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Bankruptcy law in the republic of Uzbekistan: historical and comparative analysis

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Abstract: In this article studied and analyzed issues of protection of the entrepreneurs' rights, restoring solvency of the debtor and satisfaction of creditors' claims with the use of bankruptcy 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.
Keywords: bankruptcy, rehabilitation, debtor, creditor, liquidation.

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 [1].

Bankruptcy[1] (economic 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.57 of Bankruptcy Law of Uzbekistan).

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 [2].

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 [3]. Bankruptcy Institute was introduced to the legislation of the republic of Uzbekistan through the Law of the Republic of Uzbekistan "On Bankruptcy" adopted in May 5th 1994. That Law was small in volume, had only 35 articles and properly did not reflect all problems emerging during the bankruptcy. During the first year after its adoption the Law actually did not work, only 2 cases on adjudicating the debtors to be a bankrupt were brought to the economic courts of the Republic of Uzbekistan.

[1] The term "bankruptcy" is derived from the Italian "banca rotta" which means broken bench or bank and refers to the practice of breaking a merchant's or bank's bench in the market place when it became insolvent (Jackson, 1986, p.1). We use the term bankruptcy in its generic sense of financial distress resulting in an insolvency proceeding. Strictly speaking bankruptcy applies to corporations subject to the bankruptcy code and following the initiation of bankruptcy proceedings by a court. For banks, "bankruptcy" occurs when the bank is placed into receivership or conservatorship by its chartering or primary federal regulatory agency.

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Efficiency of the applying legislation on bankruptcy was improved after adopting the Law "On making amendments to the Law of the Republic of Uzbekistan On Bankruptcy" on August 28th 1998, which introduced new version of the Law "On Bankruptcy". Compare to the old version, new version was supplemented with big amount of new articles (if the old version contained 35 articles, new had 133), it regulated in detail considering the bankruptcy cases of certain categories of debtors, added new procedure – External Management, considerably expended the rights of the creditors. Most importantly, in the second edition of the Law the indications of the bankruptcy were changed: from the non-payment it changed to sing on insolvency. Growth dynamics of the bankruptcy cases after the accepting the second edition is as following: in 1998 -439 debtors were adjudicated to be bankrupt; in 2002 – 1,250.

Growth of the number of cases considered, continuous analysis of the court practice allowed to accumulate the experience of solving these cases, as well as uncovered the shortcomings and gaps in legal regulation of the relations, dealing with bankruptcy. Need for eliminating the existing gaps the legislation on the bankruptcy generated necessity for introducing amendments to the second edition of the Law "On Bankruptcy". On April 24th 2003 new amendments were introduced to the Law of the Republic of Uzbekistan "On Bankruptcy" and Law itself were adopted in new (third) version. Now the Law consists of 192 articles, contains many new provisions, related to the bankruptcy indications and reorganisation procedures, which aimed on restoring the paying capacity of the debtor. Two additional Chapters, devoted to the new procedures of bankruptcy: Supervision and Judicial Rehabilitation were introduced to the Law. All procedures are carried out by the court receivers, who have their own name in each procedure [4].

When analyzing the insolvency laws of different jurisdictions, these foundations will stand out among the different laws on insolvency [5]. 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 [6].

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;

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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 [7]. 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 [8]. 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 [9].

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.

Bankruptcy proceedings consist of the following five (5) basic phases:

Observation (Кузатув) (BL, Arts. 62-75)

Financial rehabilitation (Суд санацияси) (BL, Arts. 76-90)

External management (Ташқи бошқарув) (BL, Arts. 91-123)

Winding-up (Тугатишга доир иш юритиш) (BL, Arts. 124-144)

Amicable agreement (Келишув битими) (BL, Arts. 145-155)

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.

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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' financial ability by settling with creditors according to the approved debt repayment schedule within the time-framework set for this process [10]. 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 [15-20]. 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 [11].

5) 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

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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 [12].

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 [13] recently published a working document regarding the guidelines in this regard.

