The improvement of dormant registering system in China

-- From the perspective of Article 30 of the Regulations on the Registration and Administration of Market Entities

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Abstract. Under the dual impact of the epidemic and macroeconomic pressure, China's social economy is facing a large impact, especially some traditional industries and SMEs. The issue of how to help market players tide over the difficulties and stimulate market vitality in the context of the normalization of epidemic prevention and control needs to be addressed. At present, China's commercial legal practice still emphasizes the continuity of business characteristics, long-term non-business market players will face negative evaluation of social and legal norms. The introduction of the dormant enterprise theory provides the theoretical basis for the hiatus system. The macroeconomic downward pressure, the diversification of commercial operations, and the inadequacy of the existing institutional supply have created a real demand for the hiatus system, and many market players have adopted the hiatus system to cope with market changes. Article 30 of the Regulations on the Registration and Administration of Market Entities specifically provides for the dormant registering system in China, but the regulation still has problems in terms of restrictions, preconditions, and duration of the closure. Based on this, the restrictions of the dormant registering system should be moderately relaxed, in order to retain the enumerated mode of qualification based on the needs of market participants to increase the enumeration of circumstances; at the same time should not be the processing of debt relationships as a prerequisite for closure, it is not appropriate to the "Regulations" Article 30, paragraph 2 for an expansive interpretation; in addition, should be set according to the characteristics of different market participants step-by-step closure period.

Keywords: Closing system; Dormant Company; Business registration reform; Regulations on the registration of market entities.

1. Introduction

China continues to deepen the "management and service" reform, the business environment is constantly optimized, commercial entities are increasingly diversified, commercial activities are increasingly diversified, and the operation of market entities also broke the previous inherent must continue to operate the model. At the same time, due to the impact brought by the new crown epidemic, many commercial entities are unable to operate due to a shortage of funds and poor operation, and there is a real demand for retaining the qualification of commercial entities and suspending their operation. The Central Economic Work Conference proposed to continue to do a good job of "six stability" and "six protection" work, especially to protect employment, people's livelihood, and market subjects, which is an important measure to "promote the economy to achieve a steady improvement in quality and reasonable growth in quantity". In the current still severe economic situation, it is necessary to introduce a more relaxed commercial registration system similar to the dormant registration, and therefore the dormant registering system needs to be taken into consideration.

Because of this, Article 30 of the Regulations of the People's Republic of China on the Registration and Administration of Market Entities (the "Regulations"), adopted on March 1, 2022, initially established a hiatus system, and the subsequent Implementation Rules for the Registration and Administration of Market Entities (the "Rules") were issued to refine and improve the provisions of the Regulations, but there are still some problems that need to be solved. At present, the theoretical study of the hiatus system is not perfect. Based on this, this paper, through the historical development of the hiatus system and the development of the current situation, clarifies the main reasons for the hiatus system, and puts forward corresponding suggestions for the problems in Article 30 of the Regulations, in order to promote the further improvement of the hiatus system.

2. History and development of the hiatus system

The core of the hiatus system is to allow the market subject to retain the qualification of commercial subjects while suspending business, hiatus system has the following characteristics: First, the subject of the hiatus system requires the legal establishment of the market subject; Second, the reason for the hiatus is affected by natural disasters, epidemics, and other force majeure factors; Third, the state before the hiatus to the extent of temporary inability to operate normally; Fourth, The conditions for the start of the closure of the business is the need to apply to the relevant management; Fifth, the subject of the hiatus does not shut down and can continue to operate after the business environment has improved; Sixth, in addition to the hiatus can not carry out business activities, market participants still enjoy other legal rights.

2.1 The history of the dormant registering system

After a short period in China, the hiatus system has been stagnant and not formally established, but only reflected in specific provisions. In this paper, the historical trajectory of the dormant registering system will be reviewed from two aspects: the existence and abolition of the dormant registering system for self-employed businesses and the practical attempts in some regions.

