POLICY PROPOSALS OF INTER-REGIONAL WORKING GROUP OF REGIONAL JUSTICE REFORM COUNCILS

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Table of Contents

People-driven Justice: how to increase public trust in judiciary. Proposals of the Inter-Regional Working Group of Regional Justice Reform Councils

I. Introduction

The Regional Justice Reform Councils (RJRCs) were established in 2015 as part of implementation of the Predecessor Project, designed to improve exchange of information between central and local levels, to include the regions into policy development, and to measure the policies impact and their region-specific implementation challenges.

On 22-23 August 2019, a meeting of the RJRCs Interregional Working Group (IRWG) on People-Driven Justice took place, aimed at developing sector policy proposals with regard to people-driven and people-participatory justice.

The IRWG in question consisted of thematic experts from all RJRCs regions and included judges, advocates and academia. During the meeting, international and national Project experts assisted and provided their advice to IRWG.

> Within a two day workshop, participants goal was to propose suggestions on how to make Ukrainian justice system more people-oriented, and how to increase the society participation in the administration of justice.

Professional, and impartial judges, fair process, clear and justified decisions and high quality of judicial services – these are expectations of people who seek judicial protection in court.

In 2015, the President of Ukraine adopted the Justice Sector Reform Strategy 2015 – 2020, followed by the relevant Action Plan (JSRSAP), - which is the first strategic and comprehensive document outlining the main steps of the justice sector reform. A significant part of JSRSAP 2015-2020 aimed at addressing major issues and challenges of the judiciary, such as strengthening institutional set-up of the judiciary, streamlining system of judiciary governance bodies, introducing effective mechanisms of judicial performance management, strategic planning, administration of resources, ensuring more transparent selection and appointment of judges, developing judicial training system, streamlining jurisdictions and improving procedural legislation, promoting alternative dispute resolution.

Many foreseen actions were successfully implemented and important outcomes were achieved in the area of judicial governance and administration of justice. At the same time, in the course of JSRSAP's implementation new challenges were identified, which could prevent from expected ultimate goal of effectively raising accountability of courts and public trust in judiciary.

II. Key Policy Proposals

Within the framework of People-Driven Justice IRWG, representatives of RJRCs sat together with international and national experts and discussed reasons of people's dissatisfaction with courts performance and lack of public trust as well as possible policy directions in building higher trust in judiciary.

IRWG participants have come to the conclusion, that encouraging society's participation in administration of judicial system and raising awareness on courts' activities can contribute to a better and more trusted justice system, and that this goal could be achieved through: regularly using satisfaction surveys by judiciary governance bodies and courts to measure and improve performance management system; development of user-friendly search tools with regard to judicial practice; increasing case disposal numbers by introducing fast-track procedures for small claims, simplified procedure for misdemeanours; promotion of mediation and ADR.

In order to foster growth of satisfaction and trust of citizens into the justice system, the justice sector should take into account public expectations and should address them specifically and comprehensively.

Therefore, the client-oriented approach and participatory justice system could become key elements for judiciary's development in the course of the next justice sector policy cycle. Main policy directions in this regard could be the following (IRWG's ideas more extensively reflected in the table/Matrix III (see below)):

- **Development of participatory model of justice administration both by promoting citizen's participation in judicial process** (dispute resolution or criminal proceedings) as juries and lay-judges, and **development of alternative dispute resolution** culture.
- **User-friendly and efficient court performance and services** by using user satisfaction and other surveys to measure performance of judicial institutions, introducing Client Service Standards and/or other quality management systems, giving special focus on support to vulnerable groups (victim/witness).
- **Expanding citizen's role in developments and control over efficient performance and accountability of judiciary** by facilitating efficient reporting on judiciary's

performance, involving representatives of civil society in judiciary's governance bodies, etc.

1. People should be active participants in justice system:

- *Citizens effectively participate in judicial process (dispute resolution or criminal proceedings) as juries and lay-judges*
- *Alternative dispute resolution becomes accustomed way for people to settle disputes*

Although Civil and Criminal Procedural Codes provide for the institute of jurors, attempts to put it into coherent and regular practice have struggled with particular legislative and practical constraints: a lack of people willing to serve as a juror, which is impacting organization of court hearings and length of proceedings; not effective system of jury management; restricted possibilities to replace a juror who is refusing to show up, etc.

Therefore, particular legislative amendments should be introduced facilitating effective service of jurors. Citizens' right to participate in the administration of justice should be embodied in a constitutional duty to serve as juror. Further, some sort of liability for improper performance of this/her duty (for example, possibility to fine a person, who is refusing to show up as a juror without a reason) would make the duty effective. Improvement of the mechanism of jury setup and management is vital for effective implementation of this institute (one of the alternatives would be to grant this competence to territorial departments of the Ministry of Justice). Also, it is necessary to grant court with instruments, enabling to effectively manage the process of jury involvement: the power to replace a juror in case of his/her evasion, scheduling proceedings in consultation with the jury, imposing sanctions on jurors who disobey court schedule without a reason.

IRWG members were discussing a possibility to quash the jury institute in the civil process due to complexity of some disputes, where deep understanding of legal norms and principles is required, for example, claims for damages for failure to provide relevant medical treatment.

IRWG members agreed on the need to approbate and pilot an institute of lay judges for review of minor cases. This could give a positive impact on reduction of workload of courts as minor cases constitute a substantive part of workload. Also, it would add more credibility to dispute resolution, since disputes would be resolved by persons respected in his/her community (experience of countries having this institute shows that minor cases usually end before lay judges, they don't go through the whole court system machinery with all its added expenses, high level of stress, etc.).

Existing extra-judicial dispute resolution mechanisms (mediation, arbitration) are in principle possible based on the existing regulatory basis (which is more developed for arbitration and non-existent for mediation), though still not effectively and widely used.

Further development of mediation and other ADRs in all types of proceedings would have positive impact both on courts' workload (the workload of first instance courts would be directly affected, negotiated/friendly agreements would prevent from appeals, thus also reducing workload of appellate courts), on people's perception of courts as not the only legal way to solve dispute, as well as on promotion of legal culture and awareness.

IRWG suggests measures to promote out-of-court dispute resolution (awareness campaigns, publication of success stories, submission of relevant information on advantages of ADR to all litigants), combined with reviewing court fees to encourage litigants to use out-of-court dispute resolution means. Compulsory attempt of pre-litigation settlement in certain categories of cases (mandatory pre-requisite for taking legal action) could also been considered.

2. People should receive high quality services in courts:

- *User-satisfaction and general opinion surveys used as basis for all major decisions on court's performance improvements*
- *Efficient tools of standardised high-quality services for court clients and special relevant measures ensuring rights and needs of vulnerable groups are implemented in all courts*

Court management, court performance, development of service standards, communication strategy – implementation of all these initiatives are relevant from the point of view of court users, expectations of parties, opinion and demands of public. Therefore, effective instruments of measuring these expectations and opinions should be facilitated. A number of surveys on public opinion and court users satisfaction were conducted in the last few years. However, these surveys were not standardized and institutionalized, and they are not used consistently.

After discussions, IRWG had come to the conclusion that institutionalisation of surveys should start from identifying clear target groups of respondents (to get relevant answers on particular topics); the distinction between client survey and public opinion should be made (survey should be conducted separately among service users and separately among the general public); introduction of electronic survey mechanism for user surveys would facilitate comprehensive surveys (existing petitions system could be taken as an example or even used as technical platform for the survey).

User surveys are the main systemic sources of information on the quality of services. The concept of client service quality standardisation, which is widely applied in business, has been already successfully introduced in state institutions that provide public services to people. Courts in Ukraine also follow rules and principles of good service. However, here the main aspect which allows to achieve comprehensive and sustainable results is the systematic

standardised approach to service quality. Therefore, client service quality standard should be developed, implemented and followed by supporting measures: guidelines, trainings, monitoring, "secret client" actions, etc. This would boost the quality of first line service of courts, which impacts the first and most important experience of people in court.

Procedural justice concept, which is widely recognized in Europe and the US as the key principle of organisation of court services, should build a basis for another set of measures and tools, enabling people, who have got into contact with court activities as court clients (parties of a case, witnesses, court experts, lawyers, etc.), get a feeling of being treated with care and respect.

IRWG would like to emphasise the importance of support to vulnerable groups: victims and witnesses in domestic violence, sexual abuse and other criminal cases. Change in judiciary's mindset towards the concept of "socially responsible" court, paying much attention to specific needs of different groups of participants of court proceedings would improve access to justice and facilitate people's perception of courts as institutions to providing services of dispute resolution and safeguarding human rights. Therefore, special measures of informational and psychological support for participants in judicial proceedings should be implemented. This includes: special psychological trainings for judges and judicial staff (management of conflicts, trauma psychology, stress resistance); user-friendly information about court proceedings, rights and duties of witnesses (leaflets, special apps, delivery of relevant information together with summons, videos, etc.), piloting of volunteer service in courts (specially trained to provide informational support to victims of crime and witnesses).

E-justice tools would be another extremely important step towards facilitating people's access to justice and their interaction with courts. IRWG would strongly suggest putting much effort in promoting the relevant e-tools in justice sector, for example:

- User-friendly keyword-based search tools on the courts' websites.

- Integration of the websites of all courts in the portal "Judiciary of Ukraine" and standardised display of information on the webpages of each court.

- Possibility to submit/receive documents electronically (including access to case-file materials, etc.).

- Full access of judges to all electronic state registers with the help of e-signature in order to exempt parties from collecting and submitting relevant data and documents from registers.

3. People should participate in judiciary's governance and be aware of judiciary's performance:

- *Representation of the civil society in judiciary governance is effective and efficient*

- *Accountability of the judiciary before society is facilitated by comprehensive system of reporting about court's performance, effective communication and awareness raising*

Ukraine has made efforts to involve civil society into important processes in the judiciary. One of these examples is the ongoing re-assessment of sitting judges and recent selection of the Supreme Court and the High Anti-Corruption Court judges. In these processes, Civil society was represented by the Public Integrity Council, which is composed of representatives of human-rights organisations, legal scholars, attorneys, journalists, and is empowered to assist the High Qualification Commission in determining compliance of the candidate for a judicial position with the professional ethics and integrity criteria. It is undoubtedly a positive step, though it has been criticized for being not effective, because of the lack of capacities, unclear status/role and difficult coordination of the Public Integrity Council with the High Qualification Commission.

