

SOME LEGAL ISSUES OF BANKRUPTCY OF BUSINESS ENTITIES

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ABSTRACT

This article is about the legal aspects and regulations of insolvency issues of business companies, which are facing nowadays. The author outlines some Uzbek legislation how to define the bankruptcy and how to prevent the business entities from becoming insolvent company. Besides, in conclusion part, some suggestions are given for the effective functioning of the institute of bankruptcy of the Republic of Uzbekistan aimed at balancing the interests of debtor and creditors, ensuring the stability of the state economy.

Key words: bankruptcy, legal entity, debtor, creditor, entrepreneurial activity, private property, court administrator, Civil Code, legislation.

INTRODUCTION

Speaking at a joint session of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan on November 12, 2010 with a report on the "Concept of further deepening democratic reforms and the formation of civil society in the country", the First President of the Republic of Uzbekistan Islam Abduganievich Karimov emphasized:

"... the analysis, logic and sequence of our transformations, the assessment of their compliance with the most modern market norms dictate the urgent need for further deepening, improvement and liberalization of the economic management system."¹

At the same time, it is noted that it is necessary to strengthen the rights and protection of private property, to create a system of reliable guarantees in which any private owner must be sure that the private property acquired or created by him legally is inviolable.

In this regard, the Decree of the President of the Republic of Uzbekistan No. UP-4725 dated May 15, 2015 "On measures to ensure reliable protection of private property, small business and private entrepreneurship, removing barriers to their accelerated development" was adopted. This Decree is aimed at creating even more favorable economic and legal conditions and incentives for radically increasing the role and place of private property in the economy, eliminating existing barriers and restrictions in the organization of entrepreneurial activity, and consistently increasing the share of private property in the gross domestic product, including with the participation of foreign capital.

¹ The concept of further deepening democratic reforms and the formation of civil society in the country. Report of the President of the Republic of Uzbekistan I. Karimov. //www.press-service.uz.

The decree approved a comprehensive program of measures providing for the implementation of 33 specific measures in four key areas of further ensuring reliable protection of private property, small business and private entrepreneurship, removing barriers to their accelerated development.

Special attention in the Program of Measures is paid to creating the necessary conditions and opportunities for the accelerated development of private property and private entrepreneurship, further simplifying the procedure for their creation and organization of activities, providing greater freedom for entrepreneurship through the liberalization of administrative and criminal legislation.

The next stage of further creation of conditions for business entities was the adoption on October 5, 2016 of the Decree of the President of the Republic of Uzbekistan No. UP-4848 "On additional measures to ensure accelerated development of entrepreneurial activity, full protection of private property and qualitative improvement of the business climate". This Decree of the President of the Republic of Uzbekistan is aimed, first of all, at further strengthening the legal protection of private property, creating favorable conditions and all-round support for small business and private entrepreneurship, increasing the investment attractiveness of the republic and testifies to the transition to a qualitatively new level of state policy in this area.

In particular, the Decree passed in as a top priority and priority public bodies, establishes the "giving flexibility to small business and private entrepreneurship, radical reduction of interference in their activities with a focus on early warning, increasing the effectiveness of prevention and the prevention of violations"

All this suggests that in our country, special attention is paid to the protection of the rights and legitimate interests of business entities and private property. In this regard, it is also necessary to note the Decree of the President of the Republic of Uzbekistan dated October 21, 2016 No. UP-4850 "On measures to further reform the judicial and legal system, strengthen guarantees of reliable protection of citizens' rights and freedoms", which was adopted in order to further democratize and liberalize the judicial and legal system, increase the effectiveness of judicial, law enforcement and regulatory bodies, increase public confidence in justice, ensure the rule of law and strengthen the rule of law in society

A stable system of economic legal relations of any state not only contributes to the growth of its economic potential, but also determines the stability of the development of the country as a whole. At the same time, the analysis of foreign practice shows that the market economy cannot function effectively without a legislative framework regulating economic turnover, including protecting its participants from the consequences of inefficient activities, expressed in non-fulfillment or improper fulfillment of assumed obligations. Proper fulfillment of obligations on the part of participants in economic legal relations is essentially a guarantee of all economic legal relations.