In China, there have been provisions for individual businesses to close down. 1987, the State Council issued the "Interim Regulations on the Management of Individual Businesses in Urban and Rural Areas" Article 11 provides that: "When an individual business is closed, it should go through closing procedures and surrender its business license. Self-discontinued for more than six months, by the original registration of the administrative organs for industry and commerce, to seize the business license", this is the first time the market was the subject dormant registering system in China, the same year released the "Interim Regulations for the Administration of Urban and Rural Individuals" Article 12 also has corresponding provisions. However, due to the lack of sound supporting measures, and cumbersome and complex operation, in 2011, the Regulations on Individual Business Enterprise came into force, and the Interim Regulations on the Management of Urban and Rural Individual Business Enterprise were repealed at the same time, and the system of "closure" of individual households has since retired from China's historical stage.

Subsequently, the financial crisis in 2008 led to a sharp contraction in the global market, the economic recession was difficult to resist, numerous small and medium-sized enterprises were short of funds and supplies, and production and operation were exceptionally difficult, so most of the production shut down. For these SMEs, allowing them to suspend their business for a reasonable period, rather than having to register for deregistration, became an objective need for the business under the economic realities of the time. Difficult business market players need a buffer period to resume operations to reduce the cost of survival of market players, and the hiatus system can play a role in this regard. Therefore, the "hiatus system" is back again, and many places have made new attempts at the system. In 2009, Shenzhen and Henan Province have tried to enterprises or self-employed businesses to introduce "dormant" registration measures. Although the details of the implementation plan are different, all allow the relevant subjects to make a temporary dormant application, after approval to survive for a while, and retain their business license, to be resumed after the economic situation improves, these measures effectively help enterprises to tide over the financial crisis.

2.2 Current development of the hiatus system

In 1988, the State Council issued the "Regulations on the Registration and Administration of Enterprise Legal Persons" Article 22 provides that: "After receiving the "Business License of Enterprise Legal Person", the enterprise legal person has not started business activities for six months or has ceased business activities for one year, it is deemed to be out of business, and the competent registration authority shall collect the "Business License of Enterprise Legal Person", the copy of the "Business License of Enterprise Legal Person", collect the official seal, and inform its depositary bank of the cancellation of registration". The provisions of the same as the shutdown, a certain degree of recognition of the status of the shutdown, and gives the relevant administrative organs a specific "as" obligation, that is, the shutdown of legal enterprises should be written off.

The first paragraph of Article 211 of the Company Law adopted in 1993 stipulates that "if a company fails to open for business for more than six months after its establishment without justifiable reasons, or if it ceases business on its own for more than six consecutive months after opening, its business license may be revoked by the company registration authority". From the text of the article, the law does not distinguish the different situations of dormant companies from those that have not opened or have ceased to operate for more than six months. According to the interpretation of the text, the word "may" here should be generally understood as the company registration authority may revoke the business license or not, at its discretion. However, under the interpretation of the text, the word "may" in this article is not consistent with the expression "shall" in the Regulations on the Registration of Enterprise Legal Persons, and some scholars interpret this article based on the principle of "special law prevails over general law", and believe that the "may" in this article of the Company Law is actually "shall". Such an interpretation is conducive to legal self-consistency, but is only jurisprudentially justified when the Regulations on Enterprise Legal Persons are in force.

The "Regulations of the People's Republic of China on the Registration and Administration of Market Entities" announced in April 2021 set up for the first time a dormant registering system at the level of market entities, setting up a "buffer zone" for some enterprises that are temporarily unable to operate normally but still have a strong will and ability to operate, which is equivalent to helping enterprises to "shut down and protect their numbers", and their closure is protected by law. From the pilot situation, this system not only reduces the cost of retaining qualifications for market players, but also effectively reduces the waste of social resources, which is important for creating a relaxed and good business environment.

After the introduction of the Regulations on the Registration of Market Entities and the repeal of the Regulations on the Registration of Enterprise Legal Persons, the legal basis for interpreting the "may" in Article 211 as "shall" no longer exists, although Article 211 of the current company law has not been amended. In addition, Article 30 of the Regulations on the Registration and Administration of Market Entities proposes a system of closure, where the "may" should return to the connotation of "may or may not be revoked". Therefore, the logic of "new law is better than old law, special law is better than general law" will not work.

