Legal regime Bankruptcy of Bank under Ethiopia Law

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rule of citation

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Signed _____

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Conclusion and Recommendation

Conclusion

The non ability of to pay debts by an individual and a bussimess enterprise like banks can be insolvency or bankruptcy. Insolvency is when a bussinessenter price assent can not pay it's liability of the business and the business owner cannot pay the liability

- In Ethiopia there are legal regimes governing bankruptcy like the commercial cod of 1960 and the 592/2008 proclamation which govern banking business. In the case of proclamation 592/2008. It only takes about insolvency. The case under which business enterprises (banks) get into bankruptcy is not specified which leaved the proclamation with a gap.

- The proclamation talks about the revocation of license the appometment of receiver and their function in case of insolvency which in this case also leave bankruptcy.

- The proclamation give all the power of handling or controlling private and government banks for the national bank of Ethiopia which is a discriminatory way of treating private banks their faith is fall under the national bank of Ethiopia.

- Proclamation NO 592/2008 did not bother about now to resolve the situation when banks are bankrupt rather if

concentrate on framing the situations how to resolve in solve insolvency crises. In this case we can conclude that the law did not recognize all the objectives started under the model law of UNCITRAL to establish and develop and effective bankruptcy law.

- The proclamation has no saying about haw liquidation and reorganization of banks should be when they one bankrupted it is only deal about how the receiver handle the liquidation of banks in case of insolvency.

- The proclamation need to specify some about interest concerning insolvency law.

- Comparing with inter countries experience like united states of America there is no single organization which takes the power of receivership it is assigned by national bank of Ethiopia.

Recommendation

For the above stated problems the writer of this research recommends the following solution conduct.

- Proclamation 592/2008 should not only take about insolvency of banks rather it should although include the case of bankruptcy.
- It should determine not only insolvency rather it should put a clear cut difference between insolvency and bankruptcy.
- All the powers of controlling both the private and public banks should not concentrate and public banks should not concentrate on the hand of the national bank of Ethiopia it should also be open for private owner.
- Proclamation No 592/2008 should follow the model rule of UNCITRAL modern to establish and development an effective bankruptcy law.
- The proclamation has no saying about interests and it has limited provisions about insolvency and a single court which entertain the case.
- There should be a single institution which deals about receivership in order to minimize the Burdon imposed upon the National Bank of Ethiopia

Table of content

Introduction

Bankruptcy is a statutory procedure by which a debtor obtains financial relief and under goes a judicial supervised recognition of liquidation of the debtor's assets for the benefit of creditor.

A debtor can be a business enterprise or an individual a some type of businesses enterprise banks also declared as bankruptcy.

The other way of expressing the non ability of paying debts is insolvency. In this. It is only the asset of the business enterprise which will be gone for payment of the liability but in the case of bankruptcy not only the asset of this enterprise but also the owner of the enterprise will be questioned.

Ethiopian banking business is governed by proclamation no 592/2008. Under this proclamation main controller of bother private and public banks is the Ethiopia national bank. The main grounds that this bank. Revoke or license of a bank and appoint receiver is when the bank be comes insolvent.

The aim of this paper is to show. What will be the case when the bank is bankrupted does this case have no place in the proclamation. Is it appropriate to give all the controlling powers for national bank are the issue?

Accordingly chapter one of the research will deal about the concept of bankruptcy when chapter two deal on bankruptcy of banks in general and the last chapter on the legal regime governing bankruptcy of bank under Ethiopian legal system.

Chapter One

General overview on the concept bankruptcy

1.1. Definitions of Bankruptcy

There is no common definition for the term bankruptcy. In legal terms bankruptcy is defined as:-

"In ability of an individual or organization to pay its creditors" [1]

Based on the above definition we can divide bankruptcy into two involuntary bankruptcy and Voluntary bankruptcy.

Involuntary bankruptcy is when the creditors file a bankruptcy petitions against adepter in reinstituted him of what they owned him. And voluntary bankruptcy is when bankruptcy petition is filed by the debtor or bankrupted person himself. [2]

According to world encyclopedia bankruptcy is defined as ". . . the state of being legally unable to pay debts." [3]

The term bankruptcies come from an Italian word meaning "Broken Branch". In Italian custom bankers and money panders whose businesses had failed are called broken branches. The word bankrupt also refers as an indebted person or business involved in a bankruptcy proceedings.

