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VIETNAM'S CORPORATE INSOLVENCY LAW: EMERGING ISSUES AND PROPOSALS FOR REFORM

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ABSTRACT: This article analyzes the practice of enforcing corporate bankruptcy law in Vietnam in the context of an increasingly volatile business environment, thereby assessing the extent to which the rights and interests of relevant stakeholders are protected, market order is maintained, and economic restructuring is supported. The study employs a combination of legal analysis, synthesis, and comparative methods, alongside an examination of the practical application of existing regulations based on secondary data and selected case studies. The findings indicate that Vietnam's corporate bankruptcy law has initially established a legal framework for addressing insolvency; however, its implementation still reveals several shortcomings, including protracted procedures, low effectiveness of business rehabilitation, and inadequacies in protecting the rights and interests of involved parties. On that basis, the article proposes orientations and solutions for improving the legal framework, focusing on enhancing enforcement efficiency, shortening procedural timelines, strengthening corporate rehabilitation mechanisms, and

better safeguarding stakeholders' rights, thereby contributing to a transparent and sustainable business environment.

Keywords: *corporate bankruptcy; bankruptcy law; corporate restructuring; business environment.*

1. INTRODUCTION

In the context of globalization and the rapid advancement of digital transformation, the business environment in Vietnam has become increasingly dynamic and exposed to various risks. Intensified competition, rapid technological changes, and fluctuations in macroeconomic conditions and legal policies have caused many enterprises to experience financial distress and insolvency. Consequently, bankruptcy is no longer an isolated phenomenon but has become an inevitable component of the natural selection mechanism of a market economy. In this context, bankruptcy law plays a particularly important role in establishing a legal framework for addressing insolvency in a fair, transparent, and efficient manner. Modern bankruptcy legislation aims not only to protect the legitimate rights and interests of stakeholders but also to maintain market order while facilitating business recovery and economic restructuring toward sustainable development.

In Vietnam, the legal framework governing corporate bankruptcy has undergone significant development. However, during the period from January 1, 2015, to September 30, 2023, the practical implementation of bankruptcy and business rehabilitation laws demonstrated results that were not commensurate with the existing legal framework. Of the 1,510 bankruptcy cases accepted by courts, only 554 cases proceeded to formal bankruptcy proceedings (36.7%), while merely 150 cases resulted in bankruptcy declarations (less than 10%). A considerable number of cases were rejected, returned, or suspended, reflecting a relatively low rate of final resolution. Corporate rehabilitation procedures were rarely utilized, with only six cases recorded over nearly nine years, primarily because enterprises filed petitions too late to enable effective restructuring (Supreme People's Court of Vietnam, 2025).

Despite these legislative developments, practical enforcement reveals several persistent shortcomings. The number of bankruptcy cases accepted and resolved remains relatively limited compared to actual market demand; proceedings are often lengthy; the effectiveness of business rehabilitation mechanisms remains low; and the rights and interests of creditors and other stakeholders are not always adequately protected. Furthermore, inconsistencies between bankruptcy law and other related legal fields, together with emerging challenges arising from the digital economy, have created an urgent need for further reform and refinement of the legal framework.

Against this backdrop, a comprehensive study of Vietnam's corporate bankruptcy law, examined in light of both practical implementation and international experience, is of significant theoretical and practical importance. Accordingly, this article seeks to identify the shortcomings and limitations of the current legal framework and to propose recommendations for legal reform aimed at enhancing enforcement effectiveness, promoting a transparent and stable business environment, and contributing to the sustainable development of the Vietnamese economy.

2. THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

The theoretical framework of this study is grounded in the legal theory of bankruptcy law as an institutional mechanism governing corporate insolvency in a market economy. From this perspective, bankruptcy law serves not only as a tool for removing inefficient enterprises from the market but also as a mechanism for reallocating resources, protecting the rights and interests of creditors and other stakeholders, and providing opportunities for the restructuring and rehabilitation of financially distressed but potentially viable businesses. This article approaches bankruptcy law through the dual functions of liquidation and rehabilitation, situating these functions within broader theoretical perspectives on the economic efficiency of law, creditor protection theory, and the contemporary trend of viewing bankruptcy as an early restructuring mechanism.

Furthermore, the study draws upon international experiences concerning the transition from liquidation-oriented bankruptcy regimes to rehabilitation-centered models. Such comparative insights help clarify the requirements for further developing Vietnam's bankruptcy legal framework in the context of international integration and digital transformation. The analysis is also informed by modern insolvency principles that emphasize business rescue, value preservation, and the promotion of sustainable economic development.

