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UKRAINIAN MODEL OF BANKRUPTCY INSTITUTE IN THE GLOBAL SYSTEMS OF CRISIS MANAGEMENT

Summary

In the process of developing market relationship in Ukraine, the legislative, regulatory and procedural basis of bankruptcy has been developed in Ukraine. Meantime the process of institutionalization of such relationship remains incomplete and the issues of determining priority goals of governing restoration of business entities' solvency remain unsettled. Over 95% of insolvent enterprises are subject to be wound-up due to low results of rehabilitation procedures and poor application of anti-crisis potential in the bankruptcy mechanism. Therefore it is too vital to research the bankruptcy institute and its possibilities in view of integration of Ukraine into the European Union, in order to support social and economic stability and to increase efficiency of the economy. The paper discusses peculiarities of the Ukrainian model of bankruptcy institute, analyzes the foreign anticrisis management experience both under the threat of insolvency and during the court proceedings. Also suggested ways to improve of the Ukrainian model of bankruptcy institute based on the experience of the European Union countries.

Introduction

Up-to-date market system in Ukraine has changed significantly terms of business activity formed under the influence both of random market mechanism and the state. Under hard competition, certain members of market relationship get bankrupt and are unable to fulfil their obligations.

Meantime market economy is a very complex system of various interrelated economic subjects. Each subject gets engaged in a series of contract, while insolvency of any subject causes negative effects both for partners, creditors and the state. Moreover,

bankruptcy of the company impacts not only on proprietary interests of owners but also on rights of employees and causes negative social consequences in many cases.

Under such conditions, effective mechanism of regulating and arranging actions of all the parties concerned, reducing negative social and economic consequences of business entity bankruptcy by means of state regulation plays a vital role.

Much attention has been paid to the research of the bankruptcy institute problems in special scientific literature. We can mention research works by O. Zaitseva, H. Kadykov, V. Kovalev, N. Nikiforov, H. Savitska, R. Saifullin, A. Sheremet, Ye. Altman, W. Beaver, Yu. Brigham, Sh. Burger, D. Van Horn, L. Hapenski, J. Depalian, D. Lampel, C. L. Mervin, H. Mintzberg, Ch. Prazana, A. Taffler, R.J. Fitzpatrick, D. Friedman, J. Fulmer, G. Shelberg and many others.

Organization of anti-crisis and financial management at the enterprise, crisis and bankruptcy forecast is shown in the works by V. Astakhov, Ye. Altman, V. Bilopolska, I. Blanc, S. Holova, T. Hramotentko, D. Huts, N. Skvortsova, A. Tereshchenko, Yu. Chebotar and many others. The issues of the bankruptcy institute development as one of the trends in economy stabilization have been studied by the following native and foreign scientists: K. Baldin, B. Hrek, W. Klein, O. Kopiliuk, A. Tereshchenko. A. Cherep, A. Stangret, O. Shevchuk, Z. Shershneva and many others. Problems of development of the bankruptcy preventing system at the enterprises have been studied by the following native and foreign scientists: Ye. Altman, I. Blanc, O. Bondar, N. Briukhovetska, A. Halchinskyi, V. Heiets, A. Cherep, A. Hriaznova, H. Ivanova, T. Klebanova, O. Kopiliuk, V. Koshkina, O. Kuzmin, L. Lihonenko, O. Mozenkov, V. Seminozhenko, R. Slaviuk, V. Sokolenko, O. Tarasenko, A. Tereshchenko. A. Cherniavskyi, A. Stangret and many others.

But despite the vast studying the issues of bankruptcy, its theoretical development level still remains insufficient. For almost two decades our country faces problems of ineffective business restoration system, high percentage of loss-making enterprises, low level of combating corporate despoliations and criminal bankruptcies and absence

of up-to-date regulations of trans-border insolvency, bankruptcy of the group of companies and natural persons.

One of essential problems faced by the bankruptcy institute development in our country is negative attitude and even rejection of the bankruptcy procedures by public opinion, since such instrument is quite new for the Ukrainian reality and society does not understand the favourable role of bankruptcy for economy of the country in whole and for certain crisis-facing companies.

