

Bankruptcy in Ukraine

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Arne Engels, Attorney-at-law, Germany

Oleksandr Biryukov, Prof. Ph.D., Ukraine

Roman Chumak, Attorney-at-law, Ukraine



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About the Authors

Arne Engels, Attorney-at-law (Germany), bar-certified attorney for banking and capital markets, Counsel with GÖRG Partnerschaft von Rechtsanwälte mbB in Cologne and Frankfurt, Germany, has been working in the field of insolvency law in Germany for almost 20 years. During this time, he has gained experience in restructuring and continuation of businesses within insolvency proceedings as well as in the liquidation of companies. He was in charge of the internal departments of one of the mayor insolvency proceedings in Germany starting 2009 (42 companies, 70.000 employees and claims against the group of more than EUR 20 Billion, heading various groups of up to 20 experts on different topics). Arne was also acting as quality manager (ISO 9001) within the insolvency department of his law firm. His experience has made him an internationally recognized expert who is supporting the PravoJustice team since 2019. Arne has published numerous texts, in particular on German insolvency and German insolvency tax law, and has participated in various events as a speaker.

Oleksandr Biryukov, Doctor of Law, Professor at Taras Shevchenko National University of Kyiv, is a proven legal consultant with 31 years of legal experience working for state and private organizations, and with more than 20 years of consulting international donor organizations, including USAID, TACIS/European Commission, the World Bank, IMF, EBRD, DFID. He was the first law professor in Ukraine who developed in 1995 Bankruptcy Law university course and teaches it now, including “International Bankruptcy” and “Cross-Border Insolvency” at Master Programs in English. Oleksandr successfully defended two dissertations in the area of comparative bankruptcy (1999) and on cross-border insolvency (2010) at Kyiv National University. He received grants for doing research on bankruptcy in UNIDROIT (Rome, Italy, 1996), Samford University (Alabama, USA, 1994-95, 1997), and New York University School of Law (USA, 2000-2001) under Fulbright Scholar/Lecturing Program. He was member of the World Bank Insolvency and Creditor/Debtor Regimes Task Force (development recommendations on effective insolvency systems, 2011-2018). In addition, he was a member of the World Bank’s working group to draft Report of the World Bank on Natural Persons Insolvency (2011-2013). As a Member of the Consultative & Scientific Council at the Supreme Court and the Consultative & Scientific Council at the High Economic Court of Ukraine (2005-2018), Oleksandr was evidenced as an expert in Ukrainian Bankruptcy Law at Stockholm Arbitration Court in two cases in 2008 and 2010. Oleksandr spoke and participated at about 200 conferences; authored more than 270 publications, mainly in the area of bankruptcy.

Roman Chumak, Attorney at Law (Ukraine), Managing Partner at Ares Law Firm. More than 10 years of professional experience in the legal field. Practical work on the support of bankruptcy procedures in Ukraine. A public figure, in the past the chairman of the Kharkiv Branch of the Ukrainian Bar Association, a member of the National Bar Association of Ukraine. Young Scientist - holds a PhD Fellow, Civil Law and Procedure Department, Kharkiv National University of Internal Affairs. Media expert in the media. He is grateful and honoured for his professional achievements in the field of law.

List of Abbreviations

| | | | |
|---------------------------------|---|---------------|---|
| Art. | Article (without citing a law it refers to an article of the BCU4) / Article or paragraph of a foreign Code | GCC | German Civil Code |
| BCU1 | Bankruptcy Code of Ukraine of May 1992 | GIC .. | German Insolvency Code - Insolvenzordnung |
| BCU2 | Bankruptcy Code of Ukraine adopted in 1999 | GmbHG | German Code for limited liability companies |
| BCU3 | Bankruptcy Code of Ukraine adopted in 2011 | MoJ | Ministry of Justice of Ukraine |
| BCU4 | Bankruptcy Code of Ukraine, adopted in 2018, entered into force on October 21 st , 2019 | nBCU | new Bankruptcy Code of Ukraine (equals the later BCU4) |
| CCU | Criminal Code of Ukraine - zakon 2341-III | NBU | National Bank of Ukraine |
| CMU | Cabinet of Ministers of Ukraine | No. | number |
| DoRI ... | Directive on Restructuring and Insolvency - Directive (EU) 2019/1023 | para | paragraph/article in foreign codes |
| ECHR | European Court of Human Rights | sec. | Section/Chapter |
| EIR...EU | European Insolvency Regulation - Regulation (EU) 2015/848 | SGO | Self-Governing Organization of Bankruptcy trustees in Ukraine (UNITA) |
| Electronic Trading System | Electronic Trading System | SPFU | State Property Fund of Ukraine |
| EU | European Union | subpara | Sub-paragraph |
| | | TOI . | threat of insolvency (as defined in Art. 34 No. 6 para 1 BCU4) |
| | | UNCITRAL..... | United Nations Commission on International Trade Law |
| | | ZPO | Civil Procedural Code of Germany |

Content

| | |
|---|----|
| About the Authors..... | 3 |
| List of Abbreviations..... | 4 |
| Content..... | 5 |
| 1. (Brief) Management summary of all results and general comments | 8 |
| a. Obligation to maintain an account..... | 8 |
| b. Definitions of ranking classes | 9 |
| c. Adaptation of the provision on contestation | 9 |
| d. Insurance of the Bankruptcy Trustees..... | 10 |
| e. Re-election of members to the various commissions of the self-governance organisation..... | 11 |
| f. Commitment to further training of the Assistant bankruptcy trustees | 11 |
| g. Voting also in absentia | 12 |
| h. Participation of external financiers in creditors' meetings | 12 |
| i. Integration into the legal system and coordination with other laws..... | 12 |
| j. Right to work of bankruptcy trustees..... | 12 |
| k. Disciplinary procedures | 13 |
| l. Remuneration of the bankruptcy trustee | 13 |
| m. Old vs. new law..... | 14 |
| n. No regulations for non-controlled areas..... | 14 |
| o. COVID-19 | 15 |
| 2. Historic approach: | 16 |
| a. All bankruptcy laws (briefly)..... | 16 |
| b. Way to the new Bankruptcy Code (BCU4) | 17 |
| c. Reasons for the new law. | 17 |
| 3. Why we compare and how we compare..... | 19 |
| a. World Bank principles | 19 |
| b. UNCITRAL Model law..... | 20 |
| c. European Union (EU)..... | 20 |
| 4. Structure of the following document..... | 21 |
| 5. Discussion of new law in detail | 22 |
| a. General provisions – Book 1, sec. 1..... | 22 |
| i. Overview of the provisions of the Chapter | 22 |
| ii. Local Comments | 23 |
| iii. Comparison to other ideas..... | 25 |

| | | |
|-------|--|-----|
| b. | Bankruptcy trustee (Book 2, sec. 1) | 29 |
| i. | Overview of the provisions of the Chapter | 29 |
| ii. | Local Comments | 34 |
| iii. | Comparison to other ideas | 36 |
| c. | Self-Governing Organisation of Bankruptcy Trustees (Book 2, Sec. 2) | 42 |
| i. | Overview of the provisions of the Chapter | 43 |
| ii. | Local Comments | 44 |
| iii. | Comparison to other ideas | 45 |
| iv. | Results | 47 |
| d. | Bankruptcy of legal persons (Book 3) | 47 |
| i. | Proceedings in Bankruptcy cases (Book 3, Sec. 1) | 47 |
| ii. | Disposal of Debtor's property (Book 3, Sec. 2) | 55 |
| iii. | Rehabilitation of the Debtor (Book 3, Sec. 3) | 65 |
| iv. | Liquidation procedure (Book 3, Sec. 4) | 77 |
| v. | Property sale in the bankruptcy case proceedings (Book 3, Sec. 5) | 83 |
| vi. | Dismissal of the proceeding in bankruptcy case (Book 3, Sec. 6) | 92 |
| vii. | Peculiarities of proceedings on the bankruptcy cases of some categories of debtors (Book 3, Sec. 7) | 92 |
| viii. | Proceedings in the bankruptcy cases related to the foreign bankruptcy procedure (Book 3, Sec. 97) | 97 |
| e. | Restoring solvency of an individual (Book 4) | 99 |
| i. | Overview of the provisions of the Chapter (Book 4) | 100 |
| ii. | Local comments | 102 |
| iii. | Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...) | 103 |
| iv. | Results | 109 |
| f. | Final and transitional provisions | 110 |
| i. | Overview of the provisions of the Chapter and local comments | 110 |
| ii. | General Comments from abroad | 111 |
| 6. | Results from the previous analysis in Sep. 2019 | 113 |
| a. | Results and Remarks | 113 |
| i. | Terms must be defined more clearly and unambiguously | 113 |
| ii. | Flaws of professional regulations | 113 |
| iii. | Self-regulatory organisation - good idea but not yet fully developed | 114 |
| iv. | Regulation of international insolvency law proceedings has to be aligned with standards and best practices of the EU and its member states | 114 |

| | | |
|------|---|-----|
| v. | Classification in the legal system can be improved..... | 115 |
| vi. | Special territories in Ukraine | 116 |
| vii. | Conclusions..... | 116 |
| b. | Working group suggestions and comments on the new law | 116 |
| 7. | Amendment law (proposal)..... | 139 |
| 8. | Annex: List of existing Moratoria | 170 |

DRAFT

1. (Brief) Management summary of all results and general comments

The Bankruptcy Code has been adopted and came into force from October 21st, 2019. The present text is based on the legal status at the time of entry into force. Subsequent amendments or texts in the legislative process have only been taken into account where this is explicitly indicated.

Taking this into consideration this analysis focuses on only those provisions that might be improved in order to help better application of new concepts and provisions of just enacted Bankruptcy Code.

We have conducted the present analysis regulation by regulation. The reason for this is that changes to the law must also be made rule by rule, even if they directly affect individual issues. However, no results can be determined from this which, in our view, justify the necessity of the various changes. This must be done thematically. We have therefore briefly presented the most important results in the following text. These are supplemented - in varying degrees of detail - by adjustments to various standards. All the changes we propose in detail are printed in the table, which is attached to the document under point 7. The justifications for the individual amendments are derived from the text of this analysis.

However, the most important issues concern:

- a) Obligation to maintain an account
- b) Definition of Ranking Classes
- c) Adaptation of the provision on contestation
- d) Insurance of the Bankruptcy Trustees
- e) Re-election of members to the various commissions of the self-governance organisation
- f) Commitment to further training of Assistant bankruptcy trustees
- g) Voting also in absence
- h) Participation of the external financiers in creditors' meetings
- i) Integration into the legal system and coordination with other laws
- j) Right to work of bankruptcy trustee
- k) Disciplinary procedures
- l) Remuneration of Bankruptcy Trustees
- m) Old vs. new law
- n) No regulations for non-controlled areas
- o) Covid-19

The topics may be summarized like this:

a. [Obligation to maintain an account](#)

The obligation to keep accounts plays an important role in insolvency proceedings. The bankruptcy trustee never manages his own money, but always third-party funds. These third parties may include ordinary creditors as well as secured creditors and those who benefit from the costs of the proceedings. In particular, the bankruptcy trustee has no right to withdraw own funds without a corresponding basis. The resulting duty of care is an essential part of insolvency administration; this is also reflected in the fact that violations of this duty of care are punishable by law.

Without this component, neither trustworthy administration of third party funds nor proper reporting on the funds received and administered is possible. However, this reporting, which can be objectively supplemented by the inclusion of external fiduciary sources (regularly these are account statements from the account-holding banks), necessarily requires a separation of equity and third-party funds. In

addition, external funds must be managed separately for each case to be administered, so that even if a bankruptcy trustee is appointed several times, the allocation of funds to the respective insolvency proceedings is always obvious.

It remains the secret of the legislator why this separation was prescribed in the area of liquidation but not in the other areas. The provision of Art. 61 No. 3 (1), (2) BCU would therefore have to be moved to the area of the tasks of the bankruptcy trustee (the new numbering follows further additions to Art. 12 No. 2 BCU and is therefore neither in itself nor from this summary alone understandable).

This point becomes even more incomprehensible when the legislator has even specifically ordered in Art. 114 No. 2 BCU the obligation to open separate bank accounts in the area of private insolvency and demands that this be passed on when the responsible bankruptcy trustee changes.

In our opinion, the duty to keep separate bank accounts must therefore be regulated uniformly for each procedure and at each stage of the insolvency proceedings. However, since the legislator is also planning (Draft Law on Improving the Regulation of Banking Activities 2571-д) to reorganize the rights of intervention in bank accounts in the event of a bank becoming insolvent, it must be ensured that the bankruptcy trustee is also protected against recourse by creditors.

b. Definitions of ranking classes

In some places in the law there is information on the ranking classes of creditors. These ranking classes are always structured differently, so that a uniform handling of the proceedings is difficult. This also applies to the software still to be developed. In our view, it would therefore be very advisable if the ranking classes were formulated in the law in a uniform manner and at a very early stage.

In this way, every creditor would also be able to understand very quickly whether and, if so, at what point his own claim is classified. In this way, effects on the quota can be determined even before the insolvency proceedings are initiated. This would enable the creditor to check for himself whether or not it is economically advantageous for him personally to initiate insolvency proceedings against the debtor's assets. If the latter were the case, the creditor could be inclined to write off his own claim and not to spend further financial resources by paying advances on procedural costs.

c. Adaptation of the provision on contestation

Contestation (Art. 42 BCU) plays a clearly subordinate role in the existing body of standards, and unfortunately its content is not conclusively regulated. For example, it does not regulate what happens to transfers based on an act of state sovereignty (e.g. through compulsory execution). It is also not regulated what happens to the contested claim of the counterparty after repayment of the funds received - does it become existent again? to what extent? at what time? is the claim eligible for participation in insolvency proceedings? what happens to released securities for the claim?

In addition, consideration should be given to adapting the deadlines to the possibilities of a renewed application for insolvency in order to avoid abuses.

All in all, it is advisable to note how little the law deals with the very frequent relocation of assets prior to insolvency proceedings.

If the debtor is obliged in private insolvency proceedings to provide information on his current assets and the development of his assets over the past three years, this is not convincing. On the one hand, this means that a large number of personal data is brought before the court, most of which is not relevant (and therefore may not be collected according to European standards). On the other hand, it makes it considerably more difficult to apply for private insolvency. Furthermore, the information provided by relatives is not relevant under substantive or procedural law: Incorrect information has no consequences. The relatives, who are not clearly defined within the Ukrainian law, are not involved in the insolvency proceedings and are obliged to tell the truth. However, the debtor cannot be put at a disadvantage due to a lack of love of truthfulness, as he can (regularly) only point out the relatives' obligation to tell the truth, but cannot fulfil this obligation himself.

However, this means that the norm no longer helps in the area of rescission either: the information on the transfers of assets would have become apparent from these documents. Thus, the bankruptcy trustee must carry out his own investigations and in particular intensively observe the claims to information from the registers. This already applies to legal entities anyway.

Finally, in our understanding, this standard lacks a regulation on what happens to ongoing court proceedings with regard to a challenge when the insolvency proceedings themselves enter the next phase: even in Ukraine, the conclusion of civil court proceedings within the time allowed by law for the settlement of the individual phases of insolvency proceedings is rare. However, if the rules are not adapted, the previous bankruptcy trustee loses its active legitimacy and the new bankruptcy trustee must (if this is still possible) enter the process in accordance with the legal regulations. This, however, entails a loss of knowledge and time. It is even possible that the previous process will become ineffective because one bankruptcy trustee is not the legal successor of the other.

d. Insurance of the Bankruptcy Trustees

The insurance of the bankruptcy trustee is a particular difficulty. This is caused by several points:

- For example, the amount of the insurance remains a matter of controversy and separate consideration. These considerations must later also take into account which specific actions of the bankruptcy trustee should be insurable and which should not.
- How such an insurance should be granted technically and in what relation it should be to the licensing of the bankruptcy trustee.

According to the current regulation, the applicant who wishes to become a bankruptcy trustee must submit an insurance policy and will then be entered in the register, provided that he fulfils the further requirements.

This regulation is extremely disadvantageous for the applicant. The applicant already has insurance, but is not yet allowed to carry on the insured activity without the licence. However, issuing the licence may take some time. During this time, however, the applicant is obliged in this construct to pay for insurance that he does not need.

This risk can be solved by the insurer granting a so-called provisional insurance cover and issuing a certificate for this. This certificate should serve to prove in the application that insurance will be available once the license has been granted. If the license is granted, the licensee must send the license to the insurer and the insurer in return (after payment of the insurance premium) sends the licensee

(and the licensor) final proof of the existence of insurance. This ensures documentation and eliminates the risk of time delays in the application process away from the applicant. For the insurer, this will result in a disadvantage due to the lower premiums, but not in a higher risk, since the possibility of a claim without a license does not exist. Art. 24 BCU had to be amended additionally in order to keep the law consistent. This may require development of relevant amendments the specific legislation on insurance.

e. [Re-election of members to the various commissions of the self-governance organisation](#)

The current law does not provide rules on the re-election of members to the governing bodies of the SGOs. At the same time, the term of office is limited to 2 years. Such a short term of office is detrimental to the continuity of the work in the self-governance organisation (SGO), as the first half year of the term of office regularly passes with familiarisation and the last half year the body is still in office as a so-called "lame duck". To put it pointedly, this would mean that the effective term of office would only be one year, followed by one year of inactivity. The possibility of re-election reduces this risk of inactivity and extended induction period and allows for continuous execution with consistent quality. In addition, a continuous transition to successors can be achieved in this way. By replacing only part of the board, knowledge and experience remain on the board, which shortens the induction period for new members considerably. Furthermore, there is continuity in the decisions to be made, as these must be represented by both the new and the re-elected members. Thus the conditions for re-election had to be created within the law.

However, in addition to re-election, there must also be a limit on the maximum term of office. The team initially discussed how long the maximum term of office should last. The international experts had initially assumed a maximum term of eight years, which would have corresponded to three re-elections. After consultation with local colleagues, however, this was reduced to six years or two re-elections. The decisive point for this reduction was the speed of changes in the Ukrainian legal system over the last 30 years. These have been much faster and more profound than elsewhere. By shortening the maximum term of office, this factor is also to be taken into account in such way that new ideas and considerations can be implemented more quickly and fully, also with regard to the various bodies of the SGOs. This is based on the assumption that representatives of outdated ideas will not be (re-)elected.

f. [Commitment to further training of the Assistant bankruptcy trustees](#)

The training of bankruptcy trustees is governed by the SGO regulations. The SGO will determine - if necessary in consultation with the Ministry - which training courses the bankruptcy trustee must attend and in what number and within what time frame.

However, no such regulation exists for the Assistant Bankruptcy Trustees. Nor is it apparent that the SGO is responsible for their training. Consequently, special guidelines for further training had to be drawn up and laid down.

g. Voting also in absentia

The regulation of Art. 123 No. 6 BCU offers great opportunities also for the other insolvency proceedings of the Act. In particular, sentence 2 of the provision still offers the possibility of agreeing on other forms within the creditorship. Especially in the current situation, where personal meetings had to be minimized as far as possible because of COVID-19, this can be a considerable building block for future regulations. The Bill 3322 will add some more possibilities.

h. Participation of external financiers in creditors' meetings

The possibility for the external financier to participate in the votes on the insolvency plan is an essential part of the chances of success of an amicable settlement. An amicable settlement usually provides the creditors with a better economic solution. However, since personal emotions often cloud the strict rationality of the economic results in the course of insolvency proceedings, the presence and participation of the third party financing the reorganisation plan can help to secure the results. However, the court must establish that no abuse is taking place. For this purpose, the court could also request proof of the financial means required to fulfil the reorganization plan.

i. Integration into the legal system and coordination with other laws

As is well known, insolvency law is not a simple law. It has too many points of contact with other provisions of the entire legal system. Rather, like a constitution, it stands above all other laws and must combine them and make them operable. All this must be done in an exceptional economic situation. For this reason, the comments made continue to apply. At the same time, the integration must be examined in concrete terms in each case and it must be ensured that the "right" law is given priority for application. The effects of the considerations on non-insolvent companies must also always be taken into account. For example, tax relief for insolvent companies can quickly also mean an economic advantage for these companies on a more favourable terms than for non-insolvent companies - the same applies to relief in the event of termination of contracts of any kind. Here it is always necessary to find a balance that is acceptable to all parties involved in the insolvency proceedings and to the economy as a whole.

In this context, the provision of Art. 26 No. 1 para 3 BCU must be mentioned as an example: According to this provision, a bankruptcy trustee may be considered unfit to exercise his office because of any conviction. This understanding cannot be correct, since there may be distributions that are not connected with his personal and economic suitability for handling insolvency proceedings. An example is an accident with personal injury caused by negligence on the way between two insolvent companies.

j. Right of bankruptcy trustees to provide services

The new Code works in the interests of creditors and therefore, the latter have the right to dismiss the bankruptcy trustee at any time. This is the opinion of the vast majority of arbitrators. Does such a statement meet the provisions of the Code?

Article 28 of the Code gives creditors the right to apply to the court for the removal of the bankruptcy trustee, regardless of the grounds and at any time. If there are grounds for the removal of the bankruptcy trustee, the court shall issue a decision.

During the previous presentations of the GAP Analysis preliminary recommendations have been taken into account – the relevant Bill containing the change of this situation has been developed and the new Law adopted on June 18, 2020. Now the newly adopted Law is at the Presidential office waiting for signature to become the Law.

Thus, in each case, when considering the issue of the removal of the bankruptcy trustee, the court must analyse the grounds for such removal. There can be no unjustified dismissal of a bankruptcy trustee who does his job in good faith. Therefore, this issue must be resolved through the formation of a single case law. It is good to note that first such cases are already adopted at the appellate courts which is a good start to formulation of a new court practice.

From the point of view of best practice, the legislation should fully guarantee the independence of the bankruptcy trustee and the court as an independent body should evaluate in each case whether the parties act in good faith or not.

k. Disciplinary procedures

An important element of independence is the existence of an effective mechanism for bringing to account the bankruptcy trustee. Although disciplinary procedures are still under the control of the Ministry of Justice, most experts recognize that this is now justified. Over time, control functions should be fully transferred from the Ministry of Justice to the self-regulatory organization.

The transparency of disciplinary procedures will ensure that the rights of bankruptcy trustees and other participants in the process are respected. Disciplinary proceedings should be conducted in public, possibly with video fixation and commission decisions made available to the public for general discussion and study.

Much work needs to be done to summarize disciplinary practice, develop new approaches to the text of decision. The aforementioned generalisation will ensure the predictability of disciplinary complaints. Meanwhile, after a number of meetings of Pravo-Justice experts with the bankruptcy trustees and the leaders of the National Association of Bankruptcy Trustees the negotiations of the SRO with the Ministry of Justice on this issue are initiated.

l. Remuneration of the bankruptcy trustee

The Code stipulates the obligation to advance the award to the bankruptcy trustee of three minimum wage rates for three months of exercise of authority. This amount of advance does not take into account the complexity of the case, the length of the proceedings and other factors.

Bankruptcy trustees constantly speak of violation of their right to receive compensation. In each case, the issue of remuneration is decided separately. The lack of a single, effective approach demonstrates the ineffectiveness of the system of cost reimbursement to the bankruptcy trustee.

It is advisable to introduce a new system of remuneration of the bankruptcy trustee, where on one side the bankruptcy trustee will be interested in obtaining the result, and on the other hand, he is guaranteed to be paid for the work performed, as already in place in other countries.

m. Old vs. new law

No. 2 and para. 1-3 are of major significance in terms of legal reality in the area of transitional provisions, as they stipulate that other laws will be ceased on/before the current BCU comes into force. This concerned in particular the previous laws on insolvency law. With these laws, the requirements for the previous licensing of insolvency administrators have also been abolished. Without these requirements, however, the existing licenses are not based on a valid legal act and are therefore inherently invalid. The new licensing was only possible according to the regulations of the new BCU.

The same applies to insolvency proceedings. In the absence of an applicable transitional legal provision, their continued existence is also problematic. The old regulations have been expressly repealed.

This creates a legally unsustainable situation in several respects. It must therefore be ensured that a proper transition of licenses and procedures into the new law is possible. The proposed solution corresponds in principle to actual, but not legally justified, action: The previous procedures and licenses will be recognized on the basis of the old law, which will thus continue to apply (previously through actual action by the judiciary/ministries) and will then be converted to licenses under the new law within a transitional period. A similar procedure can currently be observed in court proceedings, where a mixture of regulations is used which is not uniform. Consequently, the legislator must also set clear guidelines here.

n. No regulations for non-controlled areas

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.

o. COVID-19

The worldwide COVID-19 proliferation pandemic and the quarantine measures taken by all countries of the world will have irreparable consequences for the global economy. Of course, the Ukrainian economy is also projected to suffer. It will inevitably lead to an increase in the number of businesses that will need bankruptcy procedures and an increase in the number of citizens who will be forced to seek a way out of the debt boom.

An important function of the state is to assist such businesses and citizens in this matter. The essence of such assistance may be different from providing financial support to tax benefits. But considering the Ukrainian legal traditions, deputies today propose to introduce a partial or full moratorium on the beginning of bankruptcy proceedings. Such measures do not require additional financing from the state budget of Ukraine and at first glance appear to be quite significant. But from the point of view of the best European practices, any moratorium does not solve the problem and should be introduced in exceptional cases. Bankruptcy is a procedure about money that the debtor owes to the creditors. Such a moratorium without other measures would mean that it is the creditors who will not receive their money and the debtor will receive the time. The moratorium may be used by the debtor or other interested parties not for the purposes set out in the Code, but to obtain a moratorium and protect against creditors. In its recommendations, the World Bank has repeatedly pointed out that every business is entitled to bankruptcy.

The proposal to postpone other actions in the bankruptcy procedure, such as the sale of property, is of concern, but at the same time the extension of the procedural time limits in connection with the introduction of quarantine is justified.

Ideal ideas for using the digital capabilities of our time and taking action in video conferencing are quite reasonable. These proposed changes generally meet the objectives of the bankruptcy procedure.

In general, it should be said that even a temporary moratorium should be considered carefully, as this is not always justified and appropriate.