Regarding the research methodology, the article employs a combination of qualitative and comparative legal research methods to ensure comprehensiveness and reliability. The analytical and synthetic method is used to systematize and clarify the substantive provisions of Vietnam's current bankruptcy legislation. Statistical and data analysis methods are applied to assess the effectiveness of legal implementation and identify practical challenges in bankruptcy proceedings. In addition, the comparative legal method is selectively utilized to examine relevant international experiences and best practices in insolvency regulation. Based on these approaches, the study identifies key shortcomings and emerging issues within the current legal framework and proposes recommendations for legal reform aimed at enhancing enforcement effectiveness and strengthening corporate rehabilitation mechanisms.

3. RESULTS AND DISCUSSION

3.1. Legal Provisions on Corporate Bankruptcy under the Law on Rehabilitation and Bankruptcy 2025

3.1.1. Procedures for Corporate Bankruptcy

Corporate bankruptcy procedures under the Law on Rehabilitation and Bankruptcy 2025 are designed to be streamlined, transparent, and closely integrated with business rehabilitation mechanisms. This approach aims not only to address insolvency effectively but also to provide viable enterprises with opportunities for restructuring and recovery. Article 39(1) and (2) of the Law stipulate that individuals and entities entitled or obligated to file a petition for bankruptcy proceedings must submit the petition, together with lists of creditors and debtors (if any), as well as supporting documents and evidence to the competent court. Upon receipt of the petition, the Chief Justice assigns a judge or a panel of judges to consider the request. The enterprise concerned is then notified and given an opportunity to respond before the court determines the appropriate course of action.

Bankruptcy proceedings are initiated through the filing of a petition with the competent court. The right to file such a petition is granted not only to the debtor enterprise but also to creditors, employees, and other stakeholders as prescribed by law. Compared with previous legislation, the new framework broadens and clarifies access to bankruptcy proceedings, thereby enhancing the timeliness and effectiveness of insolvency resolution (Nguyen & Vo, 2023).

After accepting a valid petition, the court examines whether the statutory conditions for commencing proceedings are satisfied. Based on a comprehensive assessment of the enterprise's financial condition and prospects for recovery, the court may decide either to initiate rehabilitation proceedings or to proceed directly to liquidation-oriented bankruptcy proceedings. One of the notable innovations of the 2025 Law is the introduction of an early screening mechanism that differentiates between rehabilitation and liquidation cases, thereby reducing delays and avoiding unnecessarily prolonged procedures.

In the subsequent stage, the determination of liabilities and the preservation of assets are carried out under strict supervision. Insolvency administrators or asset management organizations are appointed to inventory assets, establish the bankruptcy estate, and implement measures to prevent the dissipation or concealment of assets. At the same time, lists of creditors and claims are prepared to provide the basis for the settlement of stakeholders' rights and interests.

Where the enterprise demonstrates a realistic prospect of recovery, a restructuring plan is developed and submitted to the court for approval following creditor consent in accordance with statutory voting thresholds. If the rehabilitation plan is deemed unfeasible or fails to obtain approval, the proceedings move into the liquidation phase. Asset distribution is conducted according to the legally prescribed order of priority, ensuring fairness and transparency. Bankruptcy proceedings conclude when either the liquidation process has been completed or the rehabilitation plan has been successfully implemented. Consequently, the process may result either in the termination of the enterprise's legal existence through liquidation or in its continued operation following successful restructuring.

3.1.2. Scope of Application of Bankruptcy Law

Article 2 of the Law on Rehabilitation and Bankruptcy 2025 provides that the Law applies to rehabilitation and bankruptcy proceedings involving enterprises and cooperatives. In cases where the Law contains no specific provisions, relevant laws shall apply. However, rehabilitation procedures and simplified rehabilitation procedures do not apply to credit institutions, insurance enterprises, or reinsurance enterprises.

Accordingly, the scope of bankruptcy law continues to be defined broadly so as to encompass business entities engaged in economic activities and subject to financial obligations within the economy. Specifically, the Law applies to enterprises of all organizational forms established under enterprise legislation, as well as cooperatives and cooperative unions operating under cooperative law. The clarification and expansion of the Law's scope of application contribute to greater consistency within the legal system and respond to the practical demands of a market economy characterized by diverse business entities varying in size and organizational structure.

At the same time, the Law contains specific provisions for certain sectors whose insolvency may have broader implications for financial stability and economic order. Such special treatment reflects the need to balance creditor protection with systemic stability (Tran, 2019). Overall, the revised provisions concerning procedural rules and the scope of application demonstrate a trend toward a more modern, flexible, and internationally aligned bankruptcy regime capable of meeting the requirements of contemporary economic development.