First of all, it should be noted that despite the latest modifications in the law, the concept of preventing bankruptcy still remains undeveloped, as shown by essential restrictions of actions upon pre-trial reorganization meaning only financial assistance for the debtor, without taking into account other opportunities.

It obstructs integration of Ukraine into the global economic community, impedes increase of the country's investment attractiveness. No doubt, all the aforesaid problems are typical of most of countries with transition economy, but the complex analysis of foreign experience in the framework of this research serves as grounds for stating that most of the abovementioned factors are typical of our country.

Part 1. Up-to-date status of the Ukrainian model of bankruptcy institute

Specification of the bankruptcy institute functioning is facilitated by the current economic conditions of business entity and by the current transformation of economic system preceding integration of Ukraine into the EU.

Bankruptcy institute shall be improved upon all its components, since in practice one of the principal goals of bankruptcy procedure still remains unrealized: there is no financial rehabilitation and renewal of debtors, the number of companies which need to be wound-up or reorganized (insolvent companies, companies with falling costs) was too large for the last 15-20 years.

The Ukrainian State Service of Statistics states that share of loss-making enterprises for this period exceeded 38% due to lack of work experience at the market, high indefiniteness and volatility of environment, absence of transparent accounting resulting in asymmetry of information [1]. In 2015 nearly 40% of the Ukrainian loss-making enterprises in the real economy sector were treated as potential bankrupts [2].

The Ukrainian law provides an opportunity for two reorganization procedures with a total term not exceeding two years, namely: disposal of the debtor's property and reorganization (restoration of solvency). Unfortunately, statistic data show too low efficiency (as compared to other countries) of the Ukrainian system of insolvency in respect of anti-crisis management of problematic enterprises (Table 1).

Despite technical tasks aimed at confirmation of the debtor's insolvency, initial bankruptcy procedure (disposal of the debtor's property) does not provide detailed consideration of the issue concerning problematic business restoration, as confirmed by statistic data: in 2015 75% cases, upon disposal of the debtor's property, faced the decision on debtor recognition as bankrupt and initiation of the winding-up procedure [3].

Table 1

Statistic data about court proceedings upon bankruptcy in Ukraine in 2009-2015 [1; 3]

	Year						
	2009	2010	2011	2012	2013	2014	2015
Number of initiated cases upon bankruptcy	11821	11190	10382	7583	5697	3324	2406
Number of enterprises recognized as bankrupt	8594	7443	6745	4631	3359	2096	1799
Number of cases resulted in amicable agreement	84	98	106	94	82	70	53
Number of wound-up bankrupt enterprises	9962	9123	8335	6084	4948	2989	2159
Number of cases resulted in reorganization	9	7	8	8	7	4	8
Number of cases resulted in pre-trial rehabilitation	-	-	-	-	5	5	4

Despite the small increase of the specific weight of financial rehabilitation procedures, it still makes up a small share among all the cases upon bankruptcy (0.33% in 2015, 0.08% in 2009). As shown by statistic data, the number of cases when the winding-up procedure was initiated decreases absolutely and increases

relatively: in 2009, the number of such cases in relative terms was 84.3%, while for the last seven years it reduced by 90%. Bankruptcy procedures are manly winding-up procedures which made up in average 85% for the last seven years.

It should be noted that in our country rehabilitation procedures unfortunately do not guarantee the debtor's business restoration. According to Table 1, for the whole period of financial rehabilitation the successful cases made up only 0.01%. Very rarely has applied the procedure of pre-trial rehabilitation in Ukraine. During the three years of this procedure in the Ukrainian institute of bankruptcy, it has a tendency to decrease.

For example, during the crisis of 2008, the USA attempt to restore the debtor's business activity in the form of reorganization was performed in 21.3% of cases [4]; while in England and Wales (countries with traditional pro-credit law) rehabilitation procedures made up 22.1% [5].

The possibility of financial rehabilitation procedure is restricted by hard terms, such as mandatory security of the debtor's obligations under the debt recovery schedule the amount whereof shall exceed the amount of obligations by not less than 20%. Hereby fulfilment of the debtor's obligation in the process of financial rehabilitation may be secured by means of pledge, bank guarantee, state or public guarantee or warranty [6]. Therefore, implementation terms of financial rehabilitation procedure are even harder than terms of debt recovery against creditors in the framework of rehabilitation/debt recovery schedule. Requirement for security in fact prevents the possibilities to apply this procedure to most crisis-facing companies.

