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**PECULIARITIES OF ALIENATION OF LEGAL ENTITY'S PROPERTY  
DURING BANKRUPTCY PROCEEDINGS/ COMPARATIVE LEGAL  
ANALYSIS OF THE SPECIAL LEGISLATION OF UKRAINE AND THE  
RUSSIAN FEDERATION**

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*Business bankruptcy is a widely used tool for solving a company's financial difficulties and is used by many business representatives worldwide. This article reveals the bankruptcy concept, gives its characteristics, analyzes the procedure for alienating the property of bankrupts of legal entities, and formulates a conclusion on the article's subject. At the end of 2019, the Code on Bankruptcy Procedures entered into force in Ukraine. The novelties of the bankruptcy procedure in the Russian Federation have been in power for four years, since October 2015. Undoubtedly, the neighboring country's experience was taken into account by Ukrainian legislators. Therefore, we decided to compare the conditions of bankruptcy and the peculiarities of alienation of the legal entity's property*

*during the period of bankruptcy proceedings under the laws of the Russian Federation and Ukraine.*

*Keywords: bankruptcy, bankruptcy procedure, Code of Ukraine on Bankruptcy Procedures, creditors, debtor, bankrupt, bankruptcy of a legal entity, property, federal law.*

The article considers the topical issues of the peculiarities of alienation of the legal entity's property during the period of bankruptcy proceedings/ comparative legal analysis of the special legislation of Ukraine and the Russian Federation.

The purpose of the article is to find and formulate areas for overcoming problems in the field of peculiarities of alienation of property of a legal entity during bankruptcy proceedings under the laws of the Russian Federation and Ukraine.

In general, the following scientists tried to overcome the problems in bankruptcy proceedings: I.A. Butyrskaya, O.M., Biriukov, A.A., V.M. Haivoronskyi, V.V. Dzhun, Yu.V. Kabenok, Butyrskyi, L.M. Nikolenko, B.M. Poliakov, Bohatyr V. and others [1]. However, permanent changes in legislation and economic procedural practice require new research.

Entrepreneurs often perceive a legal entity's bankruptcy as an extremely negative phenomenon associated with a business failure. However, in some cases, this is not the worst way out of this situation since it allows paying off debts without conflicts with creditors and reorganizing the enterprise. Suppose the value of the property of a company or an individual engaged in entrepreneurial activity cannot meet the financial conditions of creditors. In that case, the legal entity cancels the licenses and excludes them from the register, under the procedure enshrined in the legislation. The significance of bankruptcy is that insolvent persons are excluded from civil circulation (in the event of their liquidation), which

improves the market. On the other side, bankruptcy allows responsible enterprises, organizations, and conscientious persons to restore the solvency of entrepreneurs, reorganize their affairs, and restore financial stability.

The possibility of applying reorganization procedures to insolvent enterprises and organizations in a problematic situation provided for by bankruptcy legislation allows them restoring the status of full-fledged agents of market relations, encourages entrepreneurial initiative and risk since, in case of failure, they will be largely protected from the severe consequences of bankruptcy.

However, bankruptcy can be used for illegal purposes, i.e., deliberate (intentional, fictitious) declaring an enterprise bankrupt to conceal the money transfer, robbery of depositors, and other financial crimes.

Insolvency (bankruptcy) is one of the oldest economic and legal categories known already in the legal system of Ancient Rome as bankruptcy since ancient times involved a combination of claims of several creditors to the same debtor. This concept universally acts as one of the critical regulators of society's economic processes, thereby ensuring economic turnover's stability and sustainability. The origins of bankruptcy law go back to 1992 when bankruptcy law first appeared.

After the October Revolution of 1917, the legal regulation of insolvency (bankruptcy) began to be implemented after the transition to a peaceful life. Immediately after the civil war, the Civil Code of the Russian Soviet Federative Socialist Republic (1922) was adopted. It is the most essential element of the legal and regulatory framework for economic policy based on the assumption of a multilevel economy and market relations development. The Code and subsequent legislation contained instructions according to which civil law subjects could be declared insolvent (bankrupt), and the conditions and consequences of such declaration.

In 1927, the government created a system of subsidies or debt cancellation for lack of funding or unprofitability. The government could manipulate the bankruptcy at its discretion, without even going to court. The liquidation of an enterprise took place only in case of a lack of proprietary funds. The fine was imposed only on movable property, but not on immovable property. There was no principle of fluidity: the system had wasted itself. During the 70 years of Soviet rule, the property passed from citizens to the government. The state's debts were written off.