In all countries with market economies, the institution of bankruptcy is quite common and to some extent a natural phenomenon, at the same time being an integral part of the relations between economic entities. The steady trend towards the emergence of new

and liquidation of old entities without prejudice to the economy as a whole suggests that the process of insolvency (bankruptcy) is natural for a market economy to the extent that it is necessary.

The institution of bankruptcy is essentially a mechanism for improving the economy and is one of the main tools of developed countries with market economies. Bankruptcy is undoubtedly a radical measure and at the same time the last opportunity to save an enterprise from the final termination of its activities, including through the transfer of management of an insolvent enterprise from an inefficient owner to a more efficient one.

Speaking at an expanded meeting of the Cabinet of Ministers dedicated to the results of the socio-economic development of the country in 2015 and the most important priority areas of the economic program for 2016, the First President of the Republic of Uzbekistan emphasized that the ongoing work to improve the business climate is positively reflected in the ratings of the business environment of international economic organizations.² In particular, it was noted that the 75th place in terms of the effectiveness of the bankruptcy system of economically insolvent enterprises.

At the same time, it should be noted that the effectiveness of the bankruptcy system depends on the perfection of legislation in this area. The implementation of the bankruptcy mechanism of insolvent business entities is one of the urgent needs of the development of the economy of our country. Thanks to the institution of bankruptcy in economic legal relations, the change of inefficient owners is achieved, the preservation of socially significant and potentially profitable competitive industries. At the same time, through bankruptcy, the conversion of unprofitable enterprises is carried out, ensuring the stability of property relations and increasing employment in general.

The institution of bankruptcy contributes to the improvement of market relations, including by terminating the commercial activities of hopelessly insolvent debtors and providing business entities in a difficult situation with the opportunity to carry out reorganization procedures and restore solvency.

A comprehensive study and analysis of the law enforcement practice of legislation in the field of bankruptcy will allow to identify shortcomings and develop constructive proposals for further improvement of legislation.

DEVELOPMENT OF THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN ON BANKRUPTCY

The institution of bankruptcy originated in the days of Ancient Rome. The formation of the institution of bankruptcy is caused mainly by the development of economic, credit and property relations. Initially, the Roman Laws of the XII tables, as a source of Roman law, provided for the creditor's right to compensation for losses from the debtor's failure to fulfill obligations.

² Report of the President of the Republic of Uzbekistan I. Karimov at an enlarged meeting of the Cabinet of Ministers devoted to the results of the socio-economic development of the country in 2015 and the most important priority areas of the economic program for 2016. //www.press-service.uz.

The provisions of Roman law concerning insolvency (bankruptcy) in the Middle Ages, in particular, were adopted by Italian law. In the IX – X centuries, trade relations in Italian cities were sufficiently developed, which prompted the creation of legal mechanisms.

The word "bankrupt" (from Ital. banco – bench, rotta - broken) literally means to break the bench on which the merchant was sitting, conducting trading or financial activities. His refusal to pay his debts due to lack of funds led to the fact that the bench was broken. This circumstance served as the basis for the beginning of the termination of the merchant's activities and a warning to the rest.³

In the course of the historical development of the regulation of property relations, due to the insolvency of individual entities, a special institute of commercial law was initially developed – bankruptcy proceedings. The ultimate goal of this legal institution is the proportionate satisfaction of the creditors' claims of the insolvent debtor and the release of the latter from debts with the provision of an opportunity to resume commercial activity. Further development of the institute of insolvency is associated with the extension of bankruptcy procedures to other areas of business, beyond trade.

Over time, along with individuals, legal entities, which currently play a major role in commercial turnover, became more and more active participants in trade turnover. The activities of many organizations (city-forming, financial, strategic, natural monopolies, transnational, etc.) affect the economic interests of not only certain creditors, but also regions, the state and the global economy as a whole.

