

Research on Financial Supervision and the Perfection of the Legal System of Market-oriented Debt-to-Equity Swap

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Abstract: As market-oriented debt-to-equity swap has prominent comparative advantages over policy-oriented debt-to-equity swap in terms of its path, risk management and ownership design, financial institutions and enterprises in China are following the principle of legalization and actively promoting market-oriented debt-to-equity swap in an orderly manner. Based on the perspective of financial supervision, this paper takes the market-oriented debt-to-equity swap as the research object, and analyzes the institutional structure and legal perfection of China's market-oriented debt-to-equity swap. On this basis, it focuses on the responsibility of the creditor's main body, the debt entity's capital efficiency, the financial supervision legal boundary, the equity trading market mechanism and other aspects, and puts forward the strategic suggestions for perfecting the legalized system of market-oriented debt-to-equity swap in China.

1. Question Raised

Since the Eighteenth National Congress of the CPC, our government has issued a series of economic and financial policy guidance, and further pushed forward the supply-side structural reform with "three go, one fall and one supplement" as the main axis. It is our country's economy that has maintained a long-term good toughness and fundamentals. Market-oriented debt-to-equity swap is an important means of resolving the excessive asset-liability ratio and leverage ratio of enterprises in this round of supply-side structural reform. Since the publication of Opinions on Actively and Steadily Reducing the Leverage Ratio of Enterprises in 2016, market-oriented debt-to-equity swap has attracted wide attention from academia and practitioners as a way of dealing with the non-performing assets of banks and reducing the leverage ratio of enterprises. Along with the advancement of the market-oriented debt-to-equity swap process, its own face is facing prominent contradictions and problems in system design, financial supervision, and interest coordination. This paper is based on this realistic situation, based on the perspective of financial supervision. Taking market-oriented debt-to-equity swap as the research object, it discusses in depth the institutional structure and legal boundary of market-based debt-to-equity swaps to solve the current institutional bottleneck restricting market-oriented debt-to-equity swap.

2. The Core Connotation and Times Significance of Market-oriented Debt-to-Equity Swap

Market-oriented debt-to-equity swaps, as a means of dissolving the non-performing assets and capital liabilities of economic entities, which are different from policy-based debt-to-equity swaps, are of great practical significance for reducing corporate leverage and reducing the debt pressure of large-scale corporate banks. The main direction of this round of market-oriented debt-to-equity swap is to reverse the credit relationship between banks and enterprises, and adopt market mechanism to bring enterprises, banks and other financial institutions into the framework of market-oriented debt-to-equity swap participants.

2.1 The Core Connotation of Market-oriented Debt-to-Equity Swap

Debt-to-equity swap is a kind of debt disposal means of debt restructuring. At present, the definition of debt-to-equity swap has been very clear in academic circles. From the perspective of

bank creditors, debt-to-equity swap is a way to reduce the debt pressure of the debtor by reversing the creditor's rights relationship with the debtor, promote its operational performance and ultimately ensure the safety of bank loan funds. From the perspective of corporate debtors, debt-to-equity swap is a process of changing the subject of creditor's rights into the subject of equity to promote the reduction of corporate debt ratio. Therefore, the core connotation of China's current market-oriented debt-to-equity swap is under the scientific framework of the legal system and financial supervision, under the effect of market operation and government guidance, through the market-oriented selection of the target companies, market-oriented delineation A series of behaviors such as equity price and market-oriented participation in share-trading transactions promoted the reduction of corporate leverage and financial debt risk, making it a powerful means of supply-side structural reform.