As the result, the company on the verge of bankruptcy has no chances either on pre-trial case settlement or on launch of financial rehabilitation procedure, since costs shall not be pledged in the budget. Only few enterprises forecast their further condition and such forecasts are not exact under the rapidly changing terms, so it is hardly possible to apply financial rehabilitation as the crisis recovery instrument.

Moreover, another obstacle for effective performance of such procedure is a low competence of managers who are often incapable to develop the complex set of crisis recovery measures, absence of financial rehabilitation strategy among most of companies, small (as compared to foreign practice) set of financial and economical instruments aimed at business recovery.

Obvious misunderstanding of the essence and proper content of financial rehabilitation plan is confirmed by several current regulatory documents showing the attempts of governing such process by the state. For example, imperfectness of "Methodology upon detecting symptoms of entity's insolvency and actions upon concealing bankruptcy, fictitious bankruptcy or causing bankruptcy" [7] is evidenced by absence of recommendations upon complex rehabilitation strategy development. This document cannot serve as real recommendation upon crisis recovery, able to solve problems in the companies.

Second, in Ukraine most cases upon bankruptcy are initiated only when it is impossible to restore solvency. Mostly it is related to the fact that bankruptcy is still treated as inevitable business cessation and winding-up, court proceedings are not deemed as a possible way to recover crisis, and companies try to postpone initiation of proceedings, hoping to cope with problems by themselves. Such position is grounded on poor statistic data about successful recovery of companies which faced the bankruptcy procedure.

Therefore, on the way of market economy development Ukraine faced a need in developing the strategy of combating systematic multifactor crises which resulted in renovation of the bankruptcy institute aimed not only at elimination of non-effective enterprises from the market but also at restoration of solvent companies. Restoration of large business companies being insolvent due to management errors or external factors is less possible because of practical insolvency of the enterprise and rehabilitation procedures provided by the bankruptcy legislation.

As shown by analysis of the Ukrainian legislation on bankruptcy, it certainly provides real opportunities for the debtor's rehabilitation both by means of taking measures upon its solvency restoration in the framework of administration procedure and by means of making amicable agreement. Meantime several provisions do not allow treating it as pro-debtor legislation.

First, the procedure of case initiation by the commercial court is neutral, since the debtor filing an application to the court is unable to insist on case consideration under rehabilitation procedures.

Second, the first meeting of creditors held before the main session of the commercial court has an opportunity to state their own opinions about applicable procedures (administration, procedure for declaring bankruptcy).

Third, the Ukrainian law excludes an opportunity to perform rehabilitation procedures by former management of the enterprise-debtor. In order to restore the debtor's solvency in the framework of administration, the commercial court shall appoint an administrator acting under the control of creditors.

Low qualification level of arbitration managers, in view of poor control of professional associations, the corruption element in their actions does not facilitate the debtor's effective rehabilitation, especially in case of manager's dependence on creditors.

As it shown by practice, the current regulations and traditions in Ukraine do not provide priority of anti-crisis actions in the bankruptcy procedure, despite that the bankruptcy institute has a large anti-crisis potential.

Anti-crisis management (in broad sense) is usually treated as the component of strategic management of the enterprise at all the stages of its lifecycle. Its purpose is an integral part of the enterprise's strategic goal, known in the financial management modern theory as cost increase [8]. In narrow sense, anti-crisis management means crisis management and crisis recovery of the enterprise; in this case purpose of anti-crisis management means overcoming such obstacles as the company's cost decrease and security of its stable growth. This purpose supposes determination of goals of the second, third and further level, such as settlement of losses, restoration of solvency, improvement of other values being the key cost factors.

Despite the fact that insolvency is the final stage of company crisis, it contains also potential for performance of anti-crisis management by means of using rehabilitation procedures prescribed by the law. In such case anticrisis management shall be aimed directly at restoration of the debtor's solvency for the purpose of its further activity. This concept is closer to the aforesaid interpretation of anti-crisis management in narrow sense. Meantime it should be noted that anti-crisis management and bankruptcy are quite different terms.