At the same time, other justice sector institutions are being criticised for insufficient civil society's involvement. This primarily concerns the High Council of Justice, which according to the law is composed of twenty-one members, of whom ten are elected by the Congress of Judges of Ukraine from among judges or retired judges, others are elected (appointed) by the President of Ukraine, Verkhovna Rada, Congress of Advocates, Conference of Prosecutors, Congress of representatives of legal higher education and scientific institutions. This system has been criticized because of the nature and procedure of appointments: risk of politization, no society's representatives, only some legal professions are involved, etc.

On several occasions international experts have suggested, based on practices of European countries, to consider real and genuine involvement of civil society representatives in the composition of judiciary governance bodies.

IRWG supports the idea of amendments to the legislation on the composition of judiciary governance bodies and procedure of appointment/election of its members with the aim of ensuring wide representation of public in these institutions – both in terms of diversification of the profile of its members (different professions, social backgrounds), and the procedure of their election/appointment. For effective representation, the ratio of these representatives should be close to 50 percent At the same time, European standards require that the majority of members of these institutions should be judges.

Participation of civil society in the development of the court system and strengthening judicial accountability before the public, must be supported by a particular system of regular performance monitoring and reporting. IRWG suggests expanding the scope of the annual report on the state of judicial independence, prepare by the High Council of Justice, onto the state of affairs and challenges in respect of courts performance, including statistics on workload, backlogs, length of proceedings, disciplinary proceedings against judges, major projects implemented, etc. This should be done in a comprehensive manner: with public consultations and discussions; with same examples and overview of the most important high-

profile cases, analysis of reasons behind the cases pending beyond procedural timeframes, etc.

Some steps have been already taken for improving performance measurement: there is some statistics – which however is not public – on workload, backlog, length of proceedings. Though, comprehensive and standardized system of criteria and indicators needs to be developed with involvement of the judiciary and civil society representatives, who could express public expectation towards judiciary's performance: what is important from the perspective of people in general and from the perspective of court users. In this regard, CEPEJ tools would be of great assistance.

III. Working group assessment and suggestions with regard to People-Driven Justice

IRWG on People-Driven Justice assessed the current strategic objectives in the area of judiciary, particularly those related to strengthening the role of civil society in justice administration and judicial governance under the JSRSAP 2015-2020. Following the assessment, directions for judiciary's development in the period of 2020-2025 were suggested focusing on the people-oriented approach, combined this potential Challenges and Risks.

People-driven Justice: how to increase public trust in judiciary

Annex

Detected problems	Suggested solutions	Possible risks and challenges	Comments
ADR and Jury			
1.Existing extra-judicial dispute resolution mechanisms are not widely used.	Optimizing court fees to encourage litigants to use out-of-court dispute resolution. Advocacy of out-of-court dispute resolution. Compulsory attempt of pre-litigation settlement in certain categories of cases (mandatory pre-requisite for taking legal action). Introducing mediation (possible solution may be to encourage retired judges to work as mediators). Expand the competence of arbitration courts to certain categories of cases. In this case, it would also be necessary to expand the grounds for appeals against arbitration courts decisions, in particular at the request of third parties whose rights and interests relate to the dispute in question.	Restrictions on the right of access to court.	
2.No law on administrative procedures.	The discretion of public authorities to resolve disputes at the pre-trial stage needs to be expanded.		A pre-litigation stage with the participation of state authorities should not be mandatory but it could be used

			as an alternative. Today there is a problem which consists in different approaches to such procedures in various state bodies.
3.Gaps in legal regulation of the jury institute.	Hold jurors liable for evasion or improper performance of their duties. Introduce disciplinary procedures for handling complaints about a juror's actions. Citizens' constitutional duty to participate in the administration of justice is embodied in the concept of Jury. Quash the institute of jury in the civil process. Improve the mechanism of the jury composition setup. This process might be managed by the territorial department of the Ministry of Justice. Provide for court's power to replace a juror in the event of his/her evasion/misconduct.		
4.Absence of lay judges institute.	Introduce the system of lay judges to review minor cases. Base the system of lay judges on local communities and provide for financing from local budgets. Pilot the institute of lay judges.		Public direct involvement in the administration of justice through the lay judges system will increase the trust in courts.

Surveys and other performance management tools, including e-tools			
5. Lack of the systemic approach to the use of survey tools.	Extend the HCJ annual report on the state of ensuring the independence of the judiciary onto other issues that Ukrainian judiciary is facing. Base activities of judicial governance bodies on the results of satisfaction surveys. One of judicial governance bodies, most likely the High Council of Justice, should be tasked with regularly surveying court performance and user satisfaction. Introduce e-tools for user surveys. A possible option might be to adapt the existing Petitions system for conduct of surveys.	E-surveys might be viewed as excluding anonymity which, in its turn, may distort the results.	
6. Absence of user-friendly keyword-based search tools on the courts' websites.	Integration of all courts' websites under the umbrella of "Judiciary of Ukraine" portal, standardized display of information each website. Improve the Unified State Register of Judicial Decisions, namely its search algorithm and user-friendliness. Create (separately or as part of Unified State Register of Judicial Decisions) a database of persons recognized by courts as incapacitated or partially incapacitated.		Algorithm of notary actions should be improved – instead of checking persons' passports,

	Ensure full access of judges to all electronic state registers. Provide judges or court staff with the possibility to make entries in some relevant state registers, in cases where timing is important (for example, interim relief measures. Complete, as a matter of priority and with proper consideration of proposals submitted by courts, the development and roll-out of UJITS. Update UJITS with sample documents to be issued by courts (decisions, judgments, other procedural documents with standardised structure).		notaries better refer to the relevant registers/databases. The proposal is aimed at reducing the number of fraud-related cases on the real estate market.
Management/Judicial governance/Reporting			
7.Court performance – no official concept or criteria.	The concept and criteria of court performance need to be developed, discussed with all stakeholders and implemented. Court management should be based on performance management and performance-based budgeting.		
8.Amended judicial remuneration system	A special higher coefficient to be introduced and applied to the judicial remuneration in non-prestigious areas/regions of Ukraine.		The lack of judges/staff in courts of certain regions can be

	To harmonise remuneration of judges, regardless of the results of qualification assessment. Develop proposals on the strategy for the development and improvement of judicial remuneration.		addressed by raising judicial remuneration.
9.Improper case management system	Improve the automated case management system, taking into account complexity of cases and, to the extent possible, performance of a particular judge. Automated case management system should ensure immediate registration of cases by a specially designated person.	There is a problem with quantitative indicators of cases review/disposal in courts.	
Procedural issues			
10.On-going disputes on jurisdiction.	Specify in procedural legislation substance-based and subject-based jurisdiction of administrative courts. Provide for the right of the Grand Chamber of the Supreme Court to refer a case back to a cassation court if the issue of jurisdiction in such a category of cases has already been decided on, while referring to the relevant judgment/decision of the GC. Provide first instance courts with the possibility, after having opened the proceedings, to submit a request to the SC Grand Chamber to determine the		

	jurisdiction in a case (while the request is being considered, the timelines of case examination are extended).		
11. No possibility of courts to request the Constitutional Court of Ukraine to decide on constitutionality of applicable laws	Provide first instance courts (at their own initiative or at a request of a party) with a possibility to file a request before the SC Grand Chamber to apply to the Constitutional Court of Ukraine, in order to decide on the Constitutionality of applicable laws. In this case, the SC Grant Chamber should have the respective powers to address the Constitutional Court.		
12.Legislative and practical issues with regard to minor cases.	Extent the list of minor cases. Afford more flexibility of courts to classify cases as minor. Grant courts with the possibility to switch to written proceeding with respect to minor cases. Provide for the possibility of appeal in minor cases where the appeal is justified by the lack of uniformity of judicial practice.	Implementing suggested proposals would limit the possibility of cassation appeal.	It might be worth looking into the rationale for keeping the cost of claim as a criterion of minor cases, without additional aspects of the case being considered.
13.Outdated regulation of summary proceedings.	Extend the scope/categories of cases to be examined in summary proceedings.		
14. No freedom of courts to decide on the necessity of a preliminary hearing.	Grant courts with flexibility in holding preliminary hearing, depending on specifics of a case.		Not in all types pf proceedings/cases preparatory hearing is beneficial.

15.Lack of unified practice on legal aid expenses.	Develop a unified approach to determining the cost of legal aid, via either legislative amendments or development of judicial practice.		The lack of uniform practice in determination of legal aid expenses corrupts the party's right to actual recovery of expenses.
16.Bar monopoly in representation of state authorities.	Provide legal advisers with the right to represent state authorities. To extend transitional period for bar's monopoly for representation of the state, until the modalities of its implementation are developed, discussed and ready to be put in place. Amend the Constitution of Ukraine regarding the advocate monopoly.		
17.Fee for filing a disciplinary complaint with regard to an advocate before bar's disciplinary commission.	Provide legislative prohibition to charge fee for filing disciplinary complaints against legal professions.		Mandatory fee for disciplinary action in respect of an advocate hampers access to the disciplinary proceedings.
18. Other issues	Amend the procedural codes and foresee the possibility of judges to explain to the parties - before the hearing starts – possible outcomes of the case based on the evidence presented, and suggest mediation, where relevant. The parties would not be able to recuse a judge based on such an explanation.		

	Boost the power of the notary's enforcement inscription, combined with strengthening notaries' liability for performing their duties. Improve the summoning and notification procedures for the period until UJITS is fully rolled-out. Grant judges more flexibility with regard to written proceedings, including at the stage when the parties have already presented their case. Improve the process of delivery of judgments/ decisions by courts of all instances, review the possibility for a cassation court to deliver judgments/decisions outside deliberation room. To harmonise the court system with the system of administrative and law-enforcement authorities. Determine an exclusive list of grounds for secondment of judges to other courts and, where necessary, extend the duration of such secondment to 1 year.		

2.Improvement of Enforcement Proceedings. Proposals of the Inter-Regional Working Group of Regional Justice Reform Councils

I. Introduction

The Regional Justice Reform Councils (RJRCs) were established in 2015 as part of implementation of the Predecessor Project, designed to improve exchange of information between central and local levels, to include the regions into policy development, and to measure the policies impact and their region-specific implementation challenges.

On 14-15 August 2019, a meeting of the RJRCs **Interregional Working Group (IRWG) on Enforcement** took place, aimed at developing **sector policy proposal with regard to Enforcement**.

IRWG on Enforcement consisted of thematic experts from all RJRCs and included judges, private enforcement officers, advocates and academia. During the meeting, international and national Project experts assisted and provided their advice to IRWG.

