



INSOLVENCY LAW IN THE REPUBLIC OF UZBEKISTAN: LEGAL ANALYSIS AND JUSTIFICATION

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Abstract: In this article studied and analyzed history of insolvency law of Uzbekistan, issues of protection of the entrepreneurs' rights, restoring solvency of the debtor and satisfaction of creditors' claims with the use of insolvency procedures in accordance with the bankruptcy law of the Republic of Uzbekistan. In addition, when determining the signs of insolvency, it was analyzed that monetary obligations and debts on mandatory payments should be taken into account, and claims arising from labor relations should not be grounds for initiating bankruptcy proceedings.

Particular attention was paid to the objectives of the credit policy when establishing insolvency regimes, based on two goals - fair distribution of risks and maximizing the value of the debtor's assets. The models of insolvency regulation are analyzed on the example of the countries of Europe and the USA, their experience is compared with the practice of Uzbekistan. In particular, it has been established that rehabilitation norms appeared in US legislation and were subsequently used as a model in European countries, and the legislation of many countries is currently improving its legislation on the rehabilitation of the debtor. Analytical conclusions, ideas and recommendations were also developed on the need to develop the concept of insolvency in Uzbekistan and the priorities that should be reflected in it.

Keywords: bankruptcy, rehabilitation, debtor, creditor, liquidation.

1. Introduction

Insolvency – the inability of a debtor, which has been recognised by an economic court, to satisfy in full creditors' claims for monetary obligations and (or) to perform duties on mandatory payments (Art.3 of Insolvency Law of Uzbekistan).

The development of effective legal foundations and mechanisms for the elimination of insolvency in the world is gaining relevance in the context of market relations. From year to year, the number of insolvency cases in the states is increasing. In particular, during 2022, insolvency cases were opened against 13,481 businesses in the US, 5,995 in the UK, 4,891 in Turkey, 3,714 in France, 3,235 in Spain, 2,000 in Italy, 1,312 in Germany. The number of non-business-related insolvency cases is even greater, with such categories of cases in the United States accounting for 96% of the total [1]. Insolvency procedures used for large enterprises in many countries are also being implemented in small enterprises. Until now, the same procedures are being introduced by the courts without studying the capabilities and scope of enterprises. These problems indicate that the effective use of the mechanisms of rehabilitation and bankruptcy, the legal framework associated with insolvency should go to constant improvement in accordance with the requirements of the times.

In foreign countries in the works of O.Odetola, S.Smid, O.Vychodil, H.J.Nsubuga, W.Breuer, J.S.Harris, S.Aktan, S.H.Lau, A.Keay, N.Nigam, P.Walton, I.Ronen-Mevorach, Douglas

G.Baird, J.Ames, C.S.Rodgers, J.J.Jurinski, L.Fei, F.C.Too, K.M.Udofia, E.Vaccari and other legal scholars analyzed the legislation on insolvency and freedom of contract, the impact of insolvency on corporate contracts, debt restructuring, procedures for initiating the insolvency process, the beginning of procedures, issues such as consumer Insolvency and legal regulation of debt reduction, liability for insolvency in private law.

In evaluating the activity of state bodies and officials, such principles as ensuring lawfulness, to what extent the citizens' rights and freedoms are protected, the quality and openness of rendering the public services for them must be most important criterion for us [2].

2. Material and methods

Comparative, induction and deduction methods can be shown as the methods used. In particular, regulatory documents on the regulation of insolvency are compared among themselves, norms of legislation of national and foreign countries are compared. Each insolvency regime is analyzed separately.

To a certain extent, this article serves to implement the tasks set out in the Civil Code of the Republic of Uzbekistan and Law of the Republic of Uzbekistan on Insolvency, the Decree of the President of the Republic of Uzbekistan "On the development strategy of new Uzbekistan for 2022-2026".