2. Historic approach:

Bankruptcy legislation began its formation only after Ukraine got its independence in 1991 in the process of forming the new legal system of an independent Ukraine. There are no long term traditions available.

While working on this analysis, the authors have used an historical approach to clarify the logic of the law-maker in choosing a proper mechanism to better regulate debtors' insolvency and to understand the intention of the legislator to adjust known legal tools used in bankruptcy to the national economy state at all stages of bankruptcy law reform.

a. All bankruptcy laws (briefly)

The first Ukrainian insolvency law – the Bankruptcy Law – was adopted on May 14th, 1992 (Bankruptcy Law₁₉₉₂/BCU1).

The Bankruptcy Law₁₉₉₂ sets 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 Law₁₉₉₂ 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 Law₁₉₉₉ (BCU2) with a new title – the Law of Ukraine "On Restoring the Debtor's Solvency or Declaring it Bankrupt" was adopted.

The Bankruptcy Law₁₉₉₉ extended its application to entrepreneurs and some non-business institutions. The Bankruptcy Law₁₉₉₉ 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 Law₂₀₁₁ or BCU3) 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 Law₂₀₁₁ 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 Law₂₀₁₁ sets forth a list of judgements that may be challenged in appeal 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 Law²⁰¹¹.

b. Way to the new Bankruptcy Code (BCU4)

During several years that preceded the latest Bankruptcy Law reform, the expert community discussed legislative proposals, which 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. 2132¹. 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)².

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 time current BCU3).

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-d 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 entered into force on October 21st, 2019.

c. 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.

¹ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66824

² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60327

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3. Why we compare and how we compare

The aim of the present analysis is to find and point out possibilities for improvement. However, these can only be found if there are suitable benchmarks with which the present law can be compared. In principle, all other legal systems can be considered as already having regulations that correspond to the existing ones.

However, the other legal systems have also oriented themselves to superordinate ideas. These are on the one hand the guidelines and principles of the World Bank, the model laws of the UN, the guidelines of the EU and in justified by the origin of the authors the regulations of the German legislator.

The principles of the World Bank play an important role for Ukraine, since Ukraine is highly dependent on financing by the World Bank. Therefore, compliance with these principles is one of the essential building blocks.

The UNCITRAL model law the cross-border requirements for insolvency proceedings and UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation in the version of 2013/14³ regulates in particular, while the European Insolvency Regulation (EIR -Regulation (EU) 2015/848⁴) regulates the jurisdiction and applicability of law within the Member States in the event of cross-border insolvency. This regulation is supplemented by the new Directive (EU) 2019/1023 (DoRI)⁵.

In a direct national comparison, German law was chosen because of the presence of the German expert. In 1999, after more than 100 years of validity of the predecessor law, Germany introduced a completely new insolvency law, which has been moderately adopted to current requirements and findings ever since. This is a modern law which, in the tradition of German legislation, also attempts to intervene equally in the rights of the various parties involved. Through this balancing it is also a good indicator for the evaluation of various interventions in rights and legal positions which are always necessary in insolvency law by its very nature.

a. World Bank principles

The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes have been designed as a tool to assist countries in their efforts to evaluate and improve the most important aspects of the bankruptcy laws and institutional framework. Efficient, reliable, and transparent insolvency systems and creditor/ debtor regimes are of key importance for economic growth.

³ Document can be found at <https://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf>, last checked on Feb. 23rd, 2020.

⁴ 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 (CELEX: 32015R0848), last time amended by Regulation (EU) 2018/946 of the European Parliament and of the Council of 4 July 2018 replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings (PE/25/2018/REV/1), OJ L 171, 6.7.2018, p. 1–10 (CELEX: 32018R0946)

⁵ DIRECTIVE (EU) 2019/1023 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172, 26.6.2019, p. 18–55 (CELEX: 32019L1023)

The Principles were originally developed in 2001 in response to a request from the international community in the wake of the financial crises in emerging markets in the late 1990s.

The Principles were prepared by a Task Force and working groups comprised of more than 70 international experts, led by the Legal Vice Presidency of the World Bank, and in collaboration with a number of multilateral development banks, international organizations and expert industry bodies.

The Principles suggests a range of benchmarks, based on international best practice, for evaluating the effectiveness of domestic ICR systems. The Principles offer a framework for analysing core commercial laws and regulations on topics such as the registration and enforcement of security rights, credit information systems, insolvency procedure, and the roles of relevant judicial decision-makers and supervisory bodies. Bankruptcy is a key law in the commercial framework.

The Principles are structured in four groups: secured credit system and enforcement of credit agreements (Part A); the legal framework for risk management and informal corporate workout systems (Part B); formal commercial insolvency law frameworks (Part C), and institutional and regulatory frameworks (Part D).

This analysis contains evaluation of the modern bankruptcy system in Ukraine after the latest reform and identifies the areas for further improvement.

b. UNCITRAL Model law

The UNCITRAL Model law consists of two parts. First the law itself is described and in the second part the regulations are discussed. The main focus here is on the provisions of international insolvency law, so that a comparison will be made with the suggestions in this part in particular.

After the introductory fundamental considerations, the regulations cover in particular the points of access to national courts for international creditors, recognition of insolvency proceedings in other countries, cooperation with the parties involved and regulations for the resolution of conflicts with proceedings taking place simultaneously.

c. European Union (EU)

On the part of the legislation of the European Union (EU), two established issues have been taken into account: (1) EIR and (2) DoRI.

EIR deals with issues of jurisdiction, recognition and enforcement, applicable law and cooperation in cross-border insolvency proceedings as well as with the interconnection of insolvency registers.

DoRI has a further focus and takes numerous topics of insolvency law already based on a European standardization of access to the common property and living conditions. Generally, the European Member States shall adopt and publish, by July 17th, 2021, the laws, regulations and administrative provisions necessary to comply with this Directive.

4. Structure of the following document

The following document follows the structure of the Act. The individual chapters of the Act are discussed individually and in the order of the BCU4 within the next chapter. Within each section, the regulations are then briefly summarized in terms of content before the missing points are dealt with from a local perspective. Only then are the regulations and local ideas compared with international considerations and commented on, before a short summary of the results is finally given.

Chapter 6 then presents the results of the work of the working group in Kharkov from the summer of 2019 as well as further results from various events.

In Chapter 7 a first proposal for a change of the current legal situation will be worked out. This proposal will be oriented both abstractly on the results of the individual chapters and also propose new formulations as specific as possible.

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5. Discussion of new law in detail

For an essential understanding of the new law, it is indispensable to first deal with written law. In principle, this can take place in various forms. On the one hand, there is a functional approach. It deals with the individual participants of insolvency law (court, Bankruptcy Trustee, creditor, SGO). The place of the regulation is of secondary importance. As an alternative, the law can be followed in its actual form. Although this takes over any illogical points of the law, it facilitates traceability for possible changes. Since the aim of this analysis is to make concrete proposals for amending the existing law, we have decided against a functional approach and concentrated directly on the regulations. If necessary, we will deal separately with the adjustments that could lead to a better functional presentation.

The following parts have always been named after the headings of the Law in the version of the World Bank translation.⁶

The Bankruptcy Code contains a number of new provisions, among which are some:

- initiation of bankruptcy a proceeding is simplified;
- creditors, including secured creditors, and creditors committee are given broader rights in the bankruptcy proceeding;
- ceasing of the bankruptcy proceeding is not allowed;
- procedure of the property sale improved: now it is possible only through the electronic platform;
- a new procedure for natural persons were introduced, among which are the main restructuring of natural persons' debts and restructuring manager.

a. General provisions – Book 1, sec. 1

The first book of the new law consists of one chapter with a total of nine (9) articles.

i. Overview of the provisions of the Chapter

In this chapter are the following articles included:

- Art. 1 regulates the definitions,
- Art. 2 names the laws in force in relation to insolvency law,
- Art. 3 defines the State Agency for Bankruptcy and the basic regulations on state influence,
- Art. 4 regulates the basic ideas of how to avoid insolvency of the debtor and points the way to out-of-court proceedings,
- Art. 5 regulates a type of preventive restructuring procedure (which will be discussed in detail later),
- Art. 6 regulates the jurisdiction of the proceedings,
- Art. 7 regulates the handling of contentious proceedings in which the debtor is a party,

⁶ The World Bank provided the project with a translation of the law from Ukrainian into English. In the course of the work on this text, it was noticed that the translation was probably done by several people and that unambiguous terms in the Ukrainian version were not consistently translated into English in an identical manner. This may have led to problems of understanding and thus also in the comments that follow. We suggested a corrective translation, also against the background of the numerous amendments to the Law currently under discussion, but unfortunately this was not yet available.

- Art. 8 regulates the jurisdiction of the insolvency court and
- Art. 9 regulates the jurisdiction of the Court of Appeal.

ii. Local Comments

After the adoption of the Code, there was a public discussion of the new edition of the definition of the debtor. Some commentators have argued that this may open a window for opening bankruptcy proceedings or declaring state bodies bankrupt. Yet this opinion seems not well argued. Nevertheless we could see some adjustments made by Laws No. 2276 and 3322, that have not been included as of the missing signature of the President.

The Code also increases liability of the management of the insolvent company: if they fail to file a bankruptcy petition in time or fail to initiate the appropriate out-of-court measures they will bear joint and subordinated liability for not paid debts. Significant changes have been made to the legal position of creditors. In particular, conditions for participation in the bankruptcy proceedings of secured creditors were improved. The Code gave to secured creditors the right to initiate the bankruptcy proceedings; allowed secured creditors participate at decision-making process; during the debtor's sanation procedure the secured creditor may request the court to terminate moratorium regarding their claims, if the security item is not used for the debtor's rehabilitation.

Some key powers of the Creditors Committee have been transformed to the Creditors' Meeting. The quorum at the re-holding of the first meeting is lowered if the first attempt fails due to the failure of the creditors to appear. The vote on the approval of sanation plan should be by classes of creditors.

Creditors will participate in the selection of the arbitration manager. Arbitration managers are required to disclose to creditors information about financial condition of the debtor and the state of bankruptcy proceeding by the means of Internet.

Priority requirements of the current creditors is established over the competitive creditors.

A clearer distinction between the competence of the creditors' meeting and the creditors' committee in the sphere of choosing the main procedure has been made. Creditors' meetings received more powers and have greater influence on the bankruptcy proceeding (practically they can address all important issues).

From a local point of view, the Code lacks another judicial procedure - a settlement (Art. 6). From the point of view of the legislator, the issue of a settlement agreement in bankruptcy cases can be resolved in the manner prescribed by the Economic Procedural Code of Ukraine (Art. 192), since the competitive process is part of the economic process in the courts.

But there is a certain problem in the application of legal terms specified in both Codes. So, the parties to the case have the right to conclude a settlement agreement in the economic process.

The term "parties" in the Code means:

- bankruptcy creditors
- (representative of the committee of creditors) - a new concept in the legislation of Ukraine.
- secured creditors (the requirements of which are secured by the pledge of the property of the debtor)

- debtor

But in bankruptcy cases, another type of lenders appears in the bankruptcy litigation procedure - current lenders, whose claims arose after the bankruptcy proceedings were opened. This type of creditors is not referred by the Code to the concept of “party”, but to the broader concept of “participants in bankruptcy proceedings”.

Based on the foregoing, in the bankruptcy procedure, the parties have the right to conclude an amicable agreement only in the manner prescribed by the Economic Procedural Code of Ukraine. Amicable agreement as a separate bankruptcy procedure is no longer included in the text of the BCU4, but should be included again (see results in Chapter 6).

The procedure for managing the property of the debtor and the procedure for reorganizing the debtor fully allows the parties (bankrupt and secured creditors) to conclude a settlement agreement with the debtor, since these judicial procedures are competitive and the rights of creditors are ensured by the fulfillment of the terms of the settlement agreement by the debtor.

But there are difficulties to conclude an amicable agreement in the liquidation procedure, since current creditors who do not belong to the concept of the “party” are added to the competitive and secured creditors at this judicial stage.

Thus, in the case when the need arises to conclude a settlement agreement in the liquidation procedure of the debtor, ambiguous judicial practice of applying the rules of law related to this issue may arise.

This issue is important because, due to the fact that the procedure for disposing of the property of the debtor is limited in time to 170 days and during this period the court may consider in a preliminary hearing (which is held no later than 90 days after the preparatory) the requirements of the bankruptcy creditors declared within the prescribed time and which are subject to entry in the register of creditors' claims by the property manager (part 2 of article 47) such bankruptcy creditors will be parties to the bankruptcy case and have the right to conclude a settlement agreement with the debtor.

But the Code provides that the requirements of bankruptcy creditors declared after the deadline for their presentation are considered by the court after a preparatory hearing and are to be included in the register of creditors' claims by the property manager (Part 4 of Article 45).

Thus, a situation may arise in which the requirements of all bankruptcy creditors (the party) can be considered by the courts of all instances longer than the procedure for disposing of property takes. Considering that court decisions made regarding creditor claims can be appealed on appeal to the Supreme Court (Article 9), this period will probably be significant.

Based on the foregoing, in the event of a situation where the requirements of bankruptcy creditors have not yet been fully considered by the court, and in the bankruptcy case a transition has already taken place to the following procedure - liquidation, in which current creditors may already appear, there can be no settlement in the bankruptcy case concluded in strict accordance with the law.

State Bankruptcy Authority (Article 3).

Given the creation of a new institution for self-regulation of the profession of a bankruptcy trustee, it seems possible to separate the functions of a state body between such a body and a self-regulatory

organization, especially in terms of training, retraining and advanced training of bankruptcy trustees, which will correspond to the functions of a self-regulating organization (Article 33).

iii. Comparison to other ideas

1. World Bank

INTEGRATION OF THE BANKRUPTCY INTO LEGAL AND COMMERCIAL SYSTEMS

The World Bank proposes that the bankruptcy system being integrated with a broader legal and commercial systems (Principle C1).

Besides C1 in Parts A and B of the Principles the World Bank particularly mentions that bankruptcy system should correlate with credit and enforcement systems (a system of credit should be supported by mechanisms that provide efficient, transparent, and reliable methods for recovering debt, including the seizure and sale of immovable and movable assets and sale or collection of intangible assets, such as debt owed to the debtor by third parties); collateral systems (is one of the pillars of a modern credit-based economy is the ability to own and freely transfer ownership interests in property, and to grant security rights to credit providers as a mean of gaining access to credit at more affordable prices); enforcement systems (a modern, credit-based economy requires predictable, transparent and affordable enforcement of both unsecured and secured credit claims by efficient mechanisms both outside of insolvency, and in the bankruptcy case.

These systems must be designed to work in harmony.

Another important system with which the bankruptcy should be closely linked is risk management and workout systems, that includes a credit information system.

The law should encompass any or all of a debtor's obligations to a creditor, present or future, and debt obligations between all types of persons.

The Principle C3 states that insolvency should apply to all enterprises or corporate entities, including state-owned enterprises.

If some of debtor categories are excluded from the list of potential bankrupts such exceptions must be limited, clearly defined, and should be dealt with through a separate law or through special provisions in the insolvency law. This principle explains that exceptions can be but should be limited, clearly defined, and should be dealt with through a separate law or through special provisions in the insolvency law.

An informal process with adequate creditor remedies and insolvency laws that may rescue of a business through formal and informal procedures. Informal workouts should be negotiated in the "shadow of the law". As the World Bank recommends in Principle B4 these procedures should be part of the Bankruptcy Law. These procedures must include clear procedures that require disclosure of or access to timely and accurate financial information on the distressed enterprise; encourage lending or recapitalization of viable distressed enterprises; support a broad range of restructuring activities, such as debt write-off, rescheduling, restructuring, and debt-equity conversion; and provide favourable or neutral tax treatment for restructurings.

So called corporate (informal) workouts should be supported by the system that encourages participants to restore an enterprise to financial viability.

The World Bank states that an informal process should contain adequate creditor remedies in insolvency laws.

Recommendation.

The former Bankruptcy Law and current Bankruptcy Code contains provisions that state enterprises are not eligible for insolvency proceedings. This situation should be changed through eliminating this discrimination or developing special norms allowing resolving the debt of this category of legal entities by similar remedies that the bankruptcy legislation provides.

The bankruptcy law reform should go on with continue paying a special attention to the systems that are not formally part of the bankruptcy legislation: enforcement procedures, corporate law, credit systems etc.

As the World Bank advises Ukrainian Law-Maker may improve provisions of the commercial laws regarding informal (pre-bankruptcy) restructuring of the business in troubles. Incentives should be introduced in the commercial laws.

Another way for improvement of the bankruptcy legislation can be increasing liability of debtors' directors in case the debtor facing insolvency. In this regard this liability can be part of non-bankruptcy laws – corporate law system. We are sure it may give better results rather than bringing for responsibility in commenced bankruptcy proceeding.

We need to state that the current reform of bailiff (court decisions enforcement) system already give positive result. It positively influences on the cost of debts return in non-bankruptcy proceedings.

Other recommendations that the World Bank Principle C1 contains may successfully implement during the latest reform.

INSTITUTIONAL FRAMEWORK

A sound bankruptcy system should be implemented through institutional and regulatory frameworks. It is well known that a strong institutions and regulations are crucial to an effective insolvency system.

According to the Principles of the World Bank (Part D of the Principles) the institutional framework has three main elements: 1) the institutions responsible for insolvency proceedings, 2) the operational system through which cases and decisions are processed, and 3) the requirements needed to preserve the integrity of those institutions. A number of fundamental principles influence the design and maintenance of the institutions and participants with authority over insolvency proceedings.

The reform of bankruptcy legislation may go on with developing detailed regulation for the profession – the arbitration managers, including disciplining of the representative of the profession that breach the rules and standards. In this regard development and adoption of the Ethic Code looks necessary.

AUTHORISED BANKRUPTCY STATE BODY

According to the World Bank (Principle D7) the role of regulatory bodies is to carry responsibility for regulating or supervising insolvency representatives.

Current reform increased independence of arbitration managers. The Bankruptcy Code contains basic standards that reflect public expectations of fairness among professionals. The role of self-regulatory body of arbitration managers increases.

Now the Ministry of Justice have necessary powers to discharge their functions, duties, and responsibilities effectively through the Disciplinary Commission of the Ministry of Justice. A special attention of the Authorized state body in the sphere of insolvency should be paid to development of secondary legislation to support unified application of the Code.

2. *UNCITRAL Model law*

There is no content in the UNCITRAL Model law on cross-border insolvency that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law. These rules should be applied for natural persons as well.

3. *EU*

In its first chapter, the EIR also regulates the essential requirements (in particular Articles 1 and 2). Here too, however, due to the different subject matter of the regulation, it is only a basic consensus.

In the current version, DoRI also initially regulates terminology. The terms of the EIR as well as possible are adopted and only supplementary terms are defined. However, as this is the first directive of this kind, the wording is still very broad and designed to take national specifics into account as far as possible.

4. *German Insolvency Code and general remarks*

German law also begins with general provisions. However, German law does not know the position of an article with all definitions at the beginning. Rather, the terms are first defined in context and then used uniformly.

As regards content, the definitions of the BCU4 naturally differ from the German understanding of individual terms. This is due on the one hand to the different history of the law and on the other hand to the fact that the law corresponds to other laws. Individual terms such as "insolvency" are even assumed to be known from other laws.

However, it is striking that Ukrainian law assumes a close relationship with the debtor (but also with the Bankruptcy Trustee or creditor) even if a concrete (employment) relationship has already been terminated in the last three years. If German insolvency law assumes such a close relationship, it is limited to 12 months (para. 138 GIC).

Overall, it is noticeable that Ukrainian law defines some terms in great detail (and thus also very restrictively). Here, future developments could require a considerable amount of effort to adapt laws. As far as is known, an extensive interpretation - as exercised by lawyers and courts in Germany - is not part of the Ukrainian legal understanding.

However, another special feature of the present Ukrainian law is that definitions are not only made in Art. 1. Thus, in Art. 2 the term "state-owned enterprise" is used for the first time and Art. 3 explains this

in more detail. This makes the law already in the first articles difficult to read and points out that further surprises can be expected in each article.

Incidentally, Art. 2 is also an aid for the legal practitioner, which would be unnecessary according to the German understanding. This applies, for example, to Art. 2 No. 6, since under the present law foreign creditors also have an opportunity to participate in insolvency proceedings. The same applies to Art. 2 No. 7, which merely repeats existing Ukrainian obligations under international treaties.

The tasks of the State Agency for Bankruptcy regulated in Art. 3 have no equivalent in German law. Some of the tasks there simply do not exist in German law (protection of state enterprises), for other parts the Federal Statistical Office (collection of statistical data) or the court itself (confirmation of insolvency plans etc.) is responsible.

At this point, however, the special feature of Art. 3 No. 1 para 6 should already be mentioned, which requires the establishment of procedures to control the Bankruptcy Trustees. This paragraph conflicts with Art. 32/33, according to which control is to be exercised by the SGO.

The regulations of Art. 4 are also stricter than in German law.

For example, Art. 4 No. 1 requires that the main shareholders (including the landlord and government agencies) avoid bankruptcy. There is no such obligation in Germany. In the opinion of the German expert, this is also true: Not every company has a permanent positive prognosis, some companies have simply become obsolete simply because of the modern world (so no one doubts that the production of steam-powered trains or looms in relation to the world today sales figures could be problematic). However, the regulation does not include an obligation to support reorganization. The standard must also be adapted in view of the fact that secondary liability, as already demanded by some in Ukraine, would otherwise lead to the actual full liability of the persons named here. This would, however, lead the principle of insolvency proceedings ad absurdum and therefore requires correction. This can only be due to the fact that although there is a fundamental obligation of the persons named, they may, however, in justified individual cases, refrain from this obligation without hereby establishing such direct liability.

On the other hand, there is a corresponding equivalent to Art. 4 No. 2 in para 49 (3) GmbHG (German Code for limited liability companies). However, German law formally focuses on the consumption of the share capital, while Ukrainian law requires signs of insolvency (without having previously defined this).

Art. 4 No. 3 guarantees, under the conditions of No. 6, an aid that would be subject to German law of EU examination and approval. This point will be particularly important in connection with a later EU accession.

Art. 5 deals with the specific regulations on the pre-insolvency restructuring procedure. The EU has just laid down these regulations in DoRI; implementation in German law is required by mid-2021.

Discussions on this point have already started, but there are still no proposals for a specific statutory regulation. Therefore, no hint can be given about this article. In the specific case, it is rather the opposite, since this article can serve as a model for German law.

For Art. 7 there is a correspondence in German law in para 240 ZPO (Civil Procedural Code). This provision stops all of the debtor's passive processes and, in conjunction with Art. 86 GIC, gives the option of re-admission in certain cases. Active processes are also initially stopped, but can always be carried out by the Bankruptcy Trustee in accordance with para. 85 GIC to be resumed.

Art. 8 No. 3 corresponds to the German regulation of para. 18 GIC. However, Ukrainian law has the extension that natural persons can also file for bankruptcy due to the threat of insolvency. By the way, the Ukrainian legislator gave the concrete definition of impending insolvency in Art. 34 No. 6 subpara 1; which is far away from the definitions in Art. 1.

b. Bankruptcy trustee (Book 2, sec. 1)

Within the first chapter of the second book, the regulations for the Bankruptcy Trustee are valid for all types of proceedings and as it would have been called in Germany "pulled before the bracket".

i. Overview of the provisions of the Chapter

Some changes in the sphere of Bankruptcy trustee's activity have been introduced with the BCU4. The creditors' committee got the right to apply to the commercial court with a request for removal of the arbitration manager from the performance of powers at any time regardless of the grounds. Thus, the creditors' committee become completely free to dismiss the arbitration manager without any reason.

A new norm according which the debtor needs to show evidence that it/he deposited three minimum wages as honoraria was introduced.

1. Organization of the activities of the arbitration manager (Art. 10 BCU4)

In the code, the profession of a Bankruptcy trustee is classified as an independent professional activity. This status gives the Bankruptcy trustee additional rights and obligations in the exercise of his functions, but in the current version of the code, the Ministry of Justice retains key functions for regulating the profession. At this stage of the development of the profession, the authors believe that the presence of the Ministry of Justice's control functions is justified in the short term. Subsequently, the Ministry of Justice should transfer all of its control functions to a self-regulatory organization. The independence of the Bankruptcy trustee should determine the possibility of self-regulation of the profession in full.

The Bankruptcy trustee from the moment a ruling on the appointment is made and until the termination of his authority, is treated to be the official of the debtor's enterprise. This provision means that Bankruptcy trustees receive additional responsibilities. The fact that the Bankruptcy trustees have the status of an official of a bankrupt enterprise means that they have additional responsibility already as an official (special subject and prosecution under articles 364⁷, 365⁸, 366⁹, 367¹⁰, 368¹¹, 369¹² and 370¹³ CCU (Criminal Code of Ukraine)).

The right of the Bankruptcy trustee to exercise his powers at all stages of bankruptcy proceedings has been secured.

⁷ Abuse of power or official authority

⁸ Abuse of power or official authority

⁹ Official forgery

¹⁰ Official negligence

¹¹ Receiving a bribe

¹² Giving a bribe

¹³ Provocation of a bribe

The right to carry out activities with a Bankruptcy trustee begins upon receipt of the relevant certificate in the manner provided for by this code and entry into the register of Bankruptcy trustees. Thus, the legislator binds the right to a profession from the moment of performing a technical action - entering into the Unified Register of Bankruptcy trustees. Entering the register is a technical action that the registry administrator must automatically carry out, and the legislator determines the time the Bankruptcy trustee begins to work precisely from the moment it is entered into the registry. We are sure that a technical action - entering into the register is not a legal action with the commission of which a person receives the right to carry out his activities. In practice, it is not the inclusion or deletion from the registry that is the most common violation.

