Abstract

This article is devoted to the analysis of legislation and scientific works on ways to protect intellectual property rights. Material property existed long before the development of the first state, therefore, its protection has long been enshrined in many regulations, sufficiently studied and tested in practice. Intellectual property gained its importance much later – with the advent of a democratic society.

Using methods of cognition, such as generalization and synthesis, the analysis of scientific works and legal framework of Ukraine and international experience is carried out, the list of illegal actions aimed at infringement of intellectual property rights and currently taking place is determined.

The analysis and the obtained data revealed discrepancies between the regulatory framework and methodology of Ukraine with international law and the problem of practical application of certain rules.

Keywords: *intellectual property law, protection of intellectual property rights, subjects of intellectual property law, objects of intellectual property law, offenses.*

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BANKRUPTCY OF THE ENTERPRISE AND ITS REHABILITATION

Олена Нагорна. БАНКРУТСТВО ПІДПРИЄМСТВА ТА ЙОГО САНАЦІЯ. Висвітлено сутність та зміст процесу банкрутства, а також санації як основного засобу подолання кризового становища підприємства. У зв'язку зі складною економічною ситуацією, що склалася в Україні за сучасних умов, окремим питанням удосконалення та виходу з економічно нестабільного становища суб'єктів господарювання є вжиття санаційних заходів. Здійснено аналіз нормативно-правової бази, якою регламентується цей процес. Окреслено основні прорахунки виконавчої та законодавчої влади під час побудови стратегії дій у разі виникнення складного становища підприємств. Проведено паралель між системою ефективних заходів, котрі проводять на Заході для запобігання банкрутству, та слабкими заходами вітчизняного законодавства. Надано визначення поняття санації та заходів, котрі повинні бути присутні під час її реалізації. Основну увагу приділено відсутності конкретної стратегії та порядку дій для ефективного відновлення платоспроможності та стабільності суб'єктів господарювання, а також запропоновано можливі шляхи його вдосконалення. Практичне значення отриманих результатів полягає в тому, що вони можуть бути використані в діяльності підприємства у процесі вжиття антикризових заходів.

Ключові слова: *банкрутство, підприємство, санація, криза, процедура, суб'єкт господарювання.*

Relevance of the research. Taking into account today's working conditions of enterprises, opportunities for their development and economic opportunities against the background of the global crisis, we can say that this period has become the biggest challenge for entrepreneurship for the entire period of activity. Analyzing the processes of entrepreneurship in Ukraine, we can see significant mistakes in building strategy and tactics by the legislature and the executive. First of all, for the future development of Ukrainian business it is necessary to have an effective mechanism of state regulation in this area.

Previously, the world implemented two different models of bankruptcy law. The first, so-called American, was based on the principles the essence of which was rehabilitation, as a means of revival and rehabilitation of the enterprise. As for another model, the British, bankruptcy became the only option for a business entity to be able to settle with creditors at the expense of the debtor's funds. So far, developed countries have learned to integrate these two models.

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Recent publications review. With the growth of instability in the economic market, in the political arena and the spread of post-crisis panic among the population, the level of interest among researchers in ways to address negative phenomena in enterprises, methods and ways to overcome the crisis, including rehabilitation. Western research is mainly aimed at the reincarnation of enterprises and providing conditions for further stable work compared with domestic experience. The phenomenon of remediation, and its individual aspects have been the subject of a number of studies, reflected in the works of such scientists: Becker R., Skull A.V. , Makarenko P.M., Langendorf D., Ben T. G., Chupisa A. V., Kristena U., Karpun I. M., Sazonets I.L., Sabluk P.T., Layko P.A., Tereshchenko O.O., Blank I.A. and others. Their work has made a significant practical contribution to the study of bankruptcy and financial recovery of enterprises.

The subject of research was also the institution of bankruptcy in general. Special scientific literature consists of theoretical foundations for economics, the structure of its system, positioning in matters of state regulation – all these issues were dealt with by such scientists as Dehtyar A., Dudin T., Yurchyshyn V., Motrenko T., Amosov O., Guberna G., Dorofienko V., Varnaliy Z., Radysh J. and others.

The article's objective is to scientifically and theoretically substantiate the importance of effective and well-established work of the bankruptcy institution, the problems of reincarnation of the economy of bankrupt enterprises, the mechanism of state regulation of market relations, as well as the development of basic areas for reorganization.

Discussion. According to the provisions of domestic law, bankruptcy is the activity of the debtor, which is recognized by the commercial court, which consists in the impossibility of restoring its solvency and satisfaction of creditors' claims determined by the court through the liquidation procedure [1]. In addition, it can be defined as an economic situation that has occurred in an entity as a result of a crisis caused by internal or external factors that have caused a systemic crisis. It is important to remember that the inability of the enterprise to make payments in accordance with the debt to creditors must be expressed [2, p. 110].

Bankruptcy proceedings in Ukraine are regulated by the Commercial Court, the Code of Ukraine on Bankruptcy Procedures and the Law on Enforcement. Bankruptcy proceedings originate when the undisputed claims of a creditor or the claims of several creditors amount to at least three hundred minimum wages [3]. The status of the debtor as a bankrupt is granted by the Arbitration Court when there are no proposals for reorganization or disagreement of creditors with its terms. It would be appropriate to define the phenomenon of bankruptcy as the way in which businesses are «filtered». For a market economy, this phenomenon is common, but the condition of fair competition is possible only in the case of a transparent procedure, an effective mechanism and equal rights of participants in the procedure.

As world practice shows, bankruptcy is a problematic and difficult process, like any other disintegration, but from which it is clear that the fact of unproductiveness does not always mean turning the producer into a bankrupt.