Particular importance is attached to the improvement of this area in the world, having identified the peculiarities of the legal regulation of insolvency, including opening up the nature and legal nature of insolvency, applying insolvency signs (cash-flow and balance sheet) in national law, resolving pre-trial insolvency, restoring solvency to a debtor legal entity in court control, rehabilitating (restructuring) an insolvent individual, declaring a debtor legal entity bankrupt and determining its legal consequences, declaring an individual bankrupt and freeing him from obligations, and, it is important to scientifically study the issues related to agreements with the insolvent debtor and their finding void, improving judicial practices regarding the handling of insolvency cases.

3. Research results

As a result of bankruptcy, the number of economic entities is reduced, which ultimately also negatively affects competition in the market and monopolization of markets, simplifying the conditions of cartel collusion [3, p.34].

Bankruptcy institution facilitates the recovery of the market, through first of all, terminating the commercial activity of the bad debtors, and secondly, giving opportunity to carry out restructuring procedures and restoring the paying capacity for the economic entities in trouble [4, p. 44].

Article 3 of the Insolvency Law of Uzbekistan provides that the definition of insolvency does not correspond to the essence of insolvency. The state of insolvency arises spontaneously, as a result of the individual's participation in debt-credit relations, expressed in the fact that the debtor is not able to satisfy the claims of creditors, and this does not need to be recognized by the court. The insolvency situation arises before a case is brought by the court, and this situation is maintained until the debtor is declared bankrupt and removed from the state register or the debtor's solvency is restored. As a result of theoretical and legal analysis, it was concluded that insolvency is a state of inability of the debtor to satisfy the claims of creditors.

In the relationship with insolvency, the category of "payment" is central, and here the

fact of non-payment or the cessation of payment is taken as the main criteria. Because, for failure to submit a product, failure to provide services or perform work, the debtor cannot be recognized as insolvent, and in doing so, any non-monetary obligation is required to be converted into a monetary obligation.

For a long time, opinions in the legal literature emphasized the priority of fiscal requirements and their superiority over private requirements in the case of insolvency. In the insolvency case, priority was given to public requirements when compared with the requirements of private individuals, and the concept of "State – insolvency creditor which outside of debtor's wishing (no wishing creditor)" was widely used in practice. The concept has been taken as a key model in building a hierarchy of claims expressed in many states against an insolvent debtor (e.g. in the United Kingdom, Germany, France, Italy, Spain, Australia, New Zealand, Canada, United States, Mexico, China, Brazil, India and other states). Even, the payment of secondary claims – pensions and fines, financial sanctions, along with the main debt in mandatory payments were required from the insolvent debtor. From the middle of the last century, the states gradually abandoned the concept of "No wishing creditor". Because it became clear that the support of private creditors would benefit the state budget more than the collection of fiscal payments from the debtor, that is, the rule was formed "so that the debtor does not pay mandatory payments, but his counterparties do not suffer."

Scholars focus on the rule - *fallitus ergo fraudator* (insolvency – fraud) in Roman law, and argues that even today this criteria plays an important role in the "severity" of bankruptcy liability. However, no matter how impatient the insolvency laws were, there was liberal prejudice against "innocent" or "accidental" debtors. Even in ancient Rome, an "honest" debtor could be exempted from punishment as a result of paying off a debt to creditors.

Regulation of insolvency relations is carried out in two directions: bankruptcy and rehabilitation. In modern jurisprudence insolvency law is separated into two substitutions, relying on methods to eliminate insolvency: rehabilitation law and bankruptcy law. While the rehabilitation law is made up of legal norms aimed at restoring the debtor's solvency, bankruptcy law will consist of provisions for the fair satisfaction of creditors' claims at the expense of the debtor's property. The realization of the debtor's property, the identification of creditors and the formation of a register, the analysis of the financial condition of the debtor is carried out both during the rehabilitation and when it is declared bankrupt [5].

4. Analysis of research results

The history of the legal regulation of insolvency in Europe was analyzed and the following basic principles were identified that have retained their relevance to today's diary: property liability, granting as much privilege as possible to a dishonest debtor, protecting the debtor from the lawless actions of creditors, invalid transaction concluded against the interests of creditors, proving signs of insolvency. These principles apply both in the recovery of the debtor's solvency and in the bankruptcy process.