Black's law dictionaries also define bankruptcy as follows:-

"Bankruptcy is a statutory procedure by which accuse insolvent debtor obtains financial relief and under goes a judicial supervised recognition of liquidation of the debtor's assets for the benefit of creditor." [4]

According to the previous definitions when a person declared bankrupt his property may be sold as point of bankruptcy proceeding under official

supervisor. The money obtained from the sale pays expenses, such as count cost and trustee fees after paying this it will be divided among the creditors.

For example, it the debtor owes 100,000 birr, and if only 50,000 birr can be obtained after costs, the creditors would each receive half the amount owned them. In most cases, the count also gives the debtor a chance to make a new financial stunt. When the banker or the person in order to announce the public that he no longer continues the business.

1.2. Historical Background of bankruptcy

The word bankruptcy is derived from the ancient Latin word "bancus raptus" which means a broken branch or table. At this time a bank is symbolized by a bench which is put in the public place like market. Peoples will full their money in this bench and white their bill of exchange. [5]

As this practice is very frequent in Italy it is claimed that the term bankrupt is derived the Italian word "banncoratia" which means broken bank others also claim it is French word. "banque" or table. [6]

When we come to Ethiopian history of bankruptcy law there is no any original indigenous bankruptcy previsions rather the bankruptcy provision of the commercial code where drafted on the basis of common law and civil low transitions. Prior to the commercial code of 1960. There were problem of collecting the creditors debt since it was governed by customary laws. [7]

1.3. The development of modern bankruptcy law

The developments of modern bankruptcy law vary from country to country. In midi vial period life for debtors was UN comfortable. Failing into debt were considered as a moral sin. Money panders act were considered as

an act. Contrary to the laws of God and punished accordingly both by the church and by the government. [8]

There was an act (statute) of balneal which punish both the creditor and debtor if they money for each other if they didn't caught pending and if the debtor does not pay there is an act which protect the right of the creditor.

The debtor estate will be protected till 250 years in order to distribute his debt for his creditors. This statute is the first statute designed by Henery Vill. Its preamble indicates it was not a measure designed for the relief of debtors. [9]

According to the statue the debtor if nebuilt a house the creditor so he shouldn't enjoy by any of these properties since they are not his own properties.

When bankruptcy laws were first enacted in Italy and introduced to other parts of Europe in the 13th and 15th century. They were conclude wholly in the interest of the creditors and proceeded upon the assumption that the bankrupt was dish oust who must necessary be dealt with as an of tender. The assumption was in existence in the 19th C were finance the leading power in Europe at that time, embodied bankruptcy law in her 1870 commercial code. This law is still creditors remedy. [10]

In today's world, the modern bankruptcy law which involved through decades of change in attitude of the claims of creditors and for reliving the debtor from the evoke of his for his unpaid debt even if he stunts his business as fresh and succeed in it. [11]

Thus, the most important conception under lying the modern bankrupt law is that a burden of debtor who gat involved owning to business miss fortune should be relieved free from his debts, his liability to all in creditors is satisfied by his properties to the extent it concern, and as regards the un paid portion of his debts, he is no more liable to his creditors. [12]

In the United States, the construction authorizes congress to establish uniform bankruptcy laws throughout the country. The bankruptcy codes of 1978 undated the bankruptcy Act of 1898 and the amendments to the act that were passed in 1938. In the bankruptcy code the term debtor replaced bankrupt in referring to the subject of cases under the code. [13]

When we deal with bankruptcy law the first thing that comes to mind is what will be done to make or announce the person bankrupt. The step is called bankruptcy proceeding which include also liquidation proceeding both will be discussed in the next subsection.

1.3.1. Liquidation Proceedings

All bankruptcy proceedings including liquidation proceeding are began by the filling of a petition. The petition may be either a voluntary petition filed by a creditor or creditors of the debtor the term liquidation and winding up are synonymous, both describe the process of which the existence of a company is brought to an end and its property administered for the benefit of its creditors and members. There are three types of liquidation compulsory, members voluntary and creditors voluntary. [14]

The company property although the liquidator has detail of all company debts he must distribute such funds as he has related in the proper order. A creditor with security in the form of a fixed charge over company assets will usually enforce his security and will therefore not be paid by the liquidator. If it

a sale of the asset charged by the liquidator. In this case it will be hand to raise sufficient funds in order to discharge the debt; the creditor will prove the balance in the liquidation. [15]

A debtor could be honest but unfortunate; hence bankruptcy law should widen their umbrellas and should direct the focus on their concern to relieving. The honest debtor from the weight of oppressive inflatedness and preempting him to stunt life a fresh free from the obligation and responsibilities. Consequent up on business misfortune which they can not satisfy by his own efforts. [16]