Within a two day workshop, participants goal was to **evaluate** the strategic objectives of enforcement reform and the measures implemented, in accordance with the Justice Sector Reform Strategy (JSRS) 2015-2020, as well as to **identify the key areas** of the enforcement sector that **need improvement**.

IRWG on Enforcement also prepared respective policy **proposals** for the Justice Sector Reform Strategy follow-up for the period 2020-2025, with a particular focus on such areas as *Reorganization of the Enforcement System and Improving the Efficiency of Enforcement Proceedings* (Marked in JSRS Action Plan as *7.1 Improvement of the Enforcement Management System*).

II. Key Policy Proposals

Within the framework of Enforcement IRWG meeting, representatives of RJRCs sat together with international and national experts and discussed the main policy reform directions of Enforcement area in detail. In the course of this discussion, the participants gathered their input in the table/Matrix (see below III.). Main four policy proposals advanced were the following:

1) Private Enforcement Officers Shall Be Independent Professionals
2) Enforcement Reform Shall Enable Businesses and Economic Growth
3) Effective Oversight and Scrutiny Over Private Enforcement Officers Shall Be Established
4) Business Processes in Enforcement Proceedings Shall Be Improved

1. Private Enforcement Officers shall be Independent Professionals:

- *Unification of mandates for state enforcement officers (SEOs) and private enforcement officers (PEOs): PEOs should be allowed to enforce for and against the State authorities and enterprises*
- *Full authority for Assistant PEOs under the supervision and upon liability of the PEO*

Measures at the law-making level should be taken to **unify the mandates** of SEO and independent PEOs. The unification of mandates should go mainly in two directions:

i.) the right to execute different categories of enforcement documents and
ii.) the right to apply certain sanctions to the debtors.

Unification and harmonisation of SEOs and PEOs mandates must reach at least 90 percent with regard to both categories mentioned above.
According to the current regulation, only a SEO is entitled to apply special bans (restrictions) in alimony recovery cases: for example, the right to leave the country, temporarily suspend the validity of a driving license, etc. The possibility of applying these bans should also be granted to PEOs in order to enable them to deliver services efficiently.
Also, the current restrictions on the amount of sums to be recovered by private bailiffs seem not to be justified and are hampering the development of the profession of PEO. They should therefore also be reviewed and finally canceled.

Strengthen the institute of Assistants PEOs, giving broader powers to carry out procedural actions, to establish qualification requirements and disciplinary responsibility at the law-making level. According to the current regulation, an Assistant PEOs can't sign documents related to the essential procedural steps for debt recovery. The regulation also does not set requirements for the qualification or the disciplinary or other types of liability for assistants. Thus, the assistant is essentially equal to an office administrator. This hinders the development of specialised Assistant PEOs and is an obstacle to a more efficient work of PEOs. In order to

strengthen PEOs activities, assistants must be given the right to perform some procedural steps. Undoubtedly, certain processes and actions should be differentiated/distributed between the PEOs and their assistants, depending on the degree of action risks (for example, PEOs should be directly responsible for actions related to financial activities). It is advisable to provide certain exceptions with regard to assistants functions, for example, to foresee that an assistant has the right to perform the proceedings on behalf of PEOs and based on their written authority, with the exception of opening or suspension of enforcement proceedings, return of an enforcement order, auctioning of assets, distribution of the recovered funds to the creditors, calculation of the execution costs.

However, assistants expanded mandate should be coupled with the proper qualification requirements and disciplinary liability. These measures would lead to better enforcement service and, consequently, to increased trust of citizens and business.

2. Enforcement Reform Enabling Businesses and Economic Growth:

- *Abolishment of Enforcement Moratoriums favoring State-owned Enterprises*

There is a dozen of *enforcement moratoriums* that exempt certain debtors and render enforcement of final court decisions impossible. Enforcement moratoriums were statutorily established in favor of the state-owned enterprises. Apart from directly prohibiting enforcement, moratoriums also contribute to the creation of unhealthy and non-competitive suppliers' clusters around such companies. Thus, one of the main goals of the reform is to remove the enforcement moratorium established by the *Law No. 2864-III of 2001,* exempting state-owned companies' assets from enforcement, and to introduce a clear rule on *proportionality of enforcement*. All enforcement actions that constitute a disproportionate infringement of debtor's business continuity should be *subject to judicial review*. State-owned enterprises would be able to diversify their suppliers' portfolios, which will result in cost savings and better quality of purchased products and services.

3. Effective Oversight and Scrutiny of Private Enforcement Officers

- *Moving from the MOJ to the Self-Governance: Disciplinary Commission administrated by the Association of PEOs.*
- *Improvement of self-governance of PEOs, APEO.*

Currently, PEOs **Disciplinary Committee** (DC) is a body of the Ministry of Justice (MoJ), composed of representatives of the Association of Private Enforcement Officers (APEO) and of the MoJ. The members of the DC are not motivated and committed to their work, which can be seen as a direct consequence of the currently used appointment procedure, which is highly arbitrary (no quality competition/election process), instead of being based on clearly set criteria. The list of disciplinary sanctions consists only of the two extremes - reprimand (too soft) and termination of license (extremely harsh). It limits the DC's flexibility in choosing the most appropriate sanction in view of the violation at stake and hinders any kind of

proportionality. The decisions of the DC are feebly motivated, are not publicly accessible and enter into force before being subject to judicial review. As a result, DC's decisions proved to be of very low quality: in 2017-2019 the DC rendered in total 7 decisions, 5 of which were repealed by courts, the other 2 are still pending in review. Immediate entry into force of the disciplinary decision (consequently quashed by the court) disproportionately infringes enforcement parties' and the PEO's rights.

Disciplinary decisions should be fully motivated and publicized, and should be enforceable only after being reviewed by court.
Better administration of the DC by the APEO, as well as enhanced transparency and accountability of the DC, will improve the quality of its decisions. The 3-lateral composition of the DC – with the judiciary being the 3rd side – will back up its impartiality and high professional standing. And entry into force by DC decisions after judicial review will safeguard PEO's and enforcement parties' rights and legitimate interests.

The inspection of PEOs' activities by the MOJ needs improvement and monitoring. Scheduled inspections should be based on clear and transparent methodology, standards and checklist, and all these documents have to be public and available in advance. Inspections thus should follow risk indicators prepared in advance. In this way, abuse of inspection can be excluded.

It is necessary to clarify the **grounds for disciplinary liability,** extend and diversify disciplinary sanctions and to transfer some powers of control over PEOs' activities to self-government bodies. Currently the law does not explicitly regulate the competence of the controlling authorities, including courts, MoJ, DC and others. Further to that, the legislative framework doesn't clearly differentiate administrative control over activities and PEOs management by way of organization of their daily work.
The control of PEOs' activities shall be understood as verification and approval of documents issued by PEOs, based on criteria provided for bylaw, and examination of complaints regarding PEOs actions, performed by either administrative authorities or courts.

APEO's organizational structure and rules of procedure must be revised:
Regional councils established by law do not exist in practice.
Direct, secret and electronic voting, if implemented, would lead to faster and more transparent decision taking within the self-governance body.
The creation of a centralized management information system for the administration of different levels of decision-making processes and other data between PEOs and within the governing bodies of the APEO should be ensured. Ideally, such a system should set in place different decision-making procedures, including top management (strategic), operational (tactical) and administrative. This solution will help the organization to be more transparent, will reduce overall costs and the number of errors, will ensure high - quality services, accelerated communication and data sharing between board members and PEOs, improved performance and productivity, and in general will make management more efficient and effective. Moreover, it will give the APEO and its bodies the ability to adjust, control and monitor all business processes.

4. Improved Business Processes in Judgement Enforcement

- *Introduction of advanced payments for enforcement costs*
- *Improvement of enforcement policy development - monitoring mechanism for the legislation amendments*
- *Digitalization of enforcement procedures*

Under current law, POEs usually commence the recovery process without advance payments. Introducing **advance payments** for the start of enforcement procedure (actions), with the possibility of exemption for socially vulnerable and insolvent categories of creditors, will allow to establish a reasonable balance to guaranty that the fuds necessary for enforcement actions are available.

To date, there are no effective **monitoring mechanisms** in place for the implementation of the current legislation, and, as a consequence, there are no ways to speedily resolve relevant issues. It is expected that implementation of regulations would be based on a thorough analysis, transparent and full consultation process, and will be followed by the policy monitoring mechanism.

Interoperability and interconnection between relevant state registers must be ensured as a priority. Liberalization of the market for judicial officers will provide faster access to needed data. In this respect, efficient access to state registers managed by NAIS is urgent. This measure should be combined by a mechanism of electronic data exchange with other institutions (courts, police, tax inspections etc.).

Introduction of modern solutions for bank accounts blocking and other enforcement measures is another long-awaited step forward. Thus, currently there is no automated arrest of debtors accounts and no proportional allocation of funds in cases when more than one PEO executes recovery from the same debtor. Although Ukrainian legislation provides for such allocation of funds, in practice these rules are not implemented. In the absence of a fully centralized and automated allocation system, these provisions of the law remain on paper. It is believed that in mid-September 2019 some progress will be made and automated money seizure will be introduce in alimony (child support) cases, but there is a lot more to do before other creditors can feel the chance and the possibility of paying off their debts.

III. Working group assessment and suggestions with regard to Enforcement Reform

In the course of two days of its meeting, the IRWG on Enforcement assessed the current strategic objectives in the area of enforcement under the JRSAP 2015-2020. Following the assessment, Enforcement Reform objectives for 2020-2025 were developed, together with potential Challenges and Risks.

