

# Research on the Determination of the Calculation Date of Bankruptcy Debt Interests with Real Right Guarantee

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**Abstract.** The interest-bearing claims to stop interest-bearing at the time of acceptance of bankruptcy application is one of the basic criteria for the determination of the amount of creditor's rights as stipulated in China's Enterprise Bankruptcy Law. However, whether the creditor's rights in the rule include claims with real right guarantees, the theoretical and practical departments have both positive and negative views. Under the entire legal system and socio-economic background, the interest on bankruptcy claims with real right guarantees should be calculated to the date of debt settlement, which is required by the legislative purpose of the security interest, Enterprise Bankruptcy Law and Property Law there is no conflict in the scope of priority compensation for property security; this is determined by the legislative purpose of the bankruptcy proceedings. The interest rights of the secured creditor are calculated to the date of liquidation, which is not only fair to the secured creditor, but also does not harm the interests of ordinary creditors.

**Keywords:** security interest; bankruptcy claims; interest; calculation date; legitimacy.

## 1. Introduction

The handling of security interest in the bankruptcy law needs to pay attention to the interaction between the security law and the bankruptcy law, The core lies in the limitation and protection of the security interest in the bankruptcy proceedings.[1] According to the provisions of Article 46, paragraph 2 of the Enterprise Bankruptcy Law, the interest-bearing claims cease to accrue interest from the time of acceptance of the bankruptcy application. In civil activities, after the expiration of the interest-bearing creditor, the debtor shall not only pay off the principal, but also pay off the interest. The calculation period of interest shall be from the date of the debt to the date of debt performance. However, in the bankruptcy proceedings, in order for the bankruptcy process to proceed smoothly, it is necessary to determine the specific amount of the creditor when the creditor declares the creditor's right. Therefore, it is necessary to stop interest bearing when the bankruptcy application is accepted. Then, whether the creditor rights stipulated in Article 46 of the Enterprise Bankruptcy Law include claims with real right guarantees, the theoretical and practical departments have different views. The following discussion of whether the interest on the bankruptcy claim with the property right guarantee should be calculated to the date of the debt settlement.

## 2. Whether the Interest on the Bankruptcy Claims with the Security of Property Rights Should be Calculated to the Date of the Settlement of the Claims

China's "Enterprise Bankruptcy Law" stipulates that the interest-bearing claims cease to bear interest when the bankruptcy application is accepted, which is one of the basic criteria for the determination of the amount of creditor's rights. [2] Whether the interest on the bankruptcy claims with the property right guarantee should be calculated to the date of the debt settlement, there are two views that are positive and negative.

### 2.1 Definitely Say

It is affirmed that according to Article 113, paragraph 1, of the Enterprise Bankruptcy Law, the unified distribution of the bankruptcy property as stipulated in the Enterprise Bankruptcy Law does not include the secured creditor's rights, and the realization of the secured creditor's rights is not

through the bankruptcy property distribution rules. Completion, but in accordance with Article 109 of the Enterprise Bankruptcy Law, that is, the bankruptcy of the property right guarantee. The calculation of interest on creditor's rights does not apply to the provisions of Article 46, paragraph 2, of the Enterprise Bankruptcy Law. Only with Article 110 of the Enterprise Bankruptcy Law, the creditor who has the property right guarantee realizes the part of the creditor's right that has not been fully compensated after the realization of the security right, or the right to waive the priority compensation becomes the part of the ordinary creditor's right. The provisions of paragraph 2 of Article 46.

## **2.2 Negating**

Negative said that the provisions of Article 109 of the Enterprise Bankruptcy Law can only prove that the secured claims are preferentially compensated and do not involve the calculation of interest. And the provisions of Article 46, paragraph 2, of the Enterprise Bankruptcy Law, "The interest-bearing claims cease to bear interest from the time of acceptance of the bankruptcy application" does not distinguish between secured creditor's rights and ordinary creditor's rights, according to Article 44 of the Enterprise Bankruptcy Law, that the people's court accepts the bankruptcy application, the creditor who has the creditor's right to the debtor shall exercise the rights in accordance with the procedures stipulated in this Law. The secured creditor's right is also the bankruptcy creditor's right. Therefore, the secured claims are still subject to Article 46, paragraph 2, of the Enterprise Bankruptcy Law, and the interest can only be calculated until the bankruptcy application is accepted.

## **3. Interest on Bankruptcy Claims with Property Security Shall be Calculated to the Date of Debt Settlement**

The author believes that the interest on bankruptcy claims with property rights guarantees should be calculated to the date of debt settlement. The specific reasons are as follows.

