

Chinese lawmakers disagree on courts' leniency towards enterprises in distress

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China's highest court has ordered that courts should exercise prudence in using forceful measures on enterprises that are in distress due to the impact of the global financial crisis.

The move is meant to provide a caution against the social impact of rising unemployment and bankruptcy, but it has spared off hot debates among deputies to the ongoing annual session of the National People's Congress, China's legislative body.

"I agree with the policy which is beneficial to enterprises' long-term development," said lawmaker Zou Xiaoshan, also deputy board chairwoman of the Shijiazhuang Changshan Textile Group in northern Hebei Province.

"The decision has been made with consideration of the prevailing situation," Zou said, adding exercising prudence does not mean inaction towards suspect companies.

The Supreme People's Court President Wang Shengjun said in his report to the NPC session Thursday that courts at all levels should "prudently use such compulsory measures as sealing up, impounding or freezing assets of companies," and should "promptly offer judiciary advisories to help enterprises in operational difficulty tide over economic woes."

Wang said Chinese courts had promulgated regulations "offering judicial guarantee which safeguards the country's financial security and a stable and relatively fast economic growth."

Analysts believe the rationale underlining the policy is that law enforcement should disrupt businesses as little as possible during the global economic downturn.

Zou said few businessmen intentionally deferred payment and it's futile for courts to seal up companies if no money could be paid by them.

"Workshops and machines are of no use to obligees if they cannot be sold and converted into cash."

Companies were still able to maintain normal operation if the courts did not immediately seal them up, she said.

Zou said courts' compulsory measures which brought enterprises' operation to a standstill could "add insult to injury."

She suggested using mediation under the framework of the law so as to offer some "buffering time" to enterprises.

However, lawmaker Peng Xuefeng, director of the All China Lawyers Association, believed the policy "goes against the spirit of fairness and justice inherent in the law."

"Prudent handling of companies suspected of illegalities must not be over-emphasized," he said, adding the law is "a balancer of overall economic relations" and judicial organs should always remain neutral.

"Judicial policies should not go beyond legal principles even in extraordinary time."

He said although prudent handling of entrepreneurs could "temporarily alleviate business pressure caused by lawsuits," creditors' legal interest would be neglected and losses would fall on those creditors which had hoped to seek relief via legal procedures.

"In the long run, it will affect a normal market order featuring fair competition."

Earlier this year, Guangdong authorities promulgated "ten measures" helping local enterprises go through financial difficulties, including discreetly dealing with cases of dereliction of duty of company heads and staff holding key positions.

Local procuratorates should discuss with relevant departments and enterprise leaders and "cautiously choose a proper time to handle such cases," according to the measures.

Observers believe it comes as concern grows over the health of China's export-oriented

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economy. Many companies in Guangdong, a major export base, are struggling with over capacity, which leads to unemployment.

Peng said, "Prudent handling of company owners suspected of breaking the law is not a good option to solve current disputes resulted from financial woes."

Market economy was fundamentally "an economy ruled by law" and the economic development in the long run especially needed an integral legal guarantee, he said, adding there was no place for sentiment in judicial organs.

Cong Bin, an NPC Standing Committee member, said in the current financial crisis, courts should "act according to reality and their capability."

He said courts' compulsory measures on enterprises who could not pay their debts could lead to social instability, because they may hurt employees' interest and result in unemployment.

"But prudent use of compulsory measures must not be abused in dealing with the current crisis," Cong said, adding the will of the law must not yield to the will of an individual for a temporary need.

"How to exercise the role of the courts in promoting growth, employment and stability within the frame of the law will be test of the wisdom of all parties concerned," he said.(Xinhua)

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