Insolvency procedure in Ukraine: key aspects 2016

General regulation on the insolvency procedure in Ukraine

Insolvency in Ukraine is governed by the Law of Ukraine "On restoring debtor's solvency or declaring it insolvent" (the Insolvency Law), the Civil Code of Ukraine and the Commercial Code of Ukraine. Furthermore, there are a number of related regulations, which provide for certain details of insolvency procedure. Moreover, some specific aspects of regulations could be found in court practice and clarifications issued by the Ukrainian courts.

Insolvency cases are considered by the commercial courts in Ukraine.

Parties to insolvency proceedings and their rights

Under Ukrainian law, the debtor is exclusively either a legal entity or a private entrepreneur. However, there are initiatives to include the possibility for individuals to undergo the bankruptcy procedure as well. The relevant draft law was submitted to the Parliament almost a year ago, but is still being considered and analyzed by the relevant parliamentary committee.

The Insolvency Law specifies that the appropriate claim for insolvency can be filed either by the creditor or the debtor itself.

The creditor may file a claim for insolvency in the event that the debtor is unable to perform its monetary liabilities within three months following the date they fall due. In addition, the amount of such unperformed liabilities shall be not less than 300 statutory minimal wages at the date of filling of the respective insolvency claim. It is worth mentioning that no penalties are included in this amount.

While the creditor has the right to file insolvency claim, it is the obligation of the debtor to undergo insolvency proceeding in the following circumstances:

- satisfaction of claims of one or few creditors will lead to inability to fully perform monetary liabilities before other creditors;
- during liquidation of the debtor (not connected to insolvency) the inability of the debtor to fully satisfy creditor's claims is established.

Failure of the debtor to file the respective insolvency claim under the abovementioned circumstances leads to liability of its owner under the law.

The parties to insolvency proceedings are the debtor and the creditors (secured and competitive). In addition, the director of the debtor, its employees or shareholders may be involved in the proceedings.

The secured creditors (those whose claims are secured by pledge or mortgage) have only the right of advisory vote, and therefore do not directly influence decisions of the competitive creditors.

Insolvency regimes

Rehabilitation

The debtor might be subject to various insolvency regimes. The only regime which can be applied before the court decision on insolvency is rehabilitation, which aims at restoring the debtor's solvency. In order to apply rehabilitation there needs to be approvals from the owner of the entity and creditors, which possess more than 50% of overall indebtedness, as well as the rehabilitation plan.

The term of rehabilitation regime cannot exceed 12 months. The moratorium on satisfaction of the creditors' claim is imposed during the whole term of rehabilitation.

The other insolvency regimes are administration of property, liquidation, sanation and amicable settlement.

Any change of insolvency regime is published at the website of the High Commercial Court of Ukraine. It is worth mentioning that as soon as the insolvency regimes are applied to the debtor, such debtor is deemed to be without any outstanding monetary liabilities.

Amicable settlement

The amicable settlement is an agreement between the debtor and creditors on deferral and/or installment plan and also debt forgiveness. The main feature of the amicable settlement is that it can be concluded at any stage of insolvency proceedings, but not before the approval of the register of creditors. In addition, the amicable settlement shall not be concluded in relation to creditors' claims of first priority, salary and related payments, social and pension contributions. The amicable settlement shall be approved by court, which results in termination of the insolvency proceedings. However, in the event of failure to perform the terms of the amicable settlement or its termination, the insolvency proceedings are resumed.

Administration of property

As a general rule, following commencement of the insolvency proceedings the administration of property is introduced along with a moratorium on satisfaction of the creditors' claims. Such procedure may be referred to as transitional, because, on one hand, the debtor continues its commercial activities, but, on the other hand, the moratorium restricts the debtor in performing any actions with its property. During the administration of property regime the debtor is precluded from satisfaction of the creditors' claims, except for the current creditors and salary payments. In order to identify the exact amount of the debtor's indebtedness, the respective notification is published on the website of the High Commercial Court of Ukraine. Following the day of such publication the creditors have 30 calendar days to file a claim to a commercial court regarding any debts owed by the debtor. Upon consideration of such claims the register of creditors is formed, which is the main document for establishment of the amount if indebtedness and a number of votes of each creditors.

If a creditor fails to file its claim within the specified period, such creditor is not treated as a competitive creditor and its/his/her claims are satisfied in the last priority rank at the liquidation procedure.

Sanation

The sanation regime is established by court for up to 18 months in case if there is a possibility that the debtor may restore its solvency. Following the introduction of the sanation regime the manager (director) of the debtor is no longer has managing authority, which passes to the sanation manager. The main governing document in the sanation regime is a sanation plan, according to which all measures in relation to restoring the debtor's solvency are implemented. Such measures may include increase of share capital, sale of property, alienation of property by way of replacement of assets, sale of a part of the assets, debt restructuring, etc.

As a result of the sanation regime the debtor either restores its solvency or liquidation procedure is applied.

Liquidation

Liquidation is the ultimate regime, which is applied only if no other regimes were successful in restoring the debtor's solvency.

The main feature of the liquidation regime is that no additional liabilities arise, including in relation to tax payments, and the debtor's property is released from any arrests. The debtor's assets are sold in order to satisfy the creditors' claims to the maximum extent possible. Such sale is made on the auctions, notifications about which are placed on the websites of the High Commercial Court of Ukraine and the Ministry of Justice of Ukraine.

The Insolvency Law provides for priority ranks for satisfaction of the creditors' claims.

First priority: claims regarding payment of salary, court duty, procedural expenses.

Second priority: claims regarding social security payments and damages to life and health of citizens;

Third priority: claims regarding tax payments and state reserves;

Fourth priority: competitive creditors' claims;

Fifth priority: claims regarding return of contributions made by the work collective and additional remuneration of the insolvency practitioner;

Sixth priority: other claims.

Peculiarities of insolvency of certain debtors

The Insolvency Law also provides for some peculiarities of insolvency of certain debtors. These are: entities with social value or special status; agricultural enterprises; insurance companies; participants of the securities market and joint investment institutions; managers of real estate development; individual entrepreneurs; farming entities. In addition, for the purposes of protection of the state interests, the state enterprises as well as the companies in which the state holds more than 50% of shareholding are also subject to special insolvency

proceedings.

There is also a possibility to apply for shorter insolvency procedure under certain circumstances.

Overall, while Ukrainian insolvency regulation is not fully in line with the best international standards, there are ongoing developments and efforts made in order to modernize and improve it.