3.1.3. Conditions for Initiating Corporate Bankruptcy Proceedings

Under the Law on Rehabilitation and Bankruptcy 2025, bankruptcy proceedings may only be commenced when specific statutory conditions are satisfied. The primary condition concerns insolvency. Article 5(2) defines insolvency as a situation in which an enterprise or cooperative fails to fulfill its debt obligations within six months from the due date for payment.

Based on this definition, bankruptcy proceedings may only be initiated through a valid petition filed pursuant to Article 38 of the Law. Eligible petitioners include unsecured creditors or partially secured creditors; employees and trade unions where wages and other obligations remain unpaid for six months after becoming due; shareholders or groups of shareholders holding at least 20 percent of ordinary shares, or a lower percentage as provided in the company charter; and the legal representative of the enterprise, who bears the obligation to file a petition when the enterprise becomes insolvent.

Furthermore, Article 70 introduces a simplified bankruptcy procedure. The court may apply this procedure where the enterprise has no more than twenty unsecured creditors, total principal debt does not exceed VND 10 billion, the enterprise qualifies as a small or micro-sized enterprise, or where the debtor has no assets or insufficient assets to cover bankruptcy fees and procedural costs. Pursuant to Article 39, the court will only accept a bankruptcy petition when the applicant submits complete documentation and evidence demonstrating insolvency and pays the required bankruptcy fees and advance procedural costs, except where exemptions apply.

The core condition for bankruptcy proceedings is therefore the existence of insolvency. Insolvency should not be understood merely as a failure to pay debts when due; it also encompasses a severe deterioration in liquidity, reflected in cash flow constraints, financial imbalances, and limited prospects for generating future revenue. Determining insolvency requires a comprehensive and objective assessment, which serves as the basis for deciding whether bankruptcy proceedings should be initiated or whether rehabilitation measures remain appropriate.

In addition, the Law requires that the unpaid financial obligations be sufficiently significant to justify the use of bankruptcy procedures. Rather than establishing a fixed minimum debt threshold, the 2025 Law adopts a holistic approach that considers the scale of the debt, the extent of financial imbalance, and the impact of the debtor's condition on its operations and stakeholders. This approach helps prevent the misuse of bankruptcy proceedings in situations that could be resolved through alternative legal mechanisms.

Another indispensable requirement is the filing of a petition with a competent court. Such petitions may be submitted by the debtor enterprise, creditors, or other authorized parties and must be accompanied by evidence demonstrating insolvency. The court then exercises its judicial authority to review the petition, determine its admissibility, and decide whether to commence bankruptcy proceedings (Tran, 2024).

Overall, these conditions constitute an important legal foundation for ensuring that bankruptcy proceedings are applied prudently, effectively, and in a manner consistent with practical realities. They contribute not only to protecting the rights and interests of stakeholders but also to maintaining order, discipline, and confidence in commercial activities.

3.2. Practical Implementation of Bankruptcy and Business Rehabilitation Law in Vietnam

During the period from January 1, 2015, to September 30, 2023, the implementation of bankruptcy and business rehabilitation law in Vietnam revealed a significant gap between the legal framework and its practical effectiveness. Of the 1,510 bankruptcy cases accepted by the courts, only 554 cases proceeded to formal bankruptcy proceedings (36.7%), while 234 cases were denied commencement and 66 petitions were returned at the initial stage. Only 150 cases ultimately resulted in bankruptcy declarations, accounting for less than 10% of all accepted cases, including 44 cases resolved under simplified bankruptcy procedures. In addition, 49 cases were suspended (Supreme People's Court of Vietnam, 2025). These figures indicate that the insolvency resolution process has not achieved the level of effectiveness anticipated by the legislative framework, as the proportion of cases reaching a final resolution remains relatively low.

The application of business rehabilitation procedures has been particularly limited. Over a period of nearly nine years, only six rehabilitation cases were recorded nationwide. The primary reason is that enterprises tend to file petitions only after reaching a state of severe insolvency, rendering rehabilitation plans largely impracticable. This situation suggests that bankruptcy law has not yet functioned effectively as an early restructuring mechanism but has instead been utilized mainly when enterprises are already in the final stages of financial decline.

From a geographical perspective, bankruptcy petitions are concentrated in economically developed provinces and cities such as Binh Duong, Ho Chi Minh City, Hanoi, Dong Nai, and Hai Duong. In contrast, ten provinces recorded no bankruptcy petitions during the same period. This disparity reflects uneven access to and utilization of bankruptcy law across regions, influenced by differences in market size, legal awareness, and business practices.