At enterprises that carry out activities related to state secrets, the Bankruptcy trustee must have access to state secrets, and if it is absent, obtain such admission in the manner prescribed by law. The Law of Ukraine "On State Secrets" provides for the procedure for access of the Bankruptcy trustee, property manager, reorganization manager, liquidator. The code and the special law do not provide for the right of access to state secrets of the assistant Bankruptcy trustee. In practice, a situation will arise that in cases where there will be state secrets in violation of Art. 14, the assistant Bankruptcy trustee will not be able to perform his functions, since the right to gain access to state secret is not provided for by the Code and the Law of Ukraine "On State Secret".

2. Requirements to the Bankruptcy Trustee (Art. 11 BCU4)

Article 11 defines the requirements for a Bankruptcy trustee. On the whole, the provisions of this article do not cause special comments except: there cannot be a Bankruptcy trustee who has been convicted of an offense for the commission of any crime (this code is indicated further in the code). If we analyze the similar provisions of this exclusion from the profession in other self-regulatory organizations (notaries, private performers, lawyers), we can conclude that people who have not been removed or not extinguished in the prescribed manner are not allowed in the profession for a criminal offense.

The issues of advanced training of a Bankruptcy trustee should be settled by a self-regulatory organization in the manner that will be developed and approved by them. The Ministry of Justice only at the transitional stage (to provide for such a right temporarily for 2 years, for example) can establish the procedure for advanced training, and in the future the state bankruptcy body should transfer such functions to the SGO.

3. Rights and obligations of the Bankruptcy trustee (Art. 12 BCU4)

Art. 12 contains the right of the Bankruptcy trustee to request and receive documents and their copies from legal entities, state authorities, local governments and individuals with their consent. The wording of the right to receive documents and their copies from individuals, subject to their consent, instantly lays the ground for non-compliance with the legal requirements of the Bankruptcy trustee. In addition, the current code does not contain a mechanism of responsibility for not fulfilling the legal requirements of the Bankruptcy trustee, and in other self-regulating professions such a mechanism exists. For example, for not providing documents for a lawyer's request, administrative liability is provided. In practice, the situation may be such that the Bankruptcy trustee will be forced to apply to the court for procedural assistance in obtaining the necessary documents. Having determined the right of direct access to information about debtors, their property, income and funds, including confidential information

contained in state databases and registers, including electronic ones, it is advisable to provide for a free procedure for such access (state authorities now enjoy the right of free access and receiving information).

4. Independence of the administrator (Art. 13 BCU4)

This article provides that if a Bankruptcy trustee is detained by an authorized body or if he is suspected of having committed a criminal offense, the body that carried out the detention or reported suspicion must immediately inform the bankruptcy body about this. The court must be notified of such actions, since it is the court that, in case of suspension of the right to carry out the activities of the Bankruptcy trustee for a period of more than 30 days, appoints another Bankruptcy trustee (in accordance with Art. 29 para 4).

5. Assistant Bankruptcy trustee (Art. 14 BCU4)

The Bankruptcy trustee is required to verify that the person complies with the requirements of this article. The assistant Bankruptcy trustee is subject to the restrictions provided for in Art. 11 No. 2 subpara 1-4. In practice, difficulties will arise in verifying the compliance of a candidate for the position of assistant to the Bankruptcy trustee with certain points: there is no register and access to such a register of persons recognized by the court as being limited in their civil capacity and incapable.

The right of the assistant Bankruptcy trustee to have access to state secret is not fixed.

6. Qualification commission (Art. 15 BCU4)

Article 15 specifies the procedure for the establishment, functioning and powers of the qualification commission.

7. Qualification Examination (Art. 16 BCU4)

Article 16 prescribes the procedure for passing the qualification exam. A progressive change is a change in the procedure for passing the qualification exam - through automated, anonymous testing.

8. Certificate of the right to exercise the activities of a Bankruptcy trustee (Art. 17 BCU4)

The legislator in this article indicates that the moment the commencement of work of the Bankruptcy trustee is the day the information on him is entered in the Unified Register of Bankruptcy trustees of Ukraine. The right to a profession cannot be associated with the commission of a technical action - entering information into the appropriate registry. It is this wording that can cause many future violations on the example of other self-regulatory organizations.¹⁴

We believe that the right of the Bankruptcy trustee has the right to begin carrying out its activities from the moment the certificate for the right to carry out the activities of the Bankruptcy trustee is issued.

¹⁴ For example, the case of the lawyer Andrey Vishnevsky (ex-head of the BAP system), the decision to restore the status of a lawyer is not executed <https://erau.unba.org.ua/profile/27901> (<http://yur-gazeta.com/golovna/andriy-vishnevskiy-povernuv-sobi-status-advokata.html>).

9. The Unified Registry of Bankruptcy Trustees of Ukraine (Art. 18 BCU4)

Art. 18 contains the provisions on the central register of Bankruptcy trustees. This register was already established by one of the previous laws.

10. Disciplinary offenses of Bankruptcy trustees (Art. 19 BCU4)

Art. 19 contains the regulations on the infringements to be disciplined. In principle, these can only apply to violations of the SGO's guidelines. In particular, it was determined that a disciplinary offense is not the execution of the charter and decisions of the SGO of Bankruptcy trustees.

11. Control over Activities of Bankruptcy Trustees (Art. 20 BCU4)

Art. 20 regulates the rights of the State Agency for Bankruptcy and the SGOs with regard to controls. At the same time, the rights of third parties to demand controls are regulated.

12. Responsibility of Bankruptcy trustees (Art. 21 BCU4)

The right to apply disciplinary sanctions rests with the state bankruptcy body upon presentation of a disciplinary commission. Subsequently, disciplinary procedures should be transferred completely to the SGO.

13. Disciplinary commission (Art. 22 BCU4)

The order of forming the commission, its decision-making procedure and powers are indicated.

14. Disciplinary Penalties (Art. 23 BCU4)

Types of disciplinary sanctions: warning, reprimand, temporary suspension of the right to carry out the activities of the Bankruptcy trustee and deprivation of the right to carry out the activities of the Bankruptcy trustee.

15. Bankruptcy trustee liability insurance (Art. 24 BCU4)

The Bankruptcy trustee is obliged to conclude a professional liability insurance contract within 3 days from the moment of entry in the Unified Register of the Bankruptcy trustees of entries on the granting of the right to carry out the activities of the Bankruptcy trustee. It is prohibited to carry out the activities of a Bankruptcy trustee without concluding an insurance contract. It is advisable to provide for the obligation to conclude an insurance contract from the moment of receipt of the certificate for the right to carry out the activities of the Bankruptcy trustee.

16. Compensation for Damage Caused by the Bankruptcy trustees' Fault (Art. 25 BCU4)

Damage caused to a person as a result of illegal actions of the Bankruptcy trustee is compensated in accordance with the law; damage that is caused to a person as a result of unintentional actions or an error of the Bankruptcy trustee is compensated by insurance payments; damage that is caused to a person as a result of intentional actions or inaction of the Bankruptcy trustee is compensated by the Bankruptcy trustee.

Thus, harm caused to a person must be classified into the following types: illegal actions, unintentional acts or error, intentional actions or inaction. Of particular concern is the criteria by which the error of the Bankruptcy trustee can be classified

17. Termination of Activities of the Bankruptcy trustee (Art. 26 BCU4)

The article provides an exhaustive list of grounds for terminating the activities of a Bankruptcy trustee. It raises concern about one of the grounds - the entry into force of the indictment regarding the Bankruptcy trustee. Holding criminally liable for the commission of any crime means the termination of the activities of the Bankruptcy trustee. For private performers, lawyers, notaries, it is provided that the right to a profession may be lost in connection with the commission of an intentional crime.

Given the general circumvention of the regulation of the activities of self-regulating professions, it is advisable to specify the basis for the termination of the activities of the Bankruptcy trustee - the entry into force of the indictment for the intentional commission of an offense against the Bankruptcy trustee.

18. Procedure for terminating the activities of a Bankruptcy trustee (Art. 27 BCU4)

The key issue of the termination of the activities of the Bankruptcy trustee is the right of the latter to appeal the decision of the state body on bankruptcy issues. In the current version of the code, an appeal of such a decision does not suspend its effect, which means that if the decision to withdraw the right to carry out the activities of the Bankruptcy trustee is canceled, it is impossible to compensate the losses incurred. Due to the lack of mechanisms of personal responsibility for making an unlawful decision (especially when it comes to a decision of a collegial body), it is impossible to compensate for the harm caused by such a decision.

19. Appointment and dismissal of the Bankruptcy Trustee (Art. 28 BCU4)

The court has been granted discretion in appointing a Bankruptcy trustee to exercise the powers of a property manager or restructuring manager in the event that none of the Bankruptcy trustees identified by automatic selection filed an application for participation in the case. In this case, the court shall independently appoint a Bankruptcy trustee without legislatively defined criteria and mechanisms.

The committee of creditors is given the right at any time, regardless of whether there is reason to apply to the court with a request to remove the Bankruptcy trustee and the court is obliged to make a decision on the suspension. In fact, the creditors committee has the right to remove the Bankruptcy trustee at any time of their own free will.

20. Temporary suspension of the right to practice as the Bankruptcy trustee (Art. 29 BCU4)

The article indicates the grounds for the temporary suspension of the activities of the Bankruptcy trustee about which an appropriate entry is made in the Unified Register of Bankruptcy trustees.

The bankruptcy trustee is required to report such suspension to the economic court in the proceedings of which the bankruptcy case is pending. If the Bankruptcy trustee is applied, as a suspect or accused of criminal proceedings, preventive measures in the form of house arrest with a ban on leaving the house around the clock or during working hours or in custody, then in this case the Bankruptcy trustee cannot physically report the suspension of his activities (for example, if the arbitration is in custody).

21. Remuneration and Recovery of Expenses of the Bankruptcy trustee (Art. 30 BCU4)

The article indicates the procedure and amount of determining and paying the main and additional remuneration.

The right of the court to reduce the monetary remuneration of the Bankruptcy trustee in the event that the average monthly salary of the director of the debtor is excessively high compared to the minimum wage is cause for concern. There is no defined criterion how to determine the amount of remuneration excessively high compared to the minimum wage.

ii. *Local Comments*

The main idea of the bankruptcy procedure is to recover the business and if it is not possible to pay creditors their debts from its/his assets in maximum.

The general rule that regulates rights and obligations states that the Bankruptcy trustee is obliged to act for the purpose for which he was given rights and obligations. (Art. 12 No. 3).

But this general rule, as well as special rules governing the scope of powers of the Bankruptcy trustee in performing the functions of the liquidator, does not contain the authority to pay creditors their claims (satisfaction of claims).

The bankruptcy trustee (liquidator) performs this function not as a priority, but as a secondary one.

This question may seem insignificant, but from the point of view of the perception of the functions of the Bankruptcy trustee of civil society, it is important in general for the profession of Bankruptcy trustee.

The provisions of Art. 14 do not fully regulate the activities of the assistant Bankruptcy trustee due to the lack of a set of minimum rights and obligations, for example, taking part in a court session.

In addition, it would make sense if the assistant Bankruptcy trustee had the appropriate certificate.

Regarding Art. 16, verification of test are in the process. It is necessary, for not allowing using the system of access to profession manipulated.

The provisions of Art. 19 regarding the determination of the disciplinary offense of the Bankruptcy trustee of "non-performance or improper performance of their duties" (Art. 19 No. 2 subpara 3) in this edition allow us to interpret this definition quite broadly.

It would be desirable to specify the fact of harm to the interests of participants in a bankruptcy case by such non-performance or improper performance.

It is advisable to develop the system of discipline responsibility based on the Code of Ethics. This will increase the prestige of the profession.

The procedure for monitoring the activities of the Bankruptcy trustee (Art. 20) shall be established by the subject of the complaint with complaints about the actions or omissions of the Bankruptcy trustee of individuals and legal entities whose status in the bankruptcy case is not defined.

This statement of the subject composition, which is not related to the bankruptcy case, can create a mechanism of abuse in relation to the Bankruptcy trustee.

Since all legal entities and individuals related to the bankruptcy case, and whose rights may be violated by the action or omission of the Bankruptcy trustee, are covered by the definition of "participants in the bankruptcy case" (Art. 1), it would be preferable to identify persons entitled to appeal with a complaint about the Bankruptcy trustee to the state bankruptcy body, namely, as participants in the bankruptcy proceedings.

This amendment will not only allow eliminating abuses against the Bankruptcy trustee by third parties, but will also comply with the principle of independence of the Bankruptcy trustee (Art. 13).

Particular attention should be paid to the norm contained in Art. 28, which gives the right to the committee of creditors to appeal to the economic court at any time to remove the Bankruptcy trustee from the exercise of authority, regardless of the existence of grounds (Art. 28 No. 4 subpara 4).

This rule not only contradicts the other grounds for the dismissal of the Bankruptcy trustee set out in Art. 28 No. 4, but also contradicts the norms of the Economic Procedural Code of Ukraine (Art. 43) regarding the prevention of abuse of procedural rights by participants in the judicial process, which include creditors in the case about bankruptcy.

But the presence of such a norm formally gives grounds for the court to satisfy such a motion (Art. 28 No. 4).

This state of affairs will allow the committee of creditors, under the threat of removal of the Bankruptcy trustee, to exert pressure on him, thereby violating the principle of independence of the Bankruptcy trustee.

In addition, different judicial practice may arise in the application of this norm and the norms of the Economic Procedural Code of Ukraine.

It is quite natural that the arbitrator, who was dismissed by the court without any reason for such removal and who considers that a petition of the committee of creditors of this kind is an abuse of procedural rights and the actions of the court should be aimed at curbing such abuse, will see in the actions of the judge signs of violation by the judge of the law, which entails the appeal of the Bankruptcy trustee with a complaint already against the actions of such a judge in the manner and ways established by law.

Thus, an unfavorable judicial and disciplinary practice may arise, which negatively affects the reputation of both the profession of the Bankruptcy trustee and the judicial system as a whole.

It would be preferable to exclude from Art. 28 No. 4 subpara 4 and at least delete from after the word "... authority" of the phrase "... or at the request of the committee of creditors."

Regarding the main remuneration of the Bankruptcy trustee in the minimum amount of 3 minimum wages (3 and 5 living wages for able-bodied persons) for the month of the fulfillment of the powers provided for in Article 30, it should be noted that this amount is absolutely not justified by any economic or statistical indicators compared with the corresponding qualifications in professions.

Given the amount of responsibility that rests with the Bankruptcy trustee, the need to raise the level of trust in the profession and its prestige, the fact that the entire amount of the debtor's property is actually under the control of the Bankruptcy trustee, such an insignificant amount of his remuneration can lead to abuse by the Bankruptcy trustee for selfish motives.

Thus, the size of the main remuneration of the Bankruptcy trustee should be a change in the direction of increase by economic justification of this size.

There are also comments on the provisions on the payment of remuneration after the funds advanced by the applicant have ended (Art. 30 No. 2 para 7), since the mechanism for obtaining such funds from the funds received by the debtor as a result of economic activity is not defined.

In addition, in the procedure for disposing of property, the Bankruptcy trustee does not have the right to intervene in the economic activity of the debtor (Art. 44 No. 10), which will lead to the inability of the Bankruptcy trustee to receive his remuneration in the procedure for disposing of property of the debtor.

It is indicated that the costs of the Bankruptcy trustee related to the exercise of his powers in the case are reimbursed in the manner prescribed by the Code (Art. 30 No. 4).

But Art. 30 No. 6 establishes that at the expense of the funds advanced by the applicant (debtor or creditor), only the main remuneration of the Bankruptcy trustee is paid. In general, this norm does not regulate the issue of reimbursement to the Bankruptcy trustee (property manager) of the costs associated with the exercise of his powers in the bankruptcy case.

The norms of Art. 60 which governs the liquidation of the debtor provide for the repayment of only those costs of the Bankruptcy trustee (liquidator) that are associated with the liquidation procedure (Art. 6 No. 3 para 2), while the mechanism for repaying the costs incurred in the procedure for disposing of property is not provided .

iii. Comparison to other ideas

1. World Bank

The new Bankruptcy Code improved regulation of profession of Arbitration Managers, mentioned in respective provisions of the Principle D8 of the World Bank.

Now the Bankruptcy Code already provide:

- Criteria for Arbitration Managers (Recommendation: further work may be around making those criterion objective, clear, and easy to apply for better result;
- Appointment system of Arbitration Managers in general provides the choice of better managers in each case – now the system suggests three candidates to be chosen by parties of the case;

- The Bankruptcy Code has special provisions concerning situations when Arbitration Managers acts as directors they are liable for officer standards of accountability. Additionally, he/she is liable for negligence, fraud, or other wrongful conduct, and can be removed from the office.

As this Principle is devoted to competence and integrity of insolvency representatives the further movement of these provisions' implementation in Ukraine (Book 2 "Arbitration Managers" of the Bankruptcy Code) may go to the direction of increasing their independence and impartiality.

Special provisions of the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes.

Are devoted to the insolvency representatives (Principle D8). The system of regulation of insolvency representatives should ensure that:

- criteria as to who may be an insolvency representative should be objective, clearly established, and publicly available;
- insolvency representatives be competent to undertake the work to which they are appointed and to exercise the powers given to them;
- insolvency representatives act with integrity, impartiality, and independence; and
- insolvency representatives, where acting as managers, be held to director and officer standards of accountability, and be subject to removal for incompetence, negligence, fraud, or other wrongful conduct.

The World Bank states that fulfilment of these requirements may ensure the integrity of the whole system the insolvency representatives regulation.

2. *UNCITRAL Model law*

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

In the course of further improvement of the bankruptcy legislation it would be advisable to review and add more procedural norms to the Chapter on cross-border insolvency of the Code. In addition, respective procedural rules should be added to the Economic Procedural Code of Ukraine.

3. *EU*

The EU regulations in the EIR and DoRI still leave open the question of the concrete catalogue of obligations for a Bankruptcy Trustee, his appointment and dismissal, as well as the question of the qualifications. In these points, there are therefore no conclusive minimum requirements in Europe as yet. Currently, each country is still acting on the basis of its own experience and regulations. This makes it all the more important to look at other countries in addition to the German regulations and to integrate the regulations and experience with them.

4. *German Insolvency Code and general remarks*

Art. 10

Art. 10 No. 1 and 2 correspond to different German regulations. In particular, the representation provision of Art. 10 No. 1 subpara 1 corresponds to the understanding of German law. The clear regulation of these points is particularly important for litigation and liability issues.

Art. 10 No. 3 and 4 have no equivalent in German law. This is due on the one hand to the fact that there is (still) no self-governing organisation of the Bankruptcy trustee and on the other hand, there is no corresponding definition of state secrets.

Art. 11

Art. 11 specifies the requirements for a Bankruptcy trustee. This provision is of considerable importance according to the Ukrainian understanding. Since in Germany an appointment as a Bankruptcy trustee is not dependent on state registration, these points are not covered by the German regulations. Rather, Art. 56 sec. 1 sentence 1 GIC only requires that "a natural person suitable for the individual case in question, in particular one who is knowledgeable in business matters and independent of creditors and the debtor, must be appointed who is to be selected from among all persons willing to assume Bankruptcy trustee's responsibilities".

Art. 12

Art. 12 enumerates the rights and duties of the Bankruptcy trustee. Ukrainian law thus gives the Bankruptcy trustee a much closer line in the handling of his rights than Art. 80 GIC does. German law only assigns the Bankruptcy Trustee the rights of the debtor (with the exception of rights to inspect tax documents). However, it is precisely the enumerative listing that is a clear obstacle. For example, under Art. 12 No. 1 para 5) documents can be requested. Who has to bear the costs for this, is not regulated as a follow-up question. Here (as with Art. 12 No. 1 para 6), no costs may be charged to the insolvency estate.

Art. 12 No. 2 para. 5 specifies the Bankruptcy Trustee's monthly obligations to publish relevant data on the State Agency for Bankruptcy website. In principle, it is very helpful to have up-to-date data, but this can also be done automatically when changes are made using appropriate software. Similarly, in the case of procedures, a half-yearly confirmation of unchanged data would be sufficient. Anything else would cause a considerable effort for all parties involved, without providing any added value (this applies, for example, to assets in non-controlled areas, where changes are desirable but not mandatory in the next six months).

The addition to Art. 12 No. 2 sec. 10a) results from the deletions in Art. 57 No. 1 and Art. 57 No. 4 para. 5 and serves to clarify that the submission of the report is one of the other obligations within the meaning of Art. 12 No. 2 sec. 11). Failure to submit the report on time may therefore have consequences for the bankruptcy trustee under civil law as well as under professional law due to a breach of the obligations as a bankruptcy trustee.

The new version of Art. 12 No. 2 sec. 10b) was necessary in order to include the obligation of Art. 42 No. 8 para 2, which was also revised, in the official duties of the bankruptcy trustee.

The new version of Art. 12 No. 2 para 10c) was to be inserted after the addition of Art. 70 No. 2. It is a consequential amendment and the inclusion of these obligations in the concrete catalogue of obligations of the bankruptcy trustee.

The new provision of Art. 12 No. 2 sec. 12 regulates account management in favour of the debtor. At all stages of the procedure, the bankruptcy trustee is obliged to set up the relevant accounts and use them as a central depository (for all known). Thus the regulation of Art. 61 No. 3 para. 1 and 2 is taken over in a generalised way. At the same time, however, a new para 3 is added to the regulation: The insolvency of the bank keeping the account can have a considerable impact on the creditors' prospects of satisfaction. The bankruptcy trustee is therefore forced to check whether the bank he has chosen has the necessary economic strength. If in doubt, the bankruptcy trustee is unable to carry out such a check, he must be entitled to keep the account with a "secured" bank. In any case, the National Bank of Ukraine can be regarded as such a "secured" bank, which is why this bank was referred to. Should there be more specialised state banks for this purpose, they would certainly be equally suitable.

Also the former Art. 114 No. 3 was added to Art. 12 No. 2 sec. 12. The provision – which was made – for bankruptcy trustees of individuals are also of high importance within the insolvency proceeding of juridical persons.

As a purely precautionary measure, it should be noted that, in any case, Art. 12 does not explicitly mention the obligations under tax laws, foreign trade regulations and money laundering prevention, in contrast to corruption prevention.

Art. 12 must also be supplemented by the deferred provisions from Art. 28 (for details see there).

Art. 13

No changes proposed regarding to Art. 13

Art. 14

Art. 14 regulates the Assistant Bankruptcy Trustee. In contrast to Austrian law, this is not designed as a full-value replacement for the local liquidator, but rather appears to be a training position. Of course, this position also requires training, which is why an addition of a subpara 2 to Art. 14 No. 2 seems necessary. The trainee should also be able to receive theoretical training (at the expense of his employer) from the SGO or equivalent training institutions.

In contrast, no adjustment seems necessary with regard to state secrets, as the trainee should not initially have access to them, as long it is not important for doing his/her business.

There are no regulations in German law on possible assistants or deputies. German law solves this problem for a large number of tasks via the classic civil law regulations on delegation. If these do not apply (e.g. in the case of dismissal of employees), the office of the Bankruptcy Trustee is to be understood as a highly personal one and is structured accordingly.

Art. 15/16

Articles 15 and 16 have no equivalent in German law. In principle, the regulations make a well-founded impression and might have to be reassessed after initial practical experience. However, Art. 15 No. 2 sentence 2 does not clarify whether re-election/revocation is possible. This has been added in the proposed amendments. The corresponding clauses are also reference standards for the references in Art. 22 No. 2 and Art. 32 No. 6a.

Art. 17

The same applies in principle to Art. 17. However, reading the present translation leads to a time risk, since the entry in the central register should also be preceded by the confirmation of the insurance. An adaptation of the law should be made in this context, and Art. 24 should be amended accordingly.

Art. 18

Art. 18 does not regulate access to the established register, but only the content and deadlines for content updates. This regulation neither belongs systematically to this place nor is it somehow complete. It might therefore be useful to move this provision to a new area on registers or sovereign tasks in order to make the law more comprehensible in itself.

Art. 19/20

There is no equivalent in German law to Articles 19 and 20. Nevertheless, Art. 20 No. 1 in particular shows the ambiguity of the law very clearly by imposing controls either on the State Agency for Bankruptcy or on the SGO. This means that the Bankruptcy Trustee already has to answer to two supervisory authorities, which also have different rights (see Art. 20 No. 6 to 8, which only the SGO is entitled to). It becomes completely absurd if the State Agency for Bankruptcy, in accordance with Art. 20 No. 4, is also to involve the most qualified Bankruptcy Trustees in the region in its investigations. According to the logic of the law, these can only be the hearings of local SGOs. The proposal would therefore be an adaptation of Art. 20 No. 1 para. 1 to the effect that the State Agency may only exercise control until the transfer of rights to the SGO, and from that point on the SGO is solely and fully responsible. This would then also lead to a time limit in Art. 20 No. 4.

Art. 21

In the context of Art. 21, the detour via the State Agency for Bankruptcy seems cumbersome. Here, too, the SGO should be able to act directly after a decision by the Disciplinary Commission and, if necessary, after judicial review.

Art. 22

With regard to Art. 22 No. 2 sentence 2, the comments apply as with Art. 15 No. 2 sentence 2, so that a reference to the new sentence 3 inserted there is appropriate.

Art. 23

No changes to recommend within Art. 23.

Art. 24

Art. 24 must be harmonised with Art. 17, as this is the only way to ensure that the register only contains Bankruptcy Trustees who are also insured and may therefore be appointed. Otherwise, there is always the risk of loss of information, which in the worst case could even lead to the appointment of uninsured Bankruptcy Trustees.

Art. 25

Basically, Art. 25 contains a risk-adequate distribution of the allocation of fault and liability for it. Only Art. 25 No. 3 is (in translation) ambiguous: if the Bankruptcy Trustee is personally liable for each legal error, the previous paragraphs are not necessary. A Bankruptcy Trustee always and exclusively works on the basis of the law. This would reduce the entire insurance obligation to absurdity. Therefore, the proposal would be to limit the wording to intentional acts. This would then always include intentional (= deliberate) unlawful actions. This also corresponds to the German regulations of Art. 60, 61 GIC, according to which the Bankruptcy Trustee is basically liable according to the general regulations. However, this personal liability is - limited in content - insurable.