Article 30 of the Regulations on the Registration and Administration of Market Entities contains five paragraphs, which provide more detailed provisions on the dormant registering system. The first paragraph of Article 30 of the Regulations makes a proviso that "except as otherwise provided by laws and administrative regulations. Based on this, it can be considered that the "Regulations" to determine the closure of the system has two types, one is the general closure of the record, the second is the special closure of the record. General closure for the record as seen in the first paragraph of Article 30, due to natural disasters, accidents and disasters, public health events, social security incidents and other reasons that cause business difficulties, market participants can independently decide to close down for a certain period of time. In essence, it refers to the general dormant registering system based on the general principle of freedom of business, market entities that can independently decide whether to go out of business and enter into the closure process in accordance with the relevant provisions of the Regulations. And the special closure of the record refers to certain market entities can not independently decide whether to close, its closure issues need to be approved by the relevant authorities. For example, water supply, power supply, gas supply and other enterprises related to the public interest of society, as well as banks, insurance, trust and other financial enterprises involved in the financial market order.Due to the special nature of these industries and themselves, the freedom to operate is restricted and yielded to the public interest and social order, as reflected in Article 67 of the Administrative License Law and Article 20(2) of the Town Gas Management Regulations.

3. China's dormant registering system to produce the main reason

3.1 Theory change: the introduction of the dormant firm theory

Our company's legal system has certain requirements for the existence of enterprises in line with their own characteristics, most of which emphasize the continuity of business characteristics, long-term non-operating companies will face the negative evaluation of social and legal norms. In the past, the traditional concept of business to the principle of continuity and recurrence, the realization of the business objectives of the market players and market players closely related to the continuity of business, long-term non-operating market players may need to passively exit the market. The ideal goal of both the corporate system and scholars is for the corporation to survive in perpetuity, but the commercial practice is inconsistent and always seems to be trying to make the dormant state of the corporation secure.

In the past period of time, the absence of negative provisions such as Article 211(1) of the Company Law, Article 67 of the Regulations on Company Registration (2016 Revision), Article 22 of the Regulations on the Registration of Enterprise Legal Persons (2019 Revision) and other subjective provisions can be seen that our country has a negative attitude towards the hiatus system. Accordingly, there is a paucity of academic research on hiatus regimes and a lack of comparative law on the introduction of extraterritorial theory and practical experience. Until 2019, after the outbreak of the new crown epidemic, based on the increasing real demand, some scholars' perceptions have changed, arguing that market players can break the principle of business continuity and recurrence by allowing a few exceptions to their operations. Related academic studies are mushrooming, and these studies refer to the advanced theories and related concepts from abroad and put forward many suggestions on the construction of the hiatus registration system and commercial registration reform, such as the dormant company system in the UK and Singapore, the proposed dissolution system of companies in Japan, the inactive company system in Hong Kong, etc. The "Shenzhen Special Economic Zone Commercial Registration Regulations" promulgated in October 2020 is an attempt in China's mainland to draw on the "dormant company" system of the United Kingdom and other countries and the "inactive company" system of the Hong Kong Special Administrative Region, effectively helping dormant companies in good faith to survive the period of economic inactivity and maintaining the inherent vitality for the economic development of the Special Administrative Zone. At the same time, it also to a certain extent to achieve the "protection of the main market", to further enhance the sense of enterprise, reflecting the "hiatus system" considerate and warm.

Dormant enterprises have been clearly defined in foreign countries, but this concept is not stipulated in the current laws of China, and there is no unified understanding in the academic community. According to the current theoretical research, dormant enterprises can be broadly divided into two categories: the first category refers to enterprises that are forced to operate in difficulties due to changes in the external environment or consider their own business plans and other aspects, and voluntarily do not occur in a certain period of time any trading activities. Such dormant companies do not have a wrongful purpose and can be called bona fide dormant companies. The second category is the negative and unlawful evaluation of the situation into the concept of dormant company category, such as the violation of mandatory laws and regulations, loss of business qualifications and forced to cease operations, or malicious use of the enterprise as a debt evasion, tax evasion, transfer of assets, evasion of funds, fraud and other tools of unlawful behavior resulting in the company presents a long-term non-operational status of dormant companies. Because most of these businesses lack the possibility and legitimacy to continue operating, they can be called malicious dormant businesses. Such enterprises should enter liquidation procedures to clear or be forced out of the market. In contrast, such enterprises should not be regarded as dormant in principle, do not belong to the scope of the hiatus registration system, do not have a reasonable basis for survival, and are not suitable for adjustment by the dormant company system.