Regarding implementation capacity, the system of insolvency administrators and asset management and liquidation enterprises has been established but remains underutilized. By the end of 2023, 2,073 professional certificates had been issued; however, only slightly more than 300 individuals were actively practicing, alongside over 70 operating enterprises. Collectively, these entities participated in just over 500 cases, generating total service fees exceeding VND 8 billion. These figures indicate that the insolvency services market remains limited in both scale and professionalism.

In the enforcement stage, performance has shown signs of improvement. The number of bankruptcy enforcement cases and the value of assets subject to enforcement increased significantly, from 42 cases involving VND 305 billion in 2015 to 324 cases involving VND 2,198.8 billion in 2023. The monetary enforcement completion rate also rose from 56.51% to 87.90%. Nevertheless, delays continue to occur, with some cases remaining unresolved for many years, highlighting persistent concerns regarding the timeliness of enforcement (Supreme People's Court of Vietnam, 2025).

The implementation of bankruptcy and business rehabilitation law in Vietnam, particularly following the enactment of the Law on Rehabilitation and Bankruptcy 2025, demonstrates positive developments in both legislative thinking and enforcement mechanisms. However, practical application continues to reveal several structural shortcomings that require further attention.

First, one of the strengths of the current legal framework is its capacity to protect creditors through a transparent asset distribution mechanism and a clearly defined priority system. The establishment, management, and disposal of bankruptcy estates under court supervision and with the participation of insolvency administrators help prevent asset dissipation and enhance fairness in debt settlement. Furthermore, the new legislation reflects a more economically rational and socially responsive approach by emphasizing business rehabilitation. Through restructuring plans, financially distressed enterprises may overcome difficulties, continue operations, and gradually regain stability. Such an approach preserves enterprise value, protects employment, and contributes to market stability (Kang, 2015).

Second, a significant obstacle arises from the perception and attitudes of enterprises toward bankruptcy proceedings. In practice, bankruptcy continues to be viewed as a symbol of failure, carrying negative implications for reputation, business relationships, and future market participation. Although the new law reduces some adverse consequences and facilitates entrepreneurial re-entry, many enterprises remain reluctant to initiate bankruptcy proceedings. As a result, insolvent enterprises often continue operating while financially distressed, thereby increasing risks to creditors and complicating the resolution process. In addition, non-compliance with accounting, financial reporting, and disclosure requirements remains relatively common, making it difficult to accurately determine a company's financial condition and asset base (Nguyen & Vo, 2023).

Third, the capacity and resources of implementing actors remain inadequate. Bankruptcy judges require not only legal expertise but also a strong understanding of finance, accounting, banking, and corporate governance to properly assess an enterprise's condition and prospects for rehabilitation. However, the number of specialized judges remains limited, and professional competency is uneven. Similarly, although the professionalism of insolvency administrators and enforcement agencies has improved under the 2025 Law, practical challenges relating to experience, technical expertise, and inter-agency coordination continue to hinder effective implementation.

Fourth, inconsistencies among related legal frameworks remain a substantial challenge. Historically, discrepancies between bankruptcy law and civil judgment enforcement law regarding the timing and procedures for enforcing bankruptcy decisions created uncertainty in practice. Although the Law on Rehabilitation and Bankruptcy 2025 has sought to harmonize these provisions, implementation difficulties persist due to differing interpretations among competent authorities. Moreover, creditor protection mechanisms during the enforcement phase—particularly rights relating to participation, supervision, and complaints—require further clarification. Challenges also remain concerning asset valuation and disposal. While the new law expands mechanisms for reviewing and adjusting asset values, practical implementation, especially in auction procedures, continues to lack detailed guidance. Coordination between insolvency administrators and enforcement agencies in asset disposal, although improved, still requires further refinement to ensure efficiency and timeliness.

These limitations demonstrate that improving bankruptcy and rehabilitation law requires more than legislative amendment alone. It also necessitates enhanced enforcement capacity, stronger institutional coordination, and a shift in business culture and perceptions.

Such reforms are essential if bankruptcy law is to fulfill its role in facilitating corporate restructuring and maintaining market discipline.

3.3. Recommendations

Based on the foregoing analysis of the legal framework, conditions for application, and practical shortcomings, further reform of Vietnam's bankruptcy and business rehabilitation law should be implemented in a comprehensive, coordinated, and targeted manner, with particular emphasis on addressing legal gaps and ensuring consistency and practicality in application.