The up-to-date bankruptcy institute shall have an opportunity for performance of certain actions upon crisis recovery of the enterprise at its hardest stage due to the debtor's defence provided by the law (e.g. temporary moratorium on satisfaction of creditors' claims), taking measures upon financial rehabilitation and reorganization. Such formal legal procedures open additional ways of solvency restoration and business preservation as well as act as elements of anti-crisis management. It may be implemented also by informal ways during the crisis period, by means of taking some preventive measures before the crisis occurs, providing stable development after its recovery. On these grounds we may say that the concept of anti-crisis management is broader than rehabilitation in the bankruptcy procedure, i.e. these concepts are not similar. Law regulation of rehabilitation bankruptcy procedures provides unification of the bankruptcy institute and anti-crisis management: bankruptcy procedures may and must be used for reorganization of problematic enterprises, i.e. as an instrument of anti-crisis management thereof.

Despite the need in preventive anti-crisis management for the whole lifecycle of the enterprise, at the present moment there are very few enterprises being able to have

a qualified anti-crisis manager (not to say about the whole department). It should be noted that under the theory of economic cycles, crisis (as a stage of cycle) is an inevitable event both for economy in whole and for a certain enterprise whose activity is integrated into the current economic system. In such relationship preventive anti-crisis management, first of all, may facilitate mitigation of further crisis effects, decrease of their depth or even prevention of crises related to specifications of a certain company.

In fact enterprises usually take measures upon direct pre-trial settlement of obvious crises (in the form of inevitable insolvency) or crises which already occurred, which may be treated as a corporate anti-crisis management. Such type of anti-crisis management performed by the enterprise management with involvement of third-party consultants (or without them) is traditional and the most widespread in the modern world. Ye.A. Fainshmidt states that "the concept of anti-crisis management is typical of such type, i.e. response on unforeseen circumstances in cases when there is no time to plan anything" [8]. A typical sequence of events occurring in such case is shown in Figure 1.

After the fourth stage of crisis development in the company, management acknowledges inevitable fact of insolvency and then it may either take actions upon dissipation of assets (mostly in case of hired management) and other unfair actions upon its own enrichment at the expense of the company, or engage a third-party consultant upon anti-crisis management who may take prompt actions in order to prevent bankruptcy.

Therefore wrong strategy, improper business organization and poor adaptation to market requirements often result in crisis of the enterprise. So there is a need in anti-crisis management which is non-mandatory a bankruptcy procedure: it is a broader concept, since the appropriate measures shall be taken by any company facing problems, in order to prevent its winding-up by means of its recognition as insolvent under the commercial court decision.

