principles, implement the concept of green development, and fully leverage its due role in ecological and environmental protection. During its codification, China's Civil Code fully incorporated the requirements of green development and established a green institutional framework within its section on tort liability. In traditional Chinese culture, the Confucian concept of "harmony between heaven and humanity," the Daoist principle of "following the way of nature," and the Buddhist idea of "the oneness of all things" collectively form the cultural foundation of the green development philosophy. Compared to the limited environmental impact of individual lifestyles, the environmental impact of corporate production and business operations is far more significant. The concept of green development plays a pivotal role in regulating corporate environmental protection practices. Granting environmental claims priority in corporate bankruptcy proceedings is a natural manifestation of this concept. Only by ensuring that enterprises effectively settle their environmental obligations can the goals of sustainable development be achieved. In promoting a circular economy and low-carbon economic development, accelerating the construction of an ecological civilization, and realizing green development, the role of enterprises is indispensable and cannot be replaced by other entities. Therefore, whether at the time of establishment, during operations, or after termination, enterprises must earnestly fulfill their environmental responsibilities. When an enterprise faces insolvency, ensuring that environmental claims enjoy priority in repayment is a key means of compelling enterprises to assume their environmental responsibilities; this approach aligns with the core principles of building an ecological civilization.

4.2 Requirements of Fairness and Justice

Meeting the need for a fair distribution of claims among creditors is not only the cornerstone upon which the bankruptcy system is built but also the primary and core objective of bankruptcy legislation. China's Enterprise Bankruptcy Law explicitly states in its preamble that the purpose of this law is to uphold the order of the socialist market economy, ensure the fair settlement of claims, thereby protect the legitimate rights and interests of both creditors and debtors, and regulate bankruptcy proceedings. This provision profoundly reveals the primary purpose and legislative intent of bankruptcy law: to achieve the fair settlement of claims and debts and to safeguard the legitimate rights and interests of both bankruptcy creditors and debtors. Its core essence lies in "fairness," and the concept of fairness pursued in modern society has transcended formal equality to place greater emphasis on substantive fairness—that is, achieving differentiated fair treatment through appropriate preferential protection for vulnerable groups. As individuals, environmental creditors are relatively weak and find it difficult to stand up to corporations; moreover, their risk tolerance is limited. Coupled with the fact that environmental damage is often long-term, latent, and complex, safeguarding the interests of environmental creditors is more challenging than that of other creditors. Environmental claims are closely tied to people's lives and health; therefore, when a company faces bankruptcy due to insolvency, protecting the interests of environmental creditors not only safeguards their individual rights but also upholds the principles of fairness and justice in bankruptcy distributions. The pursuit of environmental justice is fully demonstrated in the process of protecting the interests of environmental creditors in bankrupt companies. Environmental justice, as a new perspective for humanity in the era of environmental crises, centers on achieving intragenerational and intergenerational equity in the enjoyment of environmental resources. Intragenerational equity, specifically, refers to the right of all members of the current generation to enjoy environmental resources equally and to benefit from a clean and healthy environment without interference or deprivation from any external factors. Intergenerational equity requires that, while pursuing their own development, members of the current generation must fully take into account the resource needs of future generations. As fundamental building blocks of the economic system and profit-seeking entities aiming to maximize profits, companies often tend to use various means to shift environmental costs to external parties in order to maximize their profits. Consequently, the impact of corporate operations and planning on the environment is both significant and far-reaching. Clarifying and establishing the priority status of environmental claims in bankruptcy liquidation can effectively promote the internalization of environmental costs, thereby fostering healthy competition among companies. Based on this, establishing the priority right to payment for environmental claims in bankruptcy liquidation holds profound significance for more effectively upholding social fairness, justice, and public order.

4.3 Implementing the Polluter Pays Principle

The principle of liability for damage can be traced back to the “polluter pays principle” advocated by the Organization for Economic Cooperation and Development (OECD) in 1972. This principle holds that organizations and individuals who emit pollutants or cause environmental damage must bear responsibility for the consequences of their actions. Its core tenet is that polluters must independently bear the economic costs of environmental pollution and ecological damage caused by their own activities, including but not limited to the direct costs of pollution control and ecological restoration, as well as the investment costs necessary for the reasonable control of pollution. The introduction of this principle marks a historic shift in responsibility for environmental governance and restoration from the state and society to individual polluters, bringing about a profound transformation in the mechanism of liability attribution.