First, the legal framework governing insolvency administrators and asset management and liquidation organizations should be further professionalized and standardized. Clearer requirements concerning professional qualifications, specialized training, and certification should be established through a nationally unified system. In addition, legislation should specify the legal responsibilities of insolvency administrators throughout each stage of bankruptcy proceedings, particularly regarding asset management, debt verification, and participation in rehabilitation planning. Independent oversight mechanisms and effective sanctions, including civil, administrative, and where appropriate criminal liability, should also be introduced to ensure accountability and minimize conflicts of interest (Jackson, 2018).

Second, judicial procedures should be further specialized. One important reform would be the establishment of specialized bankruptcy judges or dedicated insolvency divisions within the court system. Legislation should also provide more detailed criteria for evaluating rehabilitation prospects, approving restructuring plans, and addressing situations where rehabilitation efforts fail. Furthermore, unified judicial guidelines should be issued by competent authorities to reduce inconsistencies in legal interpretation and application across different jurisdictions (Esser, Frisari, & Ringe, 2019).

Third, reforms are needed at the enforcement stage to ensure consistency between bankruptcy law and civil judgment enforcement law. Clear and harmonized provisions concerning the timing and procedures for enforcing bankruptcy decisions should be adopted to eliminate overlapping or conflicting rules. More detailed regulations governing asset valuation, revaluation, and auction procedures should also be introduced to maximize asset recovery and ensure transparency. At the same time, creditor rights during enforcement proceedings—including rights of supervision, access to information, and legal remedies—should be strengthened and clarified (Chuah, 2019).

From a broader systemic perspective, enhancing corporate transparency and financial discipline is essential. Regulatory frameworks relating to accounting, auditing, and corporate disclosure should be strengthened through stricter monitoring and enforcement mechanisms. Severe sanctions should be imposed on fraudulent reporting, concealment of information, and accounting manipulation. Such measures are crucial for accurately determining insolvency and protecting stakeholder interests during bankruptcy proceedings.

In addition, business rehabilitation mechanisms should be further developed to become more practical and attractive. Legislation should clearly regulate the content, preparation, approval, implementation, and supervision of rehabilitation plans. Supportive measures, such as preferential access to financing, protections for investors participating in restructuring efforts, and reasonable debt rescheduling arrangements, should also be considered to improve the feasibility of rehabilitation plans (Cordero & Rodriguez, 2017).

Finally, legal reform should be accompanied by efforts to improve public understanding of bankruptcy and business rehabilitation. Awareness campaigns should promote the view that bankruptcy is a normal legal mechanism within a market economy, serving not only to liquidate failed enterprises but also to facilitate restructuring and market re-entry. Such a shift in perception is essential to encouraging timely and effective utilization of insolvency procedures.

Overall, reform efforts should proceed simultaneously on three interconnected fronts: improving substantive legal rules, strengthening implementation capacity, and transforming societal perceptions. Only through the integration of these elements can bankruptcy and rehabilitation law fully perform its functions of maintaining market discipline, protecting stakeholder rights, and promoting sustainable economic development.

4. CONCLUSION

Bankruptcy and business rehabilitation law plays a vital role in maintaining market discipline, facilitating the efficient allocation of resources, and supporting the restructuring of the economy. Although the Law on Rehabilitation and Bankruptcy 2025 represents a significant step forward in modernizing Vietnam's insolvency framework and aligning it more closely with international standards and best practices, its practical implementation continues to face substantial challenges.

The level of legal awareness and compliance among enterprises remains uneven, while the capacities of key implementing actors, including judges, insolvency administrators, and enforcement authorities, have yet to fully meet the demands of an increasingly complex business environment. Bankruptcy proceedings are often lengthy and costly, coordination among relevant institutions remains insufficiently effective, and the legitimate interests of creditors and employees are not always adequately protected. These shortcomings limit the effectiveness of bankruptcy law as both a mechanism for resolving insolvency and a tool for promoting corporate restructuring.

Accordingly, further legal reform is necessary to ensure that the bankruptcy framework becomes clearer, more coherent, and more practical in its application. At the same time, efforts should be directed toward strengthening institutional capacity, simplifying procedural requirements, reducing processing time, and improving cost efficiency. In addition, enhancing public awareness of bankruptcy and business rehabilitation, promoting greater financial transparency, and ensuring effective protection of stakeholders' rights are essential for strengthening confidence in the legal system.

Ultimately, the effectiveness of bankruptcy and rehabilitation law depends not only on the quality of legislative provisions but also on the capacity of institutions responsible for their implementation and the willingness of market participants to utilize these mechanisms in a timely and responsible manner. A comprehensive and well-functioning insolvency framework will contribute significantly to market stability, business sustainability, and the long-term development of Vietnam's economy.

References