Government subsidies cannot be considered an effective remedy because they do not address the root cause of bankruptcy; only the enterprise's management was changed, and the creditors did not participate in the process since the state was a real creditor. It was not a return to profitability expected, but adherence to the plan and commitment to ideology.

Before the adoption (date of adoption: October 18, 2018) in Ukraine of the Code of Ukraine on Bankruptcy Procedures (entered into force: April 21, 2019), there was no detailed regulation of this procedure at the legislative level. It contained a rule that concerns the Law of Ukraine on the restoration of solvency. If, upon removing a person from activities, the value of the valuable property is insufficient to satisfy creditors' claims, in each case, liquidation by establishing insolvency is applied.

The development of the concept of insolvency (bankruptcy) has always been closely associated with developing a market economy. As soon as an independent economic activity appears, a new life of this concept begins immediately because it makes it possible to exclude entities that cannot carry out the entrepreneurial activity and replace them with new ones. In market conditions, bankruptcy is, to some extent, a necessary "natural selection" that humanity has passed in the process of its development and which today is quite suitable for entrepreneurs.

According to Art. 1 of the Code of Ukraine on Bankruptcy Procedure (hereinafter referred to as the Code), bankruptcy is the inability of the debtor, recognized by the economic court, to restore its solvency by rehabilitation and restructuring and to pay off the monetary claims of creditors in the manner established by this Code, otherwise than by applying liquidation procedures [2].

If the debtor cannot restore solvency and satisfy the creditors' claims recognized in court, a liquidation mechanism is launched. However, some nuances can dramatically change the situation, for example, financial rehabilitation. In turn, it is the most important mechanism that can prevent the disappearance of a legal entity due to a procedure such as bankruptcy. It presupposes a system of measures carried out in the proceedings; its main purpose is to prevent the pledger from declaring bankruptcy and preventing subsequent elimination. Financial rehabilitation is aimed at dramatically improving the debtor's position, fulfilling orders by restructuring the company, its capital, and debts, or changing the debtor enterprise's organizational and legal structure. Thus, a system of measures to improve the situation through monetary and organizational changes is applied to an organization on the edge of a precipice, which leads to the restoration of the solvency of receivables. Often, as part of a series of actions, a portion of the shares of a company on the verge of collapse is sold. The debtor's rehabilitation procedure provides the possibility to initiate it before creditors, or the debtor applies to the court to initiate bankruptcy proceedings.

Suppose a situation arises that requires the implementation of the debtor's recovery plan. In that case, the latter can reach an appropriate agreement with the creditor(s) on the introduction of recovery, approve its plan, and submit it for approval to the relevant economic court within five days from the plan's date of approval.

To approve the financial rehabilitation plan, the debtor convenes a meeting of creditors by written notification to all creditors under the recovery plan in which they participate. Simultaneously, the debtor provides these creditors with a rehabilitation plan and posts announcements about the meeting of creditors on the official Internet portal of the relevant judicial authority. The meeting of creditors is convened no earlier than ten days after the posting of such an announcement.

Per Art. 6 of the above Code concerning a debtor-legal entity, the following court procedures are applied: disposal of the debtor's property; debtor's financial rehabilitation; the liquidation of the bankrupt [2].

Economic courts consider bankruptcy cases at the location of the debtor that is a legal entity. The debtor and the creditor have the right to apply to the economic court to initiate a bankruptcy case. The economic court opens bankruptcy proceedings at the debtor's request and in the event of a threat of its insolvency.

The sale of the property is one of the final bankruptcy stages, carried out in relation to a bankrupt to cover its creditors' claims. I further describe how real estate is sold in case of bankruptcy of legal entities.

The economic court shall issue a ruling on the appointment of an administrative manager of the debtor's property. The procedure for the disposal of the debtor's property shall be introduced for a period of up to 170 calendar days. The powers of the administrative manager of the debtor's property are defined in Part 3 of Art. 44 of the Code of Ukraine on Bankruptcy Procedures. The manager considers applications for monetary claims sent by the debtor under the procedure established by law, maintains a register of creditors' claims, takes measures to preserve the debtor's property, etc.

The commercial court, at the request of the property manager, creditors or on its initiative, may prohibit the conclusion of agreements

(contracts) without the consent of the bankruptcy commissioner and oblige the debtor to transfer securities, currency values, and other property for storage to third parties or take other measures to preserve property.