In these conditions, the purpose of bankruptcy legislation is not only to protect the interests of creditors, but also to solve macroeconomic problems that ensure the vital activity of human society. Thus, in addition to the bankruptcy proceedings, a significant place in modern judicial practice is occupied by restorative procedures, including financial rehabilitation and external management of the debtor's property.

At present, the main task of the institution of bankruptcy in developed market countries is associated with the preservation of the enterprise, and therefore the property of its owner by changing the system of enterprise management, granting deferred and installment payments. The state and society are interested not in liquidation of a debtor enterprise, but in restoration of its solvency through special procedures provided by the legislation on insolvency (bankruptcy).

Bankruptcy institute for our country is relatively new form of economic relations and has received its formation and development after the Republic of Uzbekistan gained independence.

Over the 30-year period of independence of the Republic of Uzbekistan several editions of Law "On bankruptcy" were adopted. All this is conditioned by constant development and perfection of market economic relations in Uzbekistan, appearance of new organizational-legal forms of economic entities and credit-financial institutions.

³ Kukukhina I.G., Astrakhantseva I.A., Accounting and Analysis of Bankruptcy. - 2004. - page.19

Dynamic development of the legislation of the Republic of Uzbekistan on bankruptcy is mainly grounded by the fact that the institute of bankruptcy for the Republic of Uzbekistan is relatively new, in this connection as it develops some problematic issues are revealed in the law enforcement practice, which requires constant improvement of rules of law on bankruptcy.

In this connection for further improvement and development of the legislation on bankruptcy, elimination of existing gaps and shortages, it is necessary to make the complex analysis of both the institution of bankruptcy, and the history of its formation in our country.

For the first time the institution of bankruptcy was legally fixed in the Uzbek legislation in the Law "On Bankruptcy" of May 5, 1994. This law contained only 35 articles and did not reflect sufficiently all problems arising at bankruptcy. The law lacked norms regulating in detail the procedure of realization of the debtor's property (business). In connection with this, in the first time after its adoption, this law did not actually work.

In 1995, on July 17, the Government of the Republic of Uzbekistan adopted a decree № 273 "On measures to implement the Law" On Bankruptcy ", which established the Government Commission to review the economic and financial activities of unprofitable enterprises. This decree served as the basis for intensification of bankruptcy procedures for economically insolvent enterprises.

Subsequently, for the purpose of state regulation and control of bankruptcy issues on December 11, 1996 the Decree of the President of the Republic of Uzbekistan "On measures on realization of the legislation on bankruptcy of the enterprises" was issued, according to which the special state body - the Committee on affairs on economic insolvency of the enterprises was created. Creation of this body was also the next step for increasing efficiency of the mechanism of bankruptcy of economically insolvent enterprises. Thus, as a result of the measures taken, already in 1997, 137 organizations were declared bankrupt by the economic courts of the republic.

The next stage in improving the institution of bankruptcy was the adoption on August 28, 1998 of the Law of the Republic of Uzbekistan "On introduction of changes and additions to the Law of the Republic of Uzbekistan "On bankruptcy", which approved the new edition of the Law "On bankruptcy". Unlike the old version, the new version contained a large number of new articles, (the total number of articles was 133). The Law

"On bankruptcy" in this version regulated in detail the consideration of cases of bankruptcy of certain categories of debtors. A new procedure - external management - was introduced, and the rights of creditors were considerably extended. One of the main differences was that in this version of the law the sign of bankruptcy was changed, i.e. the sign of non-payment was replaced by the sign of insolvency. As a result the number of cases increased, and already in 1998 439 debtors were recognized as bankrupts, and in 2002 - 1250 debtors.

Subsequently, due to the increase in the number of bankruptcy cases, the court practice was also formed, the analysis of court practice was carried out, which, in turn,

allowed to identify shortcomings and gaps in the legal regulation of relations related to bankruptcy.