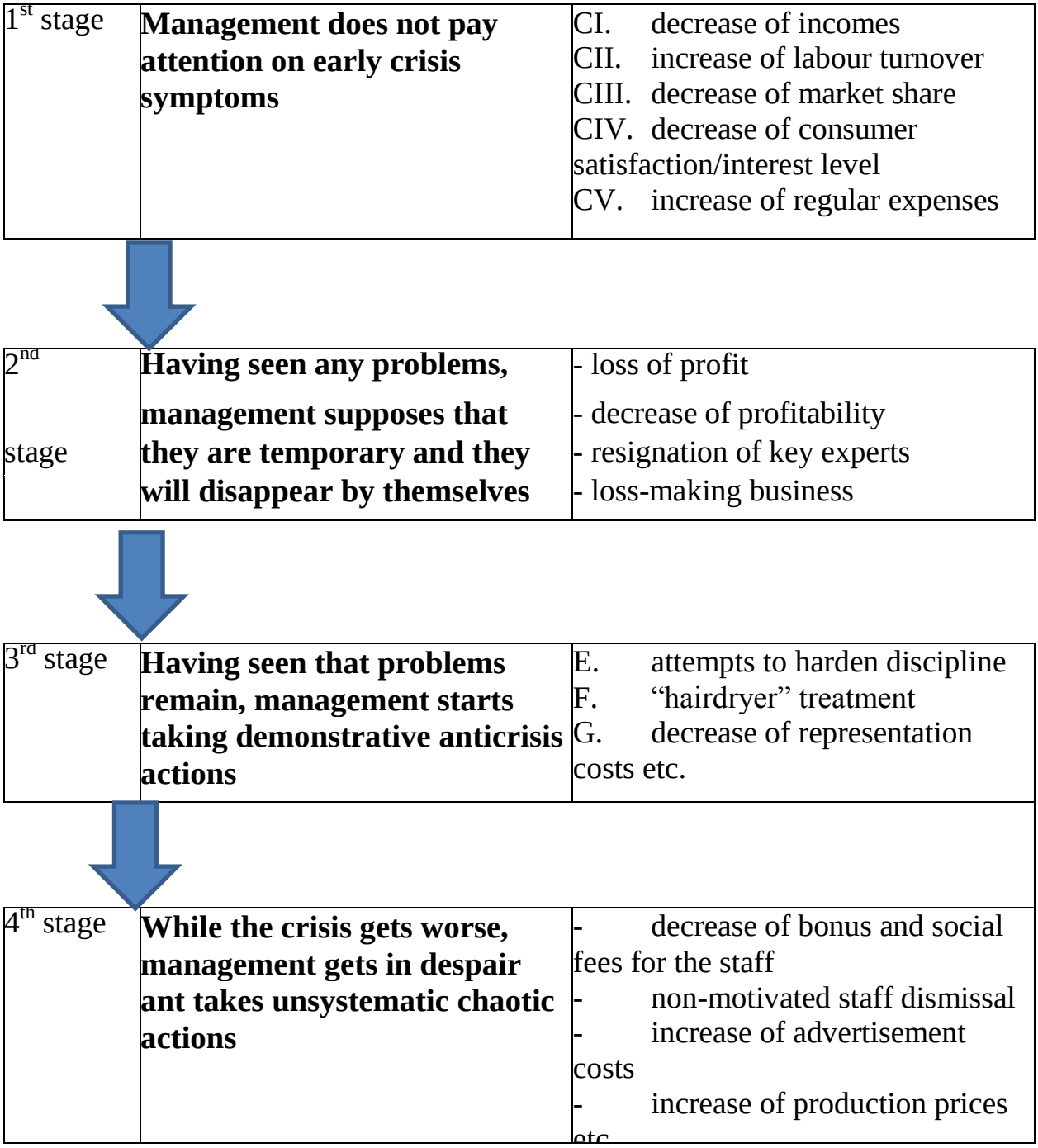

Fig. 1. Typical sequence of management's actions in case of crisis at the enterprise

Part 2. Role of the national legislation on bankruptcy in global systems of crisis management

Historically the cause of understanding the importance of anti-crisis potential of bankruptcy and developing new approaches and solutions thereon were serious economical cataclysms in late 1990-s - early 2000-s.

Negative effects of the financial crisis which occurred in 1997-1998 in South-East Asia, Japan, Russia, Ukraine and touched the developed countries (USA, Western Europe) resulted in insolvency of the largest companies and banks, high increase of bankruptcies in the financial sector and other industries of national economies.

These processes showed inability of insolvency systems in most countries to economic difficulties and facilitated the beginning of serious work aimed at settlement of problems regarding the insolvency regulating system, its designation, goals and tasks at the global level. Now such largest international institutes as IMF, EBRD and World Bank, jointly with the international association of experts in insolvency, state that the most important task (or even demand) of any insolvency system is to provide the debtor's financial restoration, its preservation as active enterprise, in other words - to provide opportunities for anti-crisis management [9].

In the global practice anti-crisis management of enterprises (depending on whether such action is voluntary or forced) is split into two large categories: informal anti-crisis management (known as corporate management) and formal anti-crisis management (under the state control) performed directly in the process of implementing the bankruptcy procedures and regulated by the appropriate legislative and regulatory acts.

The initiative of taking actions upon restructuring the problematic enterprise may be provided by concerned creditors who also usually apply to professional advisers for assistance, in compliance with legislation. Conclusion of informal and pre-trial agreements upon reorganization between the debtor and the creditors (informal workouts) is an easier and cheaper model of accelerating the rehabilitation process, as compared to court procedure. Moreover, in case of financial problems at the company the time factor is crucial while informal schemes may be much quicker than formal ones, since there are fewer parties involved in this agreement. For example, in Japan, in addition to the law on bankruptcy, there are also the Rules of Conduct under informal financial restoration of the company (workouts) adopted in the early 21st century under recommendations of INSOL International [5].