By way of alienation of property at the request of the parties, participants in the bankruptcy proceedings or the property manager, which contains statements on the debtor's manager preventing the actions of the property manager, and about the commission by the debtor's manager of actions that violate the rights and legitimate interests of the debtor and creditors, the economic court has the right to remove the debtor's manager from office and entrust the performance of its duties to the property manager.

In agreement with the property manager, the debtor's management bodies decide on the debtor's participation in unions, associations, holding companies, industrial and financial groups, or other associations of legal entities.

The manager or management body of the debtor, solely in agreement with the asset administrator, concludes agreements (contracts) regarding the following:

- transfer of immovable property for rent, pledge, deposit of the said property into the statutory fund of an economic entity or another disposal of such property;

- obtaining and issuing loans (credits), sureties and issuing guarantees, assignment of claims, transfer of debt, and the transfer of the debtor's property in trust;

- alienation of other property of the debtor, the book value of which is more than one percent of the book value of the debtor's assets

Per Art. 64 of the Code of Ukraine on Bankruptcy Procedures, after inventory procedures and obtaining consent to sell property, the liquidator

sells the property at an auction. The liquidator determines the initial sale price of the bankruptcy estate [2].

The sale of securities and other financial instruments through a stock market participant in the manner prescribed by Ukraine's legislation is carried out through an agreement concluded between the liquidator and the securities trader. The terms of contracts on the sale of bankruptcy property cannot provide payment by installments or deferred payments for the acquired property.

The Code, for the first time broadly and in detail, prescribed the procedure for bankruptcy of individuals and the procedure for selling assets of bankrupts through Prozorro electronic auctions. They created a two-level electronic auctions system, when a large number of independent sites sell assets according to the same rules, according to the ProZorro system's principles – openly, publicly, easy, and accessible to all users of the system. The auction customer provides access to information about the property being sold and gets acquainted with the property at its location. Access to such information in the electronic system is free.

The customer of the auction must announce the holding of the first auction within 20 days from the date of receipt of consent to the sale of property or determination of the terms of the auction by the court under the Code of Ukraine on Bankruptcy Procedures.

The organizer also publishes the trading protocol in the system. Thus, the entire course of the auction will be visible in the system: who, when, who submitted bids, won, and became the winner of the auction.

They also considered the issue of the maximum admission of participants to the auction. The electronic platform only identifies the participant and pays guarantee fees for participating in the auction. The winner is determined in the system after the end of the auction.

Suppose the debtor is a state-owned enterprise or an enterprise, where the share of state ownership in authorized capital exceeds 50 percent. In that case, the court shall involve representatives of the body authorized to manage state property to participate in the bankruptcy case, with notification of the commencement of bankruptcy proceedings of such an enterprise. In the event of opening proceedings in the bankruptcy case of a state enterprise or an enterprise, where the share of state ownership in authorized capital exceeds 50 percent, representatives of the body authorized to manage state property may take part in the meeting of creditors and the work of the creditors' committee with an advisory vote.

Termination, expansion of powers, and removal from duties of reorganization managers, liquidators of state-owned enterprises and enterprises, where the share of state ownership in authorized capital exceeds 50 percent, shall be carried out by the economic court if there are grounds and in the manner established by this Code [2].

When carrying out the procedure for the financial rehabilitation of state enterprises and enterprises, where the share of state ownership in authorized capital exceeds 50 percent, their real estate may be alienated only in cases provided by the financial rehabilitation plan. The initial price of the property, property rights of state-owned enterprises or enterprises, where the share of state ownership in authorized capital exceeds 50 percent, is determined under the Law of Ukraine "On the Valuation of Property, Property Rights and Professional Appraisal Activities in Ukraine".

In the Russian Federation, the bankruptcy procedure is regulated by the Federal Law No. 127 dated October 26, 2002 "On Insolvency (Bankruptcy)" [3], including the sale of bankruptcy property. An arbitration court considers cases of insolvency (bankruptcy) of enterprises in the manner prescribed by this Law, and on issues not regulated by this Law – under the Arbitration Procedure Code of the Russian Federation.

The Arbitration Court of the Russian Federation sells the property of a citizen within six months. Then it can be extended for the same period. The same court appoints a specialist – a financial manager who organizes and controls the property's sale, followed by distributing the funds received after the sale. Before proceeding with the implementation, the responsible specialist collects all creditors, clarifies the claims, makes a list, and registers them.

The value of assets is determined during the inventory process. Expert evaluation is used to determine the exact cost. According to Art. 139 of the Federal Law "On Insolvency (Bankruptcy)", the liquidator is obliged to hold it within two months from the date of receipt of the request for such evaluation. When the acts are ready, they are sent to the Unified Federal Register of Bankruptcy Information [3].