The need to eliminate existing gaps in the legislation on bankruptcy caused the need to adopt the Law "On Bankruptcy" in a new version. The law "On bankruptcy" of April 24, 2003 in its new edition consisted of 192 articles; it contained many new provisions relating to the signs of bankruptcy and reorganization procedures aimed at restoration of the debtor's solvency. In particular, this law included two additional chapters devoted to new bankruptcy procedures: supervision and judicial rehabilitation. At the same time, the law enshrined separately the status of the court administrator conducting its bankruptcy proceedings, which in each procedure was given its own name, namely: in the supervision procedure - interim manager, in the judicial rehabilitation procedure - rehabilitation manager; in external management procedure - external manager; in the liquidation proceedings - liquidation manager; in the judicial rehabilitation procedure, external manager - in external management procedure and liquidation manager - in liquidation procedures. One of the peculiarities was also the fact that court-appointed trustees began to be appointed by the economic court.

The adoption of the new version of the Law significantly improved the efficiency of application of the legislation on bankruptcy. As a result, the number of bankruptcy cases significantly increased.

Now in our country the institute of bankruptcy consists of special law "On bankruptcy", separate norms of Civil code of Republic of Uzbekistan and some bylaws such as: decrees, resolutions and orders of President of Uzbekistan, resolutions of Cabinet of Ministers of Uzbekistan and departmental legal acts. As a whole today the institute of bankruptcy is effectively regulated by the legal field.

The purpose of the Law "On bankruptcy", is to regulate relations in the sphere of bankruptcy of legal entities and individual entrepreneurs. This Law contains both substantive and procedural law norms.

Along with the Law "On bankruptcy" legal relations in the sphere of bankruptcy are also regulated by subordinate legislation in the form of separate decrees, resolutions and orders of the President of the Republic of Uzbekistan and decisions of the Government of the Republic of Uzbekistan.

At present, by-laws in the sphere of bankruptcy regulate various legal issues, including organization of activities of court administrators, liquidation proceedings and sale of property of bankrupt enterprises, detection of illegal actions that led to bankruptcy and application of liability measures to them, organization and conduct of pre-trial rehabilitation, etc.

In particular, in the wording of the Law "On Bankruptcy" of 2003 were defined new requirements to court administrators. Thus, in the article 18 of the Law, court administrators can be appointed people who have higher education, at least two years of work experience and passed an attestation in one of the state bodies. The previous versions of the Law "On Bankruptcy" did not provide for such requirements to court administrators.

The law "On Bankruptcy" contains only general requirements to the candidates for judicial trustees. In this regard, it also became necessary to settle the issues relating to the requirements to court administrators at the level of bylaws. Thus, in order to settle these issues, the Cabinet of Ministers of the Republic of Uzbekistan adopted Resolution No. 138 of March 23, 2004 "On measures to organize the activity of court administrators of economically insolvent enterprises". This decree approved the Regulation on court administrators and the Regulation on attestation of court administrators.

The Regulation on Court Administrators mainly defined the procedure for organizing the activities of court administrators (interim manager, rehabilitation manager, external manager and liquidation manager). This Regulation also settled some issues related to remuneration of court administrators and control over their activities.

CURRENT ISSUES IN LEGISLATION AND LAW ENFORCEMENT PRACTICE IN THE FIELD OF BANKRUPTCY

With the development of market relations and legal relations between business entities the need to improve legislation on bankruptcy.

The institute of bankruptcy is characterized by the presence of norms of substantive and procedural law. This institute contains features of management during bankruptcy procedures, sale of debtor's property, contestation of transactions in the course of bankruptcy procedures.

Analysis of the legislation on bankruptcy, and accordingly, the current law enforcement practice indicates the need to improve the legislation by eliminating the existing contradictions, "white spots" and inaccuracies.

Below we will elaborate on the current issues of the legislation on bankruptcy.

Legal status of a court administrator.

The Law "On Bankruptcy" provides that a court administrator is appointed by the economic court to conduct bankruptcy procedures. The Law has a number of articles defining the rights and duties of a court administrator in one or another bankruptcy procedure.