But it should be noted that such variant is not suitable to all enterprises: we believe that pre-trial procedures may be the most successful for companies with fewer creditors (otherwise it is reasonable to apply the judicial defence of the debtor's property) and more intangible assets the cost of which may be lost during the long-term court proceedings.

Besides the abovementioned informal amicable agreements in the framework of pre-trial anti-crisis management, there are such option as management buyout which may result in effective business renovation due to awareness of internal problems, as well as financial resource involvement by means of additional emission of shares both among the current shareholders and at the open market. Furthermore, in the process of preventing crisis and possible insolvency, it may be also reasonable to perform turnaround management which, in opposite, provides management replacement and development of strategic plan for way out by the third-party consultant upon anti-crisis management.

In the foreign practice of anti-crisis management informal methods apply more often than court proceedings upon rehabilitation, due to well-formed practice of their use and due to certain group of high-qualified experts in anti-crisis management. For example, in the USA there is a Turnaround Management Association [4] which controls professional level and compliance with business code of conduct by its members. In Ukraine the term of anti-crisis manager means often arbitration manager involved in the process of deep crisis, pursuant to the law on bankruptcy, while the concept of business code of conduct is unclear and rarely applied in practice. Unfortunately, nowadays the abovementioned methods rarely apply in our country: the practice of informal anti-crisis management is at the stage of generation, most of Ukrainian companies apply to experts too late, experts' qualification is poor, the mechanisms described above require for taking into account Ukrainian specifications, are poorly regulated and provide lots of opportunities for possible abuse.

It should be noted that there are some cases when implementation of rehabilitation procedures started from the informal method and then turned to formal method due to the changing circumstances or dissatisfaction of creditors.

Anti-crisis management under the state control means attempts of business rescue in the framework of court proceedings regulated by the law on bankruptcy in the process of rehabilitation procedures.

The procedure facilitating the debt restructuring in order to prolong the debtor's business activity was launched in 1914 by the Austrian law. Similar procedures were incorporated into the bankruptcy legislation of Spain (1922), South Africa (1926), Belgium, France, Germany, the Netherlands and the United States (1930s). Modern reorganization procedures in the foreign insolvency legislation appeared after 1978 when Section 11 of the Bankruptcy Code was adopted in the USA. Later,

the bankruptcy legislation reforms implemented reorganization procedures in law systems of Italy (1979), France (1985) and the United Kingdom (1986). So the trend of strengthening insolvency procedures for debtor rescue is typical of most countries including Ukraine: both the current law on bankruptcy, the Law on Amendments to the Law of Ukraine "On debtor's solvency restoration or its recognition as bankrupt" No. 4212-VI on 22.12.2011 provides two rehabilitation procedures the efficiency whereof is usually lower than in the West.

As it stated above, nowadays the legislation of any country provides an opportunity for the debtor's business restoration in the form of rehabilitation by means of applying a certain combination of typical amicable agreement (in fact, debt restructuring process agreed with creditors) and events upon restructuring the debtor's assets, staff and business activity. Meantime one of the main differences is voluntary/forced initiation of court proceedings upon reorganization as well as nomination of the debtor's manager in the process of rehabilitation: either the former manager or the insolvency expert appointed by the court.

Most legal systems provide an opportunity for voluntary application to the court by the debtor itself in order to reorganize business directly. In our opinion, it minimizes time consumption under the crisis development at the enterprise if the fair owner is concerned on the current situation but is unable to overcome crisis by itself.

The opportunity of independent management of the debtor in the reorganization procedure shall take into account the probability of managers' improper attempts to return the company in the previous condition with violation of creditors' interests. Therefore in most countries the former management is temporarily dismissed for the period of reorganization procedures. In England declaration on default inevitably results in appointment of liquidator (for winding-up the company), receiver (assigner of pledged property to secured creditor) or administrator (developer of reorganization plan). In Germany, Czech Republic, Russian and Ukraine [10] such procedure provides appointment of arbitration manager who manages the enterprise irrespective of procedure.

In the USA probability of debtor's managers' opportunistic behaviour is usually reduced by means of appointing the business activity controller. In fact the debtor-owner holds a tender on property (in favour of creditors) it is entitled to use, to sell or to lease under its ordinary business course. But any actions beyond the ordinary business course shall be approved by the court. Moreover, the debtor's manager shall submit various reports on reorganization process and on its actions, while evidence of

its fraud actions provides appointment of external manager for the further procedure management.

