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Evaluation of Kazakh and Foreign Experience in Regulating the Bankruptcy Procedure

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Abstract: The concept ofdebt relieffor the first timeappearedin Old Testament times, whereevery 50 yearsall debtswere written off, the Israelis soldinto slavery, freed and soldthe landbackto the original owner. In ancient Greece,the concept ofdebt forgivenesswas notwidespread.If a personis unable to meetits obligationsin a timely mannerthen hisand his familysold into slavery and the term of the debtslaverydid not exceedmore than 5 years.

Key words: Bankruptcy % Kazakhstan % Insolvency

INTRODUCTION

Bankruptcy Institute has come a long way of development and finally formed by the middle of the twentieth century. The emergence and development of rules on insolvency related to the objective needs of society. With each stage of social development reflect the rules governing social relations at this stage [1].

The most common theory about the origin of the word "bankruptcy" is the combination of the ancient Latin word *****bancus**+**, meaning "bench or table**+** and *****ruptus**+** -in translation "does not work". Situation in which the banker, spending their transactions in the market, "on the bench", failed to fulfill its obligations and "bench" while symbolized inability to negotiate with creditors.

According to another theory, the term "bankrupt" comes from the Italian law: so called in Italy fleeing debtors (from Italian. Banso-benchrotta-broken, which literally means to break the bench on which sat a merchant, a leading trading or financial activities). His refusal to pay its debt obligations due to lack of funds led to the fact that the bench broke. This factserves as a signaltermination ofa merchantanda warning toothers.

Bankruptcy is an extreme form of the crisis, when the company is unable to meet its obligations and restore the solvency of their own funds. Bankruptcy is the result of a crisis state, redistribution of capitalmarket instrument.

In Webster dictionary "New World" "failure", primarily defined as the inability to meet its obligations to creditors and then the inability to pay debts as they mature. "Insolvency" means the negative equityof the enterprise, that is, when the amount of assets is less than the total liabilities. However, there are cases where companies with negative equity negotiate with creditor's on debt repayment installments and by fulfilling its obligations shall continue its activities. If insolvency appears in connection with the receipt of cash is not, it means you cannot meet current obligations. In this case, lenders may require the restructuring of the company. However, losses are considered small creditors when the company has negative equity, but the cash flowto meet current commitments.

Main Part: Concepts ofinsolvency and bankruptcyof companies, according to the legal point of view, must be considered, analyzed legislation in different countries.

In Western countries, the bankruptcy law is a regulator of insolvency. If the company is experiencing financial difficulties and is unable to fulfill their obligations in accordance with the laws of the country, the court makes a decision on bankruptcy and liquidation of the company, which resulted in the insolvency procedure follows.

Studying the works of Western scholars P. Fitzpatrick, J. Horrigan, S. Merwin, W. Beaver, E. Altman, one must conclude that the financial difficulties are largely due to the problems of banks. Assessment of insolvency economic and legal aspects of the analysis can be carried out for the financial difficulties of the enterprise.

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Analysis of economic and scientific literature shows that scientists leveled the concept of "insolvency" and "bankruptcy". In addition, the model to predict what the bankruptcy is actually forecast the probability of bankruptcy.

If we examine the evolution that has under gone over the last century the institution of bankruptcy, we can see the following picture. Previously, for centuries the main purpose of insolvency proceedings is a fair distribution of the debtor's property among all creditors. In the XIX century, attention has switched from the individual debtor on his property and his business. In the XX century, in the era of global industrialization and qualitative leap in the field of scientific and technical progress, there was a shift in emphasis in the area of insolvency law in the direction of moving away the time in bankruptcy and create for him the most favorable treatment in order to restore its solvency [2].

Development of market economy objectively determines the emergence and development arrangements governing the production, distribution and consumption of goods and services. Achieving optimal production infrastructure should meet the needs of society and the purchasing power of economic actors. Any economy characterized by uneven economic development, the overcoming of which is possible with the bankruptcy mechanism.

In foreign countries are widely used extrajudicial insolvency procedures implemented by an application of both debtors and creditors. In some countries, court procedures debt restructuring as a form of reorganization of the insolvent enterprise is encouraged. So according to, bankruptcy laws of Germany provided that the main decisions during the bankruptcy case, please do not judge the insolvency and creditors' meeting at which a vote is in line with the cost of rights to demand.

Competence and responsibilities of public authorities in the field governed by bankruptcy law, but in many countries they have their own specific features. For example, governments in the European Union have the power to sue the European Union requests the Court's judgments regarding the interpretation of the European Convention on bankruptcy.

In Sweden, the Public Authority for bankruptcy is a single system with the judicial for cement and the Internal Revenue Service and is the joint responsibility of the Ministry of Justice and Ministry of Finance. With offices in all provinces of the country, this body regulates and monitors the implementation of bankruptcy procedures.

French law governing insolvency, even in the name escaped mention of bankruptcy is called. On the financial restructuring of the enterprise". In the said law provides that its objectives are "the preservation of the enterprise, its activities and maintain jobs and purification liability [3].