Art. 26

Art. 26 No. 1 contains a list of the reasons for which a Bankruptcy Trustee can no longer perform his duties. This list ends in Art. 26 No. 2 with the statement that in the cases of Art. 26 No. 1 the licence has

to be revoked. We do not consider this to be correct in all cases: for example, a Bankruptcy Trustee may be prevented by a broken leg from travelling far and still be able to conduct his proceedings directly at his home town. In that case, the dropping of cases at his own request would always trigger the revocation of the licence at some courts and thus lead to the loss of all insolvency proceedings. We do not always consider this to be proportionate. Instead, the issue should be considered separately for each insolvency procedure. In addition, as has already been mentioned by local colleagues, the list of relevant offences should be deposited. A one-off 'speeding' offense should certainly not be proportionate to revoke the licence.

Art. 27

Also with regard to Art. 27, the local comments can only be fully endorsed.

Art. 28

Art. 28 is a standard with different contents, which makes it very confusing. On the one hand, the norm regulates the appointment of the Bankruptcy Trustee (Art. 28 No. 1 and 2), then regulates grounds for exclusion and dismissal (Art. 28 No. 3 and 4) and then regulates further obligations of the Bankruptcy Trustee (Art. 28 No. 5 and 6). The contents of No. 5 and 6 belong to Art. 12 and are therefore added to it as a proposal. Art. 28 No. 2 does not contain any provisions for the reappointment of a Bankruptcy Trustee after dismissal for the reasons in Art. 28 No. 3 and 4 or the revocation of the licence from Art. 26. The wording of these provisions has been supplemented within the framework of the proposal. Art. 28 No. 4 subpara 4 was to be deleted as a consequence of the amendment of Art. 28 No. 4 subpara 3.

A division of the provision into separate regulations on appointment and independence and revocation remains recommendable in principle, but is not shown separately in the table within the results.

Art. 29

The provisions of Art. 29 are plausible at first sight. However, practice will show whether the temporary removal of a Bankruptcy Trustee from office is a suitable sanction from the point of view of practice and the insolvency creditors. The induction of the new Bankruptcy Trustee affects the creditors' time and resources without this requirement creating any added value for the creditors. In practice, it will rather only lead to delays in the insolvency proceedings. This is also counterproductive with regard to the desired goal of speeding up proceedings. It could therefore be considered to keep the penalties purely financial (no or lower remuneration) or, in the worst case, to replace the Bankruptcy Trustee completely and permanently.

Art. 30

Art. 30 refers to the Ukrainian minimum wage scale with regard to remuneration. There is also a monthly fixed salary, which also depends on the type of procedure. At first sight, the remuneration is reasonable, although not particularly interesting for a Bankruptcy Trustee who is quick to handle the proceedings. Even the bonus for the collection of individual claims cannot finally change this. On the contrary, the wording in Art. 30 No. 3 is still too imprecise and will still require clarification by the courts in various case constellations.

The system of potential fees also has the disadvantage that the Bankruptcy Trustee has no interest in an accelerated termination of proceedings. It is much more interesting for him to keep the proceedings open as long as possible. In this way, the available assets are simultaneously used up and the quota for unsecured creditors is reduced. This, too, is likely to contradict the aim of accelerating the proceedings.

However, the regulated system becomes completely absurd if the court (according to Art. 30 No. 5 subpara 2) can reduce the remuneration of the Bankruptcy Trustee at the request of a creditor. No specific criteria are specified for this, so that in this respect too there is a considerable need for regulations by the courts within the framework of interpretation of the law. At the same time, however, abuse is also possible.

Despite the preface, no changes are made to the regulation of remuneration in the context of this analysis, as the Ukrainian legislator intends to use its own and fundamentally well thought-out system. However, whether this system will bring the desired success in practice in terms of procedural acceleration, creditor quota and quality of insolvency administration must remain the subject of the following analysis, taking into account practice.

Also, as already mentioned by the Ukrainian colleagues in their part, the question will have to be asked whether the remuneration is sufficient. In Germany these discussions are regularly held, but the fundamentally different system of remuneration (which is based on a percentage of the debtor's assets under management) has already included compensation mechanisms. These result automatically from the assets under management and the higher participation derived from them through a better realisation of individual assets. In Germany, however, the Bankruptcy Trustee must also pay his office and general costs from the remuneration. Only specific costs can be taken from the insolvency proceedings as a supplement.

As a purely precautionary measure, Art. 30 No. 7 was added for clarification. This ensures that the remuneration is always net remuneration, to which any taxes (in particular value added tax) must be added.

For later reasons in connection with the amendments to Art. 40, Art. 30 No. 3 para. 1 was then amended and Art. 30 No. 3a newly inserted.

c. [Self-Governing Organisation of Bankruptcy Trustees \(Book 2, Sec. 2\)](#)

Self-governing is no longer a new institution in the profession of Bankruptcy trustees. The BCU4 makes all Bankruptcy trustees of the organization members automatically with consequences in the form of payment of membership fees and liability in case of non-payment of such fees and non-fulfillment of self-regulatory bodies.

Despite the fact that certain functions are provided for a self-regulatory organization, they are somewhat declarative in comparison with the powers of a state bankruptcy body.

The Code provides for a kind of "hybrid" of the state and representatives of the profession.

It is not very correct to leave behind a self-regulatory organization only powers to control Bankruptcy trustees in terms of applying ethical standards and so on, without providing protection functions for Bankruptcy trustees.

The very structure of self-regulatory bodies is unclear, especially with regard to regional bodies. The same applies to representation in the Qualification and Disciplinary Commissions, since the principle of incompatibility of posts is not defined.

Despite the establishment of functions for the organization, the Code does not define the tasks of self-regulation of Bankruptcy trustees.

The procedure for the constituent congress is not defined.

The procedure for holding regional congresses and creating regional bodies is not defined.

Thus, the creation of self-regulation of the profession of Bankruptcy trustees directly depends on the community of such a profession and its approach to the formation of self-regulation.

In addition, the procedure for notifying the holding of a constituent congress and its direct conduct causes certain uncertainty.

Regarding the functions of a self-regulatory organization: their implementation is possible by amending by-laws of the state bankruptcy body - the Ministry of Justice of Ukraine.

i. Overview of the provisions of the Chapter

Provisions regarding the functions and powers of self-governing organization have not been changed, except for one provision – only one self-governing organization shall be established and can operating in the country.

The Code sets out the basics for establishing this organization. The technical details are to be developed by the Ministry of Justice of Ukraine.

The Code defines the status of self-governing organization of Bankruptcy trustees.

It is established that all insolvency governing bodies are united into one non-profit professional organization, created in order to ensure the self-governance tasks of Bankruptcy trustees. The Code guarantees each governing body the right to participate in the work of self-governing bodies and the right to be elected to governing bodies.

The basic principles of the work of self-governing bodies are the principle of election, publicity, accountability and responsibility for executing all decisions of the SGO

The SGO is created under this Code and cannot be liquidated except under the Law. The founding document of the SGO Charter is approved by the congress of Bankruptcy trustees.

The financial system of the SGO bodies is established through self-financing through the system of payment of membership fees.

Article 32 defines the system of bodies of a self-regulatory organization. The SGO bodies are the Congress of Bankruptcy Trustees of the Region (Autonomous Republic of Crimea, Region, Cities of Kiev and Sevastopol), the Council of Bankruptcy trustees of the Region (Autonomous Republic of Crimea, Region, Cities of Kyiv and Sevastopol); chairman of the council of Bankruptcy trustees of the region; the Council of Bankruptcy trustees of Ukraine; Chairman of the Council of Bankruptcy trustees of Ukraine, Congress of Bankruptcy trustees of Ukraine, revision commission.

The supreme body of self-government of Bankruptcy trustees is the Congress of Bankruptcy Trustees of Ukraine. The competence of the congress is to resolve the main issues: the formation of the Board of Bankruptcy trustees of Ukraine, the election of the Chairman of the Board of Bankruptcy trustees of Ukraine and his deputies, and early removal from office; approval of the charter of self-governing organization of Bankruptcy trustee and introduction of amendments thereto; approval of the Code of Professional Ethics of the Bankruptcy trustees; the formation of an audit committee; appointment of

four members of the Qualification Commission and four members of the Disciplinary Committee; approval of the Regulations on the Board of Bankruptcy trustee of Ukraine, Regulations on the Revision Commission; consideration and approval of reports of the Board of Bankruptcy trustees of Ukraine, conclusions of the revision commission and reports of other bodies, formation of a self-regulatory organization of Bankruptcy trustee; approving the estimates of the self-governing organization of Bankruptcy trustees, its bodies, as well as reports on their implementation; exercise of other powers in accordance with this Code and the statute of self-governing organization of Bankruptcy trustees.

The Congress of Bankruptcy trustee of Ukraine must be held at least once every two years, or may be convened at the request of 10 percent of Bankruptcy trustees or a state bankruptcy authority, or one-third of the Bankruptcy trustee's councils of the region.

The Code gives discretion to the SGO in matters concerning the authority, composition and procedure of forming other SGO bodies.

The Code defines separately the functions and powers of the SGO in the Code. Basic functions are:

- The SGO's oversight function is to supervise the activities of Bankruptcy trustees in compliance with the provisions of this Code, the Code of Professional Ethics, and other regulations.
- Rulemaking functions - participation in the development of regulatory acts and measures to restore the debtor's solvency or declare him bankrupt.
- Representative - representation of Bankruptcy trustees in relations with public authorities, local self-government bodies, their officials and officials, enterprises, institutions, organizations irrespective of form of ownership, public associations and international organizations.
- Protection functions - protection of the professional rights of Bankruptcy trustees.

An interesting feature is the verification of published information, which degrades the honour and dignity, business reputation of Bankruptcy trustee, and in the event of its inaccuracy, the SGO takes measures to refute it.

The Code regulates at a minimum level the issues of the establishment and functioning of SGO bodies, which indicates that the resolution of other issues will be determined by the self-government bodies.

ii. [Local Comments](#)

The issue of the creation, operation of SGO bodies in the Code has received limited attention and the relevant provisions are set out in only two Articles 32 and 33 of this Code.

For example, the issue of advocacy in the Law of Ukraine "On Advocacy and Advocacy Activity" is governed by 16 articles, which contain detailed guarantees for the establishment and functioning of advocacy bodies.

The issue of self-government of private enforcement agents in the Law of Ukraine "On Bodies and Persons Exercising Enforcement of Judgments and Decisions of Other Bodies" is devoted to nine (9) articles.

At the level of the Code, the guarantees of the creation and activity of bodies of self-regulatory organization of Bankruptcy trustee are not sufficiently enshrined.

An important guarantee of the functioning of any self-governing organization is the issue of financing. The current Code does not determine the amount of such funding by establishing a minimum or maximum membership fee for Bankruptcy trustees and no other sources of funding. There is no provision in the Code for the possibility of SGO officials to receive remuneration and the amount of such remuneration.

It is important to have a high level of discretion for SGO bodies in determining the function and mechanisms of work of individual self-regulatory bodies. Such discretion is not justified at the stage of establishing a new institution, and in the absence of political compromise between the Bankruptcy trustees, such powers may cause abuse on the part of all parties involved.

The high level of legal culture and experience of self-governing bodies guarantees that all participants - Bankruptcy trustees of legal procedures - are adhered to. In the weak institutions of the self-regulation bodies of the private professions, a reasonable balance between all the interests of the participants of the process is reached solely on the basis of legislative regulation. We believe that the wide discretion of SGOs regarding the establishment and operation of SGO institutes is not justified at the stage of the creation and development of SGOs by Bankruptcy Trustees.

iii. Comparison to other ideas

1. World Bank

The new Bankruptcy Code improved regulation of profession of Bankruptcy trustees, mentioned in respective provisions of the Principle D8 of the World Bank.

Now the Bankruptcy Code already provide:

- Criteria for Bankruptcy trustees (Recommendation: further work may be around making those criterion objective, clear, and easy to apply for better result;
- Appointment system of Bankruptcy trustees in general provides the choice of better managers in each case – now the system suggests three candidates to be chosen by parties of the case;
- The Bankruptcy Code has special provisions concerning situations when Bankruptcy trustees acts as directors they are liable for officer standards of accountability. Additionally, he is liable for negligence, fraud, or other wrongful conduct, and can be removed from the office.

As this Principle is devoted to competence and integrity of insolvency representatives the further movement of these provisions' implementation in Ukraine may go to the direction of increasing their independence and impartiality.

Special provisions of the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes.

Are devoted to the insolvency representatives (Principle D8). The system of regulation of insolvency representatives should ensure that:

- criteria as to who may be an insolvency representative should be objective, clearly established, and publicly available;
- insolvency representatives be competent to undertake the work to which they are appointed and to exercise the powers given to them;
- insolvency representatives act with integrity, impartiality, and independence; and

- insolvency representatives, where acting as managers, be held to director and officer standards of accountability, and be subject to removal for incompetence, negligence, fraud, or other wrongful conduct.

The World Bank states that fulfilment of these requirements may ensure the integrity of the whole system the insolvency representatives regulation.

2. *UNCITRAL Model law*

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

3. *EU*

The EU regulations in the EIR and DoRI still leave open the question of the concrete catalogue of obligations for a Bankruptcy Trustee, his appointment and dismissal, as well as the question of the qualifications. In these points, there are therefore no conclusive minimum requirements in Europe as yet. Currently, each country is still acting on the basis of its own experience and regulations. This makes it all the more important to look at other countries in addition to the German regulations and to integrate the regulations and experience with them.

Only in some European countries have SGO regulations actually been implemented. An example of this is France, where implementation began more than 30 years ago and where there are different views on success or failure.

4. *German Insolvency Code and general remarks*

German law always leaves control of the insolvency administrator to the appointed judge (Art. 58 GIC). This judge is also responsible for appointment and dismissal.

This principle is very often described by Ukrainian colleagues as archaic and is considerably influenced by personal motives. In addition, corruption could never be ruled out in the proceedings, especially if there were also closed lists of names of the insolvency administrators to be appointed at the courts.

This criticism is basically correct. However, the system in Germany, which is different in many respects, does not allow for automated selection: only the judge knows which insolvency administrators have specific industry experience, have already continued companies of a certain size or whose organisation is geared to dealing with claims from more than 10,000 or 100,000 creditors. Knowledge of foreign languages and correspondence offices abroad is also not easily reflected in software. This is all the more so if an administrator can be selected nationwide - whether this is economically worthwhile for the insolvency administrator is not considered at first.

The result is that the establishment of a self-governing organisation in Germany has always failed so far, the Ukraine has now shown the way. Some of the regulations are certainly open to criticism, but local colleagues have already spoken out on this in detail.

Only the rule on the limitation of the term of office was included in the new Art. 32 No. 6a.

iv. Results

The provisions in this chapter are still very general and have already been supplemented by explanatory notes and (particularly with regard to the founding congress) by ministerial orders. The right to do so results from the transitional provisions, there No. 7.

For the time being, no major changes are to be made, but the transfer of rights from the MoJ to the SGOs, which still needs to be further specified, and the cooperation between the State Agency for Bankruptcy and the SGOs will require additions and concretisation. However, practical experience will have to be awaited first.

d. Bankruptcy of legal persons (Book 3)

The third book of the law consists of Art. 34 to 112 and regulates the procedures relating to legal persons, including international insolvency law.

The logic of the law is therefore also followed in this section, which is prepared chapter by chapter.

i. Proceedings in Bankruptcy cases (Book 3, Sec. 1)

The first chapter and Articles 34 to 43 set out the main provisions on procedures.

1. Overview of the provisions of the Chapter

The bankruptcy petition may be filed with the economic court either by the creditor or the debtor (Art. 34). The documents to be attached by the applying creditor (Art. 34 No. 2) and the debtor (Art. 34 No. 4) are specified. Thereafter, a request is only possible if the court fees have been paid and, in the case of the creditor's request, if the first three months of the insolvency administrator's fees have been demonstrably paid. In addition, in both cases numerous other documents must be submitted so that the court can make its decision. Art. 34 No. 3 also stipulates that several creditors may join forces, which is of particular interest with regard to the fees to be paid. Art. 34 No. 6 para. 1 regulates the debtor's obligation to file for insolvency in a somewhat hidden manner and defines the threat of insolvency. Art. 34 No. 6 para 2 also regulates the responsibility of the management in case of late filing for insolvency.

In absence of the grounds for refusal to accept, abandon or return the application on initiation of proceedings in the bankruptcy case the commercial court accepts the petition for its consideration within five days after its acceptance (Art. 35). The creditors' meeting must take place within a further maximum of 20 days (Art. 35 No. 2). In addition, the standard contains some instructions for notification to various state institutions.

Art. 36 deals with the debtor's obligation, in the case of a creditor's application, to provide the court and the applicant with further information and to respond in a qualified manner to the accusations made against him as debtor. However, Art. 36 No. 4 undermines this provision, which does not provide for sanctions in the case of a response and allows the proceedings to continue.

Art. 37 regulates the procedural handling of the rejection of an insolvency filing.

Art. 38 governs the rejection of the application by the court and the withdrawal of the application by the applicant. In this case, the debtor cannot withdraw the application if he has referred to Art. 34 No. 6 para. 1 in his application.

Art. 39 regulates in great detail the course of the preparatory meeting and its consequences. If proceedings are initiated by the creditor, the court verifies the debtor's ability to meet the matured obligations (Art. 39 No. 3). The court refuses to open the proceedings if: 1) the claims of the creditor indicate that there is a dispute; and if 2) the debts are settled before the preparatory procedure is opened (Art. 39 No. 6). Art. 39 No. 9 also specifies the publication of the court decision and free access to the court's own decisions. Art. 39 No. 14 provides information on the changes in company law resulting from the opening of insolvency proceedings.

Art. 40 gives creditors the possibility of securing their rights with the support of the court. This includes the transfer of powers of the head or management body of the debtor, who can then be replaced by a property administrator. According to the wording of Art. 40 no. 1 para 2, the property administrator may not be identical with the bankruptcy trustee.

Art. 41 regulates the various moratoriums in connection with the insolvency proceedings as well as the stop of ongoing enforcement proceeding during the period of the insolvency proceeding, from the initiation of which, according to Art. 39 No. 5.

Art. 42 regulates the contesting of transfers of assets by the debtor to third parties by the insolvency administrator.

Art. 43 regulates the legal succession of the parties.

2. *Local Comments*

According to the new BCU4, there are a number of bankruptcy court proceedings can be applied to the debtor in distress:

- Disposal of debtor's property
- Sanation (restoring of the debtor's solvency)
- Liquidation of the bankrupt.

Also, the debtor has a right to initiate the debtor's pre-bankruptcy rehabilitation procedure – pre-bankruptcy sanation (Art. 5). This Article was improved that now give more possibilities to solve the problems of the debtiness before initiating a formal bankruptcy proceeding.

The Code merged the procedure of settlement agreement with court sanation, which technically enabled to exclude the settlement agreement for the text of the law.

A significant reduction in duration of the bankruptcy proceedings should also be facilitated by a cut of a number of judgements that may be challenged.

Filing a bankruptcy petition already does not require to provide an evidence of existing of 300 minimum wages in amount.

The threat of insolvency of the debtor as a ground for opening the bankruptcy proceeding has been more clearly established.

The term in three years for revision and avoiding of some transactions was adopted instead of one year.

The composition of the creditors' committee was clarified: if the number of creditors is not more than seven, they all become members of the committee.

An important new rule appeared: the bankruptcy proceedings are not subject for suspension. This will help not delaying proceedings by unjustified reasons.

The Bankruptcy Code regarding the legal entities has a number of innovations. The new Bankruptcy Code has abolished a number of conditions on the basis of which the court could refuse to open a bankruptcy proceeding:

- Filing a bankruptcy petition does not require the debtor to prove proof of claim of 300 minimum wages;
- A new rule has been introduced - the debtor is required to provide proof of three minimum wages to pay honoraria to arbitration manager;
- The petition may be based on the threat of the debtor's insolvency (imminent insolvency).

The legislator limited the duration of the disposal of debtor's property procedure to 170 calendar days without the right to continue. In the previous law this term is 115 calendar days with a three-month extension (in practice, these deadlines are exceeded).

It is very puzzling that, given the term of the procedure for disposing of the property of the debtor of 170 days, the advance payment of the main remuneration to the Bankruptcy trustee is three months (Art. 34 No. 4 subpara 5).

Thus, a situation may arise in which the Bankruptcy trustee, not being able to receive remuneration from the debtor's business activities, as indicated above, will exercise his powers only within the time period that he can receive remuneration without fulfilling it in full all functions in the procedure for managing the debtor's property.

If such a property manager is replaced by another Bankruptcy trustee, a tremendous loss of time will occur. At the same time, the new Bankruptcy trustee will be forced to exercise his powers without a real opportunity to receive compensation in principle.

This state of affairs may lead to the fact that the next Bankruptcy trustee will not give his consent to the appointment of the property manager and the procedure will not be carried out in the form in which it is provided for by the Code.

It would be logical to establish an advance payment of remuneration to the Bankruptcy trustee within the term of disposal of the debtor's property - 170 days.

According to the new Bankrupt Code there are no thresholds for bankruptcy cases. Also, there is no need to confirm existence of a court decision held in favour of the creditor and decision in enforcement proceedings. Earlier, in order to open the bankruptcy case, it took time to come through a long chain of actions having a court decision and an enforcement proceeding opened. This normally took much time. The debtor now has no restrictions in the case of debt and can file for bankruptcy.

The Code has a provision according to which significant transactions can be made only with the consent of the creditors' committee. The term during which some contracts can be declared invalid was

increased from one year to three years. Creditors' assembly activity became more important and now have more influence than the creditors' committee (the assembly can address all matters that are under control of the committee).

Despite the fact that the composition of the creditors' committee has not changed and consist of seven creditors, there is an innovation - if the creditors are not more than seven persons, they are all become members of the committee of creditors.

The experts say that the three-year period will allow to declare a transaction invalid in the bankruptcy procedure and prevent so-called artificial bankruptcies. Practitioners state that this procedure was used by debtors to avoid liability and to sell property "for a penny". Previously, creditors could only collect debt through subsidiary or joint liability at the cost of the owners or managers of the enterprise, that was not enough efficient.

The Code also sets forth that the sale of assets of the bankrupt should be done in the form of auctions.

3. *Comparison to other ideas*

a. World Bank

The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes sets forth a number of basic principles as to the bankruptcy of legal entities.

Principles C1 says that effective insolvency systems should aim to:

- Strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another;
- Provide for timely, efficient, and impartial resolution of insolvencies;
- Prevent the improper use of the insolvency system;
- Provide a transparent procedure that contains, and consistently applies, clear risk allocation rules and incentives for gathering and dispensing information.

6. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

b. EU

In its regulations, the EU has always refrained from drawing up its own definitions of the issues reported in this chapter. However, especially in the EIR it presupposes the existence of certain systems (contestation, set-off, etc.). Contestation is already rudimentarily regulated in this chapter, and offsetting follows just as rudimentarily only in the context of Art. 64.

r. German Insolvency Code and general remarks

Art. 34

The provision of Art. 34 has its equivalent in several provisions of German law. For example, the regulations on filing for insolvency can be found in Art. 13 GIC, the creditor's right to file for insolvency in Art. 14 GIC, the obligation to file for insolvency with penalties in Art. 15a GIC and the liability of the managing director is regulated in the respective laws on legal form (e.g. Art. 64 GmbHG). All in all, the regulatory content of Art. 34 is also known to German law.

There are deviations - due to the structure - in the documents to be submitted. For example, the creditor no longer has to pay in advance the court fees in Germany, but bears the cost risk in the event of an unfounded insolvency petition (Art. 14 No. 3 GIC). In the other case, the costs are borne out of the insolvency estate, so there is no longer any obligation to make advance payments. However, such an obligation may arise if the court considers rejecting the application for lack of assets (Art. 26 GIC), as the existing assets are then not sufficient to cover the costs of the court and the insolvency administrator. In this case, the creditor can have the insolvency proceedings opened by paying an advance (usually between EUR 3,000 and EUR 5,000).

The corporate law consequence of such a fiduciary connection would be interesting with regard to Art. 34 No. 3 para 3. In Germany, this could be the formation of a partnership under civil law, which could then possibly lead to subsequent problems in bookkeeping and/or accounting there. However, this should only be mentioned by the way.

However, the provision according to which the landlord must consent to an application for insolvency (Art. 34 No. 4 para. 17) is not easily understood from an external perspective. In the absence of such consent, the management must nevertheless be able to file for insolvency in order to avoid its own liability under Art. 34 No. 6 para 2. It would therefore be worth considering repealing Art 34 No. 4 para 17 and 18 (power of attorney for 17). It would of course be different if, in connection with Art. 4 No. 1, the debtor could be forced to avoid filing for insolvency with the landlord. For the acceptance of an enforceable claim, however, the wording of the provisions is not sufficient.

The provision of Art. 34 No. 5 can only be understood as a steering regulation intended to remind the debtor of the competent insolvency court.

In the context of the debtor's petition, it is also interesting to know what the insolvency administrator's fee is to be paid from and how the provision of this amount is to be taken into account in the calculation of a possible obligation to file for insolvency pursuant to Art. 34 No. 6 para 1. The same applies, of course, to the court fees. All in all, the concrete legal calculation of the TOI (threat of insolvency) still requires some court decisions. Thus, it is not possible that even a small claim that cannot be paid from the funds currently available (or perhaps received within the month of Art. 34 No. 6 para 1) is sufficient to trigger the obligation to file for insolvency under this norm. If, however, the incoming funds have to be taken into account within the one-month time limit of Art. 34 No. 6 para. 1, would the expenditure within this period have to be taken into account as well? In Germany, this question has long been controversial and several decisions of the Federal Court of Justice have decided that both the incoming and outgoing funds within the time limit of Art. 15a GIC have to be taken into account in the calculation. However, further exceptions are made, including subordinations as well as claims that are not seriously claimed; these could, however, be special features of German law that are not initially intended to be of significance here in the recommendations for amendment.

