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State of Legal Regulation of Bankruptcy by the Legislation of Ukraine

Estado de la regulación legal de la quiebra por la legislación de Ucrania

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ABSTRACT

The authors analyzed the regulation of the main groups of Bankruptcy relations and certain aspects of this phenomenon. On the analysis basis, proposals are made to improve the provisions of the Act of Ukraine "On restoring the debtor's solvency or recognizing it as a bankrupt". It is established that the Act mentioned provides for the possibility of applying to the debtors only certain Bankruptcy procedures. The main direction of legal regulation of Bankruptcy is to satisfy the requirements of all debtors' creditors in the maximum possible extent, and only in the second place are implemented the goals of restoration of solvency and settlement of debtors' debts.

Keywords: Bankruptcy legislation; judicial proceedings; debtor; creditors.

RESUMEN

Los autores analizaron la regulación de los principales grupos de relaciones de quiebra y algunos aspectos de este fenómeno. Sobre la base del análisis, se formulan propuestas para mejorar las disposiciones de la Ley de Ucrania sobre el restablecimiento de la solvencia del deudor o su reconocimiento como quiebra. Se establece que la Ley mencionada prevé la posibilidad de aplicar a los deudores únicamente determinados procedimientos de Quiebra. La dirección principal de la regulación legal de la Quiebra es satisfacer los requisitos de todos los acreedores de los deudores en la máxima medida posible, y sólo en segundo lugar se aplican los objetivos de restauración de la solvencia y liquidación de las deudas de los deudores.

Palabras Clave: Legislación de quiebra; procedimientos judiciales; deudor; acreedores.

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INTRODUCTION

The economic reform and the transition of Ukraine into the world's economic development includes an in-depth study of not only the processes that make up the basis of market transformations, but also the instruments by which they are implemented. Bankruptcy legislation is seen as one of the most important instruments of institutional transformation. The existence of effective legislation in this area contributes to creating conditions for stable economic growth and sustainability of the economic system of the country.

With the help of Bankruptcy procedures, insolvency, competition, the system of traditional legal measures applied within the framework of Court proceedings, minimization of the negative impact on the national economy of processes related to the insolvency of participants in the market environment of a country, and mitigation of the consequences, due to changes taking place in the economy. Because of the existence of effective norms that accumulates this legislation not only satisfies the requirements of creditors, but also restores the solvency of business entities, is settling their debts, and, consequently, the recovery of the national economy is taking place.

Based on the understanding of this in foreign countries, there is a constant reformation of the legislation in order to create a so-called "neutral", balanced legal regulation of bankruptcy, insolvency, and competitive relations.

The national legislator, on the basis of the conclusions of the theory, is also attempting to optimize the normalization of Bankruptcy relations.

Theoretical basis (scientific system for obtaining reliable knowledge) for writing an article are works: O.M. Biryukova, A.A. Butyrsky, I.O. Vechirko V.V. Junya, B.M. Polyakova, V.V. Radziwilyuk, V.V. Stepanova, M.I. Titova and others. At the same time, the work of these scholars was not specifically devoted to issues related to the state of modern Bankruptcy Act.

Partially the problem mentioned has V.V. Radzyvilyk in comprehensive study, devoted to the highlighting and solving the problems concerning the Bankruptcy preventing (2013) reviewed. In the last 5 years since the moment of these investigation conducting, were not only changes in the national legislation of Ukraine provided, but also the deficiencies in the Act about Bankruptcy became very evident in jurisprudence.

That is why the necessity of modern national scientific holistic conception formation of Bankruptcy relations' peculiarities determined the relevance of problems investigated.

Aims of newspaper formation (task setting): to identify the main problems in legislative regulation of material and procedural Bankruptcy connection, to analyze the legislation about Bankruptcy faults, which contravene the aims immanent for this legislation, formulate propositions about legislation about Bankruptcy of Ukraine improvement.

THE SOURCES OF LEGISLATIVE BANKRUPTCY FORMATION IN UKRAINE

After Ukraine Independence proclamation in 1991 (On declaration of independence of Ukraine..., 1991) the process of public policy in area of Bankruptcy relation regulation was started. The first attempt of realization the policy named, was the adoption on May, 14, 1992 the Ukrainian Act "About bankruptcy" (About bankruptcy..., 1992), that "started the beginning of structural formation of new regulatory complex in Ukrainian legislation" (Radziwilyuk, 2013).