### **3.1 Required by the Legislative Purpose of the Security Interest**

The security interest system cannot be analyzed only in the bankruptcy system, but should be examined in the entire legal system and socio-economic background.[3] The reason why a creditor establishes a security interest in his creditor's right is to solve the problem that the debtor cannot pay off the debt due when the financial crisis occurs, including the inability to pay off the principal and interest of the debt, so that the creditor's right can be guaranteed. It is safe inside.[4] If the provisions of Article 46 of the Enterprise Bankruptcy Law can be applied to the creditor's right of the property right guarantee, the purpose of the creditor's establishment of the property right guarantee cannot be fully realized, especially for the creditors who have obtained the interest return on the loan by the bank. The guarantee cannot solve the problem that the interest on the funds will be seriously damaged due to bankruptcy. Article 170 of the Property Law stipulates that the security right guarantees the priority realization of the secured creditor, and the scope of realization is determined by Article 173 of the Property Law. That is to say, unless the parties agree otherwise, the security interest guarantees all interest rather than part of the interest, and there is no conflict between the Enterprise Bankruptcy Law and the Property Law regarding the security of property rights.

### **3.2 Determined by the Legislative Purpose of the Bankruptcy Proceedings**

The bankruptcy procedure is a general settlement system for resolving the unsecured creditor's rights. It does not sacrifice ordinary creditors at the expense of the property rights of the creditors. The interests of the secured creditors should not be lost due to the bankruptcy of the guarantor. The bankruptcy system originated from the ultimate concept of fair protection of creditor's rights.[5] One of the most important purposes of the bankruptcy procedure is to maximize the creditor's interests, but the realization of this purpose cannot be excessively sacrificed at the expense of group or individual interests, the bankruptcy law protects the ordinary creditors for the purpose of equal compensation. It stipulates the system of revocation rights, adjusts the partiality settlement and returns

to bankruptcy distribution. The manager has the right to arbitrarily cancel the contract that neither party has fulfilled. These measures are ultimately to adjust the interests of the creditors involved in the distribution, especially the ordinary creditors. To make the interests of the creditors involved in the distribution realize substantive fairness through bankruptcy. For this substantive fairness, the interests of some creditors involved in the distribution have to be sacrificed. However, there is no place in the bankruptcy law to adjust the interests of the secured creditors to subsidize the ordinary creditors. For the secured creditor's right, the realization of its creditor's rights depends on the value of the collateral and the realization of the collateral. As long as the guaranty secured by the collateral has sufficient liquidity, its creditor's right should not suffer losses, regardless of ordinary creditor's rights or other claims. The situation of compensation. Article 3, paragraph 2, of the Judicial Interpretation II of the Bankruptcy Law provides that the debtor's specific property may be used in bankruptcy proceedings to settle bankruptcy costs, common debt and other bankruptcy after the guaranty right has been eliminated or the security interest has been realized. That is, the interests of other interests of the bankrupt enterprise must be beneficial to the secured creditor. Only the value of the collateral is retained after the settlement of the secured claim, and the remaining portion can be enjoyed by other interest groups.

### **3.3 Without Damaging the Interests of Ordinary Creditors**

The interest of the debt secured by the property right is calculated to the date of liquidation, which is not only fair to the secured creditor, but also does not harm the interests of the ordinary creditor. Because the priority of the secured creditor has been publicized, there is no loss of reliance interest of the ordinary creditor. More importantly, this system is conducive to facilitating the timely and reasonable disposition of the secured property by the administrator, if the delay of the secured property is disciplinary increased interest on delay is greater than the interest brought by the delay of the debtor's property, the administrator shall promptly dispose of it, which is beneficial to the administrator and to the ordinary creditor, and is more beneficial to the secured creditor, if the administrator intentionally or a gross negligence without timely disposition of the secured property, resulting in improper derogation of the creditor's property, the manager shall, in accordance with Article 130 of the Enterprise Bankruptcy Law, the liability for the loss of the creditor shall be liable to the creditor. According to Article 75 of the Enterprise Bankruptcy Law, during the period of reorganization, the security right in respect of the debtor's specific property is suspended. However, the secured property that is not necessary to be retained for the reorganization of the enterprise can be exercised by the security right holder with the consent of the debtor or the administrator. This also encourages managers to actively dispose of the secured property without affecting the reorganization, so as to balance the interests of the secured creditor. Moreover, in the case that the manager possesses the collateral, the ex-rights person needs to coordinate with other work of the administrator when requesting the exercise of the priority repayment right, and it is inevitable that there will be a lag in a certain period, so that the manager's work can be carried out in an orderly manner, the rights of the ex-rights holder can be realized in time, and the appropriate time limit can be set as the reminder period for the ex-rights holder to exercise the right. When the administrator fails to assist in realizing the security interest within this time limit, the ex-rights holder has the right to dispose of the compensation on his own.

## **4. Summary**

Through the above analysis, we can see that the interest on bankruptcy claims with property rights guarantees should be calculated to the legitimacy of the debt settlement date, which is conducive to the protection of security interests.

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