

Bankruptcy of a legal entity in Ukraine

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1. General information

According to Ukrainian law, bankruptcy of a legal entity means the inability of the debtor to restore its solvency through rehabilitation and restructuring procedures and to repay its creditors' monetary claims other than through the application of liquidation or debt repayment procedures as established by a commercial court.

Bankruptcy is a rather lengthy procedure that results in a legal entity being declared insolvent. Bankruptcy cases are considered by commercial courts at the debtor company's place of registration.

Currently, Ukrainian legislation does not contain any requirements regarding the amount of debt necessary to initiate bankruptcy proceedings. In order to initiate the proceedings, it is necessary to provide proof of the debt and evidence that there is a threat of the debtor's insolvency.

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The bankruptcy procedure of a legal entity can be divided into the following stages: filing an application for initiation of bankruptcy proceedings, initiation of bankruptcy proceedings, disposal of the debtor's property, the debtor's rehabilitation, the debtor's liquidation, and the closure of bankruptcy proceedings. Below is a detailed description of each of these stages.

2. Submission of an application for initiation of bankruptcy proceedings

Pursuant to the Bankruptcy Code of Ukraine, both the creditor and the debtor have the right to file a petition with the commercial court to initiate bankruptcy proceedings.

The creditor's application for initiation of bankruptcy proceedings must be accompanied, inter alia, by evidence of advance payment of remuneration to the insolvency officer in the amount of 3 minimum wages for 3 months of the exercise of powers.

The creditor's application must contain information on the amount of the creditor's claims against the debtor, including the amount of the penalty (fine, interest) to be paid.

If the application for initiation of bankruptcy proceedings is filed by the debtor, the application must be accompanied by:

- a power of attorney or other document certifying the powers of a representative, if the application is signed by a representative;
- evidence of insolvency threat;
- evidence of advance payment of remuneration to the insolvency officer in the amount of 3 minimum wages for 3 months of performance of the powers;
- constituent documents of the debtor-legal entity;
- the debtor's balance sheet as of the latest reporting date;
- a list of the debtor's creditors whose claims are recognised by the debtor, indicating the total amount of monetary claims of all creditors, and the following information for each creditor: company name or name, location or place of residence, identification code of the legal entity or taxpayer registration number, or passport series and number, the amount of monetary claims (total debt, debt on the principal obligation and the amount of penalty (fine, interest) separately), the grounds for the obligations, as well as the term of their fulfilment in accordance with the law;
- a list of the debtor's property, including its book value and location, as well as the total book value of the property;
- a list of property pledged or otherwise encumbered, its location, value, and information on the creditors in whose favour the debtor's property is encumbered: name or company name, place of residence or location, taxpayer registration number or legal entity identification code, or passport series and number, amount of monetary claims, grounds for the obligations, and the term for their fulfilment in accordance with the law or an agreement;
- a certificate by the privatisation authorities (bodies authorised to manage state-owned property) on the presence or absence of state-owned property on the balance sheet of the company in respect of which the application for initiation of proceedings has been filed that was not included in its charter capital in the course of privatisation (corporatisation);
- a list of persons who have outstanding obligations to the debtor, indicating the value of such obligations, the term of fulfilment and the grounds for their occurrence;
- information on all accounts in the debtor's depository institutions opened with banks and other financial and credit institutions, their details;
- information on all accounts where the rights to securities owned by the debtor are recorded, their details;
- information on all accounts, electronic wallets opened with non-bank payment service providers, issuers of electronic money belonging to the debtor, their details;
- minutes of the general meeting (conference) of the debtor's employees, the relevant decision of the debtor's primary trade union organisation (if there are several primary organisations, their joint decision) on the election of a representative of the debtor's employees to participate in the case, if such a meeting (conference) took place before the debtor's application was filed with a commercial court;
- a decision of the debtor's supreme governing body to file an application with a commercial court to initiate proceedings in the case;
- other documents confirming the debtor's insolvency.

It is worth noting that the debtor shall file an application with a commercial court if it has property sufficient to cover the costs of the proceedings.

Another important provision is that the debtor is obliged to apply to the commercial court within one month to initiate proceedings if the satisfaction of the claims of one or more creditors leads to the debtor's inability to fulfil its monetary obligations to other creditors in full (threat of insolvency).

3. Initiation of bankruptcy proceedings

In the absence of grounds for refusal to accept, leave without motion or return the application for initiation of bankruptcy proceedings, the commercial court shall accept the application for consideration and, not later than 5 days from the date of its receipt, shall issue a resolution indicating:

- the date of the preparatory court hearing;
- the surname, name, and patronymic of the bankruptcy trustees determined by automated selection using the Unified Judicial Information and Telecommunication System from among the persons entered in the Unified Register of Bankruptcy Trustees of Ukraine.