However, this Act was adopted in the complicated period of great changes and had a lot of considerable mistakes, which made this Act too complicated to apply in jurisprudence. There are: absence of proceeding peculiarities cases about Bankruptcy considering, ambiguity of legal status of creditors and other participants of proceedings in Bankruptcy case, defect of legal regulation of traditional legislative mechanisms of realization and juridical procedure etc (Radziwilyuk, 2006).

These and other drawbacks were the reason for legislation about Bankruptcy reform. In June 1999, was the second edition of Ukrainian "Act about bankruptcy" adopted (On Amendments to the Law of Ukraine..., 1999), which was named "On restoring the debtor's solvency or declaring it bankrupt". This edition was not only the new Act, but also undoubted step forward, in relationship regulation, which with took place because of debtor's insolvency, but "faults, defects, misjudgment of new Act were noticed by specialists on the preparation stage, however they failed to eliminate mistakes during the proceeding." (Junior, 2000). Failings of the Act of Ukraine second edition needed radical reformation and additions to legislation about bankruptcy, which took place after 12 years of this edition relevance.

Contemporary period of national legislation development, provisions of which regulate the relations in bankruptcy, should be connected with the acceptance in December 22, 2011, next edition of Act of Ukraine "On restoring the debtor's solvency or declaring it bankrupt" (On Amendments to the Law of Ukraine..., 2012) (than acc.to the text Act about Bankruptcy (On restoration of the debtor's solvency..., 1992)).

The third stage of legal regulation of Bankruptcy relations is the next step in reformation of national legislation about bankruptcy, the main features of which is granularity and concretization of the main provisions of legislation that was manifested in considerable expansion of regulations amount, which regulated relations of bankruptcy, and appearance of a great number of a innovations.

Owing to conceptual changes in legislative regulation of separate Bankruptcy institutions, appearance of a new, before non-regulated institutions and separate aspects of Bankruptcy relations the content of Act's Bankruptcy was enriched.

Most of innovations or the Act is aimed at addressing appeared in second edition of the Act "On restoring the debtor's solvency or declaring it bankrupt" defects in legislation regulation Bankruptcy relations. However, this direction concerned not all of the new provisions, because of some of them appeared problems in area of jurisprudence.

Unchanged in the Law Bankruptcy is the approach to the criteria definitions of bankruptcy: undeniable requirements of creditor to debtor must together represent no less than 300 minimal amount of a salary, which debtor has not paid during the 3 month after deadline. Serious legal barrier about different approaches to abuse is a standard, which contain the main provision about undisputed creditors' requirements, which are the monetary claims of creditors, confirmed with judgement that has a legislative validity and a decision about opening an executive provision (part.1 ch.1, part.3 ch.10).

PECULIARITIES OF LEGISLATIVE DEBTOR'S STATE

Legal persons the same as natural person who have the status of the entrepreneurial activity subject, are covered under Bankruptcy Law.

Current Bankruptcy Act not only retained but also expanded the range of separate debtors, covered by Bankruptcy peculiarities, which provisions contain the Part VII of the Act.

The following categories of debtors are classified as debtors: in particular, dangerous enterprises, the list of which was approved by the Decree of the Cabinet of Ministers of Ukraine (On the implementation..., 2013) and city-making enterprises, which are united in Article 85 of the Bankruptcy Law under the generalized name – business entities having a special status; agricultural enterprises (Part 1, Article 2, Article 86 of the Bankruptcy Law); insurers (Article 87; (About insurance: Law of Ukraine..., 1996)); citizens-entrepreneurs (Articles 90-92; st.128 (The Commercial Code of Ukraine..., 2003)); farms (Article 93; (On the farm: Law of Ukraine..., 2003)); professional securities market participants (Article 88; (On State Regulation of the Securities Market in Ukraine..., 1996)); the debtor, whose rehabilitation is carried out by its head (Article 94); issuers or directors of mortgage certificates (Article 89; (On Mortgage Lending..., 2003)), managers of the construction fund, managers of the real estate fund (Article 89; (On financial and credit

mechanisms..., 2003; On amendments to certain legislative acts of Ukraine..., 2005)); the debtor, which is liquidated by the owner (Article 95) and others.