Advancing the implementation of the “polluter pays” principle effectively incorporates environmental costs into enterprises’ production cost structures, thereby incentivizing producers to take necessary measures to minimize their polluting activities and encouraging them to actively research, develop, and adopt low-pollution raw materials, products, and technologies. Through environmental tax systems and corresponding collection measures, government agencies can raise the necessary funds from polluters, providing a solid financial foundation for measures such as remedying environmental damage and preventing, controlling, and remediating environmental pollution. Furthermore, the implementation of the “polluter pays” principle also encompasses the requirement for polluters to bear civil liability toward victims of pollution; this principle thus fulfills a social function by compensating for losses caused by environmental pollution and providing relief to victims. Consequently, the “polluter pays” principle has been established in many countries and regions.

China has also adopted the “polluter pays” principle, explicitly articulating it as the “principle of liability for damage” within the framework of fundamental principles established by the *Environmental Protection Law*.This principle reflects China’s negative stance toward acts of environmental harm, demonstrates its determination to hold environmental offenders accountable, and strengthens the enforcement of environmental laws. At the same time, the principle of liability for damage provides a legitimate foundation for environmental legal liability mechanisms such as the “ecological and environmental damage compensation system” and the “daily cumulative penalty system,” further refining the structured framework of China’s environmental legal principles.

In the specific application of bankruptcy reorganization proceedings, although environmental tort claims are classified as ordinary claims and are repaid according to the fourth priority of repayment, this can be viewed as the bankrupt enterprise fulfilling its environmental responsibilities. However, given that the repayment rate for ordinary claims is generally low in practice, the actual amount paid by the enterprise for such claims is relatively limited. For example, out of 1 million yuan in environmental damages caused by a company, the funds ultimately recovered through repayment may amount to only about 200,000 yuan, leaving a shortfall of 800,000 yuan that must be borne by society as a whole. This means that companies, as perpetrators of environmental torts, need only bear a minuscule portion of the liability arising from their environmental torts and can use bankruptcy proceedings to evade the majority of their environmental liabilities. Some unscrupulous enterprises exploit this loophole by treating environmental resources as cost-free assets to reap excessive profits, only to evade responsibility through bankruptcy proceedings when faced with environmental liabilities. Therefore, to effectively implement the principle of liability for damages, it is essential to elevate the priority of environmental tort claims in the order of repayment and increase their repayment ratio.

4.4 Requirements of the Principle of Environmental Priority

The core significance of the principle of environmental priority lies in the fact that when an irreconcilable conflict arises between economic growth and environmental protection, environmental protection should take precedence to ensure the genuine realization of sustainable development. Against this backdrop, China has successively enacted and implemented numerous environmental protection laws and regulations, all of which embody the principle of environmental priority. For example, the *Environmental Protection Law of the People’s Republic of China*, hailed as “the strictest ever,” clearly articulates its legislative purpose right from the outset, profoundly reflecting the concept of prioritizing environmental protection. Environmental resources are often irreplaceable and have limited renewability. As a vital foundation for human survival, any damage caused to environmental resources during economic construction and resource development will inevitably affect the actual environment on which humans depend for survival, as well as their related rights and interests. The availability and public nature of environmental resources determine their role as the natural foundation of human existence; however, during the process of development and utilization, negative impacts on other natural elements and the overall ecological environment must be avoided.

Enterprises tend to file for bankruptcy reorganization proceedings primarily due to a heavy debt burden—that is, when their current and foreseeable future assets are insufficient to cover debts nearing maturity, or when they face other forms of insolvency. In contrast, environmental torts arising from pollution or destruction are typically sudden and unpredictable. Due to this lack of predictability, such claims often struggle to secure effective repayment on par with other claims during the distribution process. This is attributable both to the vulnerable position of environmental creditors themselves and to the neglect of the statutory order of priority for environmental claims within the current legal remedy system—a situation that is deeply frustrating. The inability to obtain effective repayment following an environmental tort will, for individuals, directly lead to victims facing a crisis of survival, or even the loss of their right to health or their right to life; for ecosystems, the damage will continue to amplify and spread, causing destruction both spatially and over time; for society as a whole, companies may evade liability for environmental torts arising from production activities or environmental accidents by filing for bankruptcy, a practice that could indirectly foster undesirable social norms and business practices. Therefore, granting priority to environmental claims in corporate bankruptcy liquidation proceedings not only effectively safeguards the legitimate rights and interests of environmental creditors but also deeply reinforces the concept of environmental protection; at the same time, it represents a powerful implementation of and response to the principle of "environment first" policy.