The Matrix below shows in details the work of the IRWG on Enforcement and is structured as follows:
Column 1: Strategic Objectives 2015-2020
Column 2: Current Status
Column 3: List of issues
Column 4: Reform Objectives 2020-2025
Column 5: Challenges, Risks
Column 6: Outputs/Activities 2020-2025

Strategic Objectives 2015-2020	Current Status	List of Issues	Reform Objectives 2020-2025	Challenges, Risks	Outputs/Activities 2020-2025
1 Improvement of the Private Enforcement Officers Management System					
7.1.1. PEOs Governance System					
'Mixed' enforcement system in place **Private** profession of enforcement officers created and certain role left for State authorities in enforcement against the state and in some administrative and socially-sensitive civil cases (alimony, childcare, eviction etc.)	Fully implemented Statistical figures on the amounts of debt actually recovered show that PEOs are more efficient, SEOs improved their performance as well. Small claims go to the State Enforcement Service (SES)	Imperfect work of SEOs due to a number of reasons: the lack of motivation, inadequate financing of work equipment, lack of qualification and etc. Unbalanced number of enforcement cases between PEOs and SEOs	Purely private judgement enforcement system	Abuse of powers by the State. A balance between debtors and creditors rights needs to be established	A more efficient debt collection process
Conditions in place to allow for a gradual move towards private model, with a view to **complete privatization** of enforcement services, based on experience in reform of notary services	Not implemented. No conditions (different mandates of SEOs and PEOs)	No law on how to switch to a purely private system	Levelling mandates of SEOs and PEOs until 2021, then decision on SES closure must be made. Unification of mandates: i. the right to execute all the categories of enforcement documents and ii. the right	No-compliance of PEOs; Merger and unlimited monopoly; Immaturity of the private	Preparing and submitting a draft amendment to the law for consideration

			to apply certain sanctions to the debtors.	enforcement system; Continuity of enforcement of "old" enforcement cases, setting procedure for transferring these cases to the PEOs; Candidates may not meet educational or other criteria, which may lead to a shortage of PEOs in some country areas	
Practical and effective conditions in place for **equal competition** between private and state-run limbs of enforcement system	No	No equal means of enforcement, PEOs are restricted by law from enforcing certain categories of decisions; have less authority than SEOs.	Equalisation of procedural powers; Simplification of statistical reporting to the enforcement department; Enhanced motivation of SEOs	Extended PEOs mandate requires monitoring of the recovery effectiveness and additional periodical analyses of the statistics	

Admission and licensing requirements for PEOs Partial **harmonization** of licensing and oversight systems of enforcement officers with other private professions in justice sector, including advocates and notaries	Fully implemented Partly implemented 3rd part of the Admission Exam is not automated	Not transparent process; Requirements are set, but the criteria are not clear at the 3rd part of the Admission Exam , verification must be automated but instead is being performed by the Commission			
Institutional **enforcement governance system** (incl. regional) allowing for requisite decree of self-governance by PEOs APEO**APEO** set up as main governance body of PEOs; regional councils set up taking into account local socio-economic realities Streamlined **powers of APEOAPEO and MOJ** with limited, clear and foreseeable role of the MOJ in regulation, licensing and oversight of the profession	Not fully (not enough PEOs in regions; voting by delegates) Fully – APEO is the only professional self-government organisation MoJ work on enforcement is led by SES which is not the optimal	Efficiency of Regional Councils remains problematic; Only 11 out 26 Regional Councils are formed; No fair representation (e.g. Kiev) of regions in the Council; No effectively functioning secretariat;	Re-start of the APEO: introduce direct voting	Insufficient financial and human resources at APEO	Preparing and submitting a draft amendment to the law for consideration

Active **cooperation of MOJ and APEO** in developing policy and legislative initiatives with regard to enforcement system, including the percentage of PEOs to be admitted into profession	model of co-operation between MoJ and APEO Legislative procedure requires more involvement of/discussion with APEO	Dependence of PEOs on the MoJ; Absence of a special unit at the MOJ The cooperation is carried out through international technical assistance projects			
7.1.2. APEO Organizational Building					
Consistent response of APEOAPEO to any interference with independence of enforcement officers and violation of their rights PEOs **participation in decision-making processes** of other justice sector institutions when their interests are affected APEOAPEO and PEOs provide regular and constructive **inputs for major policy and regulatory initiatives** related to justice sector reform	Continuous response and conclusions are not always guaranteed; APEO is constantly proposing further steps towards reform Yes, permanently Sharing of information is implemented is currently being facilitated through technical cooperation projects	There is no responsible structural unit in the structure of the APEO			

Regular exchanges between APEOAPEO/MOJ and European and international counterparts					
Increased **independence and efficiency of governance** (including disciplinary) bodies of APEO **Internal communication** channels (including electronic workflow system and web-portal) between APEOAPEO, PEOs and other State/non-State actors in the justice sector formalized and used regularly **User satisfaction surveys** used regularly by APEOAPEO to measure and improve quality of member services Clear procedures for **public access and participation** at certain APEOAPEO meetings, including timely prior announcement of meeting agendas, publication of APEO decisions with regard to enforcement governance system, etc. Internal and external **Monitoring and Evaluation (M&E)** mechanisms and review reports attest satisfactory implementation of strategic planning within APEO	Disciplinary Commission is under supervision of MOJ No surveys by APEO No such M&E mechanisms provided by the law	Lack of communication platform, information is published not in a timely manner	Disciplinary Commission functioning under APEO; procedure of APEO formation and general policy guidelines are under the remit of MoJ		

Improved use of **APEO resources and funds** More effective use and distribution of PEOs **membership fees**, to promote independent and efficient governance Financial responsibility of PEOs before APEO by way of due payment of membership fees Adequate **financial resources for APEO** to effectively perform its role in promoting independence, accountability and competence of PEOs	Not achieved as to human resources; No data on incomes spending; Not enough budget incomes for APEO because of the limited number of acting PEOs				
7.1.3. Development of ethics and disciplinary oversight system					
Ethics/disciplinary framework with sound substantive requirements and procedural rules, public access to the relevant information Diversification of the **list of disciplinary sanctions**, adding such sanctions as fines, remedial and educational measures, ensuring consistent and fair application of sanctions Ensuring the right of **access to disciplinary case-file** by a PEO concerned, fine-tuning the scope and extent of obligation to provide information to third parties and to public about pending disciplinary cases;	PEOs Code of Ethics is formally adopted but not viable No tools for online complaints are available	No clear interrelation between grounds for disciplinary liability and the sanctions; No public access to disciplinary decisions; Disciplinary decision is enforceable before court review;	Conciliation procedure in disciplinary cases aimed at pre-trial dispute resolution, education/attestation		

Ensuring clear, foreseeable and applicable regulatory basis for **online complaints**, including disclosure of personal details of complainants, fees to be paid		No clear criteria for division of jurisdiction between courts and the Disciplinary Commission			
Clear, foreseeable, and applicable differentiation between **ethical rules** (positive obligations, principles of behavior) and **disciplinary rules** (negative prohibitions, grounds for reprimand) Clear definition and application of the **proportionality** principle**,** as well as mitigating and aggravating factors in disciplinary cases **Consistent application** in practice of ethics/disciplinary rules by APEO	No such differentiation lack of proportionality between grounds for disciplinary liability and sanctions	No criteria for disciplinary liability	Regulation of PEO's procedural activity, fine-tuning control bodies competence and disciplinary liability; Proportionate imposition of disciplinary sanctions in view of their severity and establishing the order in which they are to be imposed, also setting clear grounds for disciplinary liability		•
7.2 Improving training for PEOs					
APEO has a capacity and recourses for PEOs training Initial training for PEOs is optional, establishing conditions for gradual transfer to obligatory initial training system	Qualification exam for PEOs each 5 years	Procedure is inappropriate as it might allow MOJ and other controlling authorities to influence PEOs independence	Review and cancel the qualification exam procedure every 5 years (except for some specific cases linked to disciplinary liability of POEs);	Political changes	

Failure to undergo the initial obligatory training is subject to sanctioning APEO Training Centre conducts regular trainings for PEOs and their staff On-line and remote education is available			Create compulsory advanced training and monitoring procedure; Creating tools for measuring and monitoring training results Training Center under APEO	Lack of funding, including from technical assistance projects	
Annual curriculums for career enhancement are in place, teaching methodology is of high quality and in line with best European practices Issues-based approach to education/trainins Initial training and career advancement curriculums include international standards on human rights protection Initial training and career advancement curriculums for PEOs and other legal professions (judges, advocates, prosecutors, notaries etc.) are coordinated and harmonised					
Roaster of trainers prepared and includes experienced international and national professionals, trainers are involved on a regular basis					

7.3. Improved Conditions for Practical and Effective Exercise of Profession of the PEO					
Malpractice **insurance and indemnity fund** is in place to cover civil liability of PEOs	Neither indemnity fund, not effective malpractice insurance exist; Insurance depends on the amount of the cases which PEOs are enforcing and is a fixed amount	Liability insurance doesn't cover real risks but only mistakes; Insurance premiums are increasing; Insured amount is high and equals the amount for collection	To set fixed and maximum insured amount for a year, not for one insured event	For the coming years, individual price of the insurance may rise because of unsuccessful claims and losses of insurance companies	Improvement of the insured event description: extend in the insurance agreement
Favourable **taxation rules** for PEOs (application of individual entrepreneurs status under uniform tax system)	High income tax in the amount of 41.5%; a general taxation system is applicable	Remove the rule from the law that PEOs have no right to engage in other activities	Allow PEOs to gain the status of entrepreneurs or self-employed persons, thus acting at their own risk, for profit.	Accounting becomes more complicated	Allow for PEOs companies: same legal form as for attorneys
Reviewed the system of the **SEOs remuneration** and introduction of the performance-based principle	No data				

Improved legislation and practice on enforcement procedure respect **personal data protection** principles					
Combination of effective **incentives for** debtors for **voluntary enforcement,** combined with sanctions for unwillingness to enforce	Only PEOs fees are provided for by the legislation	Debtor pays the same amounts of PEOs fees, regardless of whether the enforcement was voluntary	Differentiate the amounts of enforcement costs depending on the timing of enforcement and on the amount of recovery		
Automation and simplification of enforcement proceedings	The legislation on enforcement is very fragmented, proceedings are very complex and often paper-based	Procedural legislation and legislation on enforcement need to be improved	Improve legislation on enforcement, automate the proceedings. Obstacles for efficient enforcement are removed from procedural legislation		
Scope and extent of **judicial control** over enforcement is limited and in substance does not prevent enforcement	Procedural legislation allows for many possibilities to halt or delay the enforcement				
PEOs in practice have the necessary tools with regard to **debtors assets** (search, arrest, sale etc.)	Partly implemented	No e-access to data on: motor vehicles, bank	To ensure data exchange through electronic channels, to minimize	Not implemented on time	Authorities and private sector (banks) may not be

		accounts of individuals and to other sources	POEs requests by ordinary mail		able to agree on the relevant amounts to be invested
Practical and effective use of **APEO** Information System to advance independence, competence and accountability of APEO and PEOs **Interoperability** of APEO and PEOs Information Systems with those of other justice sector actors	Not implemented	The concept of IT system vision is under preparation	Creation of centralized management information system for the administration of different level decision making processes		

3.Improvement of Bankruptcy Proceedings. Proposals of the Inter-Regional Working Group of Regional Justice Reform Councils

IV. Introduction

The Regional Justice Reform Councils (RJRCs) were established in 2015 as part of implementation of the Predecessor Project, designed to improve exchange of information between central and local levels, to include the regions into policy development, and to measure the policies impact and their region-specific implementation challenges.