An important issue of the legal status of a court administrator is what sphere his activity refers to - labor, entrepreneurial or other spheres. The legislation of some foreign countries also lacks a unified understanding of the legal status of a court administrator. For example, in the Russian Federation between scholars and practitioners in the field of insolvency (bankruptcy) there is also no consensus on this issue.

In particular, according to the opinion of Russian scientist S. E. Andreev, author of the Commentary to the Law of the Russian Federation "On Insolvency (Bankruptcy)", there are no civil-law relations between an arbitration manager and a debtor.⁴

About the absence of any guarantees of receiving remuneration by an insolvency practitioner or at least reimbursement of expenses incurred, points out M. V. Telyukina.⁵

Issues of selling a debtor's property (business) in bankruptcy proceedings.

⁴ Andreev S.E. Commentary to the Federal Law of the Russian Federation "On Insolvency (Bankruptcy)" - Moscow, - 2004. Page.75.

⁵ Telyukina M.V. Fundamentals of competition law. - Moscow: Voters Kluver, 2004. -Page.220.

The Law "On Bankruptcy" contains special norms governing the procedure for selling an enterprise (business) or part of a debtor's property.

By its very nature, the mechanism of realization of the debtor's property in bankruptcy proceedings is a forced measure. Within the institution of bankruptcy such measure is one of the fastest and most effective ways to repay the debt or part of it to creditors.

By establishing a special mechanism of selling an enterprise (business) or a part of the debtor's property by means of bidding and public offer, the legislator set the main goal and task of this mechanism - to prevent the interested persons - the seller and the buyer - from influencing the price of the sold property.

The order of sale of the enterprise (business) or part of the property of the debtor in the Law "On Bankruptcy" is regulated by two main articles - articles 110 and 111 of the Act.

These norms of the Law provide for two main types (ways) of sale, namely, sale by auction and by means of a public offer. At the same time, Article 380 of the Civil Code provides bidding in the form of auction and tender. In accordance with the mentioned norm auctions and tenders can be open and closed. Any person can participate in an open auction and open tender. In a closed auction and closed competition only persons specially invited for this purpose participate.

In essence, the auction aims to sell the property to the highest bidder, while the competition aims to sell the property to the best bidder.

Article 369 of the Civil Code also regulates the procedure for making a public offer, namely by advertising and other offers addressed to an indefinite number of people, which is considered an invitation to make offers, unless otherwise expressly stated in the proposal.

In this case, an offer that contains all the essential terms and conditions of the contract, from which it is clear that the person who makes an offer to conclude a contract under the conditions indicated in the proposal to anyone who responds is considered as an offer (public offer).

Within the sale of debtor's property by means of a public offer a court administrator may publish proposals for a public offer in an official publication (Art. 110 of the Law "On Bankruptcy").

Application filed by any potential buyer is an acceptance of a public offer, in essence, the same acceptance to conclude a contract of sale of debtor's property.

Thus, the general mechanism of sale of the debtor's property in bankruptcy proceedings, laid down in the Law "On Bankruptcy", is divided into two stages. The first stage of the sale of property takes place through bidding in order to obtain the maximum price for the debtor's property, where the essential features are adversarial and public. The second stage is the sale of property in principle, and its main features are publicity and timeliness.

CONCLUSION

Bankruptcy procedure in a market economy is an important component of social relations in the field of economy and law, an effective way to protect violated rights and legitimate interests of subjects of economic activity, as well as an important institution of "self-regulation" and "self-cleansing" of the business environment from the failed nonviable elements.

At the same time, today for the effective functioning of the institute of bankruptcy of the Republic of Uzbekistan seems necessary to develop a scientific idea of the complex (private-public) relations arising in the framework of bankruptcy proceedings, regulated by the rules of substantive and procedural law, aimed at balancing the interests of debtor and creditors, ensuring the stability of the state economy. Thus, it implies a procedural order of bankruptcy proceedings with the application of substantive law norms with an active role of the organizer of the process - the economic court, exercising its powers in accordance with the rules of public-law control.

The presented proposals for improving the legislation on bankruptcy will ensure in law enforcement practice respect for the interests of both creditors and owners of debtor's property.

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