2.2 The Epochal Significance of Market-oriented Debt-to-equity Swap

"De-leverage" is an important task of supply-side structural reform. As a means to effectively reduce the debt and leverage ratio of enterprises, this round of market-oriented debt-to-equity swap has extremely far-reaching significance of the times. Firstly, using debt-to-equity swap as an important means to further promote supply-side structural reform is the core way to cultivate long-term economic fundamentals and to explore the combination of stable growth, reform, structural adjustment and risk prevention. Secondly, through the market-oriented debt-to-equity swap, it helps to reduce the cost of corporate debt, thereby optimizing the economic structure of the enterprise and promoting the healthy development of the real economy. Finally, with the help of financial capital, the debt-enterprise can be freed from the liquidity dilemma and help the entity through market-oriented debt-to-equity swap. Economic development is of great practical significance for China to prevent systemic financial risks.

3. Advantages and Functions of Financial Supervision in Market-oriented Debt-to-Equity Swap

Financial supervision, as an important monitoring platform and standard means of market-oriented debt-to-equity swap transactions, is of great practical significance to the disposal of non-performing assets of commercial banks in the process of market-oriented debt-to-equity swap. Fully and effectively exerting the unique advantages and excellent functions of financial supervision in the process of market-oriented debt-to-equity swaps has an irreplaceable practical effect on guaranteeing the implementation process of this round of market-oriented debt-to-equity swaps.

3.1 Financial Supervision is the Capital Guarantee of Market-Oriented Debt-to-Equity Swap Institutions

The role of financial regulation in the market-oriented debt-to-equity swap is not limited to supervision and management, and its core role should be reflected in the level of financial capital supply. At present, under the financial supervision system of China, a total of four financial asset management companies represented by Huarong Finance Co., Ltd. have been established, and the legal status of four asset management companies to market-based debt-to-equity swaps has been granted at the legal level. From the historical experience, in the process of policy debt-to-equity swap implemented in 1999, the financial supervision system represented by China's four major financial asset management companies successfully injected capital into difficult enterprises, which effectively enhanced the overall vitality and competitiveness of Chinese enterprises. During the 18 years of debt-to-equity swap in China, financial supervision has formed a scientific, systematic and complete operation process and implementation system in the capital guarantee supply of market-oriented debt-to-equity swap, which has become a core source of capital in market-oriented debt-to-equity swap in China.

3.2 Financial Supervision is the Firewall of Risk in Market-oriented Debt-to-equity Swap Operation

One of the core issues in the process of market-oriented debt-to-equity swap is how to prevent moral hazards that may arise from the process of equity trading between the creditor and the debtor in a timely and effective manner. The financial asset management company in the financial supervision system can rely on the special status of its third-party organization to mediate between the active and effective creditor entity and the debtor entity, thus ensuring the equity pricing and transfer process in the process of market-based debt-to-equity swap. Effectively reduce moral hazard and more effectively improve the efficiency of market-based debt-to-equity swaps.

3.3 Financial Supervision is the Supplier of Comprehensive Financial Services of Market-oriented Debt-to-equity Swap

From the perspective of financial services, financial regulators can rely on their own advantages of systemic financial services, and work together with banking financial institutions to promote the solution of the problem of reducing the high leverage rate of enterprises. At present, in the process of structural reform on the supply side, the financial asset management companies affiliated to China's financial regulators are continuously enriching the functions of systemic financial services, and they have comprehensive and three-dimensional operation functions in financial licences involving banks, securities, trust and funds. Financial asset management companies can provide full-industry chain financial products in the areas of balancing stock and incremental capital, integrating production and financing, debt-to-equity swap, and investment financing structure, relying on their diversified financial services functions to ensure that they provide enterprises with The whole life cycle and the financial services of the whole industry chain can effectively solve the contradictions and problems in the financing channels and financing costs of enterprises, and truly promote the reasonable reduction of the leverage ratio of enterprises.