The preparatory court hearing shall be held no later than 14 days from the date of the ruling on acceptance of the application for commencement of the proceedings, and if there are valid reasons (payment of monetary obligations to creditors, etc.) – no later than 20 days.

The decision to accept the application for initiation of the proceedings shall be sent to the parties and to the state executive service, the private enforcement officer who is in charge of the enforcement proceedings, the state registrar at the debtor's location, and the insolvency trustee appointed from among the persons entered in the Unified Judicial Information and Telecommunication System through an automated selection process using the Unified Court Information and Telecommunication System.

4. Debtor's property disposal

Property management means a system of measures to supervise and control the management and disposal of the debtor's property in order to ensure the preservation and efficient use of the debtor's property assets, and to analyse its financial condition.

In the course of its implementation, the property manager is appointed, creditors and persons willing to participate in the rehabilitation are identified, creditors' meetings are held, etc. The property disposal procedure is established for a period of up to 170 calendar days.

At this stage, the relevant commercial court may, at the request of the property manager, cancel the seizure of the debtor's property or other restrictions if they impede the debtor's business activities and the restoration of its solvency.

The result of the debtor's property disposal procedure is a court decision on the next stage - rehabilitation or liquidation of the legal entity.

5. Debtor's rehabilitation

Rehabilitation is a system of measures taken to prevent the debtor from being declared bankrupt and liquidated, aimed at improving the debtor's financial and economic situation, as well as satisfying creditors' claims in full or in part by restructuring the company, debts and assets and/or changing the organisational, legal and production structure of the debtor.

The commercial court appoints a rehabilitation manager from among the insolvency practitioners to take over the management of the debtor's business.

The key point of the rehabilitation procedure is the formation, approval and implementation of the rehabilitation plan.

The rehabilitation plan must specify the amount of claims of each class of creditors that would be satisfied in the event of the debtor's liquidation. The rehabilitation plan must also contain measures to restore the debtor's solvency, stipulate the period for restoring the debtor's solvency and ensure repayment of the debtor's wage arrears.

The rehabilitation plan is approved by a court order.

In the event of expiry of the rehabilitation procedure established by the rehabilitation plan and in the absence of a petition from the creditors' meeting to extend the rehabilitation procedure due to approval of the relevant amendments to the rehabilitation plan, the commercial court shall declare the debtor bankrupt and initiate liquidation proceedings.

6. Debtor's liquidation

Liquidation of a debtor implies the termination of a legal entity that has been declared bankrupt by a commercial court.

The judge passes a resolution declaring the debtor bankrupt and initiates the liquidation procedure.

In the resolution on declaring the debtor bankrupt and opening the liquidation procedure, the commercial court appoints a bankruptcy liquidator from among the insolvency officers entered in the Unified Register of Insolvency Officers of Ukraine, who exercises his/her powers until the completion of the liquidation procedure.

In order to identify creditors with claims under the obligations of the debtor declared bankrupt that arose during the bankruptcy proceedings, the commercial court shall publish an official notice of declaring the debtor bankrupt and opening the liquidation procedure on the official website of the judiciary of Ukraine.

Commercial courts consider creditors' claims in the order in which they are received. Based on the results of the consideration of such applications, the commercial court shall, by its decision, recognise or reject (in whole or in part) the creditors' claims.

Upon completion of all settlements with creditors, the liquidator submits a report and a liquidation balance sheet to a commercial court. After hearing the liquidator's report and the creditors' opinion, the commercial court shall issue a resolution approving the liquidator's report and the liquidation balance sheet.

If the results of the liquidation procedure leave no property after satisfaction of creditors' claims, the commercial court shall issue a resolution on the liquidation of the bankrupt legal entity. A copy of this resolution is sent to the state registrar for state registration of the termination of the bankrupt legal entity and to the owner of the property.

If the bankrupt's property is sufficient to satisfy the creditors' claims in full, the bankrupt is deemed to be debt-free and may continue its business activities.

7. Closure of bankruptcy proceedings

The closure of bankruptcy proceedings is the final stage in the bankruptcy process of a Ukrainian company. It occurs after all actions prescribed by law, such as liquidation of assets or distribution of funds among creditors, or the company's successful rehabilitation have been carried out.

The grounds for closing bankruptcy proceedings are:

- full satisfaction of creditors' claims;
- successful rehabilitation;
- insufficient assets;
- absence of creditor claims;
- creditors' waiver of their claims;
- settlement agreement;
- other reasons (e.g., liquidation of the debtor due to administrative or other decisions that make further consideration of the case unreasonable).

Once all the procedures are completed, the court decides to close the bankruptcy proceedings, which is the final step that completes the entire bankruptcy process.