On 5-6 August 2019, a meeting of the RJRCs Interregional Working Group (IRWG) on Bankruptcy took place, aimed at developing sector policy proposals on Improvement of current and draft legislation and of national practices with regard to bankruptcy.

The IRWG in question consisted of thematic experts from all RJRCs regions and included bankruptcy trustees, advocates and academia. During the meeting, international and national Project experts assisted and provided their advice to IRWG.

Within a two day workshop, participants goal was to evaluate the strategic objectives of Bankruptcy system reform and the measures implemented, in accordance with the Justice Sector Reform Strategy (JSRS) 2015-2020, as well as to suggest improvements of the newly-adopted Bankruptcy Code. On October 21st, 2019, the new Insolvency Law will come into force in Ukraine (new Bankruptcy Code of Ukraine – nBCU).[1] The nBCU replaces all other existing insolvency laws in the country and will therefore bring considerable changes. There are no long-term traditions of regulation of insolvency relations in Ukraine. Bankruptcy legislation began its formation only after Ukraine became independent in 1991, as part of evolution of the new legal system. The laws have been changed four times since then fundamentally.

The following text deals exclusively with the nBCU and no longer refers to the law applicable up to this point in time.

4. Overview of former laws

The first Ukrainian insolvency law – the Bankruptcy Law – was adopted on May 14th, 1992 (Bankruptcy Law$_{1992}$).

[1] Ukrainian Code on Bankruptcy Procedures (Кодекс України з процедур банкрутства, https://zakon.rada.gov.ua/laws/show/2597-viii) of October 18th, 2018, signed April 21st, 2019.

The Bankruptcy Law$_{1992}$ set forth the procedure and conditions for recognition of bankruptcy of only one category of persons – legal entities, in order to satisfy creditors' claims. The Law provided for two court procedures – rehabilitation and liquidation.

The very first court practice of the Bankruptcy Law$_{1992}$ application has highlighted significant shortcomings and gaps in regulation of insolvency relations, severe imperfection of many legal definitions and ineffectiveness of court procedures that the Law suggested. This did not allow to take full advantage of bankruptcy procedure at the time.

After the reform of the bankruptcy legislation in 1999, the new Bankruptcy Law$_{1999}$ with a new title – the Law of Ukraine "On Restoring the Debtor's Solvency or Declaring it Bankrupt" was adopted.

The Bankruptcy Law$_{1999}$ extended its application to entrepreneurs and some non-business institutions. The Bankruptcy Law$_{1999}$ clearly developed the functions and powers of important parties involved in the bankruptcy proceedings – bankruptcy trustee. Comparing with the old law, the new one contained already sufficient procedural norms necessary to deal with the problems which the judges face while hearing this category of cases in commercial courts.

In 2011, another major reform of the Bankruptcy Law (called Bankruptcy Law$_{2011}$) took place. As a result of full revision of the legislation, the Law of Ukraine "On Restoring the Debtor's Solvency or Declaring it Bankrupt" in a new wording was adopted.

The main changes to the law adopted by the Verkhovna Rada of Ukraine on December 22nd, 2011, were the following:

1) the Bankruptcy Law$_{2011}$ changed a number of definitions and introduced some new terms, in particular, “secured creditors”;
2) the debtor's rehabilitation procedure – before the court bankruptcy proceedings are filed – was introduced;
3) the bankruptcy proceedings – depending on the category of the debtors, their type of activity and the availability of their property – were divided into general, special and simplified;
4) the Bankruptcy Law$_{2011}$ set forth a list of judgements that may be challenged in appellation and cassation;
5) the new rule has been introduced, according to which all property disputes where the debtor’s assets and subject matter of a judge administering the bankruptcy case;
6) the procedure of disposal of debtor’s property was reduced;
7) the rules on application of bankruptcy procedures related to foreign proceedings were introduced and became a new section of the Bankruptcy Law$_{2011}$.

5. Way to the new Ukrainian Bankruptcy Code (nBCU)

During several years that preceded the latest Bankruptcy Law reform, the expert community discussed legislative proposals, which then were reflected in the Draft Law "On Amendments to Some Laws of Ukraine (on Improving the Effectiveness of Bankruptcy Procedures)" registered with the Verkhovna Rada at the end of 2017 under No. 2132. This law draft has been reviewed at the request of international organizations, including the World Bank and the International Monetary Fund and received No. 3132-d (revised).

Throughout 2017, several draft laws on improvement of the Bankruptcy Law were prepared and registered at the Parliament (at the end of 2017, six different drafts contained proposals to amend the current Bankruptcy Law).

In July 2015, the draft law on physical persons' insolvency was unsuccessfully registered with the Verkhovna Rada.

At the stage of preparation of the draft law 3132-e for the second reading, the working group established at the Verkhovna Rada's Committee on Economic Policy decided to consolidate all those drafts. At the same time, this working group decided to merge the law draft on insolvency of physical persons with the draft Bankruptcy Law and transform the draft into the format of a code.

The Code on Bankruptcy Procedures (the Bankruptcy Code) was adopted by Verkhovna Rada of Ukraine on October 18th, 2018, signed by the President on April 19th, 2019. The Code enters into force on October 21st, 2019.

6. Reasons for the new law

Among the reasons for revision of the bankruptcy legislation in 2015-2018, there was a need of bankruptcy procedures improvement, acceleration; and flourishing conditions for business development in Ukraine in those areas considered by the World Bank and the International Finance Corporation Index "Doing Business".

Thus, according to the "Doing Business-2018", Ukraine ranked 149th based on rating of bankruptcy regulation, when being placed 76th in the overall ranking. Among the main reasons for that are:

1) extremely long proceedings – 2.9 years;
2) high cost of bankruptcy procedures – 40.5% of the value of the debtor's assets;
3) low efficiency of bankruptcy procedures – 8.9 cents per dollar.

V. Key Policy Proposals

In the course of IRWG on bankruptcy proceedings, the participants commented on the Bankruptcy Law and possible practical issues that need to be kept in mind (see below III.). The results can be summed up in the following five priorities:

1. Terms must be defined more clearly and unambiguously
2. Flaws of professional regulations
3. Self-regulatory organisation - good idea but not yet fully developed
4. Regulation of international insolvency proceedings has to be aligned with standards and best practices of the EU and its member states
5. Classification in the legal system can be improved

1. Terms must be defined more clearly and unambiguously

It is essential in every law that the terms are clearly defined. If any term is used in the same or different laws with different meanings, this is negative.

The following comments by colleagues from the regions give many examples of when and where terms are not/ not clearly defined or even used with a different meaning in the same law.

For example, the term “debtor” (#3 of the table attached): nBCU uses it differently for different persons. This is because the regulations, in particular on the opening of insolvency proceedings, is different both legal and natural persons.

In German law, the differences are deliberately kept small, so that it is clear from the context whether the person must be a natural person or a legal entity. However, Ukrainian law, with its complete book regarding insolvencies of natural persons, has created a large number of deviating regulations. This variance in the regulations already makes it difficult for all parties involved to give proper reasons for their decisions.

The same occurs with the terms “discharge of creditor’s claims” (#4 of the table) or “Debt” (#6 of the table) - these terms are also essential for the understanding and application of the law.

2. Flaws of professional regulations

We can only welcome the regulation of the supervision by bankruptcy trustees. In contrast to other countries, professional supervision is a considerable improvement. However, this also restricts the proceedings: in the case of continuation or liquidation of companies, it is regularly a question of the moment - a piece of land can be valued differently tomorrow than it is today, and the future prospects of production companies can also present themselves differently

within months in a changing local and international economy. Mandatory sale of assets within 170 days does not significantly alter this result. Political influences also play a significant role. Therefore, bankruptcy trustees are forced to act quickly in order to obtain the best results for creditors. One of the most important challenges for an bankruptcy trustee is to complete this task in a fully compliant manner at all times.

A further challenge in the nBCU is that bankruptcy trustees have to justify their decisions not only to the creditors and the court but also to the supervisors. While the creditors are only interested in the best possible realisation, courts usually lack the experience of administration themselves, the supervisors are also interested in other issues. In the worst case, the supervisor would have liked to have conducted the insolvency proceedings in a completely different way and thus obtained different results in principle.

Which way of administration might have been the best one, usually is not to be decided afterwards - not even by a supervisor. What information the bankruptcy trustee had at the time of his/her decision is not comprehensible to a third party. Therefore, the regulations on on-site inspections must already be critically assessed.

However, these regulations become very critical because everyone (!) can criticise the decisions of the trustee; at least a limitation to the parties involved in the proceedings - be it creditor, debtor or court - would be a considerable step towards targeted control. Everything else invites for abuse.

3. Self-regulatory organisation - good idea but not yet fully developed

As regards the self-regulatory organisation, the legislator currently provides a very broad and not very specific framework. This makes it very difficult for those involved to determine under what conditions control shall be transferred and to what extent.

Numerous questions concerning the establishment of the organisation are not regulated by the nBCU - this starts with the legal structure (association, public corporation, limited liability company). It continues with unclear regulations concerning the requirements for the statutes and rules of procedure and does not end with the control of the bankruptcy trustees.

It is thus difficult to establish a good organisation that can and will fulfil the legislator's objectives. In this case, it would have been better to have a tiered approach to bankruptcy trustees' association rather than transferring the powers of explanation to the Ministry of Justice.

4. Regulation of international insolvency law proceedings has to be aligned with standards and best practices of the EU and its member states

The regulations on international insolvency law should actually be praised. It is important that these regulations are also in place. However, it is regrettable that these regulations are not adapted to the EIR[2] or at least to other international requirements. This lack of correlation makes it difficult for Ukraine to become an internationally accepted location for corporate insolvencies. Today, the stability in the regulations and a flexible insolvency law are an essential competitive advantage in international insolvencies. At present, many companies are still going to Great Britain to restructure and reorganize within the EU. While this possibility is expected to end on October 31st, 2019, due to the Brexit, demand will continue to exist. Here it would certainly be a considerable advantage if an associated country like Ukraine could establish itself as a new competitor. However, this requires insolvency proceedings to be simple and quick, which could also allow concentration on individual creditor groups (e.g. financial creditors or employees). The creation of a separate international insolvency law is certainly more of an obstacle to competition.