It is important to note that real estate is being sold at auction at a price not lower than the established independent valuation. By decision of the meeting or the committee of creditors, the assessment of the debtor's movable property, the book value of which is less than 100 thousand rubles as of the last reporting date preceding the filing date of the bankruptcy petition, is carried out without the involvement of an appraiser.

The debtor's property, the book value of which as of the last reporting date before the date of bankruptcy is less than 100 thousand rubles, is sold in the manner prescribed by the meeting or the committee of creditors (clause 5 of Article 139 of the Law) [3].

The arbitration court must get acquainted with the terms of sale, the property's initial price, and other nuances, after which it must approve them.

The auction is conducted in such a way that the price of the lot increases by 5-10% each time. Only those who have received special permits are allowed to participate in closed auctions. In their process, only that property is sold that has a limited circulation (military and sporting

weapons, psychotropic drugs, etc.). A competition is held in the case of the sale of objects related to cultural heritage. Whoever buys them is committed to keeping them safe and sound.

In the beginning, the manager officially announces the auction one month in advance, indicating its exact date. Only those who have submitted an application and previously made a deposit can participate. Those who have indicated inaccurate data about themselves, submitted invalid documents, filled out an application incorrectly, or did not make a deposit are not allowed to participate in the auction.

A slightly different liquidation procedure is provided for state-owned enterprises. The Decree of the President of the Russian Federation No. 1114 dated June 2, 1994, and the Regulations "On the Procedure for Sale of State-Owned Enterprises-Debtors" state that the Federal Administration, having established an unsatisfactory balance sheet structure and insolvency of the enterprise, is obliged to take measures to sell state-owned enterprises-debtors by:

- implementation of debtor enterprises at commercial and investment tenders while maintaining the status of a legal entity;
- liquidation of debtor enterprises and subsequent sale at auctions, commercial or investment competitions of their property (assets);
- sale of state shares of debtor enterprises at auctions.

The decision to sell the debtor enterprise while maintaining a legal entity's status is made by the Federal Administration or the relevant executive authority of the Russian Federation's constituent entity. The consent of creditors is not required [4].

The winner of the auction is the one who is willing to pay the highest price for the lot. All trading results are recorded in the protocol, signed, and sent within two days to both the winner and the administrative manager. Besides, they secure the purchase and sale transaction through a contract.

The winner must pay for the lot within 30 days after the conclusion of the contract. These funds are indicated in the bankruptcy estate. The deposit is refunded to all other participants.

If the terms of trade have been violated, it is possible to file a complaint with the Federal Antimonopoly Service or the court. If the complaint is upheld, then the transaction becomes invalid, and the property is sold again.

The administration manager completes the sale of the property with a bankruptcy report. The arbitration court must decide on the termination of the bankruptcy, after which, within 60 days, the court sends information about this to the tax office, which must exclude the bankrupt enterprise from the Unified State Register of Legal Entities within not more than five days. This is the end of the company's existence. The manager is paid remuneration for the work done.

**Conclusion.** Based on the preceding, it is possible to conclude that bankruptcy is a common problem that individual entrepreneurs and legal entities face in their activities. Many entrepreneurs go bankrupt every year. At the moment, the assistance provided by various organizations to persons faced with this problem is very relevant. In this article, I studied the procedure for selling the property of bankrupts of legal entities in Ukraine and the Russian Federation. The Federal Law "On Insolvency (Bankruptcy)" and the new Code of Ukraine on the Bankruptcy Procedure were analyzed. The legislation of these countries clearly defines the concept of insolvency. A legal entity may be declared bankrupt if it is not able to meet the claims of creditors for obligations and (or) fulfill the obligation to pay mandatory payments if the corresponding duties and (or) responsibilities have not been fulfilled by it within three months from the date of their fulfillment.

The undoubted merit of the law is the detailed and thorough regulation of bankruptcy procedures: external management; bankruptcy, the conclusion of an amicable agreement.

In any civilized country with a developed economic system, one of the main elements of the mechanism of legal regulation of market relations is the legislation on insolvency (bankruptcy). Currently, the market economy is characterized by such phenomena as industrial recession, economic crisis, lack of investment, tightening of monetary relations, which undoubtedly leads to the insolvency of business entities. The insolvency of legal entities affects various aspects of activities. One should not forget that the Insolvency Law and other law branches answer questions related to bankruptcy. Thus, there is a close connection with the legislation on the property, pledge, management, corporate, labor, financial law, and other private law branches. In terms of sanctions, insolvency law is linked to criminal and administrative law.