Section VII of the Bankruptcy Law for the first time regulates the application specifics of the provisions named for such debtors, as: business entities engaged in activities related to state secrets (Part 6 of Article 3 of the Bankruptcy Law (On state secrets..., 1994)); joint investment institutions (Article 88 of the Bankruptcy Law , (On Joint Investment Institutions..., 2012)), state enterprises and enterprises in whose authorized capital the share of state property exceeds 50 percent (Article 96 of the Bankruptcy Law).

Despite the fact that the Bankruptcy Law has changed and deepened the content of the legal regulation of the application specific of certain Bankruptcy categories of debtors, in particular, this applies to business entities having a social, other value or special status, agricultural enterprises, insurers and others, it is not devoid of significant defects.

The provisions of Article 85 of the Bankruptcy Law , which define the specifics of Bankruptcy of particularly dangerous enterprises and city-making enterprises, contain provisions that are perceived not only very ambiguous but also do not permit the realization of the objectives of Bankruptcy Law in practice.

In particular, to the petition of the Council of Ministers of the Autonomous Republic of Crimea or the council of the local government on the non-application to a particularly dangerous or city-forming business entity provided for by the Bankruptcy Law and closure of proceedings in Bankruptcy proceedings, guarantees should be provided to satisfy all claims of creditors for monetary obligations. (part 2 st.85), and it is not clear what the guarantees are meant by the legislator. And the requirements of parts 8 and 9 of the aforesaid article already indicate the right of the said bodies, as well as the Cabinet of Ministers of Ukraine in the person of their authorized bodies: 1) at any time before the completion of the procedure of rehabilitation of these debtors to settle with all creditors in accordance with the procedure provided for by the Bankruptcy Law; 2) to provide a guarantee in accordance with the procedure and on conditions stipulated by Law . And only in this case, in the presence of a contract of guarantee, the lenders have the right to present to the guarantor the requirement to collect the unpaid amount of debt in the manner and in cases provided for by Law (p.12 st.85).

It is evident, that the legislator, in essence, regulates only the rights of the above-mentioned bodies to provide the debtor with certain support. Moreover, in case of a guarantor violation of his obligations, with respect to creditors having one third of all claims to the debtor, the negative consequences in the form of early termination of Court procedures for the disposal of the debtor's property, rehabilitation and the opening of a liquidation proceed to the debtor (Article 13, Article 83 of the Law of Ukraine 1992).

In addition, it is for the debtor to have negative consequences if the claims of its creditors are not repaid during the current and subsequent calendar yaers. In this case, the Council of Ministers of the Autonomous Republic of Crimeaand the local government body are deprived of the right to apply again to the economic Court with the application, specified in this article, and the provisions in the Bankruptcy proceeding concerning the relevant subject of entrepreneurial activities will be carried out on general grounds (ch.3 Article 83 of the Bankruptcy Law).

The implementation of the stipulated by the Bankruptcy Law right to appeal to the authorities mentioned with a request for non-application of Court proceedings and the closure of Court order in Bankruptcy proceedings against named debtors should be directly related to the submission to the Court of a corresponding written document, the content of which must be legally determined and which must certify that the Council of Ministers of the Autonomous Republic of Crimea or the council of the relevant local government body undertakes to carry out a subsidiary liability for debts of the debtor in case of failure within the Bankruptcy proceedings to satisfy the claims of creditors on monetary obligations in the manner and term stipulated forth.

More detailed legal regulation, taking into account the significance of city-making and especially dangerous business entities, requires provisions regarding: bail and its definition; selling in cases of Bankruptcy of the integral property complex of the said debtors (in particular, the norms regarding the content of the contract of sale, the consequences of non-fulfillment of such a contract, etc.); concretization of the grounds in the presence of which sale of the property of these debtors is carried out in parts; details of the specifics of the application of the Bankruptcy procedures to the named debtors.

Given that the national legislator specifies the features of Bankruptcy for only agricultural enterprises, it would be desirable to extend the effect of the provisions of the Article 86 in the Bankruptcy Law to any organizations engaged in agricultural activities, while preserving the requirements imposed on them. Part 1,2 of this article, which in turn is due not only to the nature of such activity and its dependence to a considerable extent on the climate conditions, which in turn determines the need to foresee the possibility of occurrence of legally determined force majeure circumstances and their impact on the implementation of Bankruptcy procedures and the ability of debtors to fulfill obligations to creditors.