In Canada the mandatory term is appointment of administrator who shall act as court executor and shall bear responsibility for implementation of rehabilitation procedure. Meantime there are no regulations under which the debtor - property owner shall use its own reorganization plan like in USA. From one hand, it prevents the possibility of using moratorium on satisfaction of the creditors' claims for the purpose of unfair actions committed by the debtor aimed, for example, at release of assets. From the other hand, in the absence of illegal actions committed by the company management, there is a probability of more successful rehabilitation under absolute awareness of the debtor's current situation and possible personal concern in restoring its solvency.

It is interesting that, pursuant to the US Section 11, in order to start the procedure voluntarily, the debtor - applicant on reorganization is not required to be bankrupt (both under abuse of assets according to balance sheet and under the cash flow dynamics). Under the reorganization procedure the debtor (if it is eager to do so) may reckon on effectiveness with the third party consultants involved, since it will manage business during the procedure mainly by itself. The debtor is not required to justify its decision on filing the application [11]. Moreover, if the creditors of insolvent entity apply to the court upon initiating case proceedings on bankruptcy and winding-up, the debtor's management may apply to the court upon initiating the reorganization procedure pursuant to Section 11.

It should be noted that provisions of Section 11 do not treat the process of filing application to the court as immediate launch of the entity rehabilitation plan. In order to prevent possible abuse by the debtor, the entity shall persuade the judge in potential possibility and economical reasonableness of the company's rehabilitation, to submit the rehabilitation plan to creditors and to obtain their consent.

Under the US Bankruptcy Code, such approach to the company rehabilitation is unique that the rehabilitation plan may be proposed either by the debtor itself or by any its creditor. The insolvency laws of England and Germany also provide the debtor's business reorganization under the creditors' initiative.

We believe that it provides wider range for crisis-facing enterprise by the more optimal way, with qualified experts involved in order to assist in anticrisis plan development, than under the corporate anti-crisis management. It is also important that similar procedure strengthens the image of bankruptcy court proceedings as a real

instrument for combating the crisis and therefore changes the public consciousness in favour of proper perception of the bankruptcy institute as rehabilitation mechanism not only for the whole economy but also for certain crisis-facing enterprises.

Furthermore, in our opinion, the USA practice of splitting the experts in bankruptcy to the debtors' attorneys acting on behalf of insolvent companies only and the creditors' attorneys acting on behalf of creditors only may facilitate the more effective realization of both parties' interests due to high professional level of experts on the basis of similar practical experience.

The brightest essence of bankruptcy as anti-crisis management instrument is shown in goals of rehabilitation procedures. For example, the English law on insolvency highlights three principal goals of administrative management as the debtor's reorganization and rehabilitation procedure. Priority goral is rescue of the company as active business, i.e. "as going concern". Second, but also important, is achievement of the best result for creditors (as compared to immediate winding-up) by means of selling the company as active business. Only when it is impossible to fulfil any of the aforesaid goals, arbitration manager may sell the debtor's property to third parties for the purpose of further distribution of incomes from realization among creditors.

It is obvious that regular functioning of the debtor's production complex after its successful reorganization under the bankruptcy procedure facilitates preservation of working places (it may be vital in case of large debtors) and satisfaction of creditors' claims among the current competitive business. From the point of view of financial management it should be noted that in case of successful rehabilitation (i.e. under effective use of bankruptcy as anti-crisis management instrument) the debtor's cost will increase as incomparable with the liquidation cost of assets which may be realized at the tender. Thus, creditor of previously insolvent but currently functioning debtor may ask for the most complete satisfaction of their claims upon expiry of the arranged term.

Rehabilitation with further preservation of the debtor's active business on the grounds of both formal and pre-trial mechanisms is the main priority of modern legislation on insolvency in Germany being traditionally treated as pro-creditor. Its goal is "joint satisfaction of the creditors' claims by means of winding-up the debtor's assets ... or approval of the company's financial rehabilitation plan for the purpose of

maintaining its further activity" [2; 13]. Most actions are aimed at satisfaction of creditors but it does not exclude the possibility of debtor's reorganization. In general the bankruptcy procedure in Germany has a partial correlation with judicial bodies: the court opens and closes case proceedings, appoints arbitration managers and takes measures upon defending the debtor's assets.