5. Restructuring the Priority of Environmental Tort Claims in Corporate Bankruptcy

5.1 Considerations on the Current Priority of Labor Claims

The labor claims discussed in this paper specifically refer to wage claims in the narrow sense, covering unpaid employee wages and related wage-based benefits, but excluding pensions and other social insurance contributions. In corporate bankruptcy proceedings, the priority accorded to labor claims is primarily based on the following considerations. First, in the current market economy, the labor market exhibits characteristics of a buyer's market; that is, while employers hire employees, they also dominate the setting of wage standards. Employees often find themselves at a disadvantage during labor contract negotiations and struggle to engage in equal negotiations with employers regarding wage levels and payment methods. Second, wage arrears are a common occurrence, and employees lack effective measures to prevent them. Compared to ensuring timely and full payment of wages through contract clauses or amendments to labor laws, providing priority protection for employee wages through bankruptcy law appears to be a more direct and effective approach. Furthermore, employees exhibit a certain degree of "dependence" on their employers. This stems primarily from high job-switching costs and the fact that China's national labor market remains underdeveloped due to significant regional disparities in economic development, resulting in a low job-switching rate. This low mobility provides companies with room to suppress wages, causing employees to hesitate when considering a change in employment, and fostering a psychological "dependence" on their current employer. Moreover, wage earners have a low tolerance for the risk of unemployment. After a company goes bankrupt, shareholders can walk away unscathed, while employees may not only lose unpaid wages accrued prior to bankruptcy but also lose their jobs and future sources of income. This reality is by no means an exaggeration. Although China has achieved significant success in poverty alleviation and the urban-rural income gap has gradually narrowed, disparities in household income levels remain significant. A large number of people still live below the poverty line and have extremely limited resilience to economic risks.

Drawing on international experience, the priority ranking of labor claims in corporate bankruptcy proceedings has shown a trend toward gradual reduction. For example, Germany's Insolvency Code has classified labor claims as a type of unsecured claim; Brazil, in its 2005 amendment to the Bankruptcy Law, made reasonable adjustments to the priority ranking of labor claims, allowing only a very small portion of such claims to enjoy priority, while the remainder are treated as unsecured claims. Similar trends are evident in other countries, such as the United Kingdom and the United States. However, when examining the issue of labor claims, the author believes that, given the differing national circumstances of each country, it is not advisable to blindly adopt foreign practices. Rather, only through a comprehensive assessment of values and practical considerations can one determine whether the current ranking of labor claims in bankruptcy settlements is reasonable and meets actual needs.

5.2 Reflections on the Current Priority of Tax Claims

According to the relevant provisions of the current Enterprise Bankruptcy Law, tax claims are ranked in the order of repayment after labor claims and before general claims. Tax claims specifically refer to the right of the government (or the state), as the tax creditor, to demand payment of taxes due from the taxpayer (i.e., the enterprise) in the event of corporate bankruptcy. Compared to other creditors, the government demonstrates significant advantages in risk assessment and risk-bearing capacity. On the one hand, the government is able to assess in advance the risks that may arise from corporate bankruptcy; on the other hand, it possesses sufficient capacity to withstand such risks. However, granting tax claims priority under current legal provisions may give rise to a series of new issues.

