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ESTABLISHEMENT OF THE BANKRUPTCY INSTITUTION IN UKRAINE

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SUMMARY

The article analyzes the formation of the institution of bankruptcy in Ukraine as an integral part of the market economy and competition. Considered the situation, according to which, bankruptcy cases are under the jurisdiction of economic courts and are considered by the mat the location of the debtor, which reflects the harmonization of legislation.

The attention is focused on the Code of Ukraine of bankruptcy procedures, which expanded the subjects of bankruptcy, identified short comings and changed the definition of the term "arbitration manager", the procedure for renewing solvency or declaring a private entrepreneur and an individual as bankrupt.

Key words: bankruptcy, insolvency, debtor, creditor.

СТАНОВЛЕНИЕ ИНСТИТУТА БАНКРОТСТВА В УКРАИНЕ

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АННОТАЦИЯ

В статье проводится анализ становления института банкротства в Украине как неотъемлемой части рыночной экономики и конкурентной борьбы. Рассмотрено положение, согласно которому дела о банкротстве подведомственны хозяйственным судам и рассматриваются ими по месту нахождения должника, которое свидетельствует о гармонизации законодательства. Сосредоточено внимание на Кодексе Украины по процедуре банкротства, которым расширены субъекты банкротства, установлены недостатки и изменено определение термина «арбитражный управляющий», определен порядок возобновления платежеспособности или признания банкротом физического лица-предпринимателя и физического лица.

Ключевые слова: банкротство, неплатежеспособность, должник, кредитор.

Formulation of the problem. Macroeconomic instability and the lack of work experience lead to the emergence and deepening of crisis phenomena in many enterprises. That is why, quite actual today, there is the problem of bankruptcy of business entities. Especially, the institution of bankruptcy serving as the main instrument of state regulation of the functioning of unprofitable and financially in solvent enterprises. The bankruptcy mechanism in Ukraine is still not perfect and requires a lot of research, first of all, in assessing the effectiveness of securing the with draw al of insolvent business entities from the state of the crisis or their liquidation.

On October 18, 2018, the Verkhovna Rada of Ukraine adopted the Code of Bankruptcy Procedures in its second reading. This Code establishes the conditions and procedure for restoring the solvency of a debtor-legal entity or recognizing him as a bankrupter in order to satisfy the claims of creditors, as well as restoring the solvency of an individual. That is why it will be important to investigate what changes at the economic level will bring the Code of Bankruptcy.

The purpose of the article. The article deals with the formation of the bankruptcy institute in Ukraine since the adoption of the Law "On Bankruptcy" in 1992, with the latest changes in connection with the adoption of the Code of Bankruptcy Procedures on October 18, 2018.

Methods of research: methods of analysis, synthesis and synthesis are used.

The formation and development of the bankruptcy institute were researched by B. Grek, V. Mamutov, B. Polyakov, I. Pobirchenko, D. Pritika,

A. Cherper, Z. Shershova and others in the sphere of the development of legal and organization al principles of the bankruptcy institute in Ukraine. We have made the research of the legal basis of this institution, taking into consideration the new Code of Bankruptcy Procedures.

Main material. The most undesirable crisis situation in the big enterprises, and now for individual physical entrepreneurs is bankruptcy. By its nature, bankruptcy is an integral part of a market economy, the natural course of competition, as a result of which the weak enterprises leave this process, an d the state receives economically strong, competitive business entities. A fairly common practice in the countries with a market economies is the introduction of bankruptcy as a mechanism for regulation and self-regulation of the economy, or, above all, compliance with obligations. The first normative act regulating the insolvency of economic entities was the Law of Ukraine "On Bankruptcy" of 14.05.1992. In some parts of it, this law was similar to law in the Russian Federation. The practice of reviewing bankruptcy cases by arbitration courts that were considered from 1992 to 1999 showed that the definition of "bankruptcy" had few disadvantages, which instigated an ambiguous understanding of the law. This was especially true for the definition of the legal and economic substance of the concept of "assets in a liquidation form" [3].

Hard with a content law applies only to subjects of entrepreneurial activity with the status of a legal entity. Cases were considered by the arbitral tribunal at the place where the debtor was located and were prompted by the creditor or debtor's application. If the application was filed by the lender, the case was violated in the presence of unconditional monetary claims, regardless of the size, provided that they were not repayable to the debtor's bank form ore than one month. The debtor, in addition to the mentioned, has the right to initiate bankruptcy proceeding seven in a connection with the threat of insolvency. As a rule, a property manager was assigned to the debtor's bank, and the applicant was obliged to attach a file of the bankruptcy proceedings to the official print agency. Other lenders submitted their applications within a month. Bankruptcy proceedings were stopped by approval of the terms of the sanction or liquidation balance. Law of 1992 "On Bankruptcy" had many disadvantages, namely:

– it was of noticeable pro-creditor nature, aimed at paying debts of creditors;

– there was no reorganization procedure;

– no moratorium on satisfaction of creditors' claims was applied;

– no legally established initial amount of debt made it possible to launch a bankruptcy court mechanism in the presence of a debt of at least one penny, which did not contribute to stabilizing the economy of the state and ignoring its realities;

– the law did not correspond to the economic relations that were established in Ukraine at that time.