After serious financial crises French legislators have relied on extremely debited model insolvency law. When opening procedure recovery of production significantly weakened the rights of creditors. Due to the violation of these rights is an attempt to rehabilitate the enterprise. But as in normal economic development entity goes bankrupt due to system failures managers and structural changes of the market, it turns out that the assets (which could get all the creditors in the distribution) in any case, will primarily be used to attempt to restore the solvency of enterprises located in a systemic crisis.

Unlike the French model, the German bankruptcy system was designed to protect the interests of creditors. Due to the fact that the old rules of regulation, based on the bankruptcy proceedings and the settlement agreement, in modern conditions become ineffective, there was a need to develop rehabilitation regimes. The baseline was the reorganization procedure used in the American system. The developers wanted to avoid systemic weaknesses, the ability to tighten the procedure of reorganization managers of the debtor, the weakening of creditor rights, lack of operational control over the actions of the creditors of the debtor owns. But solving these problems, they are not able to build the optimal model. As a result, the rights of creditors are protected well enough; however, there is a partial loss of effectiveness of the system of legal regulation of insolvency. This is primarily due to the fact that regardless of future developments all procedures begin with opening of bankruptcy proceedings. In addition, the appointment of a receiver is limited operational space to make important strategic decisions. The protection afforded to secured creditors, reduces the possibility of rehabilitation.

United States of America have a long history of state regulation in the field of bankruptcy. According to the American Bankruptcy Institute regulatory system reorganized debtors applied more than liquidation. When this procedure is easy enough to initiate reorganization. Creditors, including software, bogged down in the process of reorganization. In some cases, the primary purpose debtor’s insolvency law is to avoid onerous contracts. Managers of the debtor may be interestedin delayingthe process of reorganization.

So we can say that the American system of insolvency in some respects is the loss in efficiency. Currently, such viscous scheme allows the economy to carry out a soft restructuring of the productive forces.

UK law contains a number of different procedures for the recognition of the insolvency of the debtor, including the widely used non-judicial procedures in cases where creditors liquidate the company on their own. In English law on bankruptcy liquidation of the enterprise to address a meeting of creditors is carried out, if voted for this decision at least 75 % of shareholders, which will be followed judicial determination. However, any creditor may apply to the court for the compulsory liquidation of the debtor. This often happens when the creditors have reason to suspect that there has been a deliberate bankruptcy and that the audit was conducted in bad faith. In its structure, extrajudicial confession of bankruptcy and compulsory liquidation legally identical and equally provide the claims of creditors.

In the UK, banks also operate some functions of the authority in the field of bankruptcy in the implementation of the extrajudicial liquidation procedures. By law, any bank in the event of the insolvency of his client has the right to appoint an external manager for the company. The Bank may also appoint an independent auditor to the company at the expense of the enterprise. This auditor prepares a report to the bank not only on financial and economic activity of the debtor, but also on the competence of its management. Thus, the Bank of England cannot liquidate the debtor out of court, but may initiate its reorganization.

In the UK, the regulator is Insolvency Service, part of the structural unit of the Ministry of Trade and Industry.

In the English system of creditor rights reserved most strongly. Thus the main way to resolve insolvency is not in bankruptcy proceedings as the sale of property in parts and the creation of a legal mechanism for the disposal of the enterprise in order to preserve its integrity and technological jobs. It uses a previously developed scheme providing full control of the enterprise owner fate "floating" ensure. This mechanism allows the committee to solve the problem loans, as the representative of the owner of the "floating" software operates in the interests of all creditors. Traditionally play an important role various agreements with the creditors of the bankrupt, despite the fact that the British model in some cases can lead to loss of efficiency, since it does not allow to use the full set of modern legal system technologies insolvency.

In general, the use of voluntary recognition of insolvency procedure for countries with case law (UK and others). In these countries, about 60% of enterprises bankrupt admissions procedure occurs on a voluntary decision of the meeting of creditors on liquidation of the debtor in accordance with the charter company.

World practice shows that the insolvency law should not wear the liquidation and rehabilitation nature and applied in order to maintain effective business debtor having temporary financial difficulties, but it is capable of on the basis of statutory capacity to pay its debts and continue in business.

Legislation of a number of foreign countries based on the principles of ensuring restoration of solvency of the debtor. This view of the bankruptcy procedure has proved to be in foreign countries with long-standing practice implementation of rehabilitation procedures. For example, in Belgium for financial rehabilitation of debtors, use the procedure *****concordat**+**. In this procedure, the debtor retains the authority, but the management and disposition of property. To help the debtor, among other things, the development of the rehabilitation plan shall be one or more administrators ("commissaries au sursis"), who shall report to the court.

In Canada, in order to prevent the debtor's bankruptcy reorganization provides for preventive measures and such measures specified in the contract that results in the debtor's obligations.