First and foremost, granting tax claims priority in repayment effectively amounts to indirectly shifting the tax liability onto ordinary creditors. Compared to government creditors, environmental creditors are clearly in a much weaker and more disadvantaged position in terms of the protection of their rights and interests. If tax claims take priority over ordinary claims in repayment, it may result in enterprises being unable to satisfy environmental claims after repaying government debts. Consequently, the government would ultimately bear the burden of environmental damage that has not been fully remedied. This approach appears redundant and amounts to indirectly shifting the enterprise's tax liability onto ordinary creditors, which clearly runs counter to the core legal values of fairness and justice. Webster once pointed out that "justice is the supreme interest of humanity, its importance even surpassing that of the law itself." "In the early stages of human society, people faced a choice between two diametrically opposed principles: first, the principle that fundamental rights and obligations should be distributed equally; and second, the principle that when social and economic inequalities exist, such inequalities may be regarded as just as long as they bring substantial benefits to disadvantaged groups." These theories form a solid theoretical foundation for protecting the interests of environmental creditors in bankrupt enterprises. Ensuring the equitable distribution of assets among creditors following corporate bankruptcy is the primary objective and purpose of China's bankruptcy legislation, as well as the original intent behind the establishment of the bankruptcy system. In modern society, the upholding of justice should not be limited to superficial formalities but must delve into substance, particularly by giving appropriate priority to the protection of the rights of the vulnerable. Since environmental claims are classified as ordinary claims, their order of priority makes the likelihood of recovery extremely low. Compared to the government—the holder of tax claims—environmental creditors are significantly weaker in terms of both influence and risk-bearing capacity. When a company faces financial difficulties or goes bankrupt due to an environmental incident, protection for environmental creditors is virtually impossible to achieve, which clearly fails to reflect the pursuit of fairness and justice. Furthermore, reducing the priority status of tax claims in corporate bankruptcy has become a major trend in current legislation. With the development of the welfare state, the tax burden on enterprises has grown increasingly heavy. If tax claims are given priority in corporate bankruptcy, it will inevitably reduce the recovery rate for ordinary claims. Given that tax authorities, as public agencies, can easily obtain comprehensive and accurate financial information and data on debtors through means such as tax returns and financial audits, they can fulfill their tax collection duties simply by conscientiously performing their responsibilities in day-to-day tax administration. Conversely, granting tax claims priority in corporate bankruptcy may actually foster passivity and inaction on the part of tax authorities, encouraging a culture of negligence. Therefore, some scholars argue that tax claims should be treated as ordinary claims in bankruptcy proceedings. Finally, regarding the scope of priority enjoyed by tax claims in corporate bankruptcy, some countries and regions have in fact already begun seeking to either exclude or abolish such priority. The 1994 German Insolvency Act, for instance, abolished all existing priority rights, including tax priority. Similarly, the UK Companies Act of 2002 no longer contains provisions regarding the priority of tax claims in corporate bankruptcy. In countries that have not explicitly abolished the priority of tax claims, the protection afforded to this priority has been weakened to varying degrees in practice. Take U.S. bankruptcy law as an example: tax claims rank only eighth among numerous priority categories, indicating that they do not hold an absolute priority. Furthermore, the U.S. Congress fully recognizes that the order of priority in bankruptcy cases is a crucial legal institution, the fundamental purpose of which is to ensure that more parties can share the bankruptcy estate fairly and reasonably, rather than allowing government claims to monopolize the entire estate, thereby avoiding imbalances in wealth distribution.

5.3 Considerations on the Current Priority of Social Insurance Contributions

Given the inherent need to improve the social security system, as well as the fundamental, statutory, and urgent nature of social insurance contributions, such contributions should enjoy a priority in corporate bankruptcy liquidation proceedings equivalent to that of tax claims. Since the early 21st century, China has enacted a series of laws and regulations related to social insurance. While these regulations have generally achieved the separation of social insurance contributions from employee wages, the subsequent elevation of their priority status to be equivalent to that of tax claims also contains numerous unreasonable aspects. With the evolution of the times and the renewal of social values, the pace of reform in the current social insurance system is accelerating, which has greatly promoted the improvement and development of China's social security system. Against this backdrop, treating social insurance contributions as equally important as tax claims is also reasonable. Therefore, from the long-term perspective of promoting the sustained and healthy development of the market economy, consolidating social insurance contributions and public law claims—such as tax claims—into a single, independent category of claims not only aligns with current international practices but also conforms to the trend of historical development.

5.4 A New Design for the Order of Priority in Creditor Repayment in Corporate Bankruptcy

"Human interactions, including those in economic life, are based on a certain degree of trust. Trust is founded on a certain order. To maintain this order, we must rely on various rules that prohibit unforeseeable and opportunistic behavior. We call these rules 'institutions.'" If both parties uphold the original intent of fair dealing, adhere to the principle of contractual compliance, successfully complete the exchange of offer and acceptance, and, on this basis, build a solid foundation of mutual trust—and if a guarantor subsequently provides security over specific assets to effectively facilitate the transaction—then the resulting claim should be granted the highest priority protection under any circumstances. Failure to do so would constitute a severe blow to the social credit system and profoundly undermine the network of interpersonal trust. Therefore, when establishing a priority system for corporate bankruptcy claims, the design of priority protection for environmental claims should not undermine the established status of secured claims; otherwise, this would mean unfairly shifting the costs of remediating environmental pollution and damage—which should be borne by the enterprise and the general public—onto innocent, non-culpable secured creditors. In particular, when the secured creditor is a bank, such a shift effectively amounts to imposing risks arising from commercial trust upon the vast number of depositors who did not directly participate in the commercial activity in question; this move clearly runs counter to the goal of safeguarding fundamental public interests. Based on the considerations outlined above, the author proposes the following framework regarding the priority of repayment for bankruptcy claims other than secured claims.