Significant changes were made to the "On Bankruptcy" Law. It was signed June 30, 1999 and got the title "On restoring the debtor's solvency or recognizing them as a bankrupt". This law became a pro-debtor. The conditions for initiating the bankruptcy procedure were established, a moratorium on satisfaction of creditors' claims was introduced, the subject of legal regulation was only a debt obligation (fines excluded) special procedures were introduced: rehabilitation, peace agreement, institute of arbitration manager [4].

Timely were the changes, according to which the bankruptcy proceedings were subordinated to commercial courts and were heard according to the actual location of the debtor, indicating the harmonization of legislation regulating economic activity in Ukraine. Regarding the subjective structure of bankruptcy, according to the 1992 Law the subjects of bankruptcy could only be legal entities registered in Ukraine as the subjects of entrepreneurial activity, including state-owned enterprises, enterprises with a state-owned shares in the authorized capital, consumer cooperatives and agricultural production cooperatives, enterprises with foreign investments, as well as enterprises whose objects were not subject to privatization in accordance with the current legislation [3]. Separate subdivisions of a legal entity – a business entity (branches, branches), agricultural servicing cooperatives, as well as foreign legal entities and international organizations with permanent establishments outside Ukraine [5, p. 97] could not be recognized as subjects of bankruptcy. It was also significant that individual entrepreneurs could not be the subjects of bankruptcy. State-owned enterprises were excluded from the list of subjects of bankruptcy.

Law of 1999 significantly expanded the range of subjects of bankruptcy, including legal entities operating in the form of a consumer society, a charitable or other fund, especially dangerous enterprises, professional securities market participants, financial and credit institutions, insurers and individual entrepreneurs. However, since January 2013, a new version of the Law of Ukraine "On restoring the debtor's solvency or recognizing them as a bankrupt" became effective. It set the measures to prevent the insolvency of the debtor, expansion of powers of the arbitration manager, specificities of bankruptcy of business entities that have public and other value or special status, bankruptcy of state enterprises and enterprises in whose statutory capital the share of state property exceeds 50% [8]. The separate sections regulate the sale of property in the process of prosecution and proceedings on bankruptcy related to foreign proceedings. The law prohibits the possibility of bankruptcy of state-owned enterprises (Part 5 Article 2 of the Law), does not foresee the bankruptcy of banks and financial and credit institutions regulated by other legislation [15, p. 50].

The specificities of proceedings in bankruptcy cases for banks and financial and credit institutions are regulated by the Laws of Ukraine "On Banks and Banking", :On the System of Guaranteeing Individual Deposits". The new version of the Law with amendments and additions is one of the many conditions for a more effective economic development of Ukraine. Introduced by the Law, which became effective on January 19, 2013, a lot of novelties were introduced in the normative regulation of the of bankruptcy sphere, as indicated in the explanation of the Ministry of Justice of Ukraine from 06.04.2012. "Development of normative movement of regulation of relations in the sphere of bankruptcy in Ukraine".

First of all, it is foreseen to cancel the licensing of economic activities of arbitration managers (property managers, sanitation managers, liquidators), whereas arbitration managers will become subjects of independent professional activity [1].

The powers of the state body on bankruptcy issues have been revoked and, in particular, extracted from the court and can now be regarded as interference with the administration of justice. This applies to the provision of state bankruptcy authorities' proposals to the economic court for the appointment of arbitration managers for state-owned enterprises or enterprises in respect of which the case of bankruptcy was initiated and in which authorized capital share of state property exceeds 25%. In addition, those functions that concern only state-owned enterprises or enterprises in which authorized capital share of state property exceeds 25% in respect of which the bankruptcy case was initiated the Law does not take into account the constitutional principle of the principle of equality of ownership forms [15, p. 49].

In order to avoid corruption risks and to establish a unified approach to the appointment of an arbitrator in bankruptcy cases, regardless of the forms of ownership of the debtors, it was foreseen that the candidate for the exercise of the powers of the property manager is determined by the court independently with the use of an automated system from among the persons included in the Unified Register of Arbitrage Managers of Ukraine.