Thus, in connection with the Regulations of the People's Republic of China on the Registration and Administration of Commercial Entities (Draft), the dormant enterprises discussed here mainly refer to those enterprises that are forced to refrain from any business activities for a certain period of time due to external environmental changes that lead to operational difficulties or their own business plans and other considerations, i.e., dormant companies in good faith. Scholars mostly believe that this type of company, it can be allowed to legally survive and regulate its subject qualifications and behavior through the winding-up registration system, which is the commercial registration system to regulate the subject qualifications and behavior of such companies.

3.2 Realistic factors: macroeconomic pressure and diversification of commercial operations

The external factors that give rise to the hiatus system are a variety of complex realities, including the general trend of economic downturn, the objective needs of market players, etc.

In recent years, China's economy has entered a new normal, shifting from high-speed growth to medium-high growth, optimizing and upgrading its economic structure, and shifting from factor-driven and investment-driven to innovation-driven. China's economic growth rate from 2012 to the end of nearly 20 years of high-speed growth of 10%, in response to this change, in July 2013, General Secretary Xi Jinping stressed in the Central Political Bureau Standing Committee meeting, China's economy is in the growth rate shift, structural adjustment pain period, the previous stimulus policy digestion period "three overlapping" stage, coupled with the world economy is also in deep adjustment, the development environment is very complex, we need to accurately understand the stage of China's economic development characteristics, realistic reform, and adjustment. With the economy entering the stage of high-quality development after 2016, China is also facing the pain of economic transformation, and the downward spiral and growth fluctuations of China's economy continue, further demonstrating the macro-operational characteristics of the painful and transitional period of economic transformation. The transition period is always accompanied by a decline in output and economic pain, with the majority of China's economic indicators showing negative movements, with industrial value-added growth continuing to fall, fixed asset investment growth continuing to decline, and real estate development investment growth continuing to fall. The performance of "electricity consumption", "railroad freight" and "bank loans", which have been important indicators of the Chinese economy for some time, has also deviated significantly from the original track in recent years. The outbreak of the new crown epidemic at the end of 2019 has had a global impact and the world economy has suffered a deep recession of a century. the global economy shrank by 4.4% in 2020, equivalent to seven times the decline of the world economic crisis in 2009, the worst recession since the world economic depression of the 1930s. The sudden new crown epidemic aggravated the existing economic downward pressure 2012 economic growth rate broke 8%, and in 2019 three or four quarters of the economy's year-on-year growth rate broke 6% continuously.

Since the 19th Party Congress, the General Administration of Market Supervision actively play a functional role, as one to promote the deepening of the "management and service" reform, and unremittingly optimize the business environment, stimulate the vitality of hundreds of millions of market players, to make a positive contribution to the sustainable and healthy development of China's economy and society. In recent years, local reform has also been carried out in various places according to local conditions, and the innovative reform of the business environment has continuously increased. As the business environment continues to be optimized, the enterprises' sense of access continues to improve, the number of market entities leaps to a new level, the trend of diversification of business activities and diversification of commercial entities emerges and develops day by day, and the own needs of some industries and enterprises gradually receive attention, such as the development strategies and operational characteristics of enterprises so that they do not have to operate continuously, and therefore constantly call for the emergence of a hiatus system.

With the diversification of business activities and the diversification of commercial entities, the market has seen the emergence of many companies that no longer stick to the traditional continuity of business, but can flexibly adjust to internal strategic needs and their plans. For example, companies that deal with highly time-sensitive foods such as mooncakes tend to concentrate their production operations on a few specific months of the year, and the suspension status may not be limited to six months. For example, companies that deal with highly time-sensitive foods such as mooncakes tend to concentrate their production operations on a few specific months of the year, and the suspension status may not be limited to six months. The establishment of a hiatus system can respond to the new situation of market economic development, to meet the diversified needs of market participants. As scholars say, the optimization and improvement of the business environment are not only to promote the facilitation of market entry and exit, but also to realize the upgrading of governance throughout the life cycle of market players in the process of survival as a value orientation, and to ensure the sustainable and healthy development of market players through a full range of innovative service initiatives.