First and foremost, to ensure that enterprise employees can fully enjoy their basic rights to survival and development and maintain the basic conditions necessary for their daily lives, the priority of labor claims—to be satisfied immediately after bankruptcy expenses and debts for the common benefit—is unshakable. Although certain aspects of environmental claims involving personal rights also derive from fundamental human rights at the constitutional level, there are significant differences between the two. Labor claims arise from labor activities and are, in essence, an exchange of "expected returns," whereas the creation of environmental claims is not contingent upon prior contributions. Therefore, employees' labor claims do not require filing as claims in bankruptcy liquidation proceedings but are directly included in the category of priority claims. The legislative purpose of the corporate bankruptcy system is to promote social harmony and stability, uphold fairness and justice, and balance the interests of all parties. From this perspective, environmental claims should reasonably yield to labor claims to a certain extent.

Furthermore, national taxes are regarded as "government liabilities," primarily used for public infrastructure construction and national governance; like environmental claims, they possess social and public welfare characteristics. However, the key distinction lies in the fact that environmental claims do not arise from mutual consent between the parties. Moreover, when the holder of an environmental claim is a natural person, their risk-bearing capacity is far lower than that of the government. In particular, since certain environmental claims involve direct harm to the rights to life and health, the urgency of protecting these rights far exceeds that of government claims. On the other hand, taxes are "collected from the people and used for the people"; the primary task of the state in fulfilling its public administration functions is to protect citizens' right to life, whereas the costs of remediating environmental pollution and destruction grow exponentially, and once citizens' right to life and right to health are compromised, they cannot be restored. Therefore, tax claims should be settled after environmental claims. In light of the foregoing, it is appropriate to classify social insurance contributions and tax claims within the same priority order for repayment under the rule of law; therefore, social insurance contributions should be repaid after environmental claims, alongside tax claims.

Ultimately, based on the preceding analysis of the unique nature of environmental claims, as well as the recognition of the principles of fairness and justice, the "polluter pays" principle, and the concept of green development, environmental claims should not be placed in the same subordinate priority order as ordinary claims. Ordinary claims should yield to the environmental claims of a bankrupt enterprise.

In summary, without altering the basic framework of the current corporate bankruptcy settlement system, the author believes that, in the order of priority for various claims after secured claims are excluded, environmental claims should enjoy priority second only to labor claims.

5.5 Improving the Socialized Approach to Bearing Environmental Liabilities

Given the uneven levels of economic development across China's regions, the diversity of environmental protection awareness, and the significant disparities in the scale and financial strength of insurance companies, a uniformly applicable environmental liability insurance system has not yet been established nationwide, nor is there a specialized environmental protection fund dedicated to environmental governance and risk prevention. However, in the author's view, the assumption of civil liability for environmental torts should ultimately rely on the synergistic effects of environmental liability insurance and environmental protection funds. Compared to the traditional model of "pollute first, assign liability later, and remediate afterward," this approach offers significant advantages in terms of timeliness and effectiveness, while also helping to diversify corporate operational risks and promote the steady and rapid development of the market economy.

Although environmental liability insurance and environmental protection funds offer the possibility of priority satisfaction of environmental claims, they still face numerous practical challenges. Regarding environmental liability insurance, despite active promotion by local governments in many regions, its legal basis is limited to policy documents, and enterprises' willingness to participate remains low. Furthermore, given the severe consequences of environmental pollution and ecological damage, the risks involved in underwriting are extremely high. For reasons of profitability and risk control, insurance companies often restrict their coverage, resulting in a narrow scope of coverage and low claim ratios, which in turn dampens enterprises' enthusiasm for purchasing such insurance. As for environmental protection funds, China's legislation and practice in this area are virtually nonexistent. Even if we draw on international experience and establish an environmental protection fund system, given the enormous amounts involved in environmental claims, it would be difficult to sustain the fund's operations and achieve the goal of prioritizing the satisfaction of environmental claims. Therefore, to explore a reasonable path for the priority satisfaction of environmental claims in corporate bankruptcy, the author hereby proposes recommendations and plans for improving the systems of environmental liability insurance and environmental protection funds.