1.4. Countries experience in bankruptcy law

1.4.1. The United States bankruptcy Act.

The bankruptcy Act is a federal law that provides an organized procedure under the supervision of a federal court for dealing with insolvent debtor. Debtors are considered insolvent if they are unable or fall to pay their debts as they become due. The power of congress to act bankruptcy legislation is provided under the constitution. Through the years there have been many amendments to the passed significant amendments to it in 1948, 1986, and 1994. [17]

The bankruptcy Act has several major purposes distributed to assure that the debtor's property is fairly distributed to the creditors and that so one of the creditors do not obtain unfair advantage over the other. At the same time the act is designed to protect all of creditors against actions by the debtor that would unreasonably admonish the debtor assets to which they are untitled. The act also provides the honest debt or with a measure of protection against the demands for payment by creditors under some circumstances. [18] The debtor is given additional time to pay the creditor free of pressure that the

creditors might other wise exert. If a debtor makes and deals fairly with the creditor. [19]

At one time, bankruptcy carried a strong stigma for those debtors who become involved in it. Today, this is less true, it is still desirable that a person conduct his financial affairs in a responsible manner, however, there natural disaster, illness, divorce, and severe economic dissociations are often beyond the ability of individuals control and may lead to financial difficulty and bankruptcy. [20]

1.4.2. Bankruptcy in the United Kingdom

Bankruptcy in England and Wales is governed by part twenty of the insolvency act 1986. (as amended) and the insolvency rules 1986. The term bankruptcy applies only to individual not to companies or other legal entities. [21]

An individual may be made bankruptcy only by court order following the presentation of a bankruptcy petition. An individual may present petition on the ground that he is insolvent. i.e. unable to pay his debts. A creditor or creditors may also petition for a bankruptcy order to be made against or individual debtor. Before a creditor presents a bankruptcy petition he must usually first serve on the debtor a statutory demand in the sum claimed with in 21 days of service of the demand. [22]

The debtor may apply to the court to set a side the demand on the basis that the debts is disputed on bona fide grounds or that he has counterdrain, set off or cross demand which equal or exceeds the amount of the debt claimed by the creditor. [23]

In to day's world the modern bankruptcy law which evolved through decades of change in attitude of the law makes has as its principal object the satisfaction of the claims of creditors once and for all and relieving the debtor from the yoke of his debt burden, once relieved, the debtor willing no longer be liable for his un paid debt even to he starts his business afresh and succeed in it. [24]

Relief a available to individuals or corporations. Under the bankruptcy code liquidation (chapter 7 recognition chapter 11), debt adjustment for family farmer (chapter 12) and debt adjustment for individual with a regular income (chapter 13). Municipalities may file for bankruptcy under charter generally, not all debts, are repaid in bankruptcy. The court determines which debts are to be repaid according to their priority and the debt or is typically granted a discharge from un paid debts that are dischargeable under bankruptcy code. [25]

Bankruptcy court in United Kingdom

A court that is a unit of federal district court and has original jurisdiction over bankruptcy cases. Bankruptcy courts were created by a congress as a part of the 1989. Bankruptcy Act. Article I, section 8 of the U.S constitution gives congress the power to establish" Uniform" laws on the subject of bankruptcy through out the United Kingdom state.

Bankrupt in both America and United Kingdom a debt cash on in individuals or organization whose property is subject to administration under the bankruptcy laws for the benefit of the debtors creditors. [26]

1.4.3. Bankruptcy in Tanzania

Bankruptcy is occurred all of the world countries. Bankruptcy in Tanzania as the following acts of bankruptcy in Tanzania.

A debtor commits an act of bankruptcy in each of the following cases.

If in Tanzania or else where he makes a conveyance or assignment of his property to trustee or trustee as for the benefit of his creditors generally.

If in Tanzania else where he makes around rent conveyance, gift delivery or transfer of his property or any part of there. [27]

If in Tanzania or else where he make any conveyance or transfer of his property.