There are several norms for treating a debtor as insolvent, identifying external signs of insolvency. However, in world law and practice, two criteria (tests) are widely used: cash-flow tests, a permanent insolvency – balance sheet test, and the legal aspects and advantages of these tests have been analyzed.

In the legislation of states, such terms as "restoring solvency", "rehabilitation", "reorganization" are used for the recovery of a debtor enterprise.

Under article 32 of the Insolvency Law, in the event of signs of insolvency, the debtor's head is obliged to report this in writing to the debtor's founders (participants), management bodies or the owner of the debtor's property. This norm clarifies two important cases: insolvency signs must be fully formed (absolute insolvency) for pre-trial rehabilitation to be introduced; the head of the debtor is obliged to inform the owners of signs of insolvency.

Therefore, even for the pre-trial rehabilitation before the case, signs of insolvency must be fully formed (here there may be either temporary insolvency or permanent insolvency). If the debtor has a debt, but no signs of insolvency have arisen, the "dispute" between the debtor and his creditors will continue to be resolved through the usual civil-legal means (including corporate). It is here that the signs of insolvency appear to be the border between pre-trial rehabilitation and the recovery of the debtor through civil-legal means.

In conditions of insolvency, the task of a moratorium is to protect the capital of an insolvent debtor from the claims of creditors. It is advisable that the right to present a moratorium be assigned to the same court, whichever court is under the jurisdiction of the hearing of the insolvency case. Since insolvency cases are now under the exclusive jurisdiction of economic courts, it seems reasonable to attribute the issuance of a moratorium to these courts. Such a decision will help to easily implement the norms into practice [6, p. 260-264].

In accordance with part eight of article 100 and part two of Section 122 of the Insolvency Law, first and second group creditors participate in the vote when the issue of approving judicial rehabilitation and external management plans at a creditor meeting is considered acceptable if most creditors in each of these groups vote in favour of it. That is, only creditors of the debtor who are secured and unsecured with collateral, as well as creditors of mandatory insurance and requirements arising from bank loan insurance contracts, should take part in the voting process [7].

The composition of the liquidation mass changes during the period of the proceedings for the liquidation, and the liquidation mass goes through three stages: initially, a mass is formed by collecting the property belonging to the debtor; in the second stage, the debtor's property is realizable by converting it into funds; in the third stage, the money earned is directed to satisfy the requirements of creditors [8].

Article 82 of the Civil Code of the Republic of Uzbekistan states that the objects of civil rights can be freely transferred to other persons or transferred from one person to another person in the order of universal legal succession (inheritance, reorganization of a legal entity) or in another way, if they are not removed from circulation or their circulation is not limited. Obviously, goods that are excluded from circulation or are limited in circulation must be excluded from the liquidation mass (for example, counterfeit money, archival materials, etc.). Land, underground resources, water, flora and fauna and other natural reserves are national wealth and all of them are equally used.

The legislator used the representative institute to legally ensure the management of the debtor's property. However, this approach seems controversial. A distinctive feature of legal representation is that a representative must act in the interests of the owner (article 129 of the Civil code), and under article 23 fifth of the Insolvency Law, the judicial manager must act reasonably in the interests of the debtor and creditors. In this case, in the regulation of relations on the management of the debtor's property, it is advisable to use the institution of conducting executive work due to the fact that the debtor's property is withdrawn from the

citizen and handed over to the financial manager.

A consumer is not prohibited from participating in credit relations after being declared bankrupt. An individual is obliged to show the fact that an insolvency case is initiated against him. Certain rights of the debtor can be limited only in the process of bankruptcy of the debtor, and not after the completion of the work.