5.5.1 Improving the Environmental Liability Insurance System

Although both the central and local governments in China have issued relevant regulations on environmental liability insurance, its role in actually promoting the realization of environmental claims has been quite limited. In response to the issues mentioned earlier, drawing on domestic and international legislative and practical experience, and fully considering the actual conditions of China's current economic market, the following recommendations are hereby proposed:

First, optimize and enrich the existing system of environmental protection laws and regulations to lay a solid foundation for the establishment and improvement of the environmental liability insurance system. Specifically, while China's current environmental protection laws and administrative regulations generally meet the overarching needs for environmental protection and the rational use of resources at the macro level—and promote the construction of an ecological civilization—most provisions are formulated in broad terms, with an emphasis on guiding principles rather than specific operational details. This grants environmental protection authorities a relatively broad scope of discretion. Failure to promptly establish an efficient and specific legal and regulatory framework could become a stumbling block to the development of environmental liability insurance in China. Therefore, it is particularly important to promote the establishment of mandatory environmental insurance provisions in a timely and appropriate manner. At the same time, the level of detail in national and local regulations should be selectively enhanced, and feasible pathways for sector-specific, field-specific, and region-specific legislation should be actively explored.

Second, establish a multidimensional insurance participation framework that combines mandatory and voluntary insurance. By thoroughly examining the evolution of environmental insurance systems abroad, we can draw an important lesson: neither a purely mandatory nor a completely voluntary insurance participation model can fully adapt to a highly developed market economy or meet complex and ever-changing environmental protection needs, nor can they effectively motivate enterprises to participate in insurance. To address the challenges enterprises face when selecting insurance participation models, this paper recommends establishing a neutral and professional assessment organization. By entrusting this third-party assessment organization to conduct scientific evaluations of the probability of environmental liability risks and the potential extent of damage for specific industries and their enterprises, the results can serve as the basis for determining the appropriate insurance participation model. Based on a comprehensive consideration of various factors, a final decision should be made on whether to include relevant industries or enterprises within the scope of mandatory environmental liability insurance. For enterprises not subject to mandatory coverage, the government should introduce corresponding incentive measures to guide them toward voluntarily participating in insurance programs, thereby effectively mitigating environmental risks.

Third, establish a system for the dispersion of environmental liability risks. Given insurance companies' concerns regarding the consequences of underwriting environmental liability, we can actively leverage international cooperation, draw on other countries' experiences in building environmental liability risk dispersion systems, and adapt these approaches to our national circumstances to effectively achieve risk dispersion. Specifically, under normal circumstances, a single insurance company could independently assume the insurance liability; however, in special industries prone to frequent, sudden major environmental pollution incidents, a strategy of joint underwriting by multiple insurance companies to share the risk could be adopted. At the same time, a comprehensive risk assessment mechanism must be established to scientifically evaluate the potential for environmental pollution and damage across different industries. Based on this assessment, an environmental liability risk-sharing system tailored to the specific characteristics of each industry should be constructed.

Fourth, extend the statute of limitations for claims. Given the unique nature of environmental torts, the environmental liability insurance system must ensure that the statute of limitations for insurance claims is sufficiently long; however, this period should not be extended indefinitely, so as not to adversely affect the sustained and healthy development of insurance companies. Therefore, it is recommended that differentiated statute of limitations provisions be established based on factors such as the type of environmental pollution and damage and the degree of risk, in order to accommodate various specific circumstances.

Fifth, improve incentive mechanisms such as government subsidies and policy support. Considering the unique advantages of the socialist system with Chinese characteristics and the central role of the Chinese government in social governance, the government must take proactive measures to maximize the effectiveness of environmental liability insurance by strengthening policy guidance and increasing support and incentives. Specific measures include providing preferential policies—such as tax breaks and fiscal subsidies—to environmental liability insurance underwriters to promote their healthy development.