Chapter Two

Bankruptcy of Banks

2.1. Definition of bank

Blacks law dictionary define bank as follows:-

"… It is a functional establishment for the deposit loan, exchange or issue of money and for the transmission of fund, especially a member of the federal reserve system". [1]

Under security laws a bank includes any banking institution whether not incorporated doing businesses under federal or state law. [2]

Bank refers to the entire government activities dealing with leading, borrowing, financing and transferring of money. Like other field of business law this field emerged on the foundation of contract law. When traders travel from place to place they need to buy and sell goods and they also need credit. In order to fulfill their needs they will make a contract. This written contract will pass from person to person as an obligation of payment. [3] This document came to be called a negotiable instrument. This instrument highly used by traders. These exchanges of instruments developed and have its own law among followers of the common law legal system. And his transferring of money through instruments further developed into banking. Banking came to be the center of trade, commerce and finance. [4]

2.2. Bankruptcy of Banks in General

In the early 1980's, the government of several Latin American countries including Canada and Mexico felt compelled to make up for losses in the banking system for instance, by buying substandard loans from the banker for more than their value to preserve their solvency. [5] During 1980's and 1990's many banking systems. Which in the past had suffered large losses on loans to ponastatal companies at least 50% owned by the state and crop loans? In the late 1980's the performance of banks in certain advanced industrial countries. Particularly in the industrial developed countries. Declared to the present were

governments had support some of the largest banks to preserve financial stability. [6]

Theoretically there is one way to figure out how banks become solvent. Comparing the cash of the bank on its balance sheet and the amount of asset the bank has as security against loans. The major problem of today is that many banks are listing houses on their asset that are far overvalued due the recent, and expected, housing market crash. [7]

It a bank owes depositor 10 million birr and it has I billion birr in cash in reserve and 9 billion birr in assets (businesses, houses, cars, etc) it is basically at a break even point. And it will be at risk if all the depositors wanted their money.

Bankruptcy is not only a common risk for banks rather it is a common risk for any businesses enterprises. It may happen due to normal business failure and the economy in general or due to fraud or mismanagement. Almost all enterprises in the modern world finance they operate through credit.

2.3. Special Treatment of Banks

In some countries the general insolvency law applies to banks, but in several countries the banking law includes special rules administered by the bank regulator for the structuring and forced liquidation of banks. [8] In most cases there is a similarity between the broad policy objectives served by general insolvency law and those pursued of banking by the restructuring and liquidation provision of banking between the rehabilitation of non bank enterprises under general insolvency law and the treatment of banks under banking law. [9]

In general insolvency procedures are such as rights are protected by procedural safe guards written into the law and by judicial administration of rehabilitation and liquidation proceedings. Safe guards are available in bank restricting because if often carried under the provisional administration law that protect bank owners and creditors not suspended the regulatory decision under review. Moreover, even when the agents appointed by bank regulators are expired and licensed insolvency practitioners, they are rarely familiar with administrative law. [10]

In a market economy, banks are subject to special licensing regulation and supervision rules known as prudential regulation. Banks are treated differently from other enterprise because a safe and sound banking system in indispensable for sustainable economic growth because, the nature of banking activities makes banks and the banking system vulnerable to destructive panics caused by a sudden loss of public confidence, market economies can not function properly with an efficient banking system. [11]

Bank failure may affect the health of other financial institutions, including banks that are counter parties of the failing banks. Failures may even impair the operations of financial market and payment and securities transfer system. Thus inter bank contagion and loss of public confidence can quickly shoe ball into run on other wise healthy banks that may ultimately bring down the entire banking system. Moreover, it is hard to certain banking crises with in the borders of the country where it originates. [12]

Due to growing business connections between banks in different countries. A banking crisis in another. It is simple to recall what happened in

the current America economy melt down due to bank failure which soon growls to world economic crises.

Although bank supervision addresses the safety and soundness of individual banks. The most compelling reason for prudential bank regulation is concern for the safety and soundness of the banking system as a whole and untimely the national economy. Even the objective of protecting public savings is inspired not just by social goal but also by the fear that also of public confidence would lead banking system. Thus the prudential regulation of individual banks must essentially be driven by systemic consideration. [13]

2.4. Criteria for Bank Bankruptcy

The law should define in a manner appropriate for banks when a bank is to be regulated as bankrupt and may be brought under the control of an administrator or receiver. The main statutory grounds for taking control of a bank are actual or imminent insolvency. In banking law there types of tests are used to determine a bank's insolvency. Under liquidity insolvency, which is built insolvent when it established that it is unable to pay its obligation as they are due and has not prospect of being able to do sounder balance sheet insolvency a bank may be deemed in solvent when it balance sheet insolvency shows a defect. [14]

2.5. Effect of bankruptcy

In both common law and civil law legal systems when a bank is declared bankrupt. There one some effects which will follow. Among them.

a. Disability of functioning:- all the activities of the bank before bankruptcy will come to an end. No deposition of many, lending, exchanging currency etc.

b. The bank will appoint a receiver:- a receiver will assign in order to stable the economic activities of the countries banking system. When one bank is bankrupted their might be other banks which have a share. In the same bank.
c. Liquidator committee will be formed. [15]

From the above statement we can understand that in case of bankruptcy there are two parties which try to make stable all the crises these are the receiver and liquidation administrator we will see in the next subsection about these two parties.