3.3 System gap: the existing system cannot meet objective needs

The internal factors that gave rise to the hiatus system are the changes in the system resulting from the failure of the old system to meet the needs of the current market economy. It is because of the lagging nature of the system, the misalignment between the old system and the real situation poses a new challenge to the relevant system, and a new system is thus created. Before the emergence of the hiatus system, the shutdown system had functional similarities with the hiatus system, but in fact, could not meet the objective needs of the current stage.

As a kind of administrative regulation, the use of suspension measures is related to the private interests of practitioners and the realization of social and public interests. At the level of national unified norms, China's Administrative Penalty Law provides for the suspension of production and business as a type of administrative penalty from the perspective of unified legislation. At the level of administrative law to order the suspension of production and business, stop practicing, suspension of rectification, stop production and rectification, suspension of license and closure of business and other specific forms of performance of the suspension of production and closure measures in administrative supervision practice has also been used to a certain extent, but it plays a more limited role, can not play the role of the dormant registering system should be.

Suspension of production is a more severe administrative sanction, laws and regulations in setting the suspension of production should strictly grasp the set conditions, but the Administrative Penalty Law does not unify provisions of the set conditions of the suspension of production, but only in different areas of administrative management laws and regulations for specific administrative matters set different conditions. In general, the order to suspend production and business generally applies to the following violations. (1) the offender has serious violations or unsafe hazards, and the stage production and operation conditions are seriously incompatible, must be temporarily deprived of its production and operation rights to be sufficient to prompt it to correct the violations, and eliminate the unsafe hazards. (2) engaged in processing, production and human life and health closely related (such as drugs, food, etc.) has been or may be a threat to human life and health of the goods, or the publication of a negative impact on human mental life publications, audio, and video products and other illegal acts.

In most cases, the suspension measures belong to the category of "punishment", the core purpose of which is to "deter" and "combat", reflecting the disciplinary and preventive functions of illegal behavior, mainly to correct the tendency of illegal motivation from the subjective level, to make up for the lack of implementation conditions from the objective level, and to carry out capacity correction. n this case, ordering the suspension of production, play its corrective function, to give practitioners a certain period of correction, within the correction period, practitioners can improve the conditions for the implementation of the license to strengthen the practice of rectification, improve the ability to practice, but if the specified suspension period still can not meet the conditions for the implementation of the license, will lead to the termination of the license to practice and other more serious legal consequences.

And "shut down" and shutdown is different, shutdown is to rest and recuperate. Generally speaking, enterprise suspension is mostly seen in China's administrative penalties, such as ordering the suspension of production and business, which usually refers to the temporary cessation of business, serious violations of the law only need to deprive its right to continue production and operation. The hiatus system, hiatus is not linked to administrative penalties and does not necessarily lead to the cancellation of market entities. Rather, based on practical considerations, market players can suspend business for a certain period, to retain the qualification of market players, and then resume business after some time. Therefore, the suspension of production and business is different from the hiatus system, which is more in line with the needs of enterprises in the realistic context as well as the current situation of the market, injecting new vitality into the registration system of commercial entities and providing a new institutional choice.

4. The current stage of China's hiatus system restrictions in the problem and its crack

April 2021 the newly promulgated "Regulations of the People's Republic of China on the Registration and Administration of Market Entities" (hereinafter referred to as "Regulations"), Article 30, paragraph 1: "due to natural disasters, accidents, and disasters, public health events, social security incidents and other reasons that cause business difficulties, market entities may independently decide to close down for a certain period of time. Except as otherwise provided by law or administrative regulations." Accordingly, it can be seen that the "Regulations" on the ability to independently decide to close the market are subject to certain restrictions, to meet the aforementioned provisions of the circumstances before you can independently decide to close the business.