The regulation of Art. 34 No. 6 para. 1, like the comparable regulation of Art. 15a GIC, will still require clarification by the courts. For example, the wording of the provision in the present translation does not conclusively state clearly whether the one-month period is a maximum period or an actual period. This can have considerable differences for the liability of the management under Art. 34 No. 6 para 2. This is due to the fact that in the case of an actual deadline, first the objectively verifiable circumstance of the threat of insolvency must occur and then the one-month deadline begins, whereas in the other case the one-month deadline runs permanently undercover and the management has the obligation to check every payment for the occurrence of the threat of insolvency. This means that immediately upon the occurrence of the TOI the filing for insolvency would be unidentifiable. In both cases, it is also necessary to ask in which period of time the documents required under Art. 34 No. 4 should be available. Not every company has an accounting system from which the required documents can be generated directly. Normally, the legally required lists and valuations must first be generated from a large number of individual lists. Due to the objectively existing delay, there is a considerable risk of personal liability for the managing director if business operations are continued during this period.

As a small marginal conspicuousness, Art. 34 No. 6 para 2 does not limit the claim holders to the insolvency administrator. Ukrainian law therefore does not follow the rule at this point that such claims are claims of the debtor against his former organs, but shifts them directly to the disadvantaged creditor. As a result, there is a risk that the managing director may find himself exposed to a large number of lawsuits. It is to be feared that a race of creditors for the assets of the managing director will arise. The German courts did not decide again until 2020 that such claims cannot be asserted directly by creditors.

On the basis of the current legislation on the privatisation of companies in Ukraine, there is a considerable risk that the management of these companies will become liable in the event of subsequent insolvency. This is due to the fact that the companies have already been technically insolvent since their transfer to the State Property Fund of Ukraine (SPFU). However, formal insolvency is only prevented by the existing moratoria¹⁵. Thus, the moratoria now contradict the provisions of Art. 34 No. 6 (and Art. 4 No. 2) which apply here. According to these regulations, the management would have to report the TOI and also act accordingly in order to avoid their own liability. However, since the legislator has explicitly thought differently with the regulations on privatisation, these thoughts must not have a negative impact on the management. This can be achieved in different ways. The exemption as well as the already not possible claim can be considered. An exemption would have the disadvantage that the individual members of the management would first be exposed to claims in the insolvency proceedings and would then have to assert these themselves and at their own expense against the state - this leads to a large number of unnecessary legal disputes and, if necessary, enforcement. It seems to the authors that not taking these claims into account from the outset is the more efficient way to solve this issue. It should be noted that they apply exclusively to the period of validity of the special privatisation arrangements - validity outside this period (i.e. both before and after) is explicitly excluded.

Art. 35

In contrast to German law, Ukrainian law in Art. 35 works with rigid time limits. Thus, the court must decide on the insolvency application within five (5) days. In the case of a continuation of a company, this is a very long pending phase in which the managing director may not carry out any business

¹⁵ A list of all existing moratoria, can be found in the Annex.

transactions in order to avoid personal liability. Furthermore, the provision of Art. 35 No. 1 para 5 in conjunction with Art. 35 No. 1 para 1 is unclear: Upon presentation of all the elements of the case, the court has the duty to make a decision on the continuation of the insolvency proceedings within the time limit. However, such a decision can only be taken if all the documents are available. Now Art. 35 No. 1 para 5 refers to the fact that further documents may be requested. After the introduction to Art. 35 No. 1, however, such a decision can only be made with regard to persons other than the applicant. A corresponding proposal for adaptation has been filed.

This provision is further tightened by Art. 35 No. 2, which may only make the final decision on the opening of insolvency proceedings after a creditors' meeting. How in the minimum 14-day and maximum 20-day period the continuation of the business is to take place without actively maintaining business operations (no receipt of goods, no dispatch of goods, creditors asserting their security rights and collecting goods, no sales - as a guarantee on the goods cannot be given) is unclear to international experts.

Art. 36

Art. 36 guarantees the debtor the possibility of being heard in a qualified manner in the context of a creditor's application in the preparation of the preparatory meeting. In Art. 36 No. 2, the law tries to provide a form, in Art. 36 No. 3 it also tries to provide additional information, if the debtor considers it relevant. However, the norm comes to the conclusion in Art. 36 No. 4 that no feedback from the debtor is no obstacle to proceedings. All this is in accordance with German law of the opinion. The whole provision can therefore be shortened.

Art. 37

Art. 37 is a follow-up provision to Art. 35 No. 1. For reasons of comprehensibility, it would have been nicer to link the provisions of Art. 37 directly to Art. 35 No. 1, so Art. 37 comes somewhat surprisingly.

Art. 38

Art. 38 deals with the rejection and withdrawal of insolvency applications. Art. 38 No. 3 also regulates the possibility of repeated applications, while Art. 38 No. 4 prohibits the repayment of court fees in a special case (without at the same time allowing the possibility of invoicing). The reasons for withdrawal regulated in Art. 38 No. 6 conclude with the provision that an insolvency petition filed with reference to Art. 34 No. 6 para 1 cannot be withdrawn (Art. 38 No. 6 para 5). This clause is surprising because of the openness of the calculation in Art. 34 No. 6 para 1 (see already there). Thus, the debtor may have surprisingly collected invoices that have been outstanding for months or years and are now - e.g. by a legal order for state enterprises to pay the outstanding invoices; or by a resolution of the debts from the non-controlled regions. For reasons of prudence, this compensation was - rightly - not included in the calculation according to Art. 34 No. 6 para 1, so that now actual free funds are flowing after filing for insolvency, which could be sufficient to cover the entire debt. In this case too, an application should not be withdrawn. However, since Art. 36 No. 6 para 1 is accompanied by Art. 36 No. 6 para 2, the provision of Art. 38 No. 6 para 5 is unnecessary. The withdrawal can only be made by the managing director. However, he will only take back the goods if he is certain that he will not incur any personal liability. However, this certainty only exists if the company is actually no longer in the TOI sector and no other creditor has filed for insolvency. The ban on taking back the application is therefore superfluous and should therefore be lifted.

Art. 39

Art. 39 regulates the procedure and consequences of the so-called preparatory meeting. In this meeting the court - comparable to the framework of a civil law oral hearing - should hear the reasons for the opening of insolvency proceedings from the applicants and the debtor and then form a final opinion. However, this final opinion has not been given a deadline in the BCU4 text. This is astonishing because the present law also regulates the time limits for decisions in a very decisive manner. Either the law refers to the CPCU (Commercial Procedural Code of Ukraine) via Art. 2 No. 1, or there is an inaccuracy in the law which may well cause annoyance in practice. Also the right of the court not to make a decision can be a decision of the court. However, this would prevent the continuation of the insolvency proceedings or even (if the application is actually unfounded) the possibility of the insolvency proceedings being cancelled. Although no insolvency applications received after the end of the day preceding the preparatory meeting may be taken into account in the court's decision (Art. 39 No. 4 para 1), a delay in the decision may lead to precisely such further applications. For example, according to the requirements of the supervisory authorities, financial institutions will regularly have to terminate the credit lines granted immediately in the event of insolvency, but at the latest at the point in time when insolvency is more likely than non-insolvency. This point in time will regularly occur at the latest in a temporal connection with the so-called preparatory meeting.

In this context, it should also be pointed out that Art. 39 No. 11 stipulates that the preparatory meeting can be postponed by a maximum of 30 days if state secrets may be involved and the insolvency administrator must first obtain the relevant approval. Taking into account the other periods specified by law, this maximum period is long.

Art. 40

At first sight, Art. 40 is a useful support for creditors in the realisation of the debtor's assets. By appointing a so-called property administrator, the powers of realisation of the assets are concentrated on him. This separation of personnel can also be useful in the event of liquidation, as separate persons and thus teams regularly take care of the realisation of fixed and current assets. This can lead to an acceleration. However, the standard is in the general part of the general insolvency proceedings. At this point in time it has not yet been decided whether a continuation or liquidation should take place. The appointment of a further person, who according to Art. 1 No. 1 para 19 should also have the qualification of a Bankruptcy Trustee, now increases the costs for creditors and the necessity of coordination between the persons now acting. This makes the insolvency proceedings both longer and more complex for all parties involved. Although the various persons involved also reduce the possibility of abuse in the realisation, this point cannot, however, outweigh the costs incurred and the other expenses at the expense of the creditors. Furthermore, there are no regulations on the appointment or remuneration of the so-called property administrator. In any case, these have been supplemented for the appointment by an explicit reference to Art. 28 and, with regard to remuneration, to Art. 30 No. 3a. This last amendment led to a minor amendment of Art. 30 No. 3 para 1.

Art. 41

Art. 41 essentially corresponds to the German norms on the suspension of the statute of limitations and the effects of the opening of insolvency proceedings with regard to the enforcement of claims against the debtor. The background to the moratorium is the other civil law regulation on suspensions in Ukrainian law. Somewhat surprising are the provisions in Art. 41 No. 8 para. 2 and Art. 41 No. 9: while the former provides for an automatic end of the moratorium for secured creditors after 170 days from the decision in relation to Art. 39 No. 5, the latter regulates the end of the moratorium in the case

of a court confirmed lack of insolvency of the debtor. The adjustment after 170 days is explained by the fact that by this time all essential procedural acts should have been completed and thus the insolvency proceedings should have ended. The second provision is, at least in the translation, worded in an unfortunate way. It remains open in the wording whether the end only occurs with the decision or should apply retroactively. For the interest run for claims as well as for the calculation of costs, the offset of a few days may well be considerable amounts, taking into account the provisions of Art. 41 No. 3. The wording of the provisions of Art. 41 No. 9 is therefore slightly adapted as a proposal.

Art. 42

Art. 42 regulates the contesting of asset transfers by the debtor prior to his insolvency. According to Art. 42 No. 3, the aim should be to ensure that the assets thus removed from the insolvency estate flow back into the insolvency estate (physically or economically equivalent). However, there is no provision comparable to Art. 144 GIC in Ukrainian law. Thus, under Ukrainian law, the party opposing the avoidance must surrender what has been obtained, but without fully restoring the situation prior to receipt. This deprives the rescission opponent of the possibility of participating in the distribution of the insolvency assets as a normal creditor of the insolvency proceedings. A provision similar to Art. 144 GIC is therefore added to Art. 42 No. 4 as new points.

The new Art. 42 No. 5 and 6 correspond to the German legal understanding according to which, in the event of payment on the avoidance, the originally already settled claim is revived and the opponent of the avoidance is then entitled as a creditor to amicably assert this claim in the insolvency proceedings. The precise classification depends on the revived claim.

Art. 42 No. 7 was to be added, since even facts that come to light later and are not yet statute-barred must still be able to be enforced in court. Responsible is the bankruptcy trustee acting in his current capacity at the time of the proceedings.

Art. 42 No. 8 is to be added in order to ensure that ongoing proceedings under this provision do not stop the change in the type of proceedings and that the respective bankruptcy trustee continues to be actively legitimised. He must report to the current bankruptcy trustee and the court on the current status of the proceedings. To ensure this reporting obligation, a new paragraph 10b) was also added to Art. 12 No. 2.

ii. Disposal of Debtor's property (Book 3, Sec. 2)

This chapter consists of Articles 44 to 49. The new code offers a new approach to defining the procedure for disposal of the debtor's property. A key player in the bankruptcy process was the creditors' committee. It is the creditors' committee that has broad powers in the bankruptcy procedure, which will certainly have a positive impact on the procedure, as it is the creditors who are most interested in the procedure.

The procedure for disposing of the debtor's property is the first important step in which steps are taken to seek, preserve the debtor's property, identify creditors and debtors, and other measures. As a result of this procedure, a decision must be taken either to rehabilitate the debtor, to liquidate or close the proceedings.

An important task of the property manager is to convene and hold a meeting of the lender. It is creditors who have broad powers under the new Code.

1. *Overview of the provisions of the Chapter*

Art. 44 regulates the basic tasks of the property administrator as well as the basic procedure of the realisation process. BCU4 establishes that the term of the disposal of property procedure is 170 calendar days without the right of extension (Art. 44 No. 2).

Art. 45 regulates the procedure in which the creditors can lodge their claims and the court determines the claims, as well as the participation of the creditor in a later planning procedure.

Art. 46 regulates the formal examination of an unsecured creditor's claim by the court immediately after it has been asserted within a period of five days. After this period the creditor has the possibility of rectification.

Art. 47 regulates the so-called preliminary meeting, in which the claims are discussed and determined in relation to the table.

Art. 48 regulates the creditors' meeting, the quorums and the decision-making powers. At the same time, the provisions on the creditors' committee were included in this article.

Art. 49 regulates the termination of these proceedings and the transition to the possible steps, which are extension of the procedure (where still possible), transition to the rehabilitation proceeding, transfer to liquidation or the conclusion to the insolvency proceedings.

2. *Local Comments*

a. *Art. 45/48*

Article 45 eliminated the negative consequences for bankruptcy creditors who declared their claims after the deadline set for their submission to the court (Art. 45 No. 4).

Moreover, the norm establishing that such requirements are considered by the economic court in the order of their receipt in the court session, which is held after the preliminary court session (Art. 45 No. 4 para 3), has no legal certainty regarding its application only in the property management procedure .

Such conclusions can be drawn by analyzing the powers of the economic court to consider the claims of creditors, as well as the similar powers of the reorganization manager and liquidator, including the authority to maintain a register of creditors' claims.

It should be noted that as a result of the interpretation of this rule of law an ambiguous judicial practice may arise regarding the question: can the claims of a bankruptcy creditor declared after the deadline set for their submission be considered by the court in the procedures for reorganizing the debtor and liquidating the bankrupt?

This issue is very important, since bankruptcy creditors play a huge role in the process of transferring to another judicial procedure from the property management procedure, the settlement process. The presence of statements about such creditors in the register of creditors' claims serves as the basis for satisfying their claims.

These factors can adversely affect both the time frames in the bankruptcy case and the emergence of conflicting and ambiguous judicial practice on this issue.

In addition, the ambiguity of the application of the rule of law can provoke its unfair use by individual participants in a bankruptcy case.

The proposal is the specification in Art. 45 No. 4 para 3 - "the claims of creditors declared after the deadline set for their submission are considered by the economic court during the procedure for disposing of the property of the debtor in the order of their receipt at the hearing, which is held after preliminary Economic Court "

Regarding the powers of the meeting of creditors provided for in Article 48:

Since the meeting of creditors selects a committee of creditors from among its members, which represents the interests of all creditors during bankruptcy proceedings (Art. 48 No. 6 para 5) and whose competence (meeting) includes, among other things, issues within the competence of the committee of creditors, it was logical attribution of some functions of the meeting to the competence of the committee of creditors:

- approval of the rehabilitation plan and amendments thereto (Art. 48 No. 5 para 3);
- appeal to the economic court with a petition for the introduction of the following bankruptcy proceedings.

Such a mechanism will allow the committee of creditors to fully represent the interests of all creditors without duplication and suppression of functions when some issues are resolved by the committee, and some by the meeting of creditors.

At the same time, the existence of a norm on referring the competence of the committee to the competence of the meeting will prevent the committee from abusing it to the detriment of the interests of individual creditors or the meeting as a whole.

In addition, in the case of a large number of creditors, the process of convening them and holding the meeting directly may require significant material and human resources compared to holding a meeting of the creditors committee.

6. Sale of Assets – general remarks

The most important, from a financial point of view, stage of the bankruptcy procedure is the procedure for selling the property of the debtor.

The largest number of complaints from creditors falls on the procedure for the sale of property of the debtor. It is very important to define clear control criteria on the part of all participants in the bankruptcy procedure at all stages of the sale of the debtor's property.

The following provisions of the Code are of particular concern:

The code (part 3 of article 71) defines a mechanism for paying for the services of an authorized electronic platform operator. The fee is paid by the winner of the auction. But in the event of invalidation of a transaction that was completed in violation of the procedure for preparing and conducting an auction (in accordance with Article 73 of the Code), the issue of refund of the services of an operator of an authorized electronic platform is not settled.

We propose that this issue be resolved by the following wording: In the event that a transaction that is concluded in violation of the procedure for preparing and conducting an auction due to the fault of the

operator or officials of an authorized electronic platform is declared invalid, the latter must return to the auction winner the remuneration received earlier.

Sale of the so-called "non-liquid" property of the debtor. We are talking about the property of the debtor, which could not be sold through the auction due to the lack of market value of such property. As a rule, a real buyer who is ready to purchase such property cannot be found.

We propose such property of the debtor and the right of demand to transfer free of charge to local authorities or other interested parties (you can use the analogy with the procedure for managing the property of the debtor in the enforcement proceedings. Unrealized property of the debtors is subject to free transfer) after all stages of the auction procedure. We know that the issue of disposing of non-liquid property is now being decided by the liquidators themselves by means of a fictitious sale of such property in favor of the enterprises they control. Such property may be transferred to local governments, charitable organizations, any individual or legal entity free of charge.

Issues of the sale of an integral property complex (Art. 54):

Discussion is the question of the possibility of selling part of the whole property complex without prior sale of the entire property complex as a whole. In the previous version of the Law, there was a requirement that a part of an integral property complex can be sold only after all the possibilities for selling the property of the debtor in the form of an integral property complex have been exhausted, including repeated and second repeated auctions.

We believe that in this matter there should be a state position aimed at preserving the debtor's property in the form of an integral property complex. Practice shows that a potential investor (buyer of debtor's assets) is interested in acquiring only "liquid assets". Thus, the property of the debtor is fragmented and loses its value. A lot of enterprises in Ukraine, especially the state form of ownership, operate in the form of an integral property complex.

We propose changes to the part that the sale of property of the debtor in parts can take place only when the liquidator has taken comprehensive measures aimed at selling the property of the bankrupt in the form of an integral property complex, including holding a second and second second auction.

If there is property excluded from circulation in the debtor's property, the liquidator is obliged to transfer it to the relevant persons in the prescribed manner (part 4 of article 62 of the Code). The specified norm is declarative in nature. The Civil Code of Ukraine (part 2 of article 178 of the Civil Code) stipulates that the types of objects of civil rights, whose stay in civil circulation is not allowed (objects withdrawn from civil circulation) should be established in law. Debatable is the need for detailing the types of property withdrawn from civil circulation and the procedure for its transfer to "relevant persons" in the Code. But in the subordinate regulatory act, the above provisions must be detailed.

The first and not least important step is the disposal of the debtor's property, which is introduced for a period of 170 days. This stage includes a system of measures and control over the management and disposal of the debtor's property, preservation of property, analysis of financial condition and determination of the next procedure - rehabilitation or bankruptcy.

Repeatedly, arbitrators have expressed concerns about the timing of this procedure and not being able to extend it. In our opinion, the court should be given the right to extend the term of the order, because in the case of a large debtor proceedings, such a term is impossible. Of course, the extension

of the term of disposal of the debtor's property is an exclusive measure and may not apply to all debtors.

At this stage, the debtor's creditors are identified and formed, the first meeting of the creditor's meetings and the formation of the creditors' committee are organized and held. Competitive lenders have the right to file a corresponding application within 30 days of the official announcement of the opening of bankruptcy proceedings, and secured creditors can file a corresponding application with the debtor during the bankruptcy proceedings in respect of claims that are unsecured. Competitive and secured creditors are not equal in terms of the issue of the deadline for filing a claim against the debtor. In our opinion, practical issues will arise when considering the applications of creditors that are submitted after the deadline set for their submission and the order of satisfaction of such requirements.

The property manager has wide powers in matters of analysis of the debtor's financial activity, search, valuation of assets. Without having the right to intervene in the debtor's economic activity, the property manager has the right to sue the court for the invalidation of the debtor's deeds and also the acts of the debtor. Ukraine has extensive experience in dealing with disputes over the invalidation of the debtor's actions concluded by him in violation of the established procedure.

The preliminary court hearing must be held within 70 days, and in some cases within 3 months from the date of the preparatory court hearing. In the case of bankruptcy of large size debtors, it is impossible to hold a preliminary hearing in such a period. It is at the previous court session that the issues of consideration of all claims of creditors and the order of their satisfaction, the date of the meeting of creditors and the committee of creditors, the date of holding the final court session are resolved.

Creditor meetings are held to form a committee of creditors, approve a redevelopment plan, or go to court to file for bankruptcy. The Committee of Creditors has broad powers to elect an arbitrator, dismissal or replacement, and to challenge any transaction at any stage, requiring such a transaction to be invalid.

The final stage of the disposal procedure is the court's consideration of: extending the disposal of the debtor's property; approval of the debtor rehabilitation procedure; recognition of the debtor bankrupt and opening of liquidation procedure; closing the proceedings.

An important question is the question of what are permits, licenses and other documents of a debtor, do they have their value? The code does not contain rules regarding this.

3. Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...)

a. World Bank

The new Bankruptcy Code provides a good basis for disposal of debtor's assets at the best price. This may be realized by compulsory sale through electronic auction system. This is in full compliance with the World Bank Principle C1.

6. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

b. EU

The EU has not included a mandatory procedure for the realisation of assets in its proposals, directives and regulations. This is partly because such a procedure would prevent remediation in the Western European understanding. The realisation of assets always includes both current and fixed assets. Whereas the current assets are regularly to be liquidated both in the event of liquidation and the continuation of the company - or have to be made into cash by means of recovery. This does not apply to the fixed assets. Many of these assets (e.g. machinery and licenses) are still absolutely necessary for the continuation of the company, while others could possibly be realized (cf. machinery and equipment not needed).

EU law wants all these points to be clarified within the framework of an overall solution and not to recycle parts beforehand.

It would be different, however, if the Ukrainian Bankruptcy Trustees were to see themselves exclusively as managers of the assets. In that case, the time regulated in the above standards would be understood in particular as a time for evaluating various possibilities, at the end of which various solutions could be found. As laudable as this approach would be, it is not in line with the EU's thinking. The EU's regulations want a quick solution to the issues and assume that this can be found in all procedures with the time required in each case. A separate time limit is therefore not necessary if and as long as the creditors - at least by a majority - are in agreement. As soon as this is no longer the case, the only remaining option - as in Ukrainian law - is liquidation, although under EU law the insolvency administrator can not only carry out this by means of a total break-up, but partial transfers of entire assets or even partial businesses are also possible.

r. German Insolvency Code and general remarks

Art. 44

Art. 44 should regulate the basic procedure for the recovery of the assets. However, Art. 44 leads to considerable frictions, as it takes up (and changes) previously regulated facts again and thus leads to contradictions within the law. This will be discussed in the individual explanations below. In Germany, the procedure for realisation is left solely to the insolvency administrator, who is not only supposed to look after the assets but has to consider the debtor as a whole. The procedure chosen by Ukrainian law to appoint a property administrator in addition to a bankruptcy trustee can therefore lead to problems in the area of maintaining the company (see already the comments on Art. 28 No. 3, Art. 40 No. 1 para. 2). According to the provisions of Art. 28 No. 3, it is not possible for the bankruptcy trustee and the property administrator to be identical. Even though the provision of Art. 28 No. 1 para. 2 states that only one person is to be appointed at a time, Art. 40 No. 1 para. 2 expressly refers to the possibility of the bankruptcy trustee agreeing to the actions of the property administrator. However, this contradicts Art. 39 No. 8 para. 6, 8 and 10, which expressly provides only for the appointment of a property administrator in the event of proceedings being opened.

Art. 44 No. 1 para. 1 begins with the task of achieving the best possible result for the creditors and of deciding whether the rehabilitation or liquidation procedure is more suitable. Unfortunately, this task is not specifically assigned to anybody, which is why Art. 44 No. 1 para. 2 directly requires the appointment of a property administrator, which, however, would already have to be done according to Art. 39 No. 8 para. 6 and would therefore have to be deleted for repetition.

The period of 170 days set in Art. 44 No. 2 corresponds to the duration of the moratorium in Art. 42 No. 8 para 2.

The duties of the property administrator set forth in Art. 44 No. 3 correspond to those set forth in Art. 12. In this respect, it would be urgently considered to dissolve one of the two provisions in order to avoid contradictions

Art. 44 No. 4 only repeats the provision of Art. 25 in other words and is therefore obsolete.

Art. 44 No. 5 characterizes individual actions of the management as inadmissible. However, it remains open after translation whether any arrangements made are nevertheless null and void or whether their invalidity would still have to be determined by a court. The latter would be negative and could lead to considerable delays in insolvency proceedings. It would therefore be worth considering to amend the paragraph significantly with regard to invalidity. At the same time, the management should still be personally liable to the insolvency estate in the event of an infringement and the resulting damages.

Art. 44 No. 6 is incomprehensible for a German lawyer. The system could correspond to the release according to Art 35 No. 2 GIC, but otherwise there are no regulations. Therefore, it is not understandable why individual assets should be removed from the insolvency attachment and what then happens to these or the proceeds obtained with or from them.

Art. 44 No. 7 corresponds to the idea of joint administration. This makes sense in principle, since new financial obligations are entered into here. It is also in line with the logic of Art. 25 that the property administrator should countersign these contracts, as this ensures financial fulfilment. The restriction of Art. 44 No. 7 para 6 also seems to make sense at first sight. However, this delays the course of the proceedings. Significant transaction is defined in Art. 1 No. 1 para 6.

Art. 44 No. 8, on the other hand, does not differ substantially from the preceding paragraph of Art. 44 No. 7 para. 6. The only difference is that now the reference is no longer to the general word of the transaction but to the specific sale. Since this does not make any difference from the present perspective and since the word transaction is more general and the significant transaction is defined, we would suggest leaving it at that. Accordingly, Art. 44 No. 7 para 6 is repealed and Art. 44 No. 8 is given the wording of the repealed Art. 44 No. 7 para 6.

By adapting Art. 44 No. 5, Art. 44 No. 9 can be repealed. The obligation to file challenges already arises from Art. 42 and therefore needs not be repeated.

Art. 44 No. 12 para. 2 and Art. 44 No. 13 regulate the proper continuation of the company, but give the property administrator considerable power. The actual separation between managing director and property administrator is also due to mutual control and the different tasks. This is also abandoned, which can lead to a delay in the course of the procedure. In addition, there is no further surcharge for the property administrator to take over the task, and payment directly by the debtor for taking over the tasks of the CEO is likely to eliminate the risk of corruption. In this case, however, the system as a whole would have to be corrected, so that no adjustment has been made.