5.5.2 Improving the Environmental Protection Fund System

Although the environmental liability insurance discussed above can address the issue of redress for environmental tort liabilities to a certain extent, it cannot independently bear the full responsibility. Therefore, this paper recommends adopting a two-pronged strategy to ensure that environmental creditors can obtain timely compensation and that victims are compensated. Specifically, while establishing an efficient environmental liability insurance system, efforts should be accelerated to improve the environmental liability fund system. In response to the gaps and shortcomings in China’s environmental liability fund system, this paper offers the following recommendations: First, establish a comprehensive legal framework for the environmental protection fund system. Given the complexity of environmental protection funds within the legislative frameworks of various countries, academia has identified two viable strategies: first, adopting a codification approach to construct a unified and comprehensive legal framework; second, enacting specialized legislation for specific types of funds to implement differentiated regulatory measures. For the codification strategy, China can draw on the advanced experience of the United Kingdom’s Public Benefit Trusts Act to establish comprehensive and systematic regulations covering key aspects such as the establishment procedures, management mechanisms, and fundraising for public benefit funds. As for the targeted legislation strategy, China can refer to the successful practices of the United States and certain European countries. Furthermore, establishing a multi-tiered environmental protection fund structure is crucial. A clearly defined network of environmental protection funds should be created, in which national and local funds support one another, to overcome the current dilemma of “siloed” management and promote synergy and cooperation among different entities. The establishment of this structure can draw on the Western approach of classifying funds by function to ensure seamless coordination and efficient collaboration across all stages. Furthermore, establishing a sound regulatory system is indispensable. Without effective oversight, funds struggle to ensure transparency in fundraising and operations, which can easily trigger a crisis of public trust and thereby hinder the long-term development of environmental protection funds. This paper argues that efforts should focus on three areas: first, ensuring the mutual independence of financial and operational departments; second, optimizing the audit system; and third, comprehensively promoting the disclosure of financial information, encouraging public participation in oversight, and enhancing credibility. Furthermore, broadening the channels through which environmental protection funds participate in environmental governance is equally important. Against the current backdrop of scarce funding and low levels of public participation, relying solely on government leadership is no longer sufficient to keep pace with rapid social development and change, nor can it meet the diverse demands of environmental governance. The future trend should be the joint participation of diverse social actors in the co-construction of environmental protection funds. Accordingly, this paper proposes the following two possible pathways: First, participating in PPP (Public-Private Partnership) projects. Through such participation, not only are new channels opened for environmental protection funds to engage in environmental governance, but it also promotes the development of environmental governance toward diversification and marketization; Second, implementing government procurement of services projects. Outsourcing certain environmental protection projects can significantly reduce government investment and save administrative costs, which not only aligns with the requirements for building a service-oriented government but also helps promote the improvement and development of the environmental protection fund system. In summary, improving the environmental liability insurance system and the environmental protection fund system, and fully leveraging their social relief functions, can provide a strong supplement to the priority satisfaction of environmental claims. At the same time, these systems can, in a more reasonable manner, maximize the compensation for the shortcomings of traditional remedies.

6. Conclusion

Restructuring the priority order of environmental tort claims in corporate bankruptcy not only provides solid support for the protection of environmental interests and the achievement of ecological and environmental protection goals but also serves as a key indicator of the continuous progress and improvement of the bankruptcy legal system in the new era. The revision of China’s Bankruptcy Law should give this matter full consideration and effectively incorporate this concept. Granting priority to environmental claims may have the positive effect of reducing creditors’ willingness to do business with enterprises bearing environmental liabilities, or prompting them to demand higher interest rates to cover the increased risk. These additional costs will squeeze enterprises’ profit margins, thereby incentivizing them to proactively avoid environmental liabilities. This change will prompt market participants to significantly heighten their awareness of environmental risks, while also helping to phase out enterprises that engage in extensive development characterized by “high pollution, high energy consumption, high emissions, and low efficiency.” Consequently, it will more effectively drive the economy’s transition toward green development and inject powerful momentum into the construction of an ecological civilization. Furthermore, in the face of potentially enormous environmental claims, while the difficulty of debtors’ repayment can be alleviated through various means—such as environmental liability insurance, special environmental protection funds, or even holding directors and senior executives jointly and severally liable—this is not sufficient to negate the necessity of giving priority to the satisfaction of environmental claims. In fact, when it comes to remedies for environmental damage, given the severity of the harmful consequences and the enormous scale of funding required, it is necessary to establish diversified, multi-tiered channels and mechanisms and leverage their synergistic effects to achieve full and effective remedies.

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