

Insolvency procedure in Ukraine

Igor Dykunsyy provides an overview of the insolvency procedures in Ukraine



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APPLYING NEW PROVISIONS SEEMS TO BE IN ITS EARLY STAGES AND FROM THE OUTSET RAISED MANY QUESTIONS



The main regulation of insolvency procedure in Ukraine is the Restoration of Debtor Solvency or Recognition of the Debtor as Bankrupt Act (the Act). Some general provisions on regulation of insolvency can also be found in the Commercial Code (The Code) and the Commercial Procedural Code (the Procedural Code).

Insolvency cases are within the jurisdiction of commercial courts and reviewed where the debtor resides. Either a creditor or the debtor in person may initiate bankruptcy proceedings by filing a petition if claims against the debtor total at least three hundred minimum wages (for 2012 that is UAH 322,200) not satisfied by the debtor within three months after payment deadline. In general, debtors file for insolvency only with the aim of significantly reducing their own debts.

The judge opens insolvency proceedings no later than the fifth day after receiving the petition, unless the petition fails to conform to some of the requirements listed in the Act or the Procedural Code. Notice of proceedings should be published in the official printed media, which are the newspapers “The Voice of Ukraine” and “The Government Courier”. However, a new way of publishing has been introduced by law. This requires the court to publish its ruling on opening insolvency proceedings on the official web page of the judicial authority within two days after issuing the ruling. Surprisingly, despite these changes the old way of publishing still continues. Applying new provisions seems to be in its early stages and from the

outset raised many questions. In order to solve problems implementing the new regulation, the Supreme Commercial Court of Ukraine has officially stated that unless further amendments to the Act are made, both ways of publishing should exist with the old one having priority.

After official newspaper publication, as mentioned above, creditors have 30 days to file a claim against the debtor. If they fail to do so, their claims will be regarded as settled. Clearly, not everyone has the opportunity to read the official newspapers regularly. This makes it a difficult task to discover whether an entity is in the process of bankruptcy. It is reasonable to apply for an extract from the Unified State Register of Legal Entities and Individual Entrepreneurs on a monthly basis if the situation with an entity’s debt seems to be problematic.

All claims recognised by the debtor or the court should be placed in a special register, though claims secured by mortgage are listed in a separate register.

For bankruptcy procedure or restoration of a debtor’s solvency, the court appoints an arbitral supervisor who performs the duties of administrator, rehabilitation manager or liquidator depending on the stage of the insolvency procedure. One of the arbitral supervisor’s main tasks is to manage the enterprise-debtor and to determine its circle of creditors. In general, the arbitral supervisor is a natural person-entrepreneur. However, in insolvency proceedings of a debtor who is absent from its official location (also known as the shortened insolvency procedure)

the petitioning creditor can be appointed as liquidator; thus a legal person can also be the liquidator.

Once the administrator is appointed, the powers of the debtor’s managing body are limited. All the decisions must be approved by the administrator.

Other court proceedings include rehabilitation, amicable agreement and liquidation.

Rehabilitation is a system of measures carried out during the proceedings in a bankruptcy case which is aimed at improving the financial and economic situation of the debtor and full or partial satisfaction of the creditors’ claims. Rehabilitation is possible during administration of the debtor’s property. This stage can last up to 12 months and may be extended by six months.

Amicable agreement can be concluded at any time during insolvency proceedings. An amicable agreement is made between the creditors’ committee and the debtor with the requirement that all creditors whose claims are secured by mortgage give their written consent. An amicable agreement can be concluded only for claims secured by mortgages and claims by creditors of second and later rank.

The liquidation procedure is opened if the commercial court decides to find a debtor bankrupt. As of this moment the enterprise is managed by the liquidator. The liquidation procedure must not exceed 12 months. The commercial court may prolong the term by six months. After listing and valuing the debtor’s property the liquidator sells the debtor’s assets at open auction.



The funds obtained from the sale of the debtor's assets are used to satisfy creditors' claims.

There are six ranks (priorities) of creditors' claims. The first rank consists of claims:

- a) secured by mortgage;
- b) wage arrears to currently employed or dismissed employees of the bankrupt company that occurred in the three months before initiation of insolvency proceedings, cash compensation for unused vacation days and additional vacation to employees with children, other funds payable to employees in connection with paid vacations (e.g. idle time compensation through no fault of the employee, guarantees for performing public or social obligations, guarantees and compensation for business trips, guarantees for employees sent to develop their vocational competence, guarantees for donors, guarantees for employees sent for examination at a medical facility, social benefits in connection with temporary loss of capability at company cost) and dismissal compensation payable to employees in connection with termination of labour relations including reimbursement of

loans received for these purposes;

- c) expenses of the Deposit Guarantee Fund associated with acquisition of creditor rights in relation to the bank;
- d) creditors under insurance contracts; and
- e) costs of proceedings in the insolvency case in the commercial court and work of the liquidation commission.

In the second rank the following claims are settled:

- a) claims that occurred due to the debtor's obligations to its employees, except for claims settled in the first rank and return of contributions to the debtor's share capital by employees;
- b) claims arising from obligations as a consequence of causing harm to the life and health of individuals, through capitalisation of payments including those made to the Occupational Accidents and Professional Diseases Social Insurance Fund of Ukraine for individuals insured with this Fund subject to the procedure established by the Cabinet of Ministers of Ukraine;
- c) premium payment obligations for obligatory state social insurance;

- d) claims by individual grantors (depositors) of trust institutions or other economic entities that attracted property (funds) of grantors (depositors).

Satisfaction of each lower ranking claim is possible only after full satisfaction of creditors' claims of the previous rank. After completion of all payments to creditors, the liquidator sends the liquidation balance sheet to the commercial court.

The Act also defines the peculiarities of the insolvency procedure concerning certain categories of business entity due to the nature of their activity. These include major local employers, extremely dangerous and agricultural enterprises, insurers, professional participants in the securities market, issuers or trustees of mortgage certificates, trustees of a construction financing fund or trustees of a real estate activities fund, individual entrepreneurs and farms.

Overall, regulation of insolvency procedures in Ukraine is developing very fast in order to improve quality and to be in pace with modern trends. As a consequence, the new rules concerning insolvency procedure will come into force at the beginning of 2013.



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