2.5.1. The bankruptcy representatives

Bankruptcy law refer to the person responsible for administering the bankruptcy proceedings by a number of different titles, including "administrators", "trustees", "liquidators", "supervisors", "curators", "official" or "judicial managers" or "commissioners"'. [16]

The term "bankruptcy representative" is used in the guide to refer to the person fulfilling the range of functions that may be performed in broad sense without distinguishing between those different functions in different types of proceeding. The bankruptcy representative may be an individual or, in some jurisdictions, a corporation or other separate legal entity. [17]

However appointed, the bankruptcy representative plays a central role in the effective and efficient implementation of a bankruptcy law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees and impartially. Accordingly, it is essential that the bankruptcy representative be appropriately qualified and posses the knowledge, experience and personal qualities that will

ensure not only the effective and efficient conduct of the proceedings and but also that there is confidence in the bankruptcy regime. [18]

A bankruptcy representative should quality count examinations good result, his having a better knowledge and experience, have to have a licensing and good personality. To be a representative there should not be conflict of interest between the representative and the enterprise bankrupted. [19]

When we come to Ethiopian legal system there is no specified provision which talks about bankruptcy of banks. In the banking business proclamation also there is no clean wording on bankruptcy rather it expresses the word insolvency under the condition where revocation of license of banks made. But we can conclude the proclamation sees both the terms of insolvency and bankruptcy as the same words. Since oxford dictionary define bankruptcy and insolvency as, insolence is a company or person that is insolvent does not have enough money to pay what they owe and bankruptcy is a company which officially admitted that have no money and can pay what they owe.

But there is slightly difference between insolvency and bankruptcy. In solvency is when the business owners can not pay their debts out of their business but might have other assets to pay other that the business and in the case of bankruptcy the business owners will not have a single coin to pay their debt.

In this case we can say the Ethiopian banking law has no owner for the case when banks are bankrupt or it is seeing both bankruptcy and insolvency as the same terms.

Under proclamation 592/2008 of Article 33(3) it states the national bank shall appoint a receiver to make possession and control of a bank when the

bank become insolvent and when this same article translated into Amharic it tells " . . . ••• •• •••• ••••••• ••• •••• •••". Which is to mean when the bank is in a condition having no ability to pay its debts? And this is only when the bank become bankrupt not insolvent. This issue will be briefly discussed in the next chapter.

Chapter Three

Legal regime governing bankruptcy of bank under Ethiopian legal system

3.1. Bankruptcy laws in Ethiopian legal system

The 1960 commercial code of Ethiopia under book five introduce bankruptcy and schemes of arrangement provisions (Article 968-1168). The purpose of bankruptcy law is said to benefit both the debtor and creditors, bankruptcy proceedings relieve an honest debtor from all dischargeable debtors

there by either an orderly liquidation of a debtor estate or a judiciary confirmed plan for full or partial repayment of creditor. [1]

However, the Ethiopian bankruptcy and schemes of arrangement provision are formulated primarily as debt collective mechanisms. [2] Through the provision have existed for more than forty years are rarely and poorly applied. And this is because of the experience of the said estimable development in the country. [3]

The bankruptcy provisions of the Ethiopian commercial code of 1960 could be traced to common European historical sources, among which the practice of the mercantile cities of northern Italy is the most important ones. However, European tradition is self has considerable diversity. The Latin countries have the tradition to associate bankruptcy with blame.