Restrictions on the freedom of market players to close their businesses are intrinsically justified. First, from the jurisprudential basis, the "regulations" provided by the conditions of closure have a certain justification basis. In the traditional concept of China's commercial law, the business of commercial subjects (or said market subjects) for the general principle of continuity, for example, the company's business objectives to achieve its continuity of business closely related to the company may need to withdraw from the market passively after a long period of non-operation. If there are a large number of long-term non-operating market players in the market, will affect the market order and increase the difficulty of market supervision, so the hiatus system to set certain restrictions to protect the continuity of its business and maintain a stable market order. In addition, the article also reflects the support of "dormant" market subjects in good faith, recognizing and allowing market subjects due to the frequent financial crisis, the new crown epidemic, market depression, and other reasons or objective difficulties arising from the "dormant" phenomenon, such subjects are forced to enter a temporary state of dormancy, and China's current legislation is mainly to prevent the "malicious dormant" subject to bring negative effects. The restrictive provisions of the Regulations reflect the gradual distinction between "bona fide" and "bad faith" hiatus subjects in our legislation, with the intention of preventing abuse of the hiatus system. Secondly, in the reality, most of these market players are unable to continue their normal business activities temporarily because they cannot get out of the temporary difficulties, and their own market vitality is only suppressed because of the unfavorable external environment, and they have not lost their real vitality. They need a short hiatus to build up their strength, and then resume production and operation when the situation improves, so the hiatus system can give them a certain buffer period to help them tide over the difficulties.

Although the current regulations have their rationale, there are still some problems. From a realistic point of view, in addition to natural disasters, accidents and disasters, public health events, social security events, and other reasons that cause operational difficulties for market players, other market players also have a special need to temporarily stop operating activities and retain market players, such as time-sensitive food production companies and real estate development companies, etc., while the current provisions are unable to meet their real needs. From a legal basis, the freedom to close should also be the freedom to operate. Article 30, paragraph 1 of the regulations disguised as a restriction on the freedom of market subjects to operate, because from the full life cycle of the survival of the market subject, the stage of closure should also include, so the restrictions on the freedom of closure is a restriction on the freedom to operate. Up to now, the understanding of the freedom of business has been from "no authorization can not do" to "no prohibition is free", from the positive list to the negative list, from the general prohibition to the transformation of the prohibited. Based on the important position of business freedom in the market economy, the existing views basically agree that business freedom covers the whole process of business activities before, during, and after, so the connotation of business freedom is naturally included in the freedom to rest.

Based on the "fundamental rights" attribute of freedom of business, there are two specific and feasible approaches to the above two issues. First, the circumstances listed in the "Regulations" to supplement the "Regulations" to expand the scope of the restrictions in Article 30, paragraph 1, to enumerate the conditions for market subjects to close, to clarify the types of market subjects can be closed, so as to maximize the maintenance of the freedom of market subjects to operate, and ultimately realize the value of the dormant registering system. For example, in Article 30, paragraph 1 of the "Regulations" to increase the characteristics of the industry, and internal strategic requirements, their business plans need to be flexible to adjust the market players can also independently decide to close within a certain period. Second, the standard can be unified, the conditions for market players to close without restrictions, directly to the "Regulations" in the "natural disasters, accidents and disasters, public health events, social security incidents and other reasons that cause business difficulties" restrictions deleted.

The core of the first path is still to adopt the enumerated qualification, but according to the needs of market players to increase the enumeration of circumstances as appropriate. The path is conducive to maintaining a safe and orderly market order and also enables the promotion of SMEs in the context of the epidemic. It contributes to lowering the entry barriers for market players, maintaining the inherent dynamism of macroeconomic development, and reducing systemic transaction costs. It is conducive to the construction of a complete system of information registration type of market entities and improves the flexibility of market supervision. This approach places higher demands on the government, which has changed its role from a single regulator to a composite regulator and service provider, and it needs to conduct a complete market survey to understand the needs of market players before expanding the interpretation of the existing regulations in the form of an enumeration. The core of the second path lies in "no restriction", which fully respects the freedom of market players to operate, but is prone to abuse of rules in commercial practice, which is not conducive to the maintenance of market order.

5. The market entity can go out of business and debt relations between the processing of the problem and its crack

Article 30, paragraph 2 of the Regulations has provisions: "market entities shall consult with the employees before closing down under the law to deal with labor relations and other related matters." The provision, in addition to the need to negotiate the handling of labor relations of employees under the law, does not involve other legal relationships and does not take into account the debt and credit relations of market entities. It should be noted that the content of the paragraph "and other related matters" underwriting provisions, so do not exclude that there are other matters affecting the production and operation of market entities and closure, and the treatment of debt relations is not set out in the paragraph, but it is worth analyzing the issue.