Mandatory correction requires legal regulation of the Bankruptcy Law of the Bankruptcy procedure of professional participants in the stock market and joint investment institutions. If it is possible to agree that the procedure for preventing Bankruptcy and conducting pre-trial procedures for restoring the solvency of the named debtors is established by the normative legal acts of Ukraine (Part 3 of Article 88), then objections to the requirements of Part 2 of Article 87, which admit that are not regulated named article of the special features of Bankruptcy procedures of professional participants in the stock market and joint investment institutions, as well as measures for the protection of the rights and interests of their clients, may be regulated by subordinate normative acts. Bankruptcy procedures that are carried out within the framework of Bankruptcy proceedings should be regulated only at the legislative level - within the limits of the Bankruptcy Law.

The analysis of the peculiarities of insurance agent insolvency bankruptcy, stipulated in Article 87 of the Bankruptcy Law, allows us to conclude that there are solid gaps in the normalization of Bankruptcy relations involving this category of debtors, in particular, they include: unjustified narrowing of the circle of participants in these relations; the unsettled peculiarities sale of the insurer's property sale, the requirements of its buyers and the features of the legal regime of the liquidation mass, and many others.

CHARACTERISTICS OF REGULATING THE LEGAL STATUS OF CREDITORS AND OTHER PARTICIPANTS IN THE BANKRUPTCY RELATIONS

Regarding the legal status of creditors, with the adoption of the third edition of the Bankruptcy Law, it has undergone a change in relation to each type of lenders (competitive, secured, current), in particular, the substantially extended and detailed rights and obligations of creditors, such as in Bankruptcy proceedings, as well as in Bankruptcy procedures. This concerns the normalization of issues of consideration of claims of tender lenders to the debtor (Article 17); granting them the right: to submit an application to the Commercial Court for the invalidation of transactions (agreements) and refutation of property of the debtor within the framework of proceedings in Bankruptcy proceedings; the choice in case of invalidation of transactions (agreements) or refutation of the property of the debtor: the repayment of its debt, primarily in the procedure of Bankruptcy or performance of the obligation of the debtor in kind after the closure of proceedings in the Bankruptcy case (Part 3 of Article 20), etc. Legally expanded range of possibilities to meet all the requirements of the creditors, entered in the register of claims of creditors in certain Bankruptcy procedures, in particular: in the procedure of disposal of property by the debtor – provided that they are satisfied simultaneously and in full in accordance with the register of creditors' claims (Part 9 of Article 23); in the procedure of rehabilitation and the procedure for liquidation on the basis of the ruling of the economic Court

, the owner of the property (the body authorized to manage the property) of the debtor has the right to satisfy all the requirements of the creditors and to provide the debtor with sufficient funds to satisfy all the requirements of the creditors, with the exception of a penalty (fine, penalty) (Part 1 of Article 31, Part 1, Article 39), etc.

The Bankruptcy Law contains excellent rules for regulating Bankruptcy relations with secured creditors compared to previous editors.

While creating these provisions, the legislator took an advantage of the experience of regulating the legal status of secured creditors in the historical past and in most modern legal systems of the world, according to which: the subject of a pledge is not included in the property of the debtor and "is used exclusively to satisfy the creditor's obligations which it provides "(Part 4 of Article 42); the requirements of these lenders are met outside the established queue (Part 9, Article 45), while the realization of the pledged property is carried out solely with the consent of the creditor, the requirements of which it provides, or the Court (Part 4 of Article 42); the secured claims of this category of creditors can not be the reason for the Bankruptcy proceedings; they are entitled to refuse to request claims on mortgaged property in favor of all other (unsecured) creditors; the latter is a recent version of the Bankruptcy Law (Part 2, Article 23); in the work of the committee of creditors, they have the right to participate only with the right of an advisory vote (ch. 1, 8 st.26).

Moreover, the legal status of secured creditors in the Bankruptcy Law is characterized, in particular, by the fact that this type of creditors has very significant powers that allow them to drastically influence on: the implementation of a procedure for the debtor to reorganize the proceedings in a Bankruptcy proceeding and a review proceeding procedure the presence of imperative legislative requirements on the mandatory approval of the plan of rehabilitation, all secured by creditors (Part 2 of Article 6, paragraph 2 of Part 3 of Article 27, Article 30); making a decision on the conclusion of the world (Part 3 of Article 77, Article 80).