Participants in bankruptcy proceedings are state structures and bodies provided by current legislation:

– the body conducting the case itself (Arbitration Court);

– the structure, which in case of the bankrupt enterprise is state-owned, will be authorized to temporarily dispose of its property (State Property Fund);

– organizations and citizens who have expressed a desire to participate in the restoration of the enterprise;

– firm that confirms the insolvency of the debtor company (audit firm);

– the commission appointed by the Arbitration Court after the debtor is confirmed bankrupt, in which the administrator of the property (liquidation commission) must participate [1].

The goal set by the institution of bankruptcy is expressed in ensuring the requirements of the state and creditors, and not the liquidation of the enterprise. That is why bankruptcy is one way to solve problems in economic relations, which is an effective means of state regulation, the substantive part of which is to create a business environment on a civilized basis, the formation of state protection of all market participants, settlement of disputes between market participants [4].

The problem of financial recovery of enterprises depends on several factors:

- the legislator did not clearly define the aspect of determining creditors during the competitive selection, as well as the limits of their rights, in particular the competence of the

creditors' committee. Thus, the process of debt repayment determines the inequality of creditors' conditions, when priority is given to creditors who have made a pledge, than secured their claims;

- for debtors, the legislator did not provide for the possibility of restoring solvency. There is too little time for the reorganization procedure, and there is no independent mechanism for its implementation for a longer period. The initial amount of debt due to the non-extension of the moratorium on creditors' conditions, which arises at the time of approval of the decision to introduce it, is constantly growing, which jeopardizes the process of restoring the economic viability of such an enterprise. Also, the number of times for appealing the agreements concluded by the debtor is not specified, which significantly slows down the reorganization procedure;
- Ukrainian industry is «unattractive» to external investors, who could restore the financial capacity of enterprises, and this is largely due to the impossibility of rehabilitation because of the strong resistance from creditors whose actions comply with the law.

For Western countries, the application of the above schemes is becoming increasingly difficult, the European Union at the legislative level has identified such a procedure as such the implementation of which is impossible. This is expressed in actions to promote the recovery of bankrupt enterprises, as well as creating a mechanism for «transparent» transfer of rights and responsibilities to the investor-senator. Legislation in Ukraine also defines the basic provisions on bankruptcy, but it is currently characterized by «shadow privatization» and legal inequality, where the creditor is higher than investors, the state and the debtor company itself.

The concept of «rehabilitation» is a set of measures aimed at preventing the bankruptcy of enterprises or large industrial, government, business, banking and other structures. As a rule, either the debtor, the creditor, or the new owner is engaged in the reform and restoration of the bankrupt enterprise.

The severity of the crisis situation of the debtor company and certain conditions of external assistance helps conditionally divide the rehabilitation into two types:

• in the case when the crisis situation of the enterprise is temporary, reorganization without changes in the charter of the legal entity of the given enterprise is generally applied;

• the type in which the company needs to change the charter of the legal entity of the company. This method is used in case of a serious crisis and the need to reorganize the company [5].

Effective recovery of the enterprise is possible only with the selection of the right strategy and precise tactical actions, expressed by different types of remediation measures, which include the following: the use of various financial sources of recovery, their mobilization, improving the organizational level of the enterprise, focusing on organizational and legal form of business, development and modernization of production potential, improvement of product quality, creation of conditions for retraining, diversification and improvement of product range, improvement of personnel search system [6, 7]. Taking into account the economic content of reorganization, the following division can be made according to the following features: methods of recovery process, scale, relationship with the bankruptcy of the enterprise, support from public authorities, attracting additional investment, completeness of responsibilities until remediation. The goal pursued by the company becomes fundamental for the phenomenon of reorganization, and bankruptcy is only one of the goals, as well as increasing the level of solvency, reducing production costs, increasing competitiveness and improving capital structure [8].

Despite the fact that the task of rehabilitation is to improve the situation, it is not in great demand in the domestic enterprise. The process of financial recovery in Ukraine is hampered mostly by national legislation, lack of effective government regulation, ineffective mechanism and lack of funds for rehabilitation, a complex process to attract external investors, inexperience and low qualifications of staff to carry out the process of enterprise recovery. The provisions of the Ukrainian legislation on the bankruptcy procedure trace the orientation and the main function of its mechanism, which is the liquidation of the enterprise, and not the improvement of the financial situation and the return of solvency to business entities.

Conclusion. Thus, the crisis situation in the world has become a new challenge for entrepreneurial activity, which has affected the Ukrainian entrepreneur in the form of a difficult economic situation, as well as the record liquidation of enterprises in our country. Therefore, the issue of reforming the legal regulation of the bankruptcy process, the search for an effective mechanism for prevention and regulation of this area has become urgent and requires quality research. This is due to the fact that the provisions of domestic law do not provide

opportunities and conditions for overcoming the economic crisis of enterprises in the international scenario, which in most cases leads to their complete elimination. It is also important to emphasize that one of the effective means of anti-crisis activities of the company is reorganization, which should prevent bankruptcy, reducing the negative effects of various domestic enterprises and the economic potential of the country as a whole.

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Abstract

This paper highlights the essence and content of the bankruptcy process, as well as reorganization, as the main means of overcoming the crisis of the enterprise. An analysis of the regulatory framework governing this process, main mistakes of the executive and legislative branches in building a strategy in case of a difficult situation of enterprises are outlined. A parallel was drawn between the system of effective measures taken in the West to prevent bankruptcy and weak measures of domestic legislation. The definition of the concept of remediation and the measures that must be present during its implementation are given. The main focus is on the lack of a specific strategy and procedure for the effective restoration of solvency and stability of economic entities, as well as possible ways to improve it.

Keywords: *bankruptcy, reorganization, business entity, enterprise, strategy, system, reorganization measures, crisis situation.*