In conclusion, implementation of the bankruptcy mechanism of insolvent economic entities is one of the urgent needs for development of the Uzbekistan's economy [14]. The bankruptcy 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. Bankruptcy 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 because, in theory, institutions are offered in a free market.

References:

1. Address by SHavkat Mirziyoyev at the joint session of the chambers of Oliy Majlis dedicated to a solemn ceremony of assuming the post of the President of the Republic of Uzbekistan. http://press-service.uz/en/news/5395/

2. Husain R. The Identification of Tacit Collusion in Oligopolistic Markets : дис. – 神戸大学, 2019.

3. Mahsuda, Tadjibayeva. "Discrediting as one of the signs of unfair competition." Review of law sciences 3.Спецвыпуск (2020). https://cyberleninka.ru/article/n/discrediting-as-one-of-the-signs-of-unfair-competition

4. The Commentary on the Bankruptcy Law of the Republic of Uzbekistan Coauthor:Azimov M.K.and others – Tashkent:2007. - P. 1-2.

5. Ибрагимова А. Р. Систематизация законодательства внешней торговли-залог успешного осуществления бизнес-деятельности //Молодой ученый. – 2019. – №. 20. – С. 312-315.

6. Sealy, L., Milman, B., Annotated Guide to the Insolvency Legislation, Sweet&Maxwell, 2011, p. 119

7. Oqyulov O., Tursunov A. Creating Appropriate Legal Environment for Technology Transfer by Foreign Investors in Uzbekistan //Solid State Technology. –

2020. – Т. 63. – №. 5. – С. 10497-10508. http://solidstatetechnology.us/index.php/JSST/article/view/9257
8. Атажанов Х. Корпоративное управление в коммерческих банках и его правовая природа //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.
9. Жумагулов А. Вопросы лицензирования деятельности инвестиционных фондов //Review of law sciences. – 2020. – №. 3.
10. Джуманов А. Государственное регулирование цен на лекарства в Узбекистане и Казахстане //Review of law sciences. – 2020. – Т. 3. – №. Спецвыпуск. – С.54. URL: https://cyberleninka.ru/article/n/gosudarstvennoe-regulirovanie-tsen-na-lekarstva-v-uzbekistane-i-kazahstane
11. Аскаров Ж. Т. Тиббий туризмни ҳуқуқий тартибга солиш моҳияти ва ўзига хос жиҳатлари //«Ҳуқуқий тадқиқотлар» электрон журнали. – 2020. – Т. 8. – №. 5.
12. Ещанова Д. Актуальность гражданско-правового регулирования страхования иностранных инвестиций в узбекистане //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.
13. www.uncitral.org/uncitrl/en/commissions/working_groups
14. Ruzinazarov, Sh. N. and Achilova, L. I. (2021) "A new stage in the development of the civil code of the Republic of Uzbekistan in the context of digital reality," International Relations: Politics, Economics, Law: Vol. 2020: Iss. 1, Article 6. Available at: https://uzjournals.edu.uz/intrel/vol2020/iss1/6
15. Sodikov A. Types of information in law-making process: types of information in law-making process //TSUL Legal Report International electronic scientific journal. – 2021. – Т. 2. – №. 1. – С. 8-22.
16. Sodikov A. The importance of information supply in the process of norm-making //Научные разработки: евразийский регион. – 2019. – С. 55-59.
17. Rakhmatullayevich K. S. Legal experiment: its concept, classification and role in improving norm-making //Solid State Technology. – 2020. – Т. 63. – №. 6. – С. 421-428.
18. Khumoyun S. Concept and purposes of human resource management in the aspect of labor law: concept and purposes of human resource management in the aspect of labor law //TSUL Legal Report International electronic scientific journal. – 2021. – Т. 2. – №. 1. – С. 118-126.
19. Salaev N. Penitentiary system of contemporary Uzbekistan: current condition and future promises in the reformation process //Review of law sciences. – 2018. – №. 2.
20. Salaev N., Khamidov N. Qualification Of Smuggling: Uzbek Legislation And Foreign Experience //Ilkogretim Online. – 2021. – Т. 20. – №. 3.

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