Another addition in the field of state regulation of bankruptcy relations was the regulation at the legislative level of the status and powers of the self-regulatory organization of arbitration managers, which is defined as an all – Ukrainian public organization uniting arbitration managers who have received their status in accordance with the requirements of the enactment of the Law, and exercise powers on public regulation of the activities of arbitration managers [15, p. 48]. Relying of a lawmaker to the self-regulatory organization of arbitration managers in the field of public regulation of the activities of arbitration managers – its members, as well as participation in the professional training of arbitration managers and improving their professional level, is aimed at raising the level of professional quality and the positive authority of arbitration managers.

What is more, a new, modern way of detecting all creditors and persons who have expressed a desire to participate in the debtor's rehabilitation, by means of the official announcement of bankruptcy proceeding on the official web-site of the Higher Commercial Court of Ukraine on the Internet, provides for informing a wider circle of people, reduce the costs of conducting a bankruptcy case and, to a certain extent, will make it possible to avoid delaying such proceedings in contrast to the placement of such an announcement in print agencies newspaper "Voice of Ukraine" and "Governmental Courier". In addition to the aforementioned, the legislator reduced the terms of judicial procedures that apply to the debtor, regulated the sale of property in the proceedings on bankruptcy and other painful issues [12].

October 18, 2018 The Verkhovna Rada of Ukraine has adopted the Bankruptcy Code of Ukraine, which will go in effect 6 months after the date of its publication.

The Code eliminates disadvantages and changed the definition of the term "arbitration manager". According to the Code (Part 1, Clause 1), it is an individual who has received the relevant certificate and information that is included in the Unified Register of Arbitrage Managers of Ukraine. Unlike the current wording of the law, where the arbitral manager is an individual, appointed by the economic court in the established procedure in the case of bankruptcy as a property manager, reorganization manager or liquidator from among the persons who received the relevant certificate and entered into the Unified Register of Arbitration Managers (Managers property, sanitation managers, liquidators) of Ukraine [17]. The current definition of the term dissipates the false idea that an individual holding a certificate for the right to exercise the activities of the arbitration manager (property manager, reorganization manager, liquidator) is not an arbitration manager until he is appointed in the bankruptcy case.

In accordance with the Code (part 8, Article 12), the arbitration manager in the exercise of his authority has the right to directly access information about the debtor, his property, income, means, including confidential information contained in state databases and registers [17].

The order of appointment of the arbitration manager has changed. Yes, according to Article 28 of the Code, the court proposes three arbitral managers to file an application for participation in the decision on acceptance of the application to initiate a bankruptcy proceeding. In the case when the application came from two to three arbitration managers selected by automated program, the court assigns the person who was selected the first to be the property manager/ manager of the restructuring. In addition, the Code (Part 1, Article 30) increased the size of the main payment of the arbitration manager, established the concept of additional payments, as well as provides for mandatory advance payments by the creditor and the debtor (Part 2, Part 4, Article 34).

The third book of the Code regulates the procedure for bankruptcy of legal entities, including the procedure for filing a court application for initiating a bankruptcy proceeding, opening bankruptcy proceedings, the procedure for providing claims to creditors, etc., the process of disposition of the debtor's property, the rehabilitation procedure of the debtor and the liquidation procedure.

The new Code changes the timing of certain procedural actions, in particular, the procedure for disposing of the debtor's property is introduced and should last up to 115 days, but no longer than 170 days. The queues of satisfaction of creditors' claims in the liquidation procedure of the debtor, in particular, the 5th stage, in comparison with the previous law, are amended, the requirements of additional monetary payment to the manager of the rehabilitation or the liquidator are excluded. A separate section specifies the specificities of proceedings in bankruptcy cases of certain categories of debtors, in particular, insurers, farms, state enterprises, etc. (Section VII). It also regulates bankruptcy proceedings related to a foreign insolvency procedure (Section VIII) [16].

The fourth book of the Code establishes the procedure for restoring solvency or recognizing the bankruptcy of an entrepreneur and an individual. In accordance with Code 115, proceedings on insolvency of a debtor – an individual or an individual entrepreneur may be opened only after the application of the debtor. That is, the creditor will now be able to apply to the individual or the entrepreneur, as opposed to the legal entity. The new Code sets out the grounds for the debtor's request for bankruptcy:

1. The size of the debtor's overdue obligations towards the creditor (creditors) is not less than thirty non-taxable minimum incomes of citizens (at the same time, the previous law required the requirement of three hundred minimum wages).

2. The debtor has ceased repayment of loans or other plan payments in the amount of at least half the monthly payments for each loan and other obligations within two months.

3. A ruling has been passed in the enforcement proceedings concerning the absence of property from the physical person, which can be recovered.

4. There are other circumstances that confirm that in the near future the debtor will not be able to fulfill the monetary obligations or to carry out ordinary current payments (the threat of insolvency).