There are a number of theories regarding the invalidity of transactions with an insolvent debtor. According to the delict theory, the basis for finding a transaction invalid is the commission of an infringement. The offense is carried out directly by the debtor and his counterparty, while the damage is caused to the interests of the creditor. It is possible to harm the creditor even as a result of carelessness, and the rights of creditors, which are not yet available at the time of concluding a transaction, can also be violated. Attempts to overcome these deficiencies have been attributed to quasidelictic theory. According to this, "the actions of the third person can be harmful, even if they are not carried out directly on purpose". According to the theory "special protection of the rights and interests of creditors", a relationship arises between the creditor and the person who purchased the debtor's property, the counterparty. As part of this relationship, the creditor may claim the property purchased from the counterparty. According to the theory of the executive action, the right to dispute is seen as an auxiliary means of enforcing a court decision, and the executive action is focused on the property and values that have fallen out of the possession of the debtor, and the returned property is directed to satisfy the claims of creditors.

While the use of the term "unequal agreement" is very common in the legal literature, the insolvency acts of states that the rules relating to unequal agreements are articulated in a diffuse form. The unequal transaction is a transaction whose structure is completed, which is fully or partially fulfilled by the debtor or counterparty, whose terms cover the fulfillment of an unequal alternative obligation, worsening the property status of the debtor in comparison with the counterparty. Relying on this basis, it is not required to determine the intention or dishonesty of the counterparty to cause damage to the debtor in order to find the transaction invalid. A "suspicious transaction" refers to an agreement made within three years before the incitement of an insolvency case, or with the aim of harming the property rights of creditors after the case has been brought. In order for the transaction to be suspicious, there must be an intention to harm the property interests of the creditor. An agreement concluded a month before the incitement of insolvency proceedings or after the case has been initiated, which may or may result in giving one creditor a relative advantage over other creditors, must be found invalid, being considered a preferential transaction.

Given the competition of the pro-debtor and pro-creditor approaches, it should be noted that the first approach implies not interfering with the financial difficulties of the debtor, that his solvency can be restored, that rehabilitation measures are carried out by the debtor's governing bodies. The procreditor model assumes that the debtor's governing bodies did not manage the legal entity at the proper level and created its insolvency.

In order to implement changes aimed at the effective use of sanation norms, it is necessary to remove the monitoring procedure from the legislation or, as a last resort, apply in the presence of objective necessity, to improve decision-making systems at the meeting of creditors.

Debtors and creditors must submit not only an application to declare the debtor bankrupt, but also an application for dating, according to the results of which the issue of

whether or not to apply a follow-up procedure to the debtor is resolved.

A court date plan is developed to restore solvency to meet the demands of creditors, and to maintain jobs and the debtor's business. The division of creditors' claims into categories and the provision of conditions to satisfy the claims belonging to each category rejects the principle of proportional and equal satisfaction of creditors' single – shift claims. Grouping requirements by category is aimed at increasing the flexibility of the procedure for approving a court date plan, providing acceptable conditions to creditors whose requirements are placed in the appropriate category. On the other hand, the division of creditors' claims into categories is aimed at increasing the cooperativity of creditors, ensuring their competition and encouraging creditors to come to terms with the debtor. The approach has been widely adopted in the United States, and is recognized as one of the world's leading practices in the regulation of sanation procedures used in the insolvency case.

When analyzing the insolvency laws of different jurisdictions, these foundations will stand out among the different laws on insolvency [9, p. 1-2]. Certain aspects pertaining to the insolvency law are influenced by the local legal culture, as well as the manner in which a system deals with the related matters as the security rights or labor. Approaches towards the socio-economic issues will also be reflected in aspects of the country-specific laws [10, p. 312-315].

The Civil Code of Uzbekistan is necessary instrument that establishes the basic legal framework of bankruptcy. It was recognised at the time of adopting the Civil Code that it was impossible to regulate economic insolvency without a special set of laws. It is indeed in view of this recognition that the Civil Code provides a general reference rule to a special law (Art.57, Para.4, CC). Because the society had been economically and socially developed since 1995, when the Civil Code (Part I) was adopted, and this Law was newly enacted in 2003, certain bankruptcy provisions in the Civil Code do not comply with this Law. In case of collisions, this Law precedes the Civil Code. One of its examples is the provision on the range of legal entities to which this Law applies (Art.57, CC). Several rules of the Civil Code, which do not directly regulate bankruptcy issues, are significant in settling a large range of matters which arise in the course of bankruptcy of legal entities. For instance, rules on the organisational forms of legal entities; right of ownership and other property rights; obligations and claims; liabilities for violations of obligations; the procedure for concluding, amending and terminating contracts.