It appeared that secured lenders with the right to block the introduction of these Bankruptcy procedures are in a privileged position. The legal consequences of the adoption by secured creditors of such decisions may be the use of the right granted to them for the provision of secured things from the debtor's property, their sale at auction or the repayment of debt in accordance with the information of the register of claims of creditors (Part 2 of Article 30 and Part 2, Article 80 of the Bankruptcy Law) and thus repayment of the debt of the named creditors.

However, in practice, secured lenders, which are, as a rule, represented by the banks almost do not apply to the rights' implementation mentioned in the norms of Part 2 of Article 30 and Part 2 of Article 80 of the Bankruptcy Law . In this case, competitive lenders, in the event of disagreement by secured lenders of the plan of reorganization and the settlement agreement, use the opportunities provided for in Part 3 of Article 30 and Part 3 of Article 80 of the Bankruptcy Law , which are reduced in the prevailing majority of cases prior to the introduction of the liquidation procedure, as mainly subject matter support is the integral property complex of the debtor or real estate. In order to overcome such a situation, Articles 30 and 80 of the Bankruptcy Law should include a provision on the right of the Court to approve a reorganization plan or a settlement agreement for the purpose of applying these procedures.

Sale of the property that serves as the object of provision, is carried out in accordance with the provisions of the new Section IV "Sale of property in proceedings on bankruptcy" Bankruptcy Law. There are enough problems in this sphere that arise in practice, including: the lack of regulatory regulations for obtaining an agreement on the sale of property of the mortgagee (which leads to the recognition of auction results invalid); insufficient regulation of the issues regarding the availability of information on the websites where electronic tenders are conducted; absence of a duty in the cases provided for in Article 66 of the Bankruptcy Law in granting consent for the sale of property to establish the terms of its sale, the price and cost of the services of the organizer of the auction, taking into account the interests of secured creditors and

other participants in the proceeding. The lack of a specified Court duty leads to the sale of the subject of security for the price and payment of the cost of the services of the auction organizer at unreasonably high prices, etc.

As practice shows, abuse may also occur on the part of banks – creditors, whose claims are secured by the debtor's property, when the lack or imperfection of the legal requirements allows them do not give consent to the realization of the property at all, or to impose certain unacceptable conditions for the arbitration manager, or to withdraw already granted for the sale of property of consent, etc., which ultimately leads to delays in Bankruptcy proceedings, violation of the rights and interests of the debtor of other participants in the Bankruptcy case.

The legal status of many other participants in the Bankruptcy relationship has also undergone changes. In particular, the expansion of the normative array, the situation, which is regulated by the rights and obligations of the arbitration manager, qualification requirements to him, the responsibility of the arbitration manager, etc., deserves special attention. The main provisions on the regulation of these issues are accumulated in a separate Chapter VIII, which is the latest in the Law on Bankruptcy. Also, for the first time within the limits of the mentioned Section, the legal status of self-regulating all-Ukrainian public organization of arbitration managers is regulated, its functions and powers are determined, these legislative requirements are supplemented by the norms of the by-Laws (On Approval of the Procedure for Recognition..., 2012; On Approval of the Procedure for the Control..., 2013). Revised powers of the state body on bankruptcy. Concerning the provisions, that define the powers of representative bodies of creditors, for example, long-awaited stories contained in part 2, 3 of Article 27 of the Bankruptcy Law and regulate the competence of creditors' fees for their adoption of decisions on the introduction of procedures for the remediation, liquidation, etc., are offset by others the provisions of the said Law regarding the determination of the committee creditors competence, the presence of which is a matter of confusion, since, in essence, the given legal requirements do not differentiate, but confuse the competence of the representative org the gains of creditors (Part 8 of Article 26, Part 1 of Article 28, Part 4, Article 5, Article 27, Part 6, Article 7, Article 29, Part 2, Article 37, Part 6 of the Constitution .86 and others). Such a situation requires a clear definition in the Bankruptcy Law of the exclusive competence of creditors' fees, which should include: the adoption of decisions regarding the introduction of Bankruptcy proceedings, the change of their term; determination of the procedure for conducting Bankruptcy procedures, removal of the arbitration manager from the performance of duties assigned to him and the appointment of a new, etc.