5. Classification in the legal system can be improved

A particular difficulty of any new insolvency law is always in interlocking the law with the legal system. No other law has as many interfaces to other topics as insolvency law. A company can be located in any imaginable sector and thus every sector-specific peculiarity and regulation can become important in insolvency proceedings. It would be desirable to interlink all these rules immediately, but this would be impossible from practical experience.

Essential links exist with civil law, commercial law, corporate law, tax law and criminal law, as well as in antitrust and state aid law, labour law, sanctions law, weapons law and customs law. Coordination with the particularities of farmers activities is of particular importance in Ukraine - there are already initial approaches to this in the nBCU.

But it seems that there is still some work to do: for example, Bancruptcy law and criminal law define the event of “bankruptcy” differently, the role of other persons in insolvency proceedings (enforcement officers) is not clearly defined, the concrete application of tax law is as unclear as the question of reliability, for example with pharmaceutical companies or construction companies. Many of these points will certainly be solved and established in due course of time - but this also presupposes that the courts recognise the issues and solve the difficulties in a practical manner. However, this is an additional burden for insolvency proceedings in the first few years - i.e. until the development of a consistent judicial practice.

However, another risk is in how courts and executive authorities will deal with these uncertainties. In Germany, only courts can interpret the law, and deviating decisions are very difficult in practice. However, in Ukraine the scope of discretion of administrative authorities

[2] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19–72.

– in this case of the MoJ – is very wide. This will lead to considerable application difficulties in practice, as the bankruptcy trustee must fear liability towards creditors as well as the consequences of negative assessments by the supervisory authority. This uncertainty should be urgently remedied. The nBCU has no anwer.

One possibility would be to foresee that the uncertainty in judicial practice should not be to the detriment of the bankruptcy trustee, and that decisions of the highest degree should only be applicable only after they have been published.

6. Special territories in Ukraine

An absolute peculiarity in Ukraine is the territorial condition. The new law will, of course, have an effect throughout Ukraine. However, some parts of it would be difficult to enforce. Nevertheless, there are still ongoing insolvency proceedings linked to these regions, which now have to be handled according to the new law. The new deadlines also apply. It is already obvious that the bankruptcy trustees are not able to comply with the requirements for handling proceedings in these regions. Nevertheless, the law does not provide for any simplifications, thus there are many risks for the bankruptcy trustees.

Insolvency proceedings opened in other regions are also affected: there are no regulations on how to deal with assets in these regions - a sale within the statutory period is difficult, as is a transfer of ownership.

No international law will help in these cases - at least for the time to come. It will therefore be imperative to find special regulations for insolvency proceedings relating to this region. One possibility would be the purchase of these assets at fair value by the authorities to enable the insolvency proceedings to be carried out, another option is the establishment of a holding company owned by a given region. Finding these creative regulations is in any case an essential building block and best practices in this regard can be borrowed from EU countries.

7. Conclusions

The nBCU is certainly a big step for Ukraine, despite the above issues. To solve these issues, nBCU would have to be moderately adapted in the coming years and brought in line with European regulation. A more or less complete change of system - as it happened this time - will lead to further uncertainty for all those concerned. Since the effects of such a law usually only become clear after some time, it would be very desirable for the Ukrainian legislator to correct the grossest issues and optimise the interlinkages very promptly. In the next five years, it would be highly recommended to correct the nBCU on the joint advice of the practitioners (i.e. judges, insolvency administrators, public prosecutors, debtor representatives and creditor representatives).

Such coordination with practice, as now carried out by the IRWG, would be recommended at least once a year and in more regions. This strengthens the exchange with the practice and helps to achieve understanding for each other's positions through joint discussions.

VI. Working group suggestions and comments on the new law

This report is accompanied by the very detailed outcome of a two-day workshop of judges, bankruptcy trustees and lawyers in Kharkiv. Naturally, not all of the points raised there could be addressed in the above summary. However, this should neither emphasize nor underestimate the individual points. They will all still play a role in the detailed analysis of the nBCU.

The table itself is structured in four columns, the content of which is as follows:

Column 1: Reference
Column 2: Issue/problem/shortcoming => where to find the problem with the nBCU
Column 3: Solution (reason) => why there is a problem and how to solve it
Column 4: Proposal for a recast text
Column 5: Comment

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
1	Book 1 Section 1 Art. 1. Definition of the term Debtor	The term Debtor is narrowed down to legal entity only. Insolvency of a self-employed person is not defined.	A Debtor that is a legal entity or an individual including sole traders is not able to fulfil their cash liabilities that are due with the exception of public law entities. The Code is to be complemented with the insolvency procedure of the self-employed.	
2	Book 1 Section 1 Article 1. Definition of the term Cash Liability	Technically, a bankruptcy proceeding can be opened when a legal entity has a debt of any amount.	The definition is to be complemented as follows: when an application to start the proceeding in the bankruptcy case is submitted, the amount of the debt shall be checked on the day of the application submission to the commercial court and shall be not lower than 100 subsistence minimums.	
3	Book 1 Section 1 Art. 1. Definition of the term Debtor as a legal entity and as an individual.	The term Debtor is approached inconsistently because conditions for opening a bankruptcy proceeding differs for legal entities and individuals.		
4	Book 1 Section 1 Art. 1. Definition of the term Discharge of Creditors' Claims discharged creditor claims are satisfied creditors' claims and liabilities on which an agreement has been reached on termination, including through the replacement or termination of a liability by other means;	The term is not clearly defined.	Discharged creditor claims are satisfied creditors' claims and liabilities on which an agreement has been reached on termination, including through the replacement or termination of a liability by other means **or claims that are deemed discharged according to the provisions of this Code.**	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
5	Book 1 Section 1 Article 1. The term Reciprocity Principle is not defined.	We have been told by a scholar that lack of such definition complicates work of a court in the cases of cross-border bankruptcy.	To complement the Article with the following definition of the Reciprocity Principle: court applies the law of a foreign sate in the bankruptcy cases regardless of whether this sate applies Ukrainian law in respective cases, except for when the law of a foreign country should be applied reciprocally on the grounds of the law of Ukraine or an international treaty signed by Ukraine. If application of the law of a foreign state relies on reciprocity, it shall be deemed as existent since otherwise is not proved.	
6	Book 1 Section 1 Art. 1. Definition of the term Debt	The term Debt is approached inconsistently.	Debt is an overdue cash liability.	
7	Book 1 Section 1 Article 1. The term Party of a bankruptcy case	Not all agents of bankruptcy proceeding are listed in the definition.		
8	Book 1 Section 1 Article 2. The laws on restoring debtor's solvency or declaring it bankrupt do not apply to banks that are withdrawn from the market or liquidated in accordance with the laws of Ukraine "On Banks and Banking Activity" and "On the System of Guaranteeing Individual Deposits".	The application of the specialized law is not extended to liquidation of banking facilities.	To introduce an additional section to the Code thus extending its application to bankruptcy procedure of banks.	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
9	Book 1 Section 1 Article 7 part 2. The Commercial Court, whose proceedings include a bankruptcy case, shall, within this case, resolve all property disputes	participants have noticed that a type of a court decision in such cases is not defined. For example, while hearing a case on reinstating an officer within a bankruptcy procedure, a court has to take a decision in the form of a decision, ruling...?	It has been suggested to have it in a form of a Decision.	
10	Book 1 Section 1 Article 8 part 3 it's defined that the procedure starts upon the debtors application in case of their threatening insolvency.	The term Threatening Insolvency is not defined. It's a value judgment.	Criteria of this term have to be defined.	
11	Book 2 Section 1 Article 10 part 2 A bankruptcy trustee is deemed equal to an officer of the debtor company.	In that event an additional responsibility is imposed on the bankruptcy trustee, now as an officer (a special agent liable under art. 364-370 of the Criminal Code). That is an additional criminal liability.	Suggested to remove	
12	Book 2 Section 1 Article 13 Additional guarantees for bankruptcy trustee	No liability for failure to satisfy lawful requirements of a bankruptcy trustee is defined.	To add part 4: failure to satisfy lawful requirements of a bankruptcy trustee is punishable by the current law.	
13	Book 2 Section 1 Article 19 part 3. Disciplinary offense is a failure to perform or perform properly his or her duties	There are no safeguards for bringing to liability	Part 3. Disciplinary offense is a failure to perform or perform properly his or her duties, established by court	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
14	Book 2 Section 1 Article 20 part 2 Grounds for repeated inspection of a bankruptcy trustee Current edition: Previous periods that have been inspected earlier can not be subject to subsequent inspections, except for inspection at a request of an individual or a legal entity.	Anyone can file a complaint about activities of a bankruptcy trustee and a repeated inspection will be performed.	Previous periods that have been inspected earlier can not be subject to subsequent inspections, except for inspection at a request of a bankruptcy proceeding participants.	
15/1	Book 2 Section 1 Article 20 part 3 Unscheduled on-site and off-site inspections are performed upon request of individuals and legal entities if their request entails a necessity for the state body on bankruptcy to organize an additional inspection. For the purposes of an off-site inspection the state body on bankruptcy sends the bankruptcy trustee a written inquiry on the subject mentioned in the request. The bankruptcy trustee sends the state body on bankruptcy a substantiated response and copies of relevant documents.	Anyone can file a complaint about activities of a bankruptcy trustee and a repeated inspection will be performed	Upon request of bankruptcy proceeding participants	
15/2	Book 2 Section 1 Article 20 part 4 envisages participation of most experienced and highly skilled bankruptcy trustees in the inspections	There is no provided criteria to identify which bankruptcy trustees can be deemed most experienced and highly skilled.	Representatives of the state body on bankruptcy and its territorial bodies with the possibility of involvement of regulating organization of bankruptcy trustees in accordance with the procedure established by	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
			the state body on bankruptcy, take part in the inspection.	
16	Book 2 Section 1 Article 21 part to be added	It is reasonable to point out a right of bankruptcy trustee to appeal to court	To add part 6 with the following content: A decision on imposition of a disciplinary sanction can be appealed to court.	
17	Book 2 Section 1 Article 26 To add one more reason for termination of activities of a bankruptcy trustee	In view of the situation in the east of the country	The reason for termination of activities of the bankruptcy trustee is as follows: 8 A bankruptcy trustee is recognized as gone missing or declared dead.	
18	Book 2 Section 1 Article 26 one of the reasons for termination of activities of the bankruptcy trustee is as follows: entry of a judgment of conviction against the bankruptcy trustee into force.	Conviction of a bankruptcy trustee for any crime would be a reason for termination of their activities. In other professions, like notary, private enforcement officer, deprivation of the special status is possible only for an intended crime.	The reason for termination of activities of the bankruptcy trustee is as follows: 3) judgment of conviction for an intended crime against the bankruptcy trustee coming into force	
19	Book 2 Section 1 Article 27 part 4 Decision of the state body on bankruptcy concerning deprivation of the right to practice as the bankruptcy trustee may be appealed to the court by the bankruptcy trustee. Appeal of the decision does not terminate its effect.	An imperfect and pronged judicial review can cause continuous deprivation of the right to practice as the bankruptcy trustee.	Decision of the state body on bankruptcy concerning deprivation of the right to practice as the bankruptcy trustee may be appealed to the court by the bankruptcy trustee. Appeal of the decision terminates its effect.	
20	Book 3 Section 1 Article 34 part 3 In addition to the information provided for in part one of this article, application	The scope of information to be contained in an application to	In addition to the information provided for in part one of this article, application of the creditor shall contain information on the	Without proper calculations it is impossible to check