The principal mechanism of financial rehabilitation in Germany is called Ubertragende Sanierung (in English it is known as Asset Deal). It supposes selling the debtor's property to another company specially established for this purpose. The latter will perform further business reorganization as the debtor's legal successor. It will assign significant part of movable or immovable property, most of the personnel, know-how and clients of the bankrupt company while the creditor's clams will be satisfied due to incomes from selling the property in the process of asset deal.

It is important that preparation to such deal starts nearly one month before initiating court proceedings upon bankruptcy, when the engaged arbitration manager performs detailed inventory and assesses potential cost of assets being subject to sale and then finds a buyer (probably of the whole business). But there are few such volunteers, so the bankrupt company still being a legal entity faces the winding-up procedure.

The difference between asset deal and standard financial rehabilitation procedure (Insolvenzplanverfahren) is that in first case the debtor's business owner and manager is a new legal entity which bought its assets and struggled for its overcoming the crisis, while in the process of standard rehabilitation the debtor as former legal entity has an opportunity for its business reorganization. According to statistic data, asset deal prevails among bankruptcy procedures in Germany: it makes up nearly 70% of all the cases, while standard rehabilitation makes up 10% and winding-up process - 20% [2; 5].

Over their historical development different countries embraced different methods of addressing the insolvency problem. These include voluntary settlement, restoration (or if the accepted terms to be used: reorganization) of business capabilities in from of sanitation or restructuring, and the bankruptcy (liquidation).

All of these methods are applied in two major ways: out of court and through court proceedings. In developed countries the state regulatory system comprises not only court proceedings but also out-of-court settlements [14].

The analysis of the global experience must focus predominantly the aspects that if accounted for will help identification for Ukraine of the ways to support potentially

viable businesses and to democratize the solvency restoration regime (out of court), in particular:

CVI. the ratio between solvency restoration methods that has historically emerged in developed countries;

CVII. the insolvency regulatory systems that are not broadly used in Ukraine: identification, prevention and sanitation of debtor enterprises;

CVIII. the out-of-court settlement practices.

In the Ukrainian legal practices the methods that are applied remain rather scarce: this is usually the bankruptcy meaning liquidation of the debtor's enterprise. The measures of supporting potentially viable businesses are used rarely. The out-of-court settlements are typical for self-regulating regime, i.e., for businesses who address this issue between themselves, more often than not though murky and criminally tainted deals.

Conclusion

Over the last few years, the national priorities that must be taken into consideration when building up the insolvency regulatory system in Ukraine have been affected by the lingering political instability and global crises accompanied by the abrupt downfall of production and considerable financial losses for the public. The economic policy today necessitates two strategic goals: search for reserves of restoring the economic growth and ensure stability of business and society.

Research of peculiarities of the Ukrainian model of bankruptcy institute has shown that the current regulations and traditions, as compared to most of countries, do not provide a priority of anti-crisis measures, which are present in the bankruptcy mechanism.

The Law of Ukraine "On Restoring a Debtor's Solvency or Recognizing It Bankrupt" is neither pro-creditor nor pro-debtor, rather the golden mean. It provides flexibility of the national bankruptcy system which completely allows taking into account terms of the debtor's insolvency in each certain case.

Meantime, nowadays the bankruptcy institute in Ukraine quite differs from the similar concept in developed countries, since most of business entities are bankrupt from the technical point of view, due to financial crisis in the country. The problem is that bankruptcy institute in not enough for removal of ineffective enterprises from the market and direct debt recovery to creditors.

National realities, their peculiarities and specifications, initial stage of transfer to market economy and difficulties of crisis do not facilitate application of foreign

countries' practice upon bankruptcy, although it is necessary to study, to know and to understand the foreign experience.

Ukraine may be interested in experience of developed countries in respect of prospects of improving the bankruptcy legislation. Selection of the ways of improving the bankruptcy legislation shall be grounded on the conceptual systematic approach, which would take into account the root causes of bankruptcy, include the global experience and comparative analysis of the laws on insolvency.

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