PECULIARITIES OF JUDICIAL PROCESSES OF BANKRUPTCY

Legislation defines four juridicial procedures, which may be applied for debtor: disposal of debtor's property, debtor's rehabilitation, peaceful conclusion, bankrupt liquidation (art. 7 Bankruptcy Law, p.1 art.212 CC of Ukraine (The Commercial Code of Ukraine..., 2003).

Legal regulation of juridical processes of Bankruptcy Law about disposal of debtor's rehabilitation and sanitation was not changed significantly. Nevertheless the implementation of wider spectrum of different actions that may be applied within the procedure of rehabilitation deserves attention. In addition to measures about solvency renewal, which may contain the rehabilitation plan, namely: enterprise restructuring, reassignment of production; closure of unprofitable productions; liquidation of accounts receivable; asset restructuring; sale of part of the debtor's property; fulfillment of obligations of the debtor by the owner of the debtor's property and his responsibility for non-fulfillment of obligations assumed by him; alienation of property and repayment of obligations of the debtor by substituting assets and others (Article 29), special attention should be paid to the restoration of solvency of the debtor, who received legal regulation in the new – separate articles of the Bankruptcy Law.

In particular, the provisions of Article 32 of the Bankruptcy Law are regulated by such a measure of solvency renewal as an increase in the authorized capital of the debtor, but the provisions of this article are clearly insufficient for the application of the said measure. The legislator should determine: what types of debtor business associations are subject to the requirements of this article - according to the logic of things, the specified requirements should apply only to joint-stock companies; the issue of which type of shares is possible in case of application of this measure; who remains the right to make a final decision on the application of this measure. It is entirely natural that such a decision should be made by the highest representative body of creditors. The legislator will determine which authority should initially decide to apply for such an event. We believe that in this matter we should take advantage of the positive experience of the right regulation of a similar measure in the legislation of foreign countries, for example, Belarus (Article 126 (On economic insolvency (bankruptcy))), Russia (st.114 (About insolvency (bankruptcy)..., 2002)), France (Article L. 626-3 (Zakhovtaye and Volters, 2008)) and other countries where it is determined that such a body should be the supreme body of the debtor society.

The issue of the ratio of competence of higher collegial bodies of economic societies – debtors, collegiate bodies of creditors and arbitration manager is very relevant, in particular, the appeal to the Constitutional Court of Ukraine of subjects of the right to a constitutional petition for clarification of the situation connected with ambiguous application courts of general jurisdiction of the norms mentioned in the application of laws, in deciding the case of bankruptcy of debtors – joint stock companies in relation to the competence of the general meeting of shares in these companies when entering a court rehabilitation procedure debtor. Given that the exclusive powers of the general meeting of shareholders are determined by law, and the fact of introducing the procedure for the reorganization of the debtor involves the appointment of a reorganization manager and the presence of a committee / meeting of creditors, the authors of the request were asked to clarify how the issues of the reorganization plan, which by law are classified as exclusive competence of the general meeting of shareholders, while the courts in bankruptcy cases of joint stock companies, in some cases, came to the conclusion that it is necessary to resolve issues that are set by the plan sanation and in accordance with the Law belong to the exclusive competence of the general shareholders' meeting, and only the latter shall decide on the possibility of their solution by the reorganization manager together with the committee / collections of creditors without convening a general meeting of shareholders (The decision of the Constitutional Court of Ukraine..., 2009).

Articles of the Bankruptcy Law include Article 34, which deals with such a sanction measure as the sale of debtor's property by substituting assets. The mechanism of alienation in the procedure for the reorganization of the debtor's property by replacement of assets is also established by the norms of the Cabinet of Ministers of Ukraine from 01.04.2013, No. 244 (On approval of the Alienation Procedure..., 2013). The use of this measure has its main goal of accumulation of funds to meet the requirements of, first and foremost, competitive creditors. When applying for this measure, an economic partnership is created on the basis of the debtor's property, but what kind of a company it is economically expedient to create is not indicated. Adequate implementation of the above goal will only be obtained when creating a joint-stock company. Only a joint-stock company, dependent and controlled (in this situation), but formally independent, is able to accumulate capital in a short time for the implementation of economically profitable business and the realization of this goal.