Art. 44a

The insertion of Art. 44a enables an early allocation of the cost allocation, which was previously hidden for the liquidation procedure in Art. 61 No. 3 para. 3-6. The new provision of Art. 44a is to be applied in all types of proceedings and has therefore been generalised in its wording. In addition, the applicability was formulated in the amended para. 4.

Art. 45

Article 45 deals with the lodging of claims. The basic procedure corresponds to German law. The deadline for filing the claim is regulated differently, which in Ukrainian law is always 30 days, but is calculated from the date of publication of the order of proceedings. The regulation supplements Art. 39 No. 14 para 2 in this regard.

Unsecured creditors must file their claims (pursuant to Art. 45 No. 1 para 1) directly with the court. Secured creditors (pursuant to Art. 45 No. 2 para 2) do not have a literal addressee of their filing, so the word unsecured in Art. 45 No. 1 para 1 must be deleted. The filing with the court corresponds to the filing practice in Germany until 1999. This was abandoned with the introduction of the GIC, because the number of claims and the sorting, the coordination with the insolvency administrator at the court required too many resources. Since 1999, therefore, applications must be submitted directly to the insolvency administrator, who must then forward them to the insolvency court in a collected and sorted form. Under German law, the insolvency administrator is thus responsible in particular for receiving mail, for the initial check of the claim for completeness and for sorting. This considerably reduces the workload of the court. However, the insolvency administrator then sends the claims filings to the court with an examination proposal and the claims are examined there in proceedings in which all insolvency creditors can participate. The other insolvency creditors have the right to object to the claims filed by other creditors. All this is essentially in accordance with the provisions of Ukrainian law. Since the filing of claims with the court was certainly made after consideration and represents an additional level of security in the current Ukrainian legal system, this procedure has not yet been changed to the more economical procedure from Germany, even in the comments. However, it would be worth considering whether it might be possible here to adapt more closely to German law after a certain period of time and the establishment of control measures over the insolvency administrators.

Art. 45 No. 2 then contains various special regulations and clarifications. In particular, Art. 45 No. 2 para. 2 and 3 reflect the German legal opinion, according to which a secured creditor must also invoke his rights, i.e. otherwise he loses them and only participates in the insolvency proceedings as an unsecured creditor.

Art. 45 No. 2 para. 4, which refers to the date of the exchange rate for claims in foreign currency as the date of filing the claim, is somewhat incomprehensible. In order to have a uniform reference date throughout the entire procedure, however, it would make more sense to refer to the date of the opening of the proceedings, since from this date at any rate no effective payments or other dispositions to the creditor are possible. The wording has therefore been adapted in the proposal.

In principle, the sending of copies of the notice of claim as regulated by Art. 45 No. 2 para 7 is certainly helpful, but the purpose is not clear why they should be sent to the debtor and the property manager. Sending them to the property administrator, on the other hand, would be helpful, as he should be aware of the claims. In the proposal, the law has therefore been amended to cover mailings to the debtor and the property administrator.

Art. 45 No. 3 para. 9 is somewhat surprising, as no court fees have been regulated so far (and in all other respects in the entire Art.). It is not clear what fees are actually payable and what they result from. It must therefore be assumed that this regulation originates from the reference law according to Art. 2 and is understandable. However, these certainly do not refer to the special nature of the quota payment. It cannot be from our European understanding that the fee for a timely application is higher than the quota which is achieved afterwards. It would therefore be worth considering deleting this court fee completely. However, this can also be provided for in the context of the transfer of the recipient of the application from the court to the insolvency administrator, as from this point in time at any rate a separate fee must be levied by other means.

Art. 45 No. 5 then sets a short period of 10 days in which the property administrator must notify the court of the results of the examination of the claims, taking into account the debtor's findings. According to German law, the examination meeting must take place at the earliest one week and at the most two months after expiry of the filing period (Art. 29 No. 1 GIC), whereby the insolvency administrator must deposit the documents with the court for inspection by the other creditors after at least two days and at the most three weeks (Art. 175 No. 1 Sentence 2 GIC). Compliance with the deadlines requires good coordination of all parties involved. Unfortunately, the Ukrainian court does not regulate the logic of filing the claims filed in order to allow for their identification and a comparison between the court, the debtor and the property administrator. Neither does it encourage electronic recording, so that in larger proceedings the court alone has a considerable task in dealing with the large number of claim applications and the associated documents to process them in a timely manner. In Germany, the offices in which large insolvencies with more than 10,000 creditors are regularly processed have set up special teams for these cases, which then take over the technical processing of the filing of claims. Corresponding solutions should also be envisaged in Ukraine; one possibility would be an electronic filing of claims and a corresponding file, which would then give the court, the property administrator and the debtor the opportunity to inspect and process / comment on the documents at the same time.

Art. 45 No. 6 para. 1 obliges the property administrator to allow other creditors to inspect the filings so that they can exercise their rights under this provision. In the case of a file kept only in paper form, this is an additional challenge for the insolvency administrator's office. In Germany, this is made possible in a different way by the possibility for creditors to inspect the file at court, where only a few creditors make use of this right.

Art. 45 No. 8 para 1 and 2 oblige the insolvency administrator to provide further information to the court. However, the court already has this information because of the application submitted to them. It is not clear why this duplication is to take place, since it only triggers work at the insolvency administrator. If the insolvency administrator receives the claim registration at a later date, however, it makes sense to mark the creditors accordingly, as the court can then get a quicker overview of the reason for the claim within the framework of the claim examination. However, this provision is currently superfluous and should therefore be deleted.

Of great importance, however, is the provision of Art. 45 No. 8 para. 3, according to which the claims to be designated as liabilities of the estate under German law have priority over the insolvency claims of the creditors. This classification is to be approved in full.

Art. 45 No. 10 now assigns a mandate to the property administrator, which is in contradiction to the open procedure under Art. 44 No. 1. The Ukrainian legislator will have to decide which standard should take precedence. In the current draft, the standard has been adapted and is not mandatory.

Art. 46

The provision of Art. 46 is intended to provide the creditor with an early answer as to whether his declaration complies with the legal requirements or whether improvements are necessary. This transparency is to be praised and does not take place in insolvency proceedings in Germany for reasons of simplification. Unfortunately, the standard only regulates half of the necessary things. Thus the appropriate messages are sent only to the creditor and this has also only to the court the rework to send. However, this is not sufficient in relation to the provision of Art. 45, as neither the debtor nor the property administrator is aware of the court's objections and, in the worst case, further examines the claim because of different views. Therefore, communication should always be conducted with all parties involved, and the standards were subsequently amended by a corresponding No. 4 in the draft amending Act.

Art. 47

Art. 47 essentially corresponds to the German provisions on the expiry of an examination date, with some special features. For example, Ukrainian law now requires the property administrator to draw up the table (Art. 47 No. 2 para 8). At the same time, the claims for penalties and fines are assigned to the sixth rank of claims. The amount of the established claim is then - according to the regulations in German law - decisive for the number of votes in the creditors' meeting or creditors' committee. The latter is different from Germany, since in the creditors' committee the creditors do not have to represent their own interests, but the interests of the group of creditors they represent (secured or unsecured creditors, employees, large or small creditors, representatives of the tax authorities or the Federal Employment Agency). This means that in Germany all members of the committee also have an equally weighted vote.

There is only a very small need for adjustment in the present text of the article. All of the content of this number has already been regulated elsewhere (specifically in Art. 35 No. 2 and Art. 39 No. 8 para 9) and can therefore be omitted due to duplication of the regulation.

Art. 48

Art. 48 regulates in great detail the procedure of the creditors' meeting, which must be convened by the bankruptcy trustee. However, the procedure is very complicated, so that the following proposals contain slight changes, which are also intended to speed up the process.

In Art. 48 No. 1, a new para 11 is inserted, which obliges the bankruptcy trustee, in addition to the invitation, to attach and supplement the essential items of the voting procedure with proposals for its execution analogous to the topics in Art. 48 No. 5. This makes a fiction of attendance as fictitious as the one now newly fictitious in Art. 48 No. 2 para 1 possible. Also Art. 123 No. 6 was moved as a general rule to Art. 48 No. 1 para 12.

In Art. 48 No. 2 para. 1, the requirements for a quorum of the meeting are also specified, which even in the smallest case still requires an attendance of 25% of the total amount of the liabilities. In order to have a quorum in this composition, however, the meeting must be postponed twice by 14 days in each case, so that a procedural delay of 4 weeks can occur solely due to lack of quorum caused by lack of interest of the creditors. This is generally unpleasant, since the insolvency proceedings are conducted

to satisfy the creditors and only their participation is important. So if no creditor wants to participate, it must still be possible to make a decision. This is also provided for by German law, which in this case wants to regard the insolvency administrator's proposals as approved and makes the corresponding proposals part of his report to the insolvency court. A corresponding amendment to Art. 48 No. 2 para is therefore part of the proposed amendments.

The provisions of Art. 48 No. 4 can be omitted, since they are exclusively reproductions of Art. 47 No. 2 para. 8 and 10 in different wording but with the same content. Deletion was therefore suggested.

Art. 48 No. 5 No. 5) and No. 8 No. 4) are still problematic. Both cases have been adapted to the provisions of Art. 28 No. 4 para. 9. Nevertheless, we are convinced that both regulations continue to make sense, as a dismissal of the bankruptcy trustee by the creditors can still be suggested, even if no longer with the mandatory consequence of immediate dismissal.

The establishment of a creditors' committee follows different rules in Ukraine than in Germany. In Germany, the participation of different groups of creditors would be mandatory, this is different in the Ukraine, so that the group of secured creditors alone - with corresponding voting behaviour - can also provide the creditors' committee. However, in the Creditors' Committee of the Ukraine, voting is also by head, which again corresponds to the German system.

Art. 49

Art. 49 is the decisive norm in which the further course of the insolvency proceedings is to be decided. This decision shall be incumbent on the creditors. However, Art. 49 No. 4 of the law already provides for a mandatory solution for further proceedings if no decision is taken by the creditors. Therefore, no changes are appropriate in this provision.

iii. Rehabilitation of the Debtor (Book 3, Sec. 3)

Sec 3 of Book 3 is dedicated to the rehabilitation procedure. All essential questions are to be regulated at this point and in this context in Art. 50-57. It should be noted that the regulations follow Art. 49 and thus the procedure regulated in sec. 2 of Book 3 must be regarded as a mandatory prerequisite. This also means that in many places reference is made to information and documents already created in this Sec 2.

1. Overview of the provisions of the Chapter

In an introduction, Art. 50 first of all states that the court must decide on the rehabilitation plan. The court must also appoint a rehabilitation manager. This manager will then take over the complete tasks of the management and will thus be given more tasks and powers than the property manager. This manager will also have the right to terminate certain contracts.

Article 51 of BCU4 provides an overview of the necessary content of the plan. At the same time, it indicates other provisions to be complied with, in particular the consideration of employees' rights (No. 4), the prior approval of the plan by the SPFU (No. 6) and the general effectiveness of the plan.

Art. 52 then regulates the assignment of creditors to individual classes and the rights of this class in the votes. At the same time, the points to be observed by the court are also regulated at this point.

Art. 53 deals with the increase of the debtor's share capital as a restructuring measure. A debt-to-equity swap should also be explicitly possible. The concrete regulations on the capital increase and the valuation of the contributed assets should be taken into account in the rehabilitation plan.

Art. 54 allows the sale of parts of the business. However, the existence of ownership of real estate is a prerequisite for such partial operations under Ukrainian law (see Art. 66 No. 3 Economic Code of Ukraine). This sale must be carried out via the central auction platform. If the proceeds from the ownership are not sufficient to satisfy the liabilities according to the plans in the rehabilitation plan, either the plan should be adjusted by the creditors or, if this is not done, the transition to the liquidation procedure should be made possible.

Art. 55 thus enables a different type of realisation of assets under the insolvency plan. According to the heading, this is about the exchange of assets. However, the provision shows that it is rather a matter of dividing companies into subdivisions and transferring assets and liabilities to the newly created units. In doing so, the employees - analogous to the provision of Art. 54 - go with the assets, automatically. In the event of a subsequent sale, the acquirer is also considered the legal successor in this provision.

As a catch-all provision, Art. 56 then also allows other realisation (as already laid down in Art. 54 and 55) of assets as long as this has been agreed in the rehabilitation plan and the process complies with the legal requirements. This alludes in particular to the fact that no sale should take place without the integration of electronic platforms.

Art. 57 then regulates the conclusion of the rehabilitation procedure. This regulates both the rehabilitation manager's accounting obligations and the obligations of the court as well as the possible decisions of the court.

2. Local Comments

Considering the powers of the reorganization manager to review the requirements of bankruptcy creditors (paragraph 6, part 6, article 50), as well as the possibility that the requirements of a bankruptcy creditor may have final status by virtue of their consideration in the appeal (cassation) review by the court, there is a need to supplement h .6 Art. 50 of the Code establishing the authority of the reorganization manager to maintain a register of creditors' claims.

This issue is important due to the fact that in the process of reorganization (liquidation) the requirements entered in the register are paid off.

The Art. 51 and 52, in their logical construction and connectedness, should be found in Sec. 2 of this Book.

The mechanism for considering a rehabilitation plan by bankruptcy creditors divided into classes, including creditors with voting rights (at a meeting of creditors and a committee of creditors) and creditors without the right to vote, appears to be a rather complicated structure.

At the same time, taking into account the previously indicated possibility of ambiguous interpretation and application of the norm of Art. 45 No. 4 para 3 - "the claims of creditors declared after the deadline set for their submission are considered by the economic court in the order of their receipt at the hearing, which is held after a preliminary hearing of the economic court, "a situation may arise in which the requirements of the bankruptcy creditors declared after the deadline for submitting them are not

considered by the court in The procedure for disposal of the assets of the debtor, and in reorganization proceedings.

Since such creditors (without the right to vote) are endowed with the right to approve / disapprove of the rehabilitation plan, legal conflicts may arise with the procedure for amending the rehabilitation plan in the event that the rehabilitation plan is not fulfilled and creditors' claims have not been satisfied.

This assumption is confirmed, *inter alia*, by the absence of a deadline for the rehabilitation process (they are determined by the creditors in the plan), and amendments to the rehabilitation plan are possible only by reviewing the report of the rehabilitation manager submitted to the creditors meeting no later than the expiration of the rehabilitation process defined in the rehabilitation plan (Art. 57 No. 5 para 4).

In this case, the right to make decisions on approval of amendments to the rehabilitation plan in the absence of a report of the rehabilitation manager for the meeting of creditors is not provided.

Thus, the right of bankruptcy creditors whose requirements are considered in the reorganization procedure may be violated.

In any case, the occurrence of such a situation, taking into account the legal uncertainty of the above norms, can lead to negative consequences during the debtor's reorganization procedure.

The idea of pre-trial rehabilitation is quite progressive and enables the debtor to improve the enterprise through a set of measures.

The redevelopment manager has broad powers to manage the enterprise to execute the redevelopment plan, so the arbitration manager must be granted some immunity, protection from the creditors committee. The provisions of the Code as a whole speak of the unrestricted right of the creditors' committee to dismiss the redevelopment manager without good reason.

There is no guarantee of the independence of the arbitration manager in the debtor reorganization procedure, because the Code contains the risks of abuse by the creditors' committee when executing the reorganization plan. The debtor's remediation procedure may be used by the debtor or other interested parties not for the purpose specified in the Code but to obtain a moratorium and protect against creditors. In fact, the debtor can use debridement to avoid debt obligations.

All the criteria by which the remediation manager can refuse the debtor's transactions are not defined. Positive is the right to refuse a transaction that causes damage to the debtor or a transaction that is long-lasting (more than one year). It is not clear and unclear the criterion by which the refusal of a contract of execution may create conditions that impede the recovery of the debtor's solvency. The Code and other legislation do not define the concept of creating conditions that impede the recovery of the debtor.

Thus, the redevelopment manager has the unlimited right to refuse the debtor's activities using broad discretion. The court must control the reasonable use of such a right by the arbitrator.

The Code defines the term of submission of the resolution plan and the voting protocols of each class of creditors to the economic court in one business day after the voting. It would be more expedient to provide for a different deadline, not later than the next working day after the date of voting.

The Code does not set a deadline for the debtor's resolution procedure, but the resolution plan should specify a term for restoration of the debtor's solvency, which, obviously, will be controlled not only by the court itself, but also by the creditors.

The commencement of the debtor reorganization procedure shall be approved by the court by means of an order. The main purpose of the reorganization procedure is to fully or partially satisfy the creditor's claims without recognizing the debtor as bankrupt.

All the authority to implement the reorganization plan shall be vested in the manager in such a procedure as is chosen from among the arbitrators. The sanatorium manages the property of the debtor, and the company officials are dismissed from their positions.

The arbitration manager, having the authority to manage the property of the enterprise, is obliged to adhere to the approved reorganization plan, to report on the stages of its execution by the court and the creditors committee.

The property owner does not have the authority to restrict the remediation manager in the right to the debtor's property. Unless otherwise provided in the Code or in the redevelopment plan, the creditors' committee may exercise control over the commission of significant or interested transactions.

The redevelopment manager is given the right to refuse almost any transaction of the debtor, if such transaction causes damage to the debtor, or is long-term or the conditions of such transaction prevent the restoration of the debtor's solvency. These valuation concepts give unlimited right to the manager of sanitation to refuse any transaction.

Failure to comply with the requirements of the resolution plan or failure to meet the debtor's current obligations is grounds for early termination of the procedure for resolution and recognition of the debtor bankrupt and the opening of liquidation proceedings.

A key element of the redevelopment procedure is an approved plan. The provisions of the Code provide for a non-exhaustive list of measures to restore the debtor's solvency contained in the resolution plan. The main condition of the redevelopment plan is to determine the order of repayment of the creditors' claims based on the order established by this Code.

In order to decide on the redevelopment plan, all competing lenders are divided into classes. Lenders included in each queue form a separate class of lenders. A separate class of creditors consists of secured creditors.

The decision to approve or reject the redevelopment plan is made by each class individually by a simple majority vote (not secured creditors) and two thirds of the creditors' votes (secured creditors).

If the redevelopment plan receives the required number of votes of all types of creditors and is approved by all classes, the economic court decides to approve the debtor redevelopment plan. The court's refusal to approve the approved redevelopment plan must be based on the requirements of the law and be the basis for the liquidation procedure.

The redevelopment plan may provide for an increase in the debtor's share capital through an increase in the share capital, issue and bond issue in joint stock companies.

In particular, the Code defines the procedure for the sale of the debtor's property as the only property complex in the rehabilitation procedure (Art. 54).

The sale of the debtor's property as a single integrated property complex is, in its essence, the debtor's succession, which can be realized in the resolution procedure provided the creditors' requirements specified in the resolution plan are met. If, however, the proceeds from the sale are not sufficient to satisfy the creditors' claims, the latter may amend the redevelopment plan accordingly, as otherwise the debtor is declared bankrupt and the liquidation procedure is opened against him.

The Code provides for a procedure for the sale of a part of the debtor's property in the course of rehabilitation in order to restore the solvency of the creditor and satisfy the creditor's requirements.

On the results of the debtor's asset sales, the resolution manager shall submit a written report to the creditor's meeting 15 days prior to the expiration date of the procedure and if there are grounds for termination of the procedure.

The resolution manager's report is the final document in the debtor's resolution procedure. The code contains requirements for such a report and part of it is evidence of satisfaction of requirements of competing creditors in accordance with the register of claims of creditors. Such report shall be considered by the creditor's meeting within 10 days of the date of receipt and the decision on the completion, suspension or continuation of the debtor's reorganization shall be taken as a result of the consideration. The debriefing report and the creditors' complaints are considered by the commercial court and the court order is accepted.

3. *Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...)*

a. World Bank

The main concern in this regard is terminology of the Bankruptcy Code – the reorganisation procedure is called sanation (pre-court of court sanation).

6. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

b. EU

EU law has no direct observations on the procedure in general terms. There are, however, individual special features which EU law regulates differently. An essential component of this is also the treatment of employees in the course of transfers of undertakings.

In particular, Art. 54 No. 2 and Art. 55 No. 3, 4 would have to be adapted to the directives on the transfer of employees in the case of partial disposals. The legal concept of transfer of business characterizes the change of the owner of a business or part of a business by means of a legal transaction agreement in the broadest sense. The corresponding European law directives from 1977 and 2001 have led to a far-reaching standardization of this term throughout the entire legal area of the EU and to an approximation of the individual national laws regulating the rights and obligations of employers and employees in the case of a transfer of business. A corresponding provision was first included in German labour law in 1972 with § 613a BGB, which was later supplemented by the

implementation of Directive 77/187/EEC of February 14th, 1977¹⁶ and by Directive 2001/23/EC of March 23rd, 2001¹⁷.

r. German Insolvency Code and general remarks

Art. 50

In the context of Art. 50, the first thing that stands out is the apparent depth of detail. At the same time, however, other essential contents are also missing. For example, there is also no indication in Art. 50 of the duration of the proceedings. This is therefore surprising, as the law imposes a reporting obligation on the rehabilitation manager (Art. 50 No. 6 para. 12). This means that the law itself assumes that proceedings that have been initiated may and should take some time. The aim should always be to restore the debtor's solvency, whereby the rehabilitation manager is granted greater rights for this purpose than is possible within the framework of German insolvency proceedings - but more precisely in the specific points.

Art. 50 No. 2-4 regulate the appointment of the rehabilitation manager, the date on which the corresponding appointment takes effect and the transfer of tasks from the previous management to the rehabilitation manager. Art. 50 No. 5 and 6 then describe the possibilities and mandatory tasks. The orders for the debtor to open an account (Art. 50 No. 6 para. 3) and the obligation to keep accounts and send statistical data (Art. 50 No. 6 para. 4) are conspicuous in this context. When opening the bank account, the rehabilitation manager will also have to deal with the laws on the prevention of money laundering, which, in case of doubt, will also directly assign responsibility for the funds to the rehabilitation manager in Ukraine and thus must regard him as the beneficial owner. In cases of doubt, the allocation of accounting tasks and the submission of statistical data will also mean the obligation to pay taxes on time; failure to pay taxes may then also represent an additional liability risk for the rehabilitation manager.

Art. 50 No. 7 governs the transfer of the rehabilitation manager's tasks back to the company after insolvency. The rehabilitation manager should also be responsible for the invitation to the necessary meetings under company law. At the same time, Art. 50 No. 8 stipulates that the rights of the rehabilitation manager cannot be restricted by the owner during the proceedings and (Art. 50 No. 8 para. 2) the rehabilitation manager must coordinate his duties with the creditors' committee in case of doubt.

Art. 50 No. 9 then regulates the rehabilitation manager's ability to terminate contracts in a somewhat hidden manner. However, this is not a provision analogous to Art. 103 ff. GIC, but rather its own provisions that only apply in the event of losses for the debtor. Within this provision, it is not finally clarified, how the loss is to be calculated. However, the rehabilitation manager only has this right in the first three months after taking up office. Under Art. 50 No. 9 para. 5, the creditor concerned has the right to assert his claim within 30 days within the insolvency proceedings, limited to his own losses.

¹⁶ Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses – EURlex - 31977L0187, direct link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31977L0187>

¹⁷ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses – EURlex - 32001L0023, direct link: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0023>

Again, there is no indication of the calculation (e.g. positive or negative interest) and it is unclear what effects such new claims will have on the rehabilitation plan already approved at that time.

Art. 50 No. 10 regulates the liability of the rehabilitation manager in the event of errors. At the same time, however, the provision extends its applicability to the other parties involved in this procedure. In all cases reference is made to other legal liabilities under this law. There are several reasons why this standard is not expedient: firstly, the liability of the bankruptcy trustees is already regulated elsewhere, so that no new allocation of liability is required. If the law merely wants to clarify this part, this part would have to be removed. However, the reference to the other parties involved is also confusing: such a rehabilitation plan involves both the creditors and the court (represented by the persons acting in it) and, in the broadest sense, the debtor's contractual partners. It is unclear which parties are referred to here, as the reference to Art. 1 No. 1 22 or 24 was not made according to the present translation. In case of doubt, however, to hold all the parties referred to above jointly or severally liable for possible errors is not expedient. This is all the more evident as individual parties involved cannot and should not have a complete picture due to a lack of complete information. Their liability would therefore not be compatible with general principles. Since the complete provision is certainly intended to serve the objective of the proper conduct of proceedings, this should also be taken into account. The rehabilitation manager is specifically responsible for the handling of the proceedings in these proceedings. Therefore, the rehabilitation manager should also be liable, but this has already been regulated. Thus, the standard is dispensable according to this understanding.

Art. 50 No. 11 allows the proceedings to be transferred to liquidation proceedings if the rehabilitation plan cannot be complied with.

Art. 51

This article deals with a large number of topics that are only marginally related to the chosen heading. On the one hand, this is surprising, but it is a pervasive point of criticism of the law, which will not be discussed in detail.

Art. 51 No. 1 para 1 already presupposes classes of creditors. In the entire law, there was previously only one place in which claims were classified, although individual claims were assigned to the sixth rank (Art. 47 No. 2 para. 9). Now the law requires further classes. This is unattractive and should be replaced by the introduction of a general class logic at an earlier point. Art. 51 No. 1 para 2 also assumes that the procedure for agreeing the rehabilitation plan is known, although this is only regulated in Art. 52.

Art. 51 No. 1 para. 3 and 4 regulate the task (restoration of solvency) and duration of the rehabilitation plan (designation of the period required for this). Both of these are standard provisions.

Art. 51 No. 1 para. 5, which deals with a mandatory result of the rehabilitation plan - the payment of outstanding wages - is surprising.

Art. 51 No. 2 lists the various possibilities of satisfying creditors and of structuring them in great detail enumeratively. However, Art. 51 No. 2 para. 7 allows creditors to be satisfied in other ways, provided this is not contrary to the law, and Art. 51 No. 2 para. 16 also allows the debtor's solvency to be established in other ways. This makes the entire provision superfluous. Either only the permitted possibilities are mentioned (positive catalogue) or the not permitted ones (negative catalogue) but to create a positive catalogue with an opening clause makes the law particularly illegible. It is therefore proposed to reduce the provision to para 7 and para 16.