In Japan, rehabilitation procedures prescribes in detail the Civil Rehabilitation Law, which aims - the proper regulation of the relations between the creditor and the debtor in connection with the financial difficulties of the latter. The above relationship should arise from civil grounds. Rehabilitation procedures are performed based on the plan, but the recovery received by the debtor with the consent of a majority of its creditors and subject to court approval. Initiate the use of rehabilitation procedures and apply to the court shall be entitled to an appropriate statement as debtor and the creditor. There are circumstances that allow the authorized body of the legal entity to apply for bankruptcy, do not preclude an application for the use of rehabilitation procedures. Since the adoption of the statement on the application of rehabilitation procedures and prior to a decision on it, the court may also impose a moratorium on creditors forced seizure of the property of the debtor of his obligations. As a general rule, the legal capacity of the debtor in rehabilitation procedures is not limited.

In the legal system of the Kazakh Soviet Socialist Republic in the Soviet period, there were no laws to regulate the procedure of bankruptcy.

Bankruptcy of enterprises and citizens, individual entrepreneurs was an essential attribute of Kazakhstan's economy in terms of private property and the formation of market relations.

In the period of socialist economic management, except for a small proportion of trade union (and other non-governmental organizations), as well as the collective farm and cooperative (consumer) property defined only on a limited number of assets, mainly in rural areas, the main (99%) ownership in the country are public state property. Under the socialist form of economic finance economy performed from a single center and funds the production of goods and providing services planned distributed among enterprises and organizations that, in principle, excluded their bankruptcy.

According to Article 19 of the Law of the Kazakh SSR from December 11, 1990 "On freedom of economic activity and the development of entrepreneurship in the Kazakh SSR" entrepreneur declared by the court, the court of arbitration bankrupt based on the application of the debtor or creditor claim in the debtor's inability or refusal to promptly and all items meet the conditions of the debt obligations or if asset entrepreneur become less than its liabilities.

The first law "On Bankruptcy" in the Republic of Kazakhstan was adopted on 14 January 1992. The law created a legal basis for compulsory and voluntary termination of business activity, if holding events in their financial rehabilitation (rehabilitation) is not economically feasible and was aimed at ensuring the legitimate rights and interests of the debtor's creditors.

April 7, 1995 by presidential decree having the force of law, in order to determine the base and about how to declare bankrupt the business entity and its liquidation, as well as the procedure for appointment and conduct of special procedures aimed at improving the debtor has introduced a new version of the Law of RK "On Bankruptcy".

January 21, 1997 was adopted last edition of the new Law "On Bankruptcy", in which thelaw19 times has been amended almost completely change the nature of most of the articles of the law and its basic concept [4].

Practical Application of the Kazakhstan Law "On Bankruptcy" showed that the specific conditions of the Kazakhstan market failure debtor's obligations to creditors within three months after the date of its execution is not perceived as something unacceptable, indicating that the debtor is insolvent, which received from the counterparty goods work services without paying for them and intended to use this money as working capital. On the contrary, such a phenomenon is considered conventional, i.e. these are the conditions of the domestic market and the level of justice. If we consider the signs of insolvency described in the legislation of Kazakhstan, today every second enterprise is subject to bankruptcy. Consequently, the external signs of insolvency: the duration of the period of delay in the execution of monetary liability or mandatory payments, as well as the size of the relevant requirements must be revised in the law.

Modern legislation of the Republic of Kazakhstan "On Bankruptcy", compared with the laws of foreign countries, largely directed at the preservation of the debtor company by applying to the various reorganization, organizational, economic, administrative, investment, technical, financial, economic, legal and other, not contradicting the legislation measures.

As a result of the application of insolvency procedures perceived public consciousness only as a disaster for the insolvent debtor. However, if a closer look at the role that plays in modern law the institution of bankruptcy, the conclusion that only the catastrophic consequences of the commencement of the insolvency insolvent debtor becomes not so straightforward.

One of the most effective instruments of improvement of Kazakhstan's economy is rehabilitation procedure under the law of the Republic of Kazakhstan "On Bankruptcy", which meet the needs of entrepreneurs wishing within the legal framework and forms to get the delay in repayment of borrowings and other payables. In this connection, it is necessary to consider simplifying the process of introducing rehabilitation procedure, including the consent of the secured creditor exception to the introduction of rehabilitation procedure, a separate chapter to regulate the rights of secured creditor to repay the debt from mortgaging property.

Rehabilitation treatments today are at the forefront of the bankruptcy procedures virtually all developed legal systems. The basic idea of all modern developed regulatory frameworks for insolvency is that the company would prefer to keep active, than to sell it in parts.

The cost of working technological complex disproportionately higher cost of equipment dismantled. To create socially useful product as a going concern expended significant financial, time and intellectual resources. To ensure normal conditions of employees

of the company formed by the service sector-social institutions, commercial organizations and the like. The state budget is based on tax revenue. Therefore, when the company becomes insolvent, it is necessary to solve not only the problem of equitable distribution of the remaining assets of the debtor's creditors, but the problems associated with the task of preserving the integrity of the process, social support and tax revenues.

CONCLUSION

Optimal existence institution of insolvency (bankruptcy) as a mandatory attribute of a market economy, which contains the Curative start, allowing to carry out structural reforms and creating conditions for the redistribution of capital from unprofitable production in other sectors of the economy, is a definite incentive efficient operation of business structures, while ensuring that the economic interests of creditors as well as the general state of the market regulator. Existence in the State Institute of insolvency is of paramount importance for the economy.

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