Worthiness, which is reflected in the survival of debt and loss of right after the liquidation procedure. Hence the debtor should pass through special rehabilitation procedure. The German and Anglo-Saxon tradition on the other hand is based on the practical needs of creditors. Hence the bankruptcy law reflects the interest of creditors rather than the bankrupt. [4]

The drafter of the code made choice among variant concepts on issue such as should bankruptcy necessarily is considered as blame worthy act or only as a simple accident of commercial life. The code through tried to incorporate pro debtor measures such as schemes of arrangement in order to save enter priestly so put restrictive measures even on the movement of the debtor. measures such as schemes of arrangement in order to save enter priestly so put restrictive measures even on the movement of the debtor. [5]

The commercial code of Ethiopia has saying on how to handle bankruptcy of banks. And the banking business proclamation 592/2008. Under Art 48 makes a reference to the commercial code. In case of receivership and liquidation of banks. In this case the major problem is this proclamation talks about banks insolvency rather than banks bankruptcy. As has been tried to shows under chapter two insolvency and bankruptcy are two separate terms. The proclamation in one part said. The license of banks will be taken and receivers assigned when the bank is insolvent and in the other hand. It refers to the provisions of commercial code to see. Provisions of receivership and liquidation of bank in the case of bankruptcy.

3.2. Bankruptcy of banks under banking businesses proclamation No 592/2008.

Under proclamation 592/2008 there are 60 articles but none of them talk about bankruptcy. More than 10 Articles talk about how to assign receiver, liquidation and taking license of banks in the case of insolvency.

In this same proclamation insolvency is defined as under Article 2(12).
". . . The financial condition of a bank when the liabilities of such bank exceed its assets as determined by the National Bank".
And when it interpreted (translated) in Amharic. It says. " . . . •••• •••• •• ••••• ••• ••••••• •• ••••"

According to the definition the proclamation does not seem to give the exact meaning of insolvency rather it is defining bankruptcy. In the case of insolvency only the asset of the business can not cover the debt of the business but the asset of the owners of the bank is still infect and company. The debt of the bank. But when the bank is declared bankrupt. The liabilities of the bank will not repaid by the bank asset as well as the owners' asset. In this case the proclamation is seeing the bank as the only legal entity and the liability of the bank as limited but it has no saying in the case of unlimited liability.

Our question must be what will be the answer of the banking business proclamation if one bank rules its business by an unlimited liability principle and it is bankrupted? Do we have to apply the same provisions for insolvency; the proclamation seems to make insolvency and bankruptcy as the same concepts. In the next subsection we will see measures taken when the bank s\become insolvent as provided under proclamation 592/2008.

3.2.1. Effect of insolvency

Once the bank declared in solvent there are consequences to their bank future activities or existence. There are three kinds' effects while the bank is insolvent that I will try clarifying it under the following.

1. According to article 49 of the proclamation any bank may not accept deposit while it is insolvent. It means that when the national bank of Ethiopian declares their insolvency the simultaneous effect will be to case there activity on accepting client's deposit.
2. The second procedure that is taken by the National Bank of Ethiopia according to Article 33131 of the proclamation is to appoint a receiver the receiver has money responsibility duties.
3. The last and the main action are taken by the National Bank of Ethiopia. According to article 41(1) (b) is liquidation of assets when the bank is not

viable with a period of time and it is so the bank will lose its existence and try to take some preliminary procedure.

3.2.2. Authority of National Bank

Under Ethiopian provide banking and business 5921 2008 proclamation the National bank of Ethiopia have many authority under governmental & private bank let us see some power of National Bank point the proclamation:-

Commercial of operation a bank to which a license is granted, sound full fill, before commencing operation, sound information management policies and procedures and human resource organization and such other essential obligations to carryout banking business as determine by the directive to be issued by the national Bank. [6]

The national bank may assign observers to attend any general share holders meeting of a bank, where is funds necessary in interest of depositors or share holders. Or the stability and soundness of the banking sector. Call general shareholders' meeting of a bank to discuss and resolve any issues related to discuss and resolve any issues related to the bank. [7]

The National Bank may issue directive on conditions of renewal of banking business license, the National Bank may limit. The number of votes by proxy in any meeting of share holders and voting right of holder who borrowed money from the bank. Where an influential shareholder of a bank fails to full fill the prescribed ethical and probity requirements the national bank suspends the voting rights of such person.

Appointment of any director, chief executive officer or senior executive officer of a bank at the time of licensing or at any other time may not be valid unless written approval is granted by the national bank. [8]

The national bank may issue directive on qualification of competency to be fulfilled by director, the minimum number of directors in the membership of the board of bank, the duties responsibilities and good corporate governance of the boards of directors in the membership of the board of a bank, the duties responsibilities and good corporate governance of the board of directors of bank, the maximum number of years a director may serve in any bank and the condition for his re-election, the maximum remuneration and the maximum number of employees of a bank who may be elected and serve as members in the board of directors of the bank. [9]

The national bank may, for sufficient cause suspend or remove a director, a chief executive officer or a senior executive officer of a bank.