Thus, bankruptcy is a common problem that individual entrepreneurs and legal entities face in their activities. Many entrepreneurs in our country are annually subject to bankruptcy. At the moment, the assistance provided by various organizations to persons faced with this problem is very relevant.

From an economic point of view, bankruptcy is a particular case of insolvency of a legal entity. From a legal point of view, bankruptcy is insolvency established by an economic court.

When applying for bankruptcy of an enterprise, social factors must be considered, such as hiring dismissed workers, retraining if necessary, etc. The bankruptcy of enterprises is a widespread phenomenon. They are often deliberately driven into bankruptcy. This is often the only way to save an enterprise, based on which a new one is subsequently created.

The negative essence of bankruptcy lies in the recognition by the economic court of the impossibility of renewing the debtor's solvency and

satisfaction of the creditors' claims recognized by the court only by applying the liquidation procedure.

It is clear that bankruptcy and reorganization should be exceptional measures and should be applied only when other efforts cannot bring results. It is necessary to use all legal opportunities to slow down the development of crisis phenomena and find opportunities to develop production.

Liquidation of a legal entity is its termination, which does not entail the emergence of new legal entities. One of the grounds for the liquidation of a legal entity is its insolvency (bankruptcy). In general, the legislation on insolvency (bankruptcy) is one of the constituent parts of the legal regulation of civil circulation and ensuring its normal functioning. The legislation defines an insolvency procedure as a bankruptcy procedure, which is judicial, like all bankruptcy procedures. Their introduction (opening) and their further fate (extension, completion) are determined by the court and formalized by the relevant judicial act. According to the Bankruptcy Law, four main groups of measures can be applied to a legal entity-debtor: preliminary procedures (pre-trial settlement, supervision); recovery (financial recovery, external management); liquidation (bankruptcy proceedings); amicable agreement.

The main feature of the bankruptcy procedure is that it pursues the goal of satisfying creditors' general interests, including at the expense of the interests of individual creditors as individual plaintiffs. The modern legal institution of bankruptcy makes it possible to ensure creditors' claims on proportionality and priority principles maximally. Macro- and microeconomic problems arising from the application of bankruptcy procedures associated with the preservation of the debtor's business (respectively, jobs, economic interests of the region, etc.) or liquidation of the debtor (respectively, the withdrawal of inefficiently operating enterprises from the economic turnover,

etc.) are currently not considered as the main tasks of legal regulation of bankruptcy. Subjective rights to own and dispose of the property based on the principle of inviolability of property cannot, from a legal point of view, have the highest protection if there are long-term overdue obligations.

Based on the results of the study, it is proposed to make the following changes and additions: it is necessary to increase the minimum amount of debt of a legal entity, which is a condition for initiating a case; to abolish the “package” of documents that an individual or legal entity is obliged to submit to the court to declare itself bankrupt (voluntary bankruptcy); create conditions that would stimulate the participants in the bankruptcy case to conclude an amicable agreement.

**References:**

1. Bohaty, V. (2020) Solving the Problem of Financial Support for Activities of an Insolvency Officer [Visegrad journal on human rights], no. 3, 25–29. [in English].
2. Code of Ukraine on Bankruptcy Procedure 2019 (Verkhovna Rada of Ukraine) [Vidomosti Verkhovnoii Rady (VVR) [2019]. Ofitsiynyy sayt Verkhovnoyi Rady Ukrayiny [The official website of the Verkhovna Rada of Ukraine]. Retrieved from <https://zakon.rada.gov.ua/laws/show/2597-19#Text> [In Ukrainian]. (2019, April, 21).
3. Federal Law “On Insolvency (Bankruptcy)” 2002 (The State Duma) [Collection of legislation of the Russian Federation] [2002]. Ofitsial'nyy sayt Gosudarstvennoy Dumy Federal'nogo sobraniya Rossiyskoy Federatsii [The official website of the State Duma of the Federal Assembly of the Russian Federation]. Retrieved from <https://duma.gov.ru/legislative/lawmaking/> [In Russian]. (2002, September, 27). [in Russian].

4. Decree of the President of the Russian Federation 1994 (The President of the Russian Federation) [1994]. Ofitsial'nyy sayt Prezidenta Rossii [The official website of the President of the Russian Federation]. Retrieved from [http:// http://www.kremlin.ru/acts/bank/6210](http://www.kremlin.ru/acts/bank/6210) [In Russian]. (1994, June, 02). [In Russian].

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