Section III of the of the Fourth Code book introduces a new plan for restructuring the debts – it establishes the post of restructuring manager, which is developed to restore the solvency of the debtor. According to Article 130 of the Code, the court decides to declare a debtor bankrupt and introduce a procedure for repayment of their debts in case within 120 days from the date of opening insolvency proceedings at a meeting of creditors no decision has been taken on approval of the debtor restructuring plan or a decision to switch to the procedure for repayment of claims debtor [16].

Conclusions. Consequently, the establishment of the bankruptcy institute in Ukraine takes place in difficult circumstances, which requires a more detailed study and revision of the tasks and functions of the bankruptcy institute. Definitely, the new Code of Ukraine on bankruptcy procedures, the insolvency procedure of the debtor or recognition of its bankruptcy in Ukraine is regulated more fully now than with the previous legislative act as it simplified access of the debtor to the bankruptcy procedure. At the same time, some issues remained unclear or settled in general terms, in particular, the grounds for the debtor's or creditor's appeal with a statement of bankruptcy of legal entities were not clearly defined, the deadline for the debtor's reorganization procedure not set, bankruptcy of banks not regulated, etc. The most important achievements of the Code from bankruptcy procedures is that: firstly, the assets of the debtors will be sold through an online platform that will ensure transparency and the highest possible price of the alienated property. In addition, the level of responsibility of the management of the debtor-company increases because of unused measures to prevent bankruptcy. Also, the Code provides the opportunity to declare invalid the transactions of the debtor's property with related parties during the last three years preceding the opening of the bankruptcy procedure. In addition, lenders will be able to participate in the selection of the arbitration manager, who will have to report regularly to them on the financial condition of the debtor. Secondly, according to preliminary estimates, the adoption of the Code is expected to help Ukraine significantly improve its position in the World Bank's 'Doing Businesses' rating – in the overall score and on the "Solvency" indicator. At the same time, until the adoption of the Code, Ukraine has sometimes shown the worst results, for example, on the effectiveness of the bankruptcy procedure, its cost and duration. Thirdly, the Code improves the procedure for corporate bankruptcy. Due to its simplification, a bankrupt can be sold as a working business.

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ОСНОВНЫЕ ФОРМЫ ДЕЯТЕЛЬНОСТИ СУБЪЕКТОВ АДМИНИСТРАТИВНО-ПРАВОВОЙ ЗИЩИТЫ ПРАВ РЕБЕНКА В УКРАИНЕ

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АННОТАЦИЯ

В статье детально рассмотрены основные (правовые и неправовые) формы деятельности субъектов административно-правовой защиты прав ребенка на Украине. В процессе исследования установлено, что ключевыми правовыми формами деятельности уполномоченных субъектов являются следующие: 1) издание административных актов; 2) осуществление юридически значимых действий; 3) заключение административных договоров. К неправовым формам отнесены различного рода действия, связанные с материально-техническим обеспечением деятельности органов государственной власти и местного самоуправления, а также организационные действия, которые не влекут за собой никаких юридических последствий.

Ключевые слова: права детей, уполномоченные субъекты, правовые и неправовые формы, административный договор, акт государственного управления, юридически значимые действия.

BASIC FORMS OF ACTIVITY OF THE SUBJECTS OF ADMINISTRATIVE PROTECTION OF CHILDREN RIGHTS IN UKRAINE

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SUMMARY

The author of the article has studied in details the main (legal and non-legal) forms of activity of the subjects of administrative protection of children rights in Ukraine. In the course of the research, the author has established that the key legal forms of activity of authorized subjects are: 1) issuance of administrative acts; 2) implementation of legally significant actions; 3) conclusion of administrative contracts. Various types of actions related to the logistic and technical provision of state authorities and local self-government agencies' activities, as well as organizational actions that do not entail any legal consequences, were assigned to non-legal forms.

Key words: children rights, authorized subjects, legal and non-legal forms, administrative contract, public administration act, legally significant actions.

Постановка проблемы. Деятельность субъектов административно-правовой защиты прав ребенка выражается в соответствующих формах. Имеется в виду та ситуация, когда управленческая деятельность уполномоченных субъектов осуществляется и обеспечивается с помощью четко установленных мер воздействия. Однако внешнее выражение управленческой деятельности, которая применяется в отношении несовершеннолетних, может отличаться от общих стандартов.

Состояние исследования. Права ребенка и их защита органами государственной власти, общественными объединениями, международными организациями и т. п. неоднократно становились предметом исследования представителей педагогических, правовых, социологических, психологических наук. Интересными и чрезвычайно актуальными являются исследования В. Абрамова, А. Нечаева, Л. Мыськив, К. Левченко, А. Дакал, И. Цыбулиной, А. Вингловской и ряда