The legislation on bankruptcy of Uzbekistan shall not be applied in respect of state-financed organisations [11, p. 119]. If an international treaty of the Republic of Uzbekistan establishes the rules different from those envisaged by the legislation of the Republic of Uzbekistan on bankruptcy, the rules of the international treaty shall be applied.

In this Bankruptcy Law, the terms "bankruptcy" and "economic insolvency" are used as synonyms. They are defined as the inability of the debtor to satisfy in full creditors' claims for monetary obligations and (or) to perform duties on mandatory payments, when such inability has been recognised by the economic court. The very notion of "insolvency" is not used uniformly at a global level in that some legal systems use "bankruptcy". Although these terms essentially carry the same meaning in many systems, there is an explanation that insolvency sometimes means the state of financial affairs of a debtor while bankruptcy refers to the formal state of being put into formal bankruptcy [12, p. 104-105]. The notion of insolvency takes two definitions referring to the situation where the liabilities of a debtor exceed his or

her assets, i.e. balance sheet insolvency, or where the debtor cannot repay the debt as it falls due by reason of a cash flow problem, i.e. commercial insolvency [13].

When the debtor has not satisfied creditor's claims for monetary obligations and (or) to perform duties on mandatory payments within three months from the maturity date, such inability shall be recognised as indications of its bankruptcy. A bankruptcy case shall be considered by the economic court. A bankruptcy case may be commenced by the economic court, when indications of bankruptcy are verified, if aggregate claims against the legal entity debtor amount to not less than a five hundred-fold minimum wage, and claims against the debtor being an individual entrepreneur (hereinafter referred to as the 'individual entrepreneur debtor') - not less than a thirty-fold minimum wage, except as envisaged by this Law.

Insolvency proceedings consist of the following four (4) basic phases:

Observation;

Judicial rehabilitation;

External management;

Winding-up;

1) Observation. In observation, current payments are such as monetary obligations and mandatory payments which mature after the introduction of supervision, and monetary obligations and mandatory payments which emerge after the economic court accepts a petition for the declaration of the debtor's bankruptcy. Observation is one of the bankruptcy processes which is introduced by the economic court from the moment of the commencement of a bankruptcy case. Observation is carried out from the moment when the economic court accept a petition for the declaration of the debtor's bankruptcy up to the following process, for the purpose of preserving the debtors' property and analysing the debtor's financial situation.

2) Judicial rehabilitation. In the process of judicial rehabilitation, current payments are monetary obligations and mandatory payments which arise after the court accepts the petition, and those payments which arise before the court accepts the petition. The purpose of judicial rehabilitation is to restore the debtor's financial ability by settling with creditors according to the approved debt repayment schedule within the time-framework set for this process. The restoration of the debtor's financial ability is also the purpose of external management, but the methods to achieve this purpose differ between these two bankruptcy processes. In judicial rehabilitation, the management of the debtor's business is, in principle, not transferred to the rehabilitation manager, but retained by the debtor's management bodies under some restrictions. The total period of judicial rehabilitation should not exceed twenty-four months

3) External management. In the process of external management, claims for current payments are claims for monetary obligations and mandatory payments which mature after the introduction of external management and those which arise after the court accepts the petition or the introduction of supervision and (or) judicial rehabilitation. As is provided in Article 93, despite the moratorium, it is allowed to discharge claims of citizens which occur from labour law relations and claims for alimony, for remuneration under copyright agreements, for damage to life or health. It is considered that compensation of moral damage should also be included in this group. All claims mentioned in Paragraph 1 of Article 134 are also subject to preferential satisfaction. All claims outlined above do not need to be included in the creditors' register. The external manager drafts an external management plan, which is

approved by the creditors' meeting and provides the main purpose – the restoration of the debtor's solvency and the satisfaction of creditors' claims in the manner set by this Law. External management can be, as a general rule, conducted for no more than twenty-four months.