It is prohibited to transact banking business in Ethiopia with out obtaining a banking business license from the national bank.

The national bank may, for sufficient cause suspend or remove a director, a chief executive officer or a senior executive officer of a bank, where the national bank remove directors of a bank and as a result of the removal the number of directors falls below the minimum prescribed by the law. It shall immediately assume the powers of board of directors and shall, within 30 days, call a meeting of share holders for directors to elect to replace the removal directors. [10]

Any bank shall appoint external auditors the appointment of such auditors shall be approved by the national bank. The national bank shall

determine by directive the time limit for issuance of audit report after the end of a bank's financial year. The national bank may periodically, or at any time, an on site in section of any bank. [11]

The national bank may revoke the license of any bank immediately if

a. It is confirmed that the licensing of the bank was made on the basis of false or wrong information or
b. The bank has failed to commerce operation with in 12 month' following' the grant of the license. [12]

3.2.3. Appointment of Receiver

The new banking business provide 592/2008 proclamation clearly cite on Article 33 the national bank shall appoint receiver to take possession and control of a bank if determine that one or more of the following circumstance exist in respect of the bank. [13]

- The license of the bank is revolved as stipulated under sub Article 1(a) of Article 32 of this proclamation.
- The bank become insolvent, if the bank does not pay the credit or when a capital of the bank less than the debt.
- If the bank's has not practice to obey the rule of law of the banks or laws of the country and the banks spent or extravagant asset due to un governed or un ruled by the principle of the banks. This time the national bank of Ethiopia receive and appoint the receiver because it has the power to appoint receiver.

- National banks of Ethiopia promulgate a regulation, by assumption of govern manage properly both national and sate banks. According to this proclamation by missing that the bank abnormally violated any of the principle or limitation imposed by the national bank. [14]

If the bank doesn't to present or against to submit its books of accounts documents or records for inspection to any authorized or agent of the national bank. So that the national bank of Ethiopia it has authority to appoint receiver for such winds of a bank. The national bank of Ethiopia, it has the power of regulate influence and supervise the whole banks where found in Ethiopia.

Due to this reason, if some one of the banks didn't to accept the law or principle carries out to the command of the national bank of Ethiopia it immediately take and appoint receiver for it. [15]

If the bank determine to himself to operate as legally independent entity. This means if the bank's crowned himself and refused the order of the national bank not only this if it is nationalized by itself and against the law of national bank them the national bank becomes appoint receiver to it.

The appointment of a receiver shall be published by the national bank in reason for appointment the name of the receiver and other published by him and put or sends to the effective date and any other relevant information. [16] As we observed from the above explanation national bank of Ethiopia the power to publish news paper, including media to information which means provided such relevant information having the whole procedure, principle and way of pattern of any banks behavior that will be act under the supervision of the national bank of Ethiopia.

According to the new proclamation Art 32 sub Article (C) any of appointment receiver shall be accountable to the national bank of Ethiopia in case of Ethiopia sights to act as receiver if it is finds necessary. [17]

3.2.4. Effects of Receivership

Under the publication of the appointment of receiver by the national bank confirm to article 33 sub Article 2 of this new proclamation has as follows:-

- ✓ The receiver license does not present before the administration of receiver bank anyone to take an action to the bank with out the decision approval to the bank receiver. However, the banks by its Owen authorities didn't take any action before the approval
- ✓ The power of the share holders, board of director and other executive management of the bank shall be transfer to the receiver
- ✓ The receiver shall be an authorized the whole property or assets and other records, share holders. [18]

3.2.5. Right and Duties of Receiver

A receiver appointed pursuit to Article 33 of this proclamation shall be vested with the full and executive powers and duties of management and control of the bank under receivership. [19]

Without prejudice to sub article (1) of this Article the receiver's powers shall include the power to:

- Continue or discontinue any operations of the bank.
- Dispose of the assets of the bank.
- Borrow money on the security of the assets of the bank, or unsecured, subject to any limitations provided for by directive to be issued by the national bank for such purpose.
- Terminate or limit any payment obligation of the bank.

- Reset the rates of interest payable on the banks liabilities, provided, however, that such rates may not be less than those prevailing on the relevant market.
- Set a cut off date on which occurring interest on deposits and other liabilities terminates.
- Employ any contracts of employment contracts for services or lease agreements or any other contracts to which the bank is a party.