Since Art. 51 No. 3 only explains a part of Art. 51 No. 2, this part should also be deleted.

Art. 51 No. 4 should be left unchanged despite the many different subjects of regulation. The freed-up No. 2 and 3 might make it possible to distribute the paragraphs to individual numbers and make the article easier to read overall.

Art. 51 No. 5 again refers to the different classes of the ranks, but without reference to basic provision. On the other hand, the possible deviation from the classes with the consent of the creditors, as laid down in this provision, makes sense and therefore remains unchanged.

Art. 51 No. 6 regulates the prior consent to the rehabilitation plan by the SPFU. This is logical under Ukrainian law and should therefore be retained.

Art. 51 No. 7 sentence 1 stipulates that the creditors can continue to assert their rights against third parties irrespective of the rehabilitation plan. This is correct in the end, as this is a security in favour of the creditor. The provision thus corresponds to the basic idea of the provision in Art. 254 No. 2 sentence 1 GIC.

Art. 52

Art. 52 No. 1 regulates the assignment of creditors to classes in the first place in an abstract manner. Art. 51 No. 1 para. 1 assumes that each creditor should be assigned to his class to the same extent, whereas Art. 52 No. 1 para. 2 already assigns the secured creditors to another class to the extent of an effective security. Likewise, all creditors should agree to a class if the plan provides for the negative change of his class. In principle, these provisions correspond to the considerations of German law. However, there is still no specific allocation to the classes, so that the criticism already expressed with regard to Art. 51 No. 1 para. 1 also applies here.

Art. 52 No. 2 corresponds to Art. 226 No. 1 GIC, so that the creditors in a class must be treated equally.

Art. 52 No. 3 regulates the voting ratio. Accordingly, the classes must vote independently of each other. Only those creditors whose result is changed by the plan in relation to the outcome of a liquidation may vote (para 2). At the same time, simplifications are introduced in para 3 with regard to the participation of the tax authorities. These regulations serve overall to accelerate and simplify the procedure - apparently. In fact, Art. 51 No. 3 para 2 in particular poses a considerable risk for the continuation of disputes. For example, none of the above norms gives an indication as to how the liquidation value of the firm (and at what point in time) should be calculated. However, both are essential in order to be able to calculate a comparability with the proposed procedure. It is therefore expected that a large number of creditors will claim the differences nor is it regulated in what form the deviation is to take place. Thus, even a positive deviation can lead to a duty of consent of the group - but this cannot be meant according to the logic of the provision. Thus, in practice the provision will trigger a considerable potential for objection by informed creditors and thus also offer the possibility of personal improvement. In case of doubt, this can only be prevented by litigation. However, due to the duration of litigation procedures, these disputes would in turn be suitable for delaying the implementation of the rehabilitation plan.

The simplification with regard to the tax administration in Art. 52 No. 3 para. 3 is also exciting. In particular, the simplification in sentence 1 and 2 half-sentence 1 invites abuse, since in principle all claims covered by the norm are classified as not to be taken into account. For all other creditors, the state is then to be treated in the same way as unsecured creditors. In European law, this norm would

certainly qualify as state aid. Incidentally, the question of recourse to the directors remains open: If the debts under a rehabilitation plan are to be treated as irrecoverable, the directors might be third parties in terms of tax liability within the meaning of Art. 51 No. 7 sentence 1 or it can no longer be taken action against them on the basis of the fiction of consent in Art. 52 No. 3 para. 3 because the rehabilitation plan was not rejected. However, this question is only of dogmatic interest and is therefore not pursued further here.

Art. 52 No. 4 regulates the conditions of consent differently according to class. For the unsecured creditors, the majority of the head and sum is therefore decisive (Art. 52 No. 4 para. 1). For secured creditors, the law requires a qualified majority of 2/3 of the total amount, while the majority of the creditors' heads is still required in addition (Art. 52 No. 4 para. 2). If the plan is not approved, it is deemed rejected by this class (Art. 52 No. 4 para. 3). The majorities required by the BCU4 are somewhat stricter than in German law, but this is reasonable with respect to the secured creditors. This can only be problematic in combination with Art 51 No. 7 if the guarantors would be devalued in their existing recourse claim.

Art. 52 No. 5 regulates further particularities of the plan. Accordingly, all creditors who could obtain a direct advantage from the plan - whether as a related party, immediate payment of the quota or by way of additional collateral - are to be excluded from the vote.

Art. 52 No. 5 para 1 prohibits persons affiliated with the debtor (as defined in Art. 1 No. 1 para 6) from participating in the vote. This prohibition stems from the prevailing suspicion that the essential assets may have been distributed to other connected persons and that these persons should not now be able to prevent the assertion of the claim. We currently consider this provision to be still necessary, but it cannot be ruled out that in the future there may also be restructurings that are made possible precisely by such related persons. This includes, in particular, restructurings in intercompany obligations, which will only be possible if the major creditors from the parent company agree and the parent company can ensure the maintenance of business operations in its subsidiaries through its voting behaviour.

In the same way, according to Art. 52 No. 5 para. 2, the influence of unsecured creditors can also be reduced by ensuring that they receive their funds immediately after the rehabilitation plan has been confirmed. Thus a vote is not necessary. The translation is interesting in that it is unlikely that full payment will have to be made. This could also prevent the participation of creditors through partial payments. In order to prevent this, we suggest a clarification that this special feature should only apply if full payment is made before confirmation of the rehabilitation plan. Only in this way can creditors pursue their claims in the event of non-payment while insolvency proceedings are still in progress and do not need to apply for further proceedings.

The possibility of further security after confirmation of the rehabilitation plan should also be able to exclude the secured creditors from voting on the plan (Art. 52 No. 5 para. 3). Since the re-securing of secured creditors while maintaining the previous credit or providing new credit funds is a thoroughly regular way to continue the business, these exclusions are interesting. They may also allow for majorities, especially since no minimum security or minimum value is specified. For example, even the possibility granted in the rehabilitation plan for an unwelcome creditor to obtain partial security for his quota payment by means of a single small assignment of claims can exclude him from participating in the approvals. It remains to be seen how the plan designers will make use of the possibilities of exerting influence in practice and whether changes will have to be made because of this standard. At

present, I would suggest that this standard should be completely deleted because of the considerable possibilities of abuse.

Art. 52 No. 6 is a purely regulatory provision for the transmission of minutes to the court. Here a day is very quick from the German legal point of view, but from the Ukrainian point of view it is possible.

The court, for its part, cannot refuse to approve a rehabilitation plan under Art. 52 No. 7 if all creditors have agreed or if the creditors are in any case not worse off than in the context of a liquidation. This corresponds to the principle of creditor autonomy.

However, there are no regulations on how to deal with the resistance of individual classes and how it can be overcome in the interest of all creditors. According to the current wording, especially in the context of the judicial confirmation of Art. 52 No. 7, all classes must agree. This requires a creative approach to opposing creditors.

However, a refusal should be possible under Art. 52 No. 8 if the plan is against the law. In my view, this is as self-evident as it is mandatory. For this reason, in Germany the plans are already submitted to the court in advance so that such deviations are noticed as early as possible and can therefore be remedied at the earliest possible stage. According to the Ukrainian law, after rejection, a new vote must be taken on the amended plan (Art. 52 No. 8 para 2). This may delay the procedure as a whole. However, only practice will be able to show here whether a changeover to the German system of prior checking could be more sensible. In practice, the percentage of plans which can be directly approved by the court can be determined in relation to those to be rejected under Art. 52 No. 8 para 1. If the number of plans to be rejected is small, a corresponding change is unnecessary. This is assumed to be unnecessary, so that no amendment of the Act is proposed at that time.

Art. 52 No. 9 orders the transition from rehabilitation proceeding to liquidation proceeding, if the maximum time for rehabilitation proceeding given by the law is not observed. However, this maximum time schedule is not apparent, so that the norm currently stands alone and should, in our opinion, be adapted to the proposed duration of Art. 51 No. 1 para. 4 sentence 1.

[Summary of Art. 51 and Art. 52](#)

Both norms regulate the content and procedure of a rehabilitation plan. However, both are already a prerequisite for a decision under Art. 49. The position of the norms in the law should therefore - as already proposed by local colleagues - be urgently reconsidered.

[Art. 53](#)

Art. 53 deals with the possibility of increasing capital under the rehabilitation plan. The steps laid down in detail should be part of the plan. Thus, a debt-to-equity swap is also possible in principle. In this context, Art. 53 No. 3 deals with the reversal in the event that the capital increase should later be considered ineffective or void by a court. However, the description of the reversal set out there is certainly difficult in practice. This is due to the fact that an actual mutual reversal is envisaged. This would also result in the debts arising again, which in the worst case could then lead to (renewed) insolvency of the debtor. In such cases, practice will therefore have to develop short-term solutions to prevent this outcome.

Art. 54

Art. 54 regulates the exploitation of parts of the business with its own property. The definition of the "Integral Property Complex" should be Art. 66 No. 3 Economic Code in Ukraine¹⁸ and Art. 191 No. 2 Civil Code of Ukraine¹⁹. The rehabilitation plan shall also be the basis for subsequent entries and legal successions in contracts. This should also avoid difficulties in the transfer of licenses or permits.

According to Art. 54 No. 2, the employment contracts are also transferred directly. However, an opposition solution in accordance with the European regulations, which are the basis for Art. 613a German Civil Code (GCC), is expressly not provided for. Nor is there any information to be provided to the employees. In any case, this part will have to be further adapted as the EU approaches (see above in the EU section).

The proceeds are to be allocated to the remaining assets (Art. 54 No. 3) and the auction itself is to take place via the established digital platforms (Art. 54 No. 4 - see later in Book 3 sec. 5, Art. 68 ff.)

Art. 54 No. 5 allows the creditors to adjust the rehabilitation plan on the recommendation of the rehabilitation manager if the proceeds from the sale of the business units do not correspond to the plans. If the creditors cannot agree on an amendment to the rehabilitation plan, the court will declare the debtor bankrupt and order the transfer to liquidation proceedings (Art. 54 No. 5 para. 2).

Art. 55

In contrast to Art. 54, Art. 55 is also intended to open up the possibility, in the sense of Art. 54, of spinning off parts of businesses into separate legal entities and only then exploiting them. By placing more emphasis on partial operations, this provision becomes more specific than Art. 54, especially in allocation of individual assets and individual employees to the respective (new) legal entities. A special feature in this context is Art. 55 No. 5 para. 2, which expressly permits the partial sale of spun-off divisions.

Art. 56

The fall-back provision of Art. 56 allows - analogous to the fall-back provisions in Art. 51 No. 2 - other forms of exploitation. These other disposals must have been decided by the creditors within the framework of the rehabilitation plan and must also comply with the law. The latter aims in particular at creating units to be sold, which are to be realised via the existing auction platforms established by law. This type of sale is in line with the Ukrainian understanding of transparent pricing - details of which will be provided later under these regulations.

Summary of Articles 54 to 56

It can be stated that both norms correspond to a considerable extent and Art. 55 is perhaps only somewhat more specific. On the basis of the translation, shortening of the norms analogous to Art. 51 No. 2 appears to be mandatory and should simplify the law. Only the provisions on employees (Art. 54 No. 2 / Art. 55 No. 3, 4), on the sale of (newly created) assets (Art. 54 No. 4 / Art. 55 No. 5, 6) and the transition to liquidation proceedings (Art. 54 No. 5 / Art. 55 No. 7) should be retained in the revised form. However, all this is only possible if there are no other compelling reasons for the retention of Art.

¹⁸ The Integral Property Complex of an enterprise shall include real estate and may be the object of sales or other transactions, under the conditions and in the manner determined in this Code and related laws.

¹⁹ The enterprise as integral property complex shall include all types of property that are intended for its activities, including lands, buildings, constructions, equipment, inventory, raw materials, products, claims, debts, as well as the right to trade mark or other designation and other rights, unless otherwise provided by contract or law.

54 and 55, which cannot be conclusively assessed without knowledge of the other Ukrainian legal system. That's why no rewording of the articles is suggested at that point.

Art. 57

The provision regulates the end of the procedure. The rehabilitation manager must report 15 days before the end of the period specified in the rehabilitation plan if there are reasons to stop the procedure (Art. 57 No. 1). This report must be sent to all creditors. The report must contain the information specified in Art. 57 No. 2. It shall also report the status of creditor satisfaction with respect to unsecured creditors (Art. 57 No. 3 para. 1). The report should conclude with the rehabilitation manager's proposal on how to proceed (Art. 57 No. 3 para. 2). The rehabilitation manager has the following options: (1) terminate the proceedings, as the debtor's solvency has been restored (Art. 57 No. 3 para. 3), (2) terminate the rehabilitation procedure by court order and allow it to be transferred to the liquidation procedure (Art. 57 No. 3 para. 4) and (3) ask the court to confirm the changes to the rehabilitation plan and extend the procedure by the term set (Art. 57 No. 3 para. 5). These provisions in Art. 57 No. 3 mean that the creditors will always have to make a decision at the end of the procedure, so that the insertion in Art. 57 No. 1 is superfluous and should therefore be omitted.

Art. 57 No. 4 then regulates the period within which the creditors must review the report. The creditors' meeting must then take place. According to Art. 57 No. 5, the creditors then decide on the rehabilitation manager's proposal. It is unclear whether they are bound by the rehabilitation manager's proposal or whether they can deviate from it. The latter is likely to be the case if there is an appropriate majority.

Art. 57 No. 5 para. 5 then stipulates that the decision can be taken without a report if there are obvious reasons for this. The meaning of this provision is unclear: Creditors usually have no influence on the actual settlement and therefore no knowledge of the current status of the proceedings. In this context, it is therefore regularly not possible to speak of an obvious possibility to make a decision, so that reasons which could make a presentation of the report unnecessary are not evident. Thus, in adaptation to the amendment of Art. 57 No. 1, Art. 57 No. 4 para. 5 must also be deleted. Thus the rehabilitation manager must in any case report at the end of the term. This is also important for the documentation and traceability of his activities. In addition, such reports can also form the basis of the release from liability, so that written documentation is mandatory for all parties. However, Art. 12 No. 2 No. 10a was also added for clarification.

The provisions of Art. 57 No. 6 and 11 seem to correspond according to the present translation, but they are contradictory with regard to deadlines. To resolve this, only Art. 57 No. 11 is retained.

Art. 57 No. 7 to 10 regulate the further course of the proceedings and the forwarding of the documentation together with the minutes and supplementary information to the court. In our opinion, these are conclusive and do not require any changes.

For Art. 57 No. 11 see above.

Art. 57 No. 12 sentence 1 is a mandatory consequence of Art. 57 No. 11, since the court has to make one of the decisions. The regulation of sentence 2 already results from the above regulations of Art. 57 and is therefore merely repetitive. From this point of view, the entire provision is therefore repetitive and should be deleted for reasons of clarity.

Art. 57 No. 13 and 14 regulate the procedure again in a conclusive manner.

iv. Liquidation procedure (Book 3, Sec. 4)

Art. 58-67 govern the liquidation procedure. The commercial court opens liquidation procedure upon the decision on declaring the debtor bankrupt is taken (Art. 58). The court appoints a liquidator to deal with sale of the debtor's assets. This term of the procedure cannot exceed 12 months.

The Liquidator from the day of his/her appointment exercises a number of important powers (Art. 61) that includes:

- Takes the debtor's property under control in order to ensures its preservation;
- Conducts the inventory and sets up initial value of the bankrupt's property;
- Analyses financial position of the Bankrupt;
- Performs the powers of the manager (governing bodies) of the bankrupt;
- Organizes sale of the bankrupt's property;
- Administers the register of creditors' claims and fulfil other functions.

1. Overview of the provisions of the Chapter

Art. 58 regulates the initiation of the procedure. The most important point is the definition of the maximum duration of the proceedings at 12 months in Art. 58 No. 1 para 2.

Art. 59 regulates the consequences of the declaration of bankruptcy. These lead to a general suspension of payments on all outstanding liabilities and a complete transfer of management and disposal powers to the liquidator. It also specifies the dates to be published.

Article 60 sets out the powers of the court in the liquidation procedure.

Art. 61 deals with the duties of the liquidator.

Art. 62 regulates the affiliation of objects to the assets involved in the insolvency proceedings and also gives an indication of the form in which the debtor's liabilities could be covered. The latter also seems to have an impact on Art. 4 No. 2 and Art. 34 No. 6.

Art. 63 determines the exploitation channels for certain assets. In this context, realisation by auction is qualified as the rule and direct sale is only permitted for perishable goods or goods with a value of less than a minimum monthly content. Shares and securities may be sold via the stock market; payment by instalments is not permitted.

Art. 64 contains the ranks in the insolvency proceedings. According to it, the first rank includes the employees with all their claims, claims arising from judgments of the ECHR, payments to creditors with claims arising from insurance contracts, the costs of the proceedings and the costs of the creditors, if they have incurred them. The second rank includes claims of social security institutions. Tax authorities and other claims under public law are ranked third, while unsecured creditors are ranked fourth. Employee claims that have become part of the share capital are ranked 5th and all other claims are ranked 6th.

In contrast to its name, Art. 65 regulates the termination of the liquidation proceedings.

Art. 66 regulates the dismissal of the debtor's employees and refers in most cases to the special regulations applicable in this regard.

Art. 67 regulates at the end of this sec. the storage of the debtor's business papers.

2. *Local comments*

The biggest novation of the BCU4 in the sphere of improving efficiency of the liquidation procedure is that the law requires liquidator to act in a good manner and to do everything possible to find the debtor's property (Art. 65). In this Article the BCU4 provides that the liquidator is responsible for carrying out all necessary actions aimed when recovering the debtor's assets.

The liquidator conducts inventory and getting the consent for the property sale, the liquidator does the sale of the bankrupt's assets at the auction (Art. 63).

The proceeds received from the bankrupt's property sale go to satisfying the creditors' claims as set forth in this Code (Art. 64).

After the end of distribution of the proceeds among the creditors, the liquidator submits the report and liquidation balance-sheet to the commercial court (Art. 65).

The term of liquidation of the debtor is 12 months, but in practice such terms are much longer. To extend such terms, courts use the provisions of the Commercial Procedure Code. It would be appropriate to give the court the right to continue the liquidation procedure in the Code (Art. 68).

3. *Comparison to other ideas (WORLDBANK, UNCITRAL, German ...)*

a. *World Bank*

The Principles C1 of the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes in order the liquidation procedure is efficient recommend that the insolvency system needs to provide for the efficient liquidation of both nonviable businesses and those where liquidation is likely to produce a greater return to creditors and the reorganization of viable businesses.

b. *UNCITRAL Model Law*

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

c. *EU*

EU law has no direct observations on the procedure in general terms.

d. *German Insolvency Code and general remarks*

Art. 58

Art. 58 regulates the initiation of proceedings and refers in Art. 58 No. 1 para 1 to the various allocation provisions. It is important to note that the maximum duration of the proceedings is fixed at 12 months,

which does not allow for any further extension. Finally, Art. 58 No. 1 para 3 regulates the possibility of the court to decide even if the summoned parties do not appear. All this leads to a short and round norm, the only disadvantage of which is that the numbering has not been properly carried out, i.e. there is a No. 1 but no No. 2, but below No. 1 there are again three different topics. Here the adjustment of the numbering should be considered.

Art. 59

The complete cessation of business operations and the necessity of liquidation are at the core of this regulation. Art. 59 No. 2 also regulates the transfer to the liquidator of the assets still managed by the debtor himself, as well as the insignia, which must take place within 15 days. Art. 59 No. 3 requires the publication of the decision on the official website and Art. 59 No. 4 specifies the relevant data to be published. There are no proposals for amendments to this norm.

Art. 60

This Article deals mainly with judicial powers and serves as a starting point for a large number of referrals. However, once again, topics are regulated twice in terms of content. Thus, Art. 60 No. 1 regulates the selection of the liquidator. Since his information should already have been published according to Art. 59 No. 4 para 5, this provision is only declaratory. The provision of Art. 60 No. 2 is certainly superfluous, since its regulatory content is already unquestionably derived from Art. 12 No. 1. This provision is also not regarded as a starting point for referrals, since a reference to the topics regulated in the general part of the Act, such as the challenge under Art. 42, is not provided for. This provision was therefore recommended for deletion. At the same time, the provision of Art. 42 was supplemented by the new No. 7 and 8.

Art. 60 No. 3 contradicts the principle of supervision of the bankruptcy trustee by the SGO. If the court is to retain specific supervision, there is no need to transfer it to the SGO. It can therefore only mean supervision in the specific procedure, although this certainly leads to problems in the delimitation of competences. In order to ensure supervision by the SGOs, the provision should therefore be deleted. Art. 60 No. 3 refers to the ranking of creditors for the first time in the entire law.

Art. 60 No. 4 regulates the lodging of claims and the judicial procedure for examining claims in this part of the procedure. Although this corresponds in principle to the already known procedure (Art. 40 ff.), it is explicitly designed here without time limits. Against this background, Art. 60 No. 4 para 4 is also problematic. This provides that distributed quotas remain with the creditor even if it becomes apparent on the basis of new claims that the quota payment was too high. This invites the liquidator to reward early filings with the available liquidity and the creditors filing later only receive the remainder. Moreover, there are no rules on how the remainders are calculated: If the creditors filing later are initially entitled to the part already paid out (catch-up), so that the creditors already satisfied initially receive no further funds, or if the new creditors are only to be considered in addition, so that all creditors in this distribution again receive the identical percentage quota. The latter would contradict the principle of equal treatment of creditors, but is possible according to the wording of the law. With regard to this provision, however, it is trusted that in any case, case law does not allow for abuse and thus in practice deadlines are set for the pay-outs and thus creditor equal treatment is also guaranteed. An amendment is therefore not proposed for the time being.

Art. 61

The article summarises, in the usual manner, the rules governing the duties of the liquidator. Thus, Art. 61 No. 1 describes in great detail and enumeratively the tasks of the liquidator, which essentially already result from Art. 12 or can be derived logically. From a practical point of view, it is exciting that the liquidator should keep the register of claims (Art. 61 No. 1 para 19), but that these should be received directly by the court and also examined there (without consultation) (Art. 60 No. 4 para 2). The technical forwarding to the liquidator or the details of the keeping of this register are then not the subject of the present regulation. For reasons of legislative clarity and unambiguity, consideration should be given to streamlining and thus simplifying the entire No. 1. It might also make sense to summarise the catalogues of tasks collected at different points in the Act in a general section and to structure them in a targeted manner or, as in Germany, to present them only in abstract form. However, both considerations will not be pursued further within the framework of this analysis.

Art. 61 No. 2 is, analogous to Art. 42 No. 7 (new version), an essential component of the assertion of claims. Art. 61 No. 2 enables the liquidator (and for the first time only him) to assert subsidiary claims against third parties. This refers to all stakeholders who could have avoided the insolvency or should have prevented it in the face of Art. 4. This norm is therefore extremely powerful and has already been the subject of various discussions. The basic idea is correct, as insolvency can and should only take place if the stakeholders have themselves violated the obligation to suspend the company and in this context have not ensured an orderly liquidation of the company in time. This omission is now to establish liability. However, whether recourse to the founder can also be correct after the sale of the company would have to be discussed elsewhere and, in the current version, can only be explained by the concern of distress sales to avoid liability. In these cases, liability of the founder, as well as of any other existing shareholders, must be mandatory, but whether this will also apply to a long-past sale remains to be determined by case law.

Art. 61 No. 3 regulates in para 1 and 2 the mandatory use of separate accounts by the liquidator for the administration of incoming funds. It is questionable why this norm is only part of the regulations in the liquidation procedure. A shift of these regulations into the area of Art. 12 (there new No. 2 sec. 12) seems therefore (under generalisation of the regulations) mandatory.

The provisions of Art. 61 No. 3 para. 3-6 are also surprising at this point. They regulate the sequence of use of the funds received from the realisation of secured properties. However, there was already a special procedure for this in Book 3 sec. 2, so the regulations should be moved there (and supplemented) and the regulations here (Art. 44a) will then be referred there in appropriate application.

The provisions of Art. 61 No. 4, 5 and 7 remain unchanged. The provision of Art. 61 No. 6, on the other hand, has already been included in the Act as Art. 60 No. 3 (and deleted there), for details see there. The provision was therefore to be repealed.

Art. 62

This article initially and apparently exclusively regulates the affiliation of objects and rights to the mass, as well as the rights to segregation. What will then be astonishing is Art. 62 No. 8 para. 1, which, in

addition to this regulation, must also have a supplementary regulatory content and infects various other regulations with this idea.

Art. 62 No. 1 and 2 initially regulate the allocation of property to the insolvency estate. This is not surprising, but it is interesting to note that objects are also counted which are in possession of property under official control. The objects to which operational control refers are not part of the assets involved in the insolvency proceedings, just like the objects delivered under retention of title (Art. 62 No. 3 para. 1). The same applies to objects which the insolvency debtor administers only as trustee (Art. 62 No. 3 para. 2). Overall, the allocation of the objects is in principle in accordance with German law. However, a special feature arises as a result of Art. 62 No. 8 para. 1, which only applies to privatised debtors. In these cases, only those objects that were also the subject of privatisation or were acquired later are part of the insolvency estate. However, if objects (especially land plots) were not mentioned in the privatisation, they do not become part of the bankruptcy estate even if they are accounted for as property. Although this provision is actually logical, it attacks at the wrong point: Since the land plot was not included in the privatisation, it is owned by the state - i.e. by a third party - and is therefore not part of the estate. However, if it was assigned to the debtor in the balance sheet, the balance sheets were wrong on this point. This would mean that the balance sheets would have to be corrected. If this were to be carried out in full, it could result in the debt coverage ratio and thus the possibility of creating liquidity from own funds ending at a much earlier point in time than was assumed by the management at the time of the insolvency petition. This would probably mean that the notification obligations pursuant to Art. 4 No. 2 and also the insolvency application pursuant to Art. 34 No. 6 para 1 would have been filed too late and thus also triggered the liability pursuant to Art. 34 No. 6 para 2. As a conclusion, every managing director is therefore only advised to have the assets of his company, which may differ considerably from the assets according to the balance sheet, regularly examined and valued in accordance with Art. 62 and on this basis to make a decision on the applicability of Art. 4 No. 2 and Art. 34 No. 6. At the same time, this question also becomes important for the court's decision on continuation under Art. 65 No. 5 para. 1.