Unobjective is the content of the provisions of Part 3 of Article 34 of the Law of Ukraine of 1992 which determined the size of the authorized capital of the newly formed economic partnership as the difference between the value of property assets and the value of debts on the requirements of competitive creditors. In this case, formation of the authorized capital, when creating, in particular, a joint-stock company, may be made impossible by the existence of the burden of the aggregate amount of claims of competitive creditors, the same can be said about the formation of the property base of such a company, necessary for its full

functioning and creating its attractiveness for future buyers. Consequently, the following and other provisions of these articles require significant revision.

With regard to such bankruptcy proceedings as a peace agreement, the legislative provisions devoted to it are almost not applicable in practice. Moreover, in some of the bills it is not a judicial procedure at all. This situation is connected with insufficient and imperfect regulation of it by national legislation. It is necessary to change the concept of the normalization of the settlement agreement by the Bankruptcy Law. Improvement of its legal regulation should take place in the following main directions: definition of legal consequences of the approval of a peace agreement by a court, which should include: the appointment by a court of special persons (persons) elected by a court or a meeting of creditors and approved by the court to monitor the fulfillment of the terms of the agreement, which must be reported to the economic court in a certain periodic manner; the presence in the terms of a court agreement of the provisions that would restrict the debtor's right to manage and dispose of his property by the time he fulfills the terms of this agreement, etc. Moreover, there are shortcomings in the legal regulation of the bankruptcy law of the liquidation procedure. In principle, from the point of view of the implementation of this procedure, in practice, the short term of its implementation, which is equal to 12 months (part 1 st.37). Within the said deadline, if the debtor is a large enterprise, a business entity with a significant number of creditors, a significant amount of assets and the presence of liquid assets in it, the measures defining the content of this procedure can not be implemented to the extent necessary.

The Bankruptcy Law has expanded and detailed the legal regulation of measures to prevent the debtor's bankruptcy and extrajudicial procedures, as well as the procedure for reorganization which has become the nature of the procedure that can be carried out before the bankruptcy proceeding, in connection with the necessity of approval of the plan of reorganization by the court 5, 6).

It can not be overlooked that the Law on Bankruptcy significantly increased the volume and enriched the content of the regulations governing issues related to the procedural aspects of bankruptcy: in particular, it provides for the possibility of appealing judicial decisions in bankruptcy procedures, the jurisdiction of all cases in disputes over participation of the debtor of the court considering the bankruptcy case, etc.

The new Law on Bankruptcy is the regulation of issues related to bankruptcy procedures related to a foreign bankruptcy procedure in the new chapter IX.

Consequently, the reform of bankruptcy law must continue and it continues, as evidenced not only by amendments and additions to it but also by the creation of a whole range of draft laws, which is extremely necessary both in terms of improving the normalization of bankruptcy relations and the compliance of such regulation with modern trends in legal regulation in most leading foreign countries.

CONCLUSION

The dynamism of the development of Bankruptcy legislation is inherent not only in the national legislation of Ukraine. It serves as a characteristic feature of the genesis of national legislation of the dominant majority of countries in the world, including the European legal area. This is due to the existence of a number of external economic and political factors that constantly and directly affect the state of legal regulation of bankruptcy, insolvency, and competitive relations in one or another country.

In the national theory of Bankruptcy Law, in the practice of Law enforcement, there are a number of unresolved issues that affect the effectiveness of the implementation of the rules of Bankruptcy Law: the imperfection of legal regulation of measures and Bankruptcy proceedings that can be applied to certain categories of goddesses, in particular: business entities, having a public, other value or special status; professional stock market participants and joint investment institutions, etc.; defects in the normalization of the legal status of secured creditors, which lead to the practice of preventing them from meeting their

requirements; the existence of an urgent need to review the provisions governing the sale of property in the Bankruptcy proceeding; uncertainty, in the sense of not delimitation of the competence of the meeting of creditors and committee of creditors; significant gaps in the legal regulation of such remedial measures, such as an increase in the debtor's authorized capital and the sale of debtor's assets by substituting assets; the need to change the concept of normalizing the agreement, etc.

These points in the context of the issue under study require further scientific research with a view to creating a new conceptual approach to reforming the legislation of Ukraine on bankruptcy.

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