4. Strategic Suggestions on Perfecting the Legal System of Market-oriented Debt-to-Equity Swap

Based on the above discussion, it can be seen that the implementation criteria of market-oriented debt-to-equity swaps carried out in this round are to abide by the principle of market-oriented operation, and in accordance with the selection of the target of conversion, the pricing of the stock exchange, the design of the increase or decrease of the shareholding, etc. The market-oriented process operates. It is precisely because financial supervision has the special advantages of capital guarantee and the control function of risk prevention in the process of market-oriented debt-to-equity swap. Therefore, it is necessary to optimize the legal system of market-oriented debt-to-equity swap in order to ensure the institutionalized operation of market-oriented debt-to-equity swap.

4.1 Allowing Commercial Banks to Hold Shares Directly and Continuously Deepen the Full Duty of Debt-to-Equity Debt Subjects

Throughout the successful experience and advanced practices of market-oriented debt-to-equity swap in Western countries, it is the trend of financial system reform worldwide to gradually reverse the financial business paradigm from separate operation to mixed operation. The main body of market-oriented debt-to-equity swap in China, represented by securities industry and insurance industry, has gone through the process from separate operation to mixed operation. From this point of view, allowing commercial banks to become direct shareholders in the market-oriented debt-to-equity swap is the inevitable choice of market economy and the development of the industry. Mixed operation is an important direction of deepening the reform of the banking system in China. In the actual operation process, we need to adhere to the principle of scientific prudence, take the possibility of effectively suppressing systemic financial risks as the key direction, and build a scientific mechanism that can accurately predict and reasonably control potential risks. In order to

effectively promote the smooth development of market-oriented debt-to-equity swaps, China has established a special organization to manage it. However, compared with the issues of post-intervention management agency initiative and market efficiency, giving commercial banks the status and function of direct shareholding is of great practical significance for simplifying operational procedures and improving operational efficiency. Therefore, we should revise and improve the financial industry banking industry management system regulations represented by the “Bank Law” as soon as possible, and allow commercial banks to directly hold shares, share capital pricing mechanism, shareholding ratio of creditors, and advance and retreat mechanisms of equity increase and decrease. The legal rules are clearly defined and institutionalized and standardized, so as to continue to deepen the full-time responsibility of market-oriented debt-to-equity swaps at the legal system level.

4.2 Optimizing Corporate Governance Structure and Increasing Capital Efficiency of Debt-to-Equity Debt Subject

As the core subject and object of market-oriented debt-to-equity swap, the enterprise's governance ability and level directly determine the expected returns of shareholders after the swap, which will significantly affect the enthusiasm and initiative of the main body of creditor's rights to equity swap. The core reason why enterprises are confined to debt burden lies in the imperfection and inefficiency of their governance structure. The process of converting creditors to shareholders by market-oriented debt-to-equity swap and by means of capital increase and equity expansion can effectively realize the "separation of two rights" of converting enterprises, and thus enhance the efficiency of capital preservation and appreciation. After the main body of creditor's rights has been transformed into shareholder's main body, it can fully participate in the important decision-making and daily business management of debt enterprises. Thereby ensuring the synergy of the shareholders' meeting, the board of directors and the board of supervisors, and ultimately ensuring the maximum value of the claims. However, a problem that cannot be ignored is that after the implementation of market-oriented debt-to-equity swaps, the equity structure and shareholding ratio of the debt-enterprise companies will change, and the actual problem of the transfer of actual control rights of enterprises appears. Therefore, it is necessary to carry out a legislative system-based system on the issues of internal control that may exist in the conversion-oriented enterprises after the market-oriented debt-to-equity conversion, based on the “Guidance Opinions on the Derivation of Market-based Banks' Debt-to-equity” issued by the Central Office. And based on the relevant provisions of the company law, we will continue to improve the corporate governance structure within the company to continuously improve the capital efficiency of the debtor.