According to Article 30 of the Regulations, after the application for closure registration is submitted, it shall be publicized to the society through the National Enterprise Credit Information Public Notice System for a period of 15 days, and if no objection is raised during the public notice period, the registration authority shall grant closure registration. If objections are raised by interested parties, creditors, etc. during the public notice period, to what extent will the application for closure of the market entity be affected? Is there a relief mechanism to allow market players to make a second application if the administrative organ makes a decision not to register? If it exists, can market players re-apply for closure registration in a short period after proper handling of debts and liabilities? These are all questions that deserve our consideration in the follow-up. It has been argued that the key to answering these questions is the extent to which creditors (should/or) have an impact on the conduct of market participants in applying for closure registration.

The impact of debt relations on the closure of market entities can refer to similar cases in judicial practice, such as the administrative authorities revoking the company's business license administrative penalty cases. In a case of administrative compensation disputes, the trial court's opinion is that the administrative organ revocation of business licenses will not directly affect the interests of creditors' claims formed in the business due to payment disputes, and the current Chinese law does not provide that market supervision and management departments need to consider the interests of relevant creditors in the process of performing their duties. Accordingly, it can be presumed that China's current institutional practice does not take the creditor-debtor relationship as a precondition for market entities to apply for closure, and this article also agrees with this view, that is, whether to deal with the creditor-debtor relationship is not a prerequisite for market entities to apply for closure.

The issue has some similarities in the company liquidation bankruptcy system in the "creditor's right to object", refers to the establishment and management of the company in the process of serious damage to the interests of creditors in the legal situation and object to this, and request the court or the competent authorities to resolve, in order to protect their legitimate rights and interests of civil rights. The right of objection here is the right of request on the company law, the scope of request not only includes the debtor to implement the act of disposal of its property or rights but also includes the company in a certain period of time without justifiable reasons for not opening or ceasing business, similar to "zombie enterprises", "lost companies" and another malicious dormant subject. If a market entity does not apply for closure registration based on malice, it is not an act done by the debtor for illegal purposes, and there is no statutory situation that seriously damages the interests of creditors, so it does not have a direct impact on the interests of creditors.

A similar system in insolvency law can give us some inspiration. Article 58 of the Enterprise Bankruptcy Law provides that "If the debtor or creditor disagrees with the claim recorded in the claim form, he or she may file a lawsuit with the people's court that accepts the bankruptcy petition." Specifically, objection lawsuits can be filed on the authenticity and legality of bankruptcy claims, whether the statute of limitations has been exceeded, the amount of claims examined by the administrator, and other claim matters related to the distribution of the bankruptcy estate. Although it seems that creditors can raise a wide range of objections, whether the company is insolvent depends mainly on the court's examination and the actual situation of the company's operation, and has no essential and necessary relationship with the objections raised by creditors. According to some scholars, the right to dissent in bankruptcy claims can be defined as "the right of the interested party of a claim to dissent from the result of the confirmation of the claim in the process of the successful confirmation of whether the claim is a bankruptcy claim (or the claim does not need to be reported) and the specific circumstances of the claim by the administrator's court." From the provisions of the right of objection in the confirmation of bankruptcy claims in China, the right of objection raised by the right holder cannot directly decide whether the disputed claim is established and the nature and amount of the claim, etc., but it plays a role in restraining the arbitrary action of the subject of power when the administrator exercises the function of preliminary confirmation of claims and the court exercises the function of final confirmation of claims. It can be seen that the essence of the bankruptcy law "creditor's right to object" is that regardless of whether creditors object, the company should be liquidated, as usual, that is to say, the relationship between creditors and debt does not affect the company to liquidate in bankruptcy, exit the market, then the company will not be affected by the closure of business.