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	of the creditor shall contain information on the amount of the creditor's claims to the debtor, indicating separately the amount of the fine (penalty, charge) payable.	start the proceeding in the bankruptcy case is not full	amount of the creditor's claims to the debtor, indicating separately the amount of fine (penalty, charge) payable with proper calculation of these claims	the accrual of a penalty or charge, for what period they are accrued, what rate is applied etc..
21	Book 3 Section 1 Article 34 part 4 paragraph 7 ...and the amount of penalty (fine, charge separately)	Debtor may enter into non-existent commitments.	To remove	Accrual of fine and charge is creditor's right, which they might not exercise, that is why these amounts might not exist. Apart from that, debtor's accounting records show payables only related to primary obligations; fines and charges are not shown. In the event of an application with indicated amounts of punitive sanctions, debtor artificially increases the amount of their overdue cash

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
				liabilities. Moreover, punitive sanctions do not have a due date, they are payable upon request of a creditor. If there is no such request, there is no overdue liability.
22	Book 3 Section 1 Article 35 part 3 3. Ruling on acceptance of the application for initiation of the proceedings in the case shall be sent to the parties and to the state enforcement service, the private enforcement officer, who enforces the proceedings, to the state registrar at location (residence) of the debtor, to the body authorized to manage the state property of the debtor, with a state-owned share exceeding 50 percent of their authorized capital, the bankruptcy trustees determined by means of automated selection using the Single Judicial Information and Telecommunication system from among the bankruptcy trustees registered with the Unified	It is not possible to notify parties staying in the temporarily occupied territories		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	Registry of Bankruptcy Trustees of Ukraine.			
23	Book 3 Section 1 Article 39 part 9 In order to identify creditors and persons who have expressed their desire to participate in the debtor's rehabilitation, the official website of the judiciary of Ukraine shall post a notice on initiation of proceedings in the debtor's case (official announcement) not later than on the day following the day of the court's ruling. Access to information on proceedings in the cases, posted on the official website of the judiciary of Ukraine, is open and free of charge.	An issue of access to the bankruptcy proceeding for creditors staying in the temporarily occupied territories		
24	Book 3 Section 1 Article 39 part 15 Ruling to initiate bankruptcy proceedings shall be sent to the debtor, the creditor (creditors) and other persons who take or must take part in the case not later than three days from the date of the ruling...	It is not possible to post any notifications to the persons staying at the temporarily occupied territories		
25	Book 3 Section 1 Article 40 part 1 Commercial court has the right at the request of the parties or participants in the bankruptcy case or on its own	How can debtor's property be preserved in the temporarily occupied territories?		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	initiative to take measures to secure claims of creditors.			
26	Book 3 Section 1 Article 40 part 3 From the date of commercial court ruling on termination of powers of debtor's manager or management body, relevant debtor's officials, whose powers have been terminated by the commercial court ruling, are obliged within three days to deliver the accounting and other documents of the debtor, his seals and stamps, material and other assets to the property administrator and the property administrator is obliged to accept them.	It is not possible to deliver the said documents from the temporarily occupied territories		
27	Book 3 Section 1 Article 42 part 1 paragraph 2 ... debtor met the property liabilities before the established date;	Voluntary early fulfilment of liabilities is one of the priorities in the relationships between business entities. Its validity should not be conditional upon probability of a counterpart's bankruptcy, especially in such a long period as 3 years.	Suggested to remove	This rule effectively restricts counterpart's positive behaviour aimed at early fulfilment of liabilities because of their concern that this fully legitimate transaction will be recognized invalid in three years.

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
				Additionally, an agreement is invalid from the date of its conclusion, and if a bankruptcy case is initiated three years later, which makes a ground to recognize the agreement invalid, then such a provision contradicts the instructions provided by the Civil Code of Ukraine on the moment of invalidity of transaction.
28	Book 3 Section 1 Article 42 part 4 At the end of consideration of the application of a bankruptcy trustee or a creditor regarding invalidation of a debtor's transaction, commercial court shall pass a ruling.	Court passes a decision on invalidation of an agreement in an action proceeding. The question on correlation of procedural documents in different judicial procedures now arises.	As a decision.	
29	Book 3 Section 1 Article 44 part 3 take inventory of the debtor's property and determine its value not later than	It is not possible to take inventory of debtor’s property in the temporarily occupied territories?		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	two months from initiation of the bankruptcy proceedings;			
30	Book 3 Section 1 Article 45 part 3 With respect to claims that appeared before initiation of the bankruptcy proceedings, unsecured creditors shall submit written applications to the commercial court with claims to the debtor as well as the supporting documents, within 30 days from official announcement of initiation of the bankruptcy proceedings.	It is not possible to ensure the rights of creditors staying in the temporarily occupied territories		
31	Book 3 Section 1 Article 45 part 3 paragraph 5 amount of creditor's claims to debtor with a separate indication of an amount of fine (penalty, charge);		Amount of creditor's claims to debtor with a separate indication of an amount of fine (penalty, charge) and their proper calculation.	Without proper calculations it is impossible to check the accrual of a penalty or charge, for what period they are accrued, what rate is applied etc, that is it is impossible to check grounds and correctness of the claims.
32	Book 3 Section 1 Article 45 part 8 paragraph 3	How should the result of a bankruptcy case action	To add... **in the form of a decision**.	If a claim is heard within an action proceeding, then its