4.3 Defining the Scope of Application of Debt-to-equity Swap and Delimiting the Legal Boundary of Market-oriented Debt-to-equity Swap

From the scope of application of law between creditors and debtors of market-oriented debt-to-equity swap in the world, private finance, as an important financial component of market economy, has become an effective supplement to the financial capital supply of debt-to-equity swap. As a way of protecting creditor's rights, the scope of application of creditor's law should not be limited to commercial banks in the process of debt-to-equity swap. Especially in the process of selecting the object of debt-to-equity swap, we should restrict it with clear laws and regulations at the level of efficiency and fairness. From the legal level, we should enhance the whole society's awareness of the market-oriented debt-to-equity swap to improve the productivity of economic factors in the entity as a whole, clarify the screening indicators and threshold standards of debt-to-equity swap enterprises at the operational system level, and gradually establish and improve the positive and negative lists. From the access conditions of debt-for-equity swaps and the selection procedures of debt-for-equity swaps, the legal boundary of market-oriented debt-to-equity swaps is clarified, and legal supervision and system blessing are used to ensure that market entities implement market-oriented debt transfer in accordance with the market-based legalization. The work of the stock. More importantly, the financial supervision department should clearly define the

rights and responsibilities of the subject and the object of the object in terms of the selection of the creditor's main body and the debtor's equity in the process of conversion, the location of the conversion of creditor's rights, and the formulation of the conversion price. The three dimensions of responsibility, responsibility, and accountability clarify the scope of application of debt-to-equity swaps.

4.4 Establishing the Mechanism of Debt-to-Equity Swap and Guiding the Stock Exchange of Debt-to-Equity Market Scientifically

The biggest difference between market-oriented debt-to-equity swap and policy-oriented debt-to-equity swap is that there is no "bottom line constraint" on the return of equity swap and the loss of creditor's rights. Therefore, financial regulators should scientifically guide the initiative to prevent the risk of convertible default caused by bond losses or insufficient profits, rather than clarify the "guaranteed terms" in the form of a system. Taking equity transfer, equity repurchase and preferred stock setting in market-oriented debt-to-equity swap as examples, we should regulate the way of equity withdrawal by creditors in the process of equity transfer with clear system, encourage creditor's rights enterprises to realize equity withdrawal and transfer in a diversified way; in the process of equity repurchase, financial regulators should not excessively restrict the market reached between creditor's rights enterprises and debtor's enterprises. Firm share repurchase agreement, and the process of share repurchase must strictly follow the relevant provisions of the company law; In the setting up of preferred stocks, on the basis of the "Guiding Opinions on Converting Equity from Market-Based Banks" and other policies, encourage some of the non-performing assets of market-denominated debt-to-equity creditors to be converted into debtor's priority, ensuring Minimize the risk of debt-to-equity swaps and promote the optimization of the equity structure of debt companies. By establishing the advance and retreat mechanism of market-oriented debt-equity swaps, scientific guidance and appropriate constraints in all aspects of equity trading will help creditor entities achieve a win-win situation in terms of investment income expectations and debt business performance.

5. Conclusion

The results of this paper show that market-oriented debt-to-equity swaps, as an important means of implementing China's supply-side structural reforms, have a positive role in resolving bank non-performing assets and improving corporate governance. However, in the specific operation process of market-oriented debt-to-equity swaps, there are realistic bottlenecks in the aspects of equity advancement and retreat and capital gains. This paper believes that the basic guarantee of market-oriented debt-to-equity swap lies in financial supervision, and the carrier of financial supervision implementation lies in the legal system and institutional framework. To promote the orderly implementation and large-scale development of market-oriented debt-to-equity swap, we should give full play to the unique advantages and excellent functions of financial supervision institutions in the process of market-oriented debt-to-equity swap, continuously deepen the full responsibility of debt-to-equity swap creditors, continuously improve the capital efficiency of debt-to-equity swap debtors, rationally delimit the legal boundary of market-oriented debt-to-equity swap, and scientifically guide the financial market of debt Continuous efforts will be made to ensure that the pilot experience of this round of market-oriented debt-to-equity swap can be replicated and popularized in all elements and fields with the support of mature system design and technical preparation.

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