Whether a market entity chooses to go out of business is a reflection of its autonomy, even if it is insolvent, there are still bankruptcy, liquidation, and other procedures as adjustment measures. Therefore, this paper believes that whether to deal with the debt relationship is not a prerequisite for market players to apply for closure. The creditor-debt relationship between civil and commercial subjects belongs to the domain of private law and can be settled by natural persons and legal persons according to the principle of autonomy of intent. Creditors can seek and contact the relevant person in charge or legal representative of the debtor for consultation, and try to solve the matter through settlement, mediation, arbitration, etc. Finally, they can also take the legal way to file a lawsuit to protect their rights and interests. It is worth noting that there may also be a creditor-debtor relationship between the market entity and the consumer, and this relationship has a special nature, for example, has been for the consumer prepaid card market entity, its application to close whether the need to deal with the creditor-debtor relationship between the consumer in advance, it is necessary to consider separately. In summary, the "Regulations" 30 paragraph 2 of the content is not suitable for an expansive interpretation.

6. The problem of setting the hiatus period based on different types of market players

Article 30, paragraph 4 of the Regulations provides that "the maximum period of market entities out of business shall not exceed three years. Market entities to carry out business activities during the hiatus are considered to resume business, the market entity shall be publicized to the community through the national enterprise credit information disdormant registering system." Generally speaking, market entities are mainly corporate entities, partnerships, sole proprietorships, and individual businesses, these types of market entities, production and operation characteristics, incorporation conditions, the complexity of the procedures, the legal operating period, and other features vary, so the need for a specific analysis of specific issues. Therefore, the need to adjust the closing period for different market characteristics and the current "Regulations" provisions are generalized.

The "Regulations" unified provisions of the period of closure of market entities shall not exceed a maximum of three years so that the provisions lack relevance. As a legal person with an independent legal personality, it has relatively abundant assets, the ability to bear legal responsibility independently, and stronger risk resistance, in general, the market survival time is longer than that of partnership, sole proprietorship, and individual business, and the operation has stability and continuity. In addition, according to the market survey, more than fifty percent of market players have died out cumulatively in five years, and only nearly thirty percent of market players have survived for more than 10 years. The probability of market players dying in the next year after surviving for 1 year is the highest at 21.9%; those surviving for 2-5 years have a probability of dying in the next year at 10%; the probability of dying in the next year after surviving for 5 years decreases rapidly. The average life span of market players is 3-5 years, and the survival bottleneck period is 6-7 years, making it more difficult for SMEs to survive in the current context. According to the length of sustainable operation, from high to low for a corporate legal person, partnership, sole proprietorship, and individual business.

This shows that it is necessary for different types of market entities, to set different provisions of the closure period, to avoid the emergence of numerous individual vagrants and zombie households, such subjects do not have legal personalities, but also do not have to independently assume legal responsibility, poor supervision is prone to market chaos, affecting the market order. Therefore, it is necessary to set up a laddering period of closure according to the characteristics of different market entities, for example, the maximum period of closure of an enterprise legal person (company) does not exceed 3 years, the maximum period of closure of partnership does not exceed 2 years, the maximum period of closure of sole proprietorship does not exceed 8 months, and the maximum period of closure of individual business owners does not exceed 6 months, to achieve specific analysis of specific problems. With the deepening of market economy reform, the types of market players are diversified, which requires that based on maintaining the standardized operation of market players, their flexibility should be expanded as much as possible, that is, under the premise of strengthening the protection of creditors and maintaining the market order, investors and managers are given more autonomous rights, and there is no need to interfere too much with their operation and management behavior in the law, but only to adjust accordingly.

7. Conclusion

Under the pressure of the current macroeconomic situation, the optimization of the business environment needs to be achieved through innovative means of governance "to protect the market players" goal. Considering the external market environment, market players' business plans and strategic goals, industry characteristics, and other factors, the suspension of business while retaining the qualification of commercial entities is a real demand of many market players, so the construction and improvement of the dormant registering system are necessary. Recognizing and regulating the hiatus of market players is not only important for the development of market players themselves and society but also has theoretical and practical legitimacy. However, the "Regulations" Article 30 of the construction of the market subject hiatus system in the restrictions, preconditions, and hiatus period of the problem still needs to be improved. In terms of restrictions, the mode of enumerative qualification should be retained, but the enumeration of circumstances should be appropriately increased according to the needs of market players. In the preconditions, it is not appropriate to the processing of debt relations as a prerequisite for the closure of the business, it is not appropriate to the second paragraph of Article 30 of the Regulations for an expansive interpretation. The period of closure, should be set up according to the characteristics of different market players laddering the period of closure.

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