However, changes are not necessary on the basis of this article.

Art. 63

The regulation deals with the main features of the sale of the debtor's assets. According to No. 1, the debtor must sell his goods exclusively by auction. The minimum price shall be the liquidator's estimate. If the goods are perishable or of low value, a direct sale without an auction may also be considered. Here too, the Ukrainian liquidator will be given much more specific and tighter instructions on how to conduct the proceedings than we believe to be necessary. Through the personal liability of the bankruptcy trustee and insurance against it (cf. Art. 24, 25), errors made by the insolvency administrator should be compensated for the insolvency creditors in a way that is neutral in terms of assets. According to this basic understanding, it could also be left to the bankruptcy trustee himself to decide how to achieve the best possible realisation for the creditors of the insolvency proceedings. However, this understanding does not correspond to the Ukrainian understanding, which always suspects abuse and therefore wants to create a higher degree of transparency. For this reason, the law stipulates realisation via auctions as the rule and direct sales only as an exception. This order will have to be subject to judicial control if the creditors could have been satisfied more quickly with a higher quota in the case of direct sales. In this case, the court will have to decide whether the provisions of

Art. 63 take precedence over the satisfaction of creditors and whether a bankruptcy trustee will be liable for any resulting loss of proceeds. Since both obligations are of equal rank, the order of precedence would have to be decided here. In any case, this part of the classification of the higher-value target is not the subject of this study, so that no changes are proposed.

Art. 64

This article regulates the order and assignment of creditors to the ranks (No. 1) as well as the specifics of payments. As usual, a waterfall is used, so that creditors of a lower rank only receive funds when those of the previous rank are fully satisfied (Art. 64 No. 2). In addition, the remaining funds are divided among the creditors of one rank pro rata (Art. 64 No. 3). Surprising from the German point of view is the concrete assignment of the claims to the ranks. While with the introduction of the GIC, all creditors in Germany were in principle placed on an equal footing in insolvency proceedings (Art. 38 GIC), Ukrainian law still retains the classification of creditors into ranks. In contrast to German law, the procedural costs are also subject to rank 1 and are therefore regularly satisfied on an equal footing with employees only on a pro rata basis. This deviates from the German regulation, according to which the procedural costs are privileged (Art. 54, 55 GIC) and also a conclusion of proceedings in case of non-payment of costs is only very simplified (Art. 208 et seq. GIC). In Ukrainian law, however, this also only affects court costs, as the administrator's costs are always paid directly from the proceedings during the proceedings. Claims of the 5th rank are completely alien to German law, as participations of employees in the debtor are not treated differently from those of all other parties involved. However, the standard fits into the existing set of rules without contradiction and should therefore initially remain unchanged.

As a purely precautionary measure, a No. 8 could be added, according to which remaining amounts will flow to the shareholders after all creditors of the above ranks have been satisfied. This would correspond to Art. 199 GIC, which also provides for an allocation of the funds in this rare case of a financial statement. A corresponding norm has been taken into account in the proposal.

Art. 65

This article, in turn, covers the complete procedure for the closure of proceedings and not only, as indicated in the title, the final report of the liquidator. This report is only the subject of No. 1 and also includes the objects not related to the estate, which are nevertheless attributable to the debtor (comparable to the objects released in accordance with Art. 35 sec. 2 GIC). The report is thus conclusive. If no further assets are available (Art. 65 No. 2), the court decides on liquidation. If there are still assets, the court may appoint a new liquidator for these remaining assets (Art. 65 No. 4) or may order the continuation of the debtor if the remaining assets are sufficient to cover the remaining liabilities (i.e. there is no over-indebtedness; Art. 65 No. 5). In this context, it is not regulated whether the balance sheet to be drawn up in the case of Art. 65 No. 5 may also show as assets the non-privatised assets in the debtor's possession. In this respect, the discussion begun on Art. 62 No. 8 para. 1 continues at this point. No changes are necessary.

Art. 66

The dismissal and the applicability of the labour law regulations is not part of the GIC in German law. Therefore, the regulation is surprising at this point and, due to lack of knowledge, it is not necessary to comment on it significantly. Only the present translation gives rise to questions: For example, it is incomprehensible why a topic which already concerns the property manager (Art. 66 No. 1) is only regulated (in a hidden manner) in the area of liquidation. It is also not clear how the payment of employees should actually be regulated. According to the present translation, the bankruptcy trustee is responsible for payment. However, this is only possible if he either receives the corresponding funds from somewhere or is allowed to withdraw them. Neither of these can be seen in the text, so that it should be possible to reimburse salaries from the masses and the proposal has been adapted accordingly.

Art. 67

Art. 67 also contains, from a German perspective, surprising provisions of general commercial law. This article deals with the liquidator's obligation to deposit the commercial documents in the relevant register. According to German commercial law, the management (which is taken over by the insolvency administrator in the event of insolvency) must ensure this on an ongoing basis and also arrange for the destruction of the papers at the end of the storage period. According to German law, the business papers for the insolvency proceedings are incidentally business papers of the insolvency administrator and must therefore be stored separately by the latter. Possibly, for the sake of simplification, reference could also be made here to the general provisions of commercial law, provided that this contains corresponding regulations. However, this proposal can only be made by local colleagues.

v. Property sale in the bankruptcy case proceedings (Book 3, Sec. 5)

Sec. 5 regulates in Art. 68-89 the sale of assets by auction.

The concept of the new code suggests that the procedure for sale of the property will be carried out by order of the Bankruptcy trustee at auction in the electronic trading system. Electronic trading system is a two-tier information-telecommunication system consisting of a central database and authorized electronic platforms.

The Cabinet of Ministers of Ukraine established the procedure for access of authorized operators of electronic platforms (hereinafter - operator) to the electronic trading system²⁰. The availability of free and equal conditions of access of operators to the trading system will make it possible to avoid the creation of a monopoly. Previous experience allows us to argue that only the healthy competition could become a condition for the successful operation of the debtor's property sale procedure.

That procedure is the sale of the debtor's property is the most litigation and claims on the part of all participants in the bankruptcy case. The task of the Bankruptcy trustee to sell the property at the highest price.

²⁰ <https://zakon.rada.gov.ua/laws/show/865-2019-п> ПОСТАНОВА КАБІНЕТУ МІНІСТРІВ УКРАЇНИ від 2 жовтня 2019 р. № 865

Positive is the notification procedure the committee of creditors or secured creditors of the material terms and conditions of sale of debtor's property. The creditors' committee or the secured creditor has the right: to agree the sale procedure on the proposed terms, to agree on the sale procedure of the new conditions; refuse to grant approval for sale. The court granted the right to determine the conditions of the auction in the event of failure of the committee of creditors or secured creditor agree on proposal from the trustee sale conditions.

1. Overview of the provisions of the Chapter and local comments

The provisions of the Code relating sale of the debtor's assets have been improved in order to ensure the sale of the property at the highest price. The sale of the debtor's property must be done at auctions.

Information about the sale should be kept as open as possible: property sales announcements will be shared via the Internet. The rules on auctions were Improved significantly.

At the request of the banking community, in order to assuring secured creditors rights in bankruptcy proceedings a mandatory approval of secured creditors for the initial price of the property, the composition of lots, the auction step, the text of announcements, the cost of saving the property, storing and selling costs of the mortgaged property were introduced.

Sales efficiency should be increased by introducing the possibility of lowering the price at the first re-auction.

Sale of property at an auction held in the electronic trading system. The Cabinet of Ministers of Ukraine establishes the procedure for the functioning of the trading system, the organization and conduct electronic auctions, the size, payment and refund of guarantee fees and payment of compensation to operators of electronic platforms. SGOs and relevant departments of the Ministry of Justice does not participate in the approval of such an order, which can affect the quality and functionality of the accepted order.

The key issue is the authorization of software packages and how to access authorized electronic platforms for the electronic trading system. Such conditions should be as open as possible and to promote competition operators authorized sites, rather than to establish a monopoly of one or more sites.

Providence set auction period - within 20 days of receipt of consent to the sale of the property and the conditions of the auction by the court in accordance with the provisions of the Code.

The criteria to be fulfilled by authorized electronic platforms, but the procedure for such authorization determined by the Cabinet of Ministers of Ukraine.

auction Customer has the right to cancel the auction only in case of violation of the established procedure of its preparation before the auction, and to hold a new auction It must be announced within 10 days. Limiting the right of the Customer to cancel the auction only in the presence of the base have a positive impact on the elimination of abuse at this stage. If such an auction, when there are grounds for its cancellation would be held, then later by the economic court can invalidated transaction made with violation of the procedure of preparation and holding of the auction.

For the first time in the Code establishes liability to third parties, who were not able to take part and win in the auction. Art. 74 contains the size of the financial responsibility for the violation of the procedure of preparation and / or holding an auction, which in turn prevented the person to take part and win in the auction. Responsibility for such actions shall be the offender, but whether this form of responsibility is spread on the bankruptcy administrator or not is not clear enough. Greater attention is paid to the responsibility of the operator an authorized site and its officials. We assume that the practical application of this provision is possible only through the establishment of the facts of violation of the procedure of preparation and / or the auction by the decision to invalidate the transaction in accordance with Art. 73.

Art. 75 defines the conditions of sale. Mandatory conditions of sale include the assets, the initial price and the auction step. Bankruptcy trustee is obliged to send the conditions of sale to members of the creditors' committee or the secured creditor. The code did not specify in what form and how the liquidator must send such conditions, but such notification shall enable the creditors' committee or the secured creditor to convene a committee of creditors within 20 days from the day when they received or should have received the terms of sale. Vague wording "for 20 days from the day when they are received or should have received" will be interpreted by all participants in the process in different ways.

If the creditors committee has not held its meeting on which to accept or reject any or decision in this case, the economic court shall determine the conditions of the auction. With the provisions of Art. 75, it follows that if the creditors 'committee has not held its meeting (e.g. not meeting held within 20 days from the date when received or should have received notification of the creditors' committee), the conditions of sale are considered to be consistent?

Notification of the sale of the debtor's right to demand at the auction worded slightly in ache "the debtor shall be notified." What gives the right to assert that the notice to the debtor procedure, members of the creditors and the secured creditor committee the authors Code treated differently.

The positive is the right of the creditor committee, a relatively cluttered independence- secured creditor to establish the initial price of re-auction, re-auction the second lower than required under the provisions of Art. 79 of the Code. In practice, the evaluation does not always reflect the real market value of the debtor's property.

Information on the results of the auction immediately after the completion of the auction shall be announced in the electronic trading system on the website of the authorized electronic platforms. It is necessary to give a definition of "immediately". For example immediately - as soon as possible during the working day, which should be carried out (be) appropriate action upon occurrence of the bases for their implementation²¹.

2. Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...)

a. World Bank

The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes sets forth the vision of the sale in liquidation procedure. The main goal of the sale is maximization of the value of a firm's

²¹ Resolution NBU 417 from 26.06.2015 № "On approval of the implementation of the financial monitoring banks" (<https://zakon.rada.gov.ua/laws/show/v0417500-15> - last checked Fe. 24th, 2020)

assets and recoveries by creditors (Principle C1). Another foundation for organization of the sale is prevention of the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments.

6. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

b. EU

EU law has no direct observations on the procedure in general terms.

г. German Insolvency Code and general remarks

Art. 68

With the introduction of the new chapter, the above standard first regulates the principles: (1) Sale via an electronic platform, (2) Rights to more detailed regulation by the Cabinet of Ministers of Ukraine , (3) Trouble-free and equal access for all interested parties. Interesting in Art. 68 No. 6 is the exclusion of the right of first refusal.

In Germany, the forced sale of objects has been regulated by law since 1897²². To this day, the courts continue to rely on the presence auction. An auction through the use of modern means of communication is not planned. Therefore, the provisions made in this section are revolutionary for the German legal system, although not unusual for the practice of so-called "freehand" sales. In this context, a large number of insolvency administrators also use Internet platforms offered by individual liquidators or sworn experts and auctioneers. However, these websites are regularly not known to the general public and cannot be reached via a central institution.

Art. 69

Article 69 defines the Electronic Trading System. Art. 69 No. 1 defines the separation between the database and the bidding platforms. The latter is intended to allow competition in this area in particular. Competition between the authorised electronic platforms ensures an essential element of transparency, as it allows different routes into the central database. The central database is currently maintained by the state provider prozorro.sale, so that the state ensures that the essential requirements are met by its own company.

Art. 69 No. 2 sentence 1 repeats the essential principle of non-discriminatory access and can therefore be deleted. Art. 69 No. 2 sentence 2 requires the data integrity and confidentiality of the bidders' data until the end of the auction; it thus regulates a new and independent part.

Art. 69 No. 3 regulates the requirements for the platform with great attention to detail. These requirements seem to correspond to the current state of the art. It is regrettable at this point that the

²² Act on Compulsory Auction of Immovable Property of 24.03.1897, Act on Compulsory Auction of Immovable Property and Forced Administration in the adjusted version published in the Federal Law Gazette Part III, Section 310-14, last amended by Article 9 of the Act of 24 May 2016 (Federal Law Gazette I p. 1217), source: <https://www.gesetze-im-internet.de/zvg/BJNR000970897.html> - last checked: Feb. 24th, 2020

requirements for the bidder are not listed in an own law, as prozorro.sale is responsible for various sales, including state property. These sales also take place via auctions and are therefore subject to basically identical regulations. For a later adaptation of the regulations to more advanced technical possibilities or better requirements in this case only the amendment of an own law would be necessary and not the adaptation of the special laws. The legislator may therefore consider repealing this provision and reformulating it generally.

Art. 70

According to Art. 70 No. 1, the operator of the platform must announce the holding of the auction within 20 days from the date of the approval of the sale of the real estate or the determination of the auction conditions by the court, as stipulated in this code. Regardless of the fact that once again there is (still) no No. 2 in the regulation, the communication channels have not been clarified. The ETS is not named as a recipient of the decisions in any of the existing decision norms. The only possibility for the ETS would therefore be to query the internet platforms for publication and to contact the appointed bankruptcy trustees independently. However, this is precisely what is not done in the otherwise very detailed provisions of the Act. For this reason, a new No. 2 has been added to regulate these parts, also taking into account Art. 75. The procedure to be followed in the absence of a reply was also regulated. Since this is also a new obligation of the bankruptcy trustee, a new para. 10c) was also added to Art. 12 No. 2.

Art. 71

Art. 71 regulates the technical and organisational requirements for the platforms permitted for the system. Art. 71 No. 3 also clarifies that only the winner of the auction is obliged to pay the corresponding fees. This provision is somewhat surprising at this point, given the detailed provisions in Art. 84 following, but is not detrimental to clarity.

Art. 72

This provision comprehensively regulates the possibility of cancelling an auction that has already started. Accordingly, such a cancellation is possible only, if mistakes have already been made before the start (Art. 72 No. 1). The nature of these errors is unclear, but they must be clearly described (Art. 72 No. 2 sentence 2). In case of cancellation, a new auction must be discontinued within 10 days (Art. 72 No. 1 para 2). Without specific reference is the provision of Art. 72 No. 3, which requires the repayment of deposits. According to the logic, this belongs in Art. 84 and there moved as new No. 5. This is also proposed accordingly.

Art. 73

The procedure for the realization of the assets is to be strengthened by the provision of Art. 73, which again consists of only one No. 1. Thus, other deeds which could prove a registration of a sale of property can be declared invalid by the Commercial Court as insolvency court if this could impair the realisation. It is interesting to note that these proceedings can be conducted not only by the bankruptcy trustee but also by the debtor or the creditors. It is precisely the latter that should again enable a stronger involvement of other parties involved and thus also increase transparency in the proceedings - this is different from Germany, where creditors regularly rely on the reports of the insolvency administrators on these issues.

Art. 74

The provision of Art. 74 regulates the possibility of compensation for damages to persons who were unable to submit bids due to access preparation. This provision sounds very helpful, but in practice it

will cause considerable problems, since the evidence of the elements of the facts mentioned here, which entitle to damages, may not yet be sufficiently defined. This is already true for the fact that the bidder cannot prove in case of doubt that he would have bid more (the mere statement will certainly not be sufficient here). Numerous court rulings are therefore to be expected here, which must specify the concrete requirements.

Art. 75

The provision of Art. 75 comes as a surprise at this point, as it has a very close connection to Art. 70. Thus, Art. 75 regulates the exact procedures by which the determination of the goods to be auctioned should take place between the bankruptcy trustee and the creditors (including secured creditors, if applicable). The possible deadlines are also regulated. However, the interfaces between Art. 75 and Art. 70 are also missing, so that Art. 70 No. 2 in its proposed new version maintains this interface.

In a later version of the law, consideration should be given to merging the two provisions and thus preventing the two related provisions from falling apart again.

The addition in Art. 75 No. 7 sentence 2 results from the missing allocation of the obligation in Art. 76 No. 1. A corresponding obligation in the case of a creditor's decision was integrated into the new version of Art. 70 No. 2 para 2.

Art. 76

This article is given different contents, which are difficult to summarize and could actually also be part of the regulation of Art. 70. Art. 76 No. 1 requires that the debtor must also be informed about the setting of an auction. Unfortunately the law forgets to say by whom. Here, various participants come into consideration, depending on the specific stage of the proceedings. Since the information is a formal task and also prepares the realisation of property, this would have to be a letter from the court, according to local opinion. However, this contradicts the requirements in Art. 70 and Art. 75 No. 7, according to which the information can also be provided by the bankruptcy trustee. Consequently, in the case of a decision by the court under Art. 75 No. 7, the court has jurisdiction, in all other cases the bankruptcy trustee has jurisdiction. The amendments have been incorporated into both Art. 70 No. 2 para. 2 and Art. 75 No. 7 sentence 2 and the provision has been deleted.

Art. 76 No. 2 requires the land to be marked, but neither by whom nor within what period of time is determined. The provision is therefore useless and can be deleted.

Art. 76 No. 3 to 5 contain basic regulations on access to the auctions and thus correspond to already existing regulations in Art. 69 No. 3 and Art. 71 No. 2. The regulations could therefore be deleted.

Art. 77

Art. 77 regulates the specific content that must at least be published on ETS. The regulations for the various types of property - land (Art. 77 No. 4), buildings (Art. 77 No. 5), vehicles (Art. 77 No. 6) and shares (Art. 77 No. 7) - go into great detail. The usual details for identifying the target object are regularly provided. In this context, it is of course questionable why this list is subject to the BCU4 regulations and not regulated in the more general law on ETS, as already suggested. Finally, the descriptive details of the objects to be sold would have to be identical in all cases of sale. The unnecessarily specific regulations in BCU4 create sources of error for the future.

However, Nos. 4-6 close with the words "etc.", so that the catalogue is not exhaustive here. This wording is challenging for the legal practitioner, as it allows for subsequent additions to the list both by

the analogies to other laws and by case law. Whether such an addition would also be useful and / or takes place must be the subject of the texts following this analysis.

Art. 78

Two very important topics are covered in this article. In No. 1, this concerns the prohibition of the employees of the State Authority of Bankruptcy from passing on information to third parties to the administrators of the ETS, the client and the operators of the platforms. However, it is not forbidden to take part in such activities by exploiting the information. We have supplemented this point in the proposed legislation.

Art. 78 No. 2 stipulates that the highest bidder at the end of the auction is also the winner of the auction. This is actually a matter of course, which could again be part of the regulation of ETS itself and should not be specific to auctions of insolvency assets.

Art. 79

The provision sets out in a very clear and detailed manner how to deal with unsuccessful auctions. Further auctions would be held, whereby in the second attempt the cost prices would initially be reduced by 10% (Art. 79 No. 2) and in the third attempt by a further 25% (Art. 79 No. 4). However, the committee of creditors (in the case of secured creditors with their consent) may deviate from these requirements. The wording of the provision could thus be made much simpler, but in this specific case this was waived in favour of other issues, as it would not entail any change in substance.

Art. 80

In addition to Art. 79, Art. 80 regulates the reduction of prices during a running auction. These reductions may not be carried out at all during the first execution, during the first repetition only with the consent of the creditors (Art. 79 No. 1 sentence 2), but with the possibility of agreeing on a minimum price (Art. 79 No. 2), and from the second repetition onwards, reductions may be carried out regularly.

As an amendment we would suggest to delimit the numbers more clearly, since at present in No. 1 both the original auction and the regulations for the first repetition can be found. Therefore, Art. 80 No. 1 sentence 2 should be understood as Art. 80 No. 2 para 1 and the current Art. 80 No. 2 should become Art. 80 No. 2 para 2. A corresponding proposal was included.

Art. 81

If secured goods cannot be sold at the auctions, the secured creditor has the right of self-assignment. The law differentiates between the first and second repetition of the auctions according to the wording. This can be simplified so that two paragraphs (No. 3 and 4) can be deleted without replacement and the wording of paragraphs 1 and 2 can be adapted.

Art. 82

This provision governs the handling of the sale of receivables in so far as they are subsequently settled in whole or in part. In this case, the seller is obliged to give the appropriate instructions during the auction.

Art. 82 No. 2 regulates the handling of partial payment before the auction begins. However, there is no handling of partial payments which take place during an auction and which also was received by the bankruptcy trustee. Since at this point in time a correction of the auction is no longer possible and the provision of Art. 72 is also not relevant, there is the risk that the buyer could bid a higher price than the

residual value of the claim actually contained. This would please the bankruptcy trustee, as additional proceeds could be expected but should not occur. In order to prevent this, the provision of Art. 82 No. 2 was extended by a para 2, which provides for the crediting of the amount already received after the start of the auction against the purchase price achieved in the auction. In case of doubt, this crediting must be done first.

Special attention should be paid to Art. 82 No. 3, according to which a sale of the claim can only take place at par value. This provision is in contrast to the provisions of Art. 79, 80, since such a reduction of the purchase price would thus be excluded (provision of Art. 82 No. 3 would be *lex specialis* in this respect). This provision must be adapted to the effect that a sale at fair value must always be possible. This is due to the fact that, on the one hand, the bankruptcy trustee, for his part, has to realise all claims and, on the other hand, that the claim could be uncollectible from the debtor's point of view and therefore is or has to be entered in his books at a value other than the nominal value. This fact must also be taken into account in the course of the realisation. In any case, a sale at the book value of the receivable in the debtor's last pre-insolvency balance sheet would be possible. In addition, the provisions of Art. 79 should be applicable accordingly in order to enable a sale by auction.

Art. 83

A detailed protocol shall be drawn up for each auction. The details of this can be found in Art. 83, which sounds technically complicated, but is in principle negotiable. The only exception to this is Art. 83 No. 3 sentence 1, which requires both the platform operator and the winner to countersign the minutes. However, the law does not regulate whether and how this should be provided. For the publication of the minutes on the fifth day after the end of the auction (Art. 83 No. 3 sentence 2), the signature of the platform operator alone should be sufficient.

Art. 84

The handling of the selection required under Art. 77 No. 1 para 5 after the end of the auction is governed by Art. 84. In principle, these must be returned to the registered bidders within three days (Art. 84 No. 1). However, Art. 84 No. 2 provides for an exception, according to which no repayment is made to the winner. The fees can be deducted from the winner's deposit and the remaining amount is to be considered as a deposit on the total purchase price still due.

According to Art. 84 No. 3, however, down payments should not be refundable if there is no winner of the auction. An exception is made for the cases of Art. 72 (cancellation). The basic provision of Art. 84 No. 3 sentence 1 concerns only a very rare case. A registration and deposit is only necessary if the potential buyer also makes a bid. This bid regularly leads to the fact that a sale must also take place. Therefore, the situation regulated here can only occur if external reasons make the auction impossible. The regulation is probably intended to ensure that in this case the platform first receives its fees and that the further issues can be settled between the seller and the potential buyer. However, the legislator overlooks the possibility of seizure of this claim for payment. This gives the potential buyer the basic possibility to prevent the payment of the funds to the bankruptcy trustee (at least for the time being or temporarily).

The constellation on which Art. 84 No. 3 sentence 2 is based is not understandable; after Art. 84 No. 2 has already distributed the winner's down payment, it should now not be repayable. This sentence should therefore be deleted.

In Art. 84 No. 4 there is a problem with the specific calculation of the interest. According to the present translation, several interpretations are possible. The discount rate of the NBU can be increased by 120 percent. It is questionable what the 120% refers to. This can be once the basic amount, then the discount rate times factor 1.2 or the discount rate. In the last case there are even several calculation possibilities again, because the discount rate plus 120% (the base or nominal) can be understood. The wording should therefore be adapted to the other laws in Ukraine as much as possible, thus allowing a uniform understanding. We know from Germany that these formulations are very misleading and have caused legal uncertainty in our country for several years since 2002 due to the amendment of the GCC. However, a proposal from the international side is not necessary here, as the issue certainly already exists elsewhere in Ukrainian civil law.

Art. 84 No. 5 originates from a shift of the norm of Art. 72 No. 3 to the logically more relevant place.

Art. 85

The regulation regulates the payment deadlines. These are comprehensible and do not need to be changed. In addition, Art. 85 No. 2 clarifies that the secured creditor who acquires his secured property only has to pay the difference between the secured value and the purchase price (and may set off the remaining partial amount). This provision corresponds to the principle of "dolo agit, qui petit, quod statim redditurus est" (he who requests that which he will have to return acts by deceit), which has been known as *maxim* since Roman law, and is therefore self-evident.

Art. 86

Art. 86 regulates the handling if the winner of the auction does not pay at least 50% of the payment within the 10-day period of Art. 85 No. 1 and does not pay the remaining amounts to the system within a further 10 days (Art. 85 No. 3). In this case the whole auction will be declared invalid (Art. 86 No. 1) and a new auction will be held (Art. 86 No. 3). All participants, except the winner, will have their deposits refunded.

Even if the reference