- Disclose information regarding the bank and its operations that would otherwise be confidential, provided, however, that disclosure shall be made only if it is necessary to take any action specified in Art 40 or 41 of this proclamation. [20]

3.2.6. the Bankruptcy of banks examined from international standard

The UNICITRAL model law on insolvency and the European council regulation No 1346/2000 on insolvency proceeding aims at protecting both the creditor and debtor in times of insolvency. Both standards do not only protect these parties in the case where the bank is in a limited liability or in the case of insolvency but also they protect the honest debtor which is declared bankrupt. [21]

But in the case of Ethiopia the banking business proclamation only targeted on banks which have a limited liability. Any business organization is free to shape its liability those who form their business with unlimited liability are at risk.

And also in the same proclamation the whole regulation power is given to the National Bank of Ethiopia; will if be fair in handling these private banks can't not be abusive?

The power of controlling by the national bank is far reading in this case the faith of private banks will fall upon this same bank and this is against the free market economy principle.

According to the UNCITRAL model law there are some rules which are needed to establish and develop an effective bankruptcy law. The writer of the research will compare. This model law with our banking proclamation NO- 592/2008.

According to UNCITRAL in order to establish and develop an effective bankruptcy law, the following key objective should be conceding red.

A. Provide certainty in the market to promote economics stability and growth.
B. Maximize value of assets.
C. Strike a balance between liquidation and reorganization.
D. Ensure equitable treatment of similarly situated creditors.
E. Provide for timely, efficient and importantly resolution of insolvency.
F. Preserve the insolvency state to allow equitable distribution to creditor.
G. Ensure a transparent and predictable insolvency law that container uncertain for gathering and disposing information and
H. Recognize existing creditors rights and establish clear rule for ranking of priority climes

Proclamation No 592/2008 did not bother about how to resolve the situation when banks are bankrupt rather it concentrate on framing the situation. How to resolve insolvency crises in this case we can conclude that the law did not recognized the entire objective stated above to establish and develop. An effective bankruptcy law.

The UNCITRAL model laws also specify that the bankruptcy law should include provisions addressing both recognition and liquidation of a debater

It is only deal about how the receivers handle the liquidation of banks in case of insolvency.

The UNCITRAL model law also clam the bankruptcy law should recognize right and claim arising under law anther than the insolvency law, whether domestic or foreign, except to the extent of any express limitation set form in the bankruptcy law.

The proclamation No 592/2008 specify that the commercial code and other relevant laws can be applicable with respect to receiver ship and liquidation of banks also for as they are not inconsistent with the provisions of the proclamation but the problem is the provision talks about in the case of insolvency but the commercial code talk with respect of bankruptcy. This is a clear problem of a proclamation in making difference between the two different concepts of bankruptcy and insolvency.

According to the model rule the bankruptcy law should specify that where a security interest is effective and enforceable under law other

than the bankruptcy law it will be recognize in bankruptcy proceeding as effective and enforceable.

Proclamation No- 592/2008 has no sating about interest concerning bankruptcy law

Recommendation seven of the UNCITRAL model law also specify that in order to design an effective and efficient bankruptcy law, the following common feaster should be considered.

Conclusion and Recommendation

Conclusion

The non ability of to pay debts by an individual and a business enterprise like banks can be insolvency or bankruptcy. Insolvency is when a business center price assent can not pay it's liability of the business and the business owner cannot pay the liability

- In Ethiopia there are legal regimes governing bankruptcy like the commercial cod of 1960 and the 592/2008 proclamation which govern banking business. In the case of proclamation 592/2008. It only takes about insolvency. The case under which business enterprises (banks) get into bankruptcy is not specified which leaved the proclamation with a gap.

- The proclamation talks about the revocation of license the appointment of receiver and their function in case of insolvency which in this case also leave bankruptcy.

- The proclamation give all the power of handling or controlling private and government banks for the national bank of Ethiopia which is a discriminatory way of treating private banks their faith is fall under the national bank of Ethiopia.

- Proclamation NO 592/2008 did not bother about now to resolve the situation when banks are bankrupt rather if concentrate on framing the situations how to resolve in solve insolvency crises. In this case we can conclude that the law did not recognize all the objectives started under the model law of UNCITRAL to establish and develop and effective bankruptcy law.

- The proclamation has no saying about haw liquidation and reorganization of banks should be when they one bankrupted it is only deal about how the receiver handle the liquidation of banks in case of insolvency.

- The proclamation need to specify some about interest concerning insolvency law.

- Comparing with inter countries experience like united states of America there is no single organization which takes the power of receivership it is assigned by national bank of Ethiopia.

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