4) Liquidation proceedings. In liquidation proceedings, current payments are judicial expenses and expenses for remuneration of court receivers, current utility and operational charges, expenses for the insurance of the debtor's property, and monetary obligations and mandatory payments which are incurred after the commencement of a bankruptcy case (regardless of their maturity date, but excluding mandatory payment incurred after the initiation of liquidation proceedings), and payments of claims of citizens to whom the debtor is accountable for damage to life or health according to the legislation (Art.134, Para.1). The abovementioned payments are included in the creditors' register, but are subject to preferential satisfaction, beyond the order of priority. Liquidation proceedings are applied to the legal entity debtor and the individual entrepreneur-debtor.

Amicable agreement is an agreement between the individual entrepreneur debtor, a manager of the legal entity debtor or a court receiver, and the representative of the creditors' meeting, based on a resolution of the creditors' meeting passed by a majority in value of all creditors and with consent of all secured creditors. The objective of an amicable agreement is to terminate bankruptcy proceedings by mutually conceding in relation to the amount and terms of debts and so on. An amicable agreement is made in writing and enters into force after the economic court approves it. An amicable agreement may be entered into at any stage of bankruptcy processes.

F. According to Wood, the history of the development of the right to insolvency is defined as an action "from repression of the debtor - to the protection of the debtor" [14, p.1064]. B.Mann believes that as the right to insolvency develops, it must be revised and processed according to "risk from crime, economic defeat from spiritual repression" [15, p.358].

P. According to a study by Dimartino, economic changes, cultural advances, and general institutional changes in the 19th and 20th centuries have had a significant impact on the structure and functioning mechanisms of insolvency legal systems. The development of industrialization, ownership and control of companies in Western countries caused a change in the attitude formed towards debt [16, p. 23-43].

At a conference held by the Institute of European law (September 2014, Zagreb, Croatia [17]), issues of business rescue were discussed with insolvency legislation, it was argued that ending the business of companies experiencing financial difficulties in many European countries until the last two decades of the last century was the only way to solve the problem.

In 2005, representatives of the scientific community, in particular N. Martin writes that compared to insolvency legislation in the United States, the legislation of many European countries aims to "punish" debtors more than rehabilitate them [18, p. 3-77].

By the beginning of the 21st century, it became clear that the legal basis of insolvency available to many European countries does not meet new calls: from the results provided by liquidation, it became clear that the achievements achieved by reorganizing the company's business are effective and profitable [19, p. 4-8].

Despite the fact that different European jurisdictions still have different approaches to regulating insolvency issues, there is a tendency to view rehabilitation meals against debtors as an alternative to termination. In most cases, Chapter 11 of the U.S. Bankruptcy Code (Title 11) is obtained as a model of changes in state law [20, p.38].

The insolvency of company groups and the insolvency of financial institutions as banks and insurance companies also raise special difficulties. The difficulty in analyzing the company group in case of insolvency of one of the companies of the group is if the other companies in the group may be held liable for the insolvency status, if the group may be treated as a single entity for insolvency purposes, or if the insolvent company should, in line with the notion of the separate entity principle, be liquidated separately. There are different approaches to this problem and UNCITRAL [21] recently published a working document regarding the guidelines in this regard.

5. Conclusions

In conclusion, implementation of the insolvency mechanism of insolvent economic entities is one of the urgent needs for development of the Uzbekistan's economy. The insolvency mechanism allows to achieve aims on replacing the inefficient owners, preserving of socially important and potentially profitable productions and on the contrary conversion of the unprofitable enterprises, ensuring the stability of the property relations and securing the employment of the workers. Insolvency legislation of Uzbekistan proved to have dissimilar degrees of efficiency in dealing with what in theory were rather similar problems and issues, such as the stability of the macroeconomic environment, the defense of creditors' rights and the necessity of fostering entrepreneurship and risk-taking. This diversity represents a puzzle, in common, institutions are offered in a free market.

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