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	Before recognizing a debtor as bankrupt, the debtors' disputes with creditors who have post-bankruptcy claims to the debtor, are resolved within the bankruptcy case action proceeding by commercial court.	proceeding be finalized? Decision, ruling or order.		consideration on the merits should result in a decision as it is established by the CPC.
33	Book 3 Section 2 Article 43 part 1 In case of withdrawal or substitution of a creditor in a bankruptcy case, commercial court, at request of a legal successor or other party(s) to the case, substitutes this party with its successor at any stage of the proceedings.	Does substitution of a party with their successor require to introduce changes to the register of creditors' claims? It is not established.	To add the following provision to Article 43: in case of substitution of a party with their successor, bankruptcy trustee has to introduce respective changes to the register of creditors' claims within 5 days of receipt of the court ruling.	Given the lack of proper regulation, there will be issues with the further legalization of a successor in the bankruptcy proceeding, thus it would be reasonable to ensure that bankruptcy trustee has an obligation to introduce respective changes into the register
34	Book 3 Section 3 Article 50 part 4 Seizure of debtor's property and other restrictions on debtor's actions regarding disposal of their property may be imposed only within the rehabilitation procedure, provided that	The term Escrow is not articulated.		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	they do not impede implementation of the rehabilitation plan and do not counter the interests of unsecured creditors. Seizure of monetary funds held at escrow accounts opened by the debtor at banks in accordance with the procedure established by the laws, is not allowed.			
35	Book 3 Section 3 Article 50 part 11 Debtor' s rehabilitation procedure shall be terminated early in case of non-fulfilment of the rehabilitation plan and/or in case of non-fulfilment of the post-bankruptcy liabilities of the debtor, which results in the commercial court declaring the debtor bankrupt and initiating a liquidation procedure.	The amount of post-bankruptcy liabilities is not defined for the purpose of early termination of rehabilitation.	The amount of post-bankruptcy liabilities is not defined for the purpose of early termination of rehabilitation.	
36	Book 3 Section 3 Article 51 part 1 Rehabilitation plan shall obligatory specify value of claims of each class of creditors, which would be discharged if implementation of the debtor's liquidation procedure.	We suggest an amendment to this part	Rehabilitation plan shall obligatory specify value of claims of each class of creditors.	
37	Book 3 Section 3 Article 52 part 6 Rehabilitation plan and voting results minutes in each class of creditors shall be submitted by the property	It is technically impossible to enforce this provision.	Rehabilitation plan and voting results minutes in each class of creditors shall be submitted by the **rehabilitation administrator** to the	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	administrator to the commercial court within one business day of the voting.		commercial court within five business days of the voting.	
38	Book 3 Section 3 Article 55 part 2 The size of the authorized capital of an established economic partnership shall be determined as the difference between the value of property assets transferred to such partnership and value of the claims of the post-bankruptcy creditors.	Unsecured creditors are not mentioned	The size of the authorized capital of an established economic partnership shall be determined as the difference between the value of property assets transferred to such partnership and value of the claims of the post-bankruptcy creditors and unsecured creditors.	
39	Book 3 Section 4 Article 58 paragraph 2 In the cases specified by this Code commercial court renders the decision on declaring the Debtor bankrupt and starts the Liquidation Procedure at the court session with the parties present. The court sets the term in which the Liquidator is obliged to perform liquidation of the Debtor. This term cannot exceed 12 months.	It is not possible to perform liquidation procedure within 12 months for the enterprises situated in the temporarily occupied territories		
40	Book 3 Section 8 the entire section	The entire section does not conform to the Association Agreement and international treaties, European Directives. Ukraine has not ratified special	It is necessary to align the provision of the section with the EU Directive 2001/17/ ЄС, Directive 80/987, the European Convention on Certain International Aspects of Bankruptcy, UNCITRAL Model Law on transborder insolvency	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
		international treaties on bankruptcy.		
41	Book 3 Section 8 Article 97 part 2 paragraph 5 Provisions of this section are not applicable to the banks and other financial institutions.	It is necessary to remove this provision taking into account the fact that it is impossible to apply the said provision to international banks and financial institutions.	We remove this provision.	The present Code regards banks and financial institutions the way these terms are defined by the Law of Ukraine on Banks and Banking, which are established according to the Ukrainian procedure; it is inappropriate to restrict effect of an international treaty and procedure of establishing foreign banks and financial institutions
42	Book 4 Article 99 part 1	A list of documents confirming the powers of a bankruptcy trustee is not provided	We suggest the following addition: a foreign bankruptcy trustee has to confirm their powers with a properly certified copy of a foreign court decision on appointing them to the position of a foreign procedure bankruptcy trustee	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
43	Book 4 Article 99 part 2	Special international treaties have not been ratified.	It is necessary to add a list of powers of a foreign bankruptcy trustee	
44	Book 4 Article 100	There is no specification of jurisdiction in case of a public bankruptcy proceeding	To add the following part: foreign bankruptcy trustee can petition commercial court of Ukraine at the address of debtor's property if there is no public bankruptcy proceeding	
45	Book 4 Article 99 part 3 paragraph 2	The Code does not regulate prosecution of foreign bankruptcy trustee	It is necessary to define the boundaries of possible liability considering the rules of international treaties and foresee them in the Code	
46	Book 4 Section 2 Article 121 part 2 paragraph 5	The legislator did not indicate annual interest	5. the inflation index and annual interest are not applied under Article 625 of the Civil Code for the entire overdue period of debtor's cash liabilities	
47	Book 4 Article part 115 part 1	Part of this Article does not conform to Article 8 of the Code. There should be an opportunity for a creditor to apply for opening of bankruptcy proceeding.	To amend part 2 of Article 115 as follows: proceeding in the insolvency case of an individual debtor or sole trader debtor can be started based on debtor's **and creditor's** application.	
48	Book 4 Article 115	To add a part on application of creditor	Creditor has the right to submit an application to commercial court in order to open an insolvency proceeding in case there are grounds set forth in part 2 of this article.	
49	Book 4 Article 116 part 1	To add creditor	An application in order to open an insolvency proceeding is submitted by debtor and creditor if there are grounds envisaged by this Code.	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
50	Book 4 Article 116 part 5	An obligation of debtor's family members to file asset declaration cannot be a debtor's obligation, sanctions cannot be imposed on family members' property. This rule indicates lack of protection for debtor's family. It is necessary to remove the provision concerning family members.	5 Asset declaration is filed by debtor for three years (for each year separately) preceding filing of the application to start the proceeding in the insolvency case to the court. The declaration shall contain information on debtor's property, income and expenditures that exceed 30 minimum salaries including those owned by the debtor as a joint property or property in common.	
51	Book 4 Article 119 part 5 paragraph 10	It is necessary to remove the information concerning family members.	10) obligation of the State Border Guard Service body to provide information on debtor's crossing the state border over the last three years to the restructuring administrator and the court	
52	Book 4 Article 127 part 4	Obligation has to be secured with debtor.	4 During the term of the debt restructuring plan the debtor is obliged to inform creditors included into the debt restructuring plan about significant changes in his/her assets and also about receiving loans and credits, as well as about buying goods on credit, inform other parties before signing such agreements that the debt restructuring procedure was introduced concerning him/her.	
53	Book 4 Article 131 part 3	Lack of reference to the provisions of the Family Code of Ukraine in order to protect debtor's family members.	3 Liquidation Estate may include share of the debtor in the joint property. In this case debtor's share is allocated from the joint	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
			property as set forth in the Civil Code and Family Code of Ukraine.	
54	Book 4 Article 132 part 1	To add an authority of court to remove property from liquidation estate.	1. On a reasoned motion of debtor and other participants of the proceeding in the insolvency case, **as well as on its own initiative**, Commercial Court has the right to exclude debtor's property which can be foreclosed according to the legislation but which is necessary for satisfaction of basic needs of the debtor and his/her family members from the Liquidation Estate.	
55	**Book 4**	**It would be reasonable to provide for a mechanism of international relations and a procedure for foreign assets audit for individuals. At this stage this Book is considered as a mechanism for abuse of rights of individuals and sole traders that have debts and no property in Ukraine enabling them to avoid repayment.**		
56	Book 4 Section 5 Article 136	The article is quite narrow: it lacks the following specific rules concerning land law and civil law: 1) If debtor is a farming enterprise, special		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
		treatment of their property responsibility + all members of the farming enterprise must agree to file the application; 2) Specific composition of liquidation estate requires specific sales conditions subject to designated use of real estate and property rights; 3) Property owned by the manager and members of a farming enterprise as private property and other property with regard to which it is proven that it was acquired using revenues not constituting joint property of the members of the farming enterprise shall not be included into liquidation estate.		

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
		4) Procedure of suspension for a farming enterprise.		
57	Book 3 Article 60 part 3 In the liquidation procedure, commercial court handles complaints against actions (inaction) of liquidator and exercises other powers specified in this Code.	Procedure for handling complaints filed by participants of bankruptcy proceeding is not established.	In the liquidation procedure, commercial court handles complaints against actions (inaction) of participants.	
58	Book 3 Section 2 Article 45 part 4 Claims of creditors, filed after expiration of the term established for submission thereof, shall be discharged in the order of priority established by this Code.	Suggestion of a bankruptcy trustee	Claims of creditors, filed after expiration of the term established for submission thereof, shall be considered discharged.	
59	Book 1 Section 1 Article 28 paragraph 3 Committee of creditors has the right, any time, to apply to the commercial court with a petition for dismissal of bankruptcy trustee from exercising their powers, regardless of the grounds.	Suggestion of a bankruptcy trustee	To remove that rule	
60	Book 3 Article 60 part 4 Applications with claims of post-bankruptcy creditors are handled by commercial court in the sequence of their submission. Following review of these applications, commercial court rules to recognize or reject (fully or partially) creditors' claims.		To add the following: A court ruling provides the grounds for liquidator to include these claims to the relevant creditors' register.	

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
61	MoJ Decree #447.5 dated 15.03.2014 Work of bankruptcy trustees is overregulated. Some requirements are outdated. Unscheduled inspection as a tool to put pressure on bankruptcy trustee initiated by unhappy creditors.	To change control mechanism over bankruptcy trustees, transferring the powers from the Ministry of Justice to the Self-Regulating Organization. To remove the tough requirements for the office	To amend MoJ Decree #447.5 dated 15.03.2014 and harmonize it with the current context	Decrease in the influence of supervisory authorities on work of bankruptcy trustees (there is a possibility of power abuse on the part of supervisory authorities)
62	Article 23 part 4. Revoking license of bankruptcy trustee	Submission of the Disciplinary Panel is the ground to revoke the license of a bankruptcy trustee, this happens only in a judicial proceeding	To add the following words to part 4 of Article 24: under court decision	=> #19
63	Article 22 Disciplinary Panel	Composition of the Panel under the Code is 7 people (3 from the MoJ, 4 from the Assembly of Bankruptcy Trustees)	It is necessary to decrease the number of MoJ representatives and substitute them with the judiciary, similar to what private enforcement officers have. It is necessary: 2 people from the MoJ, 1 judge of the Supreme Court, 2 people from the Self-Regulating Organization, 2 people from the Assembly of Bankruptcy Trustees	4 people SRO + 1 Judge + 2 MoJ
64	Article 2 part 4 under the Code, political parties, local self-government bodies and state bodies can go into bankruptcy.	To complement the list	To extend the list of exceptions in Article 2 part 4	Political parties are allowed to go bankrupt

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
	The only exception is treasury enterprises			
65	Article 41 part 3 paragraph 13 of transitional provisions	Bankruptcy trustee has no power to secure recovery of alimony. It is necessary to point out that enforcement officer does not suspend enforcement proceedings under decision to recover alimony.	To amend Article 34 part 4 as well. To remove the word “alimony” from paragraph 13 of the Transitional Provisions To amend part 3 of Article as follows: ...or at the stage of sale from publication of the information on sale, **recovery of alimony**, as well as in the case of execution of decisions in non-property disputes	Aligning to Article 121
66	Article 5 part 8. Moratorium ceases within 60 days of approval of rehabilitation plan. Also Article 41 part 8 and Article 121 part 5 establish restricting terms for moratorium at 170 and 120 days, after which the moratorium is ceased.	It is reasonable to suspend the time for moratorium if the proceeding is suspended (in the event of an appeal and other circumstances suspending the proceeding)	To add the following text to Article 5 part 8, Article 41 part 8 and Article 121 part 5: the time shall be suspended when the proceeding is suspended	Secured creditor has an opportunity to receive their collateral, which may result in lack of efficiency of rehabilitation within an established term. Apart from that, there is a risk of procedure sabotage aimed at preventing debtor from recovery, incidentally terms for moratorium to be

#	Issue/problem/shortcoming	Solution (reason)	Proposal of Amendment	Comment
				ceased are established with no conditions.
67	Article 30 part 5 No advance payment for the bankruptcy trustee's expenses. Money is spent on evaluation, audit, guarding, postal services. Article 30 part 5 says that committee of creditors has a right to establish advancing fund but what if such a fund is not established?	This should be not a right but rather an obligation of the committee of creditors to establish such a fund and there should be a set lower limit necessary to cover all expenses of a bankruptcy trustee.	To amend and complement part 5 of article 30	This will prevent subsequent disputes on recovery of expenses of bankruptcy trustee, so courts will have less cases to hear.
68	Article 90 has an influence on the Law of Ukraine on Enforcement Proceedings and does not provide clear algorithm of action for enforcement officer within bankruptcy procedure, which can result in abuse.	Consequences of closing a bankruptcy case have to be related to Article 35 of the Law of Ukraine on Enforcement Proceedings and to describe in details because there are different consequences after different grounds (actions of enforcement officer)	To complement Article 35 of the Law of Ukraine on Enforcement Proceedings with the following text: In case commercial court closes a bankruptcy case under article 90 part 2 of the Code, enforcement officer closes the enforcement proceeding under article 39 part 3 of the Law of Ukraine on Enforcement Proceedings. In case commercial court closes a bankruptcy case under article 90 part 1, 4, 5, 6, 7, 8 of the Code, enforcement officer resumes the enforcement proceeding under article 35 of the Law of Ukraine on Enforcement Proceedings.	To harmonize the Code and the Law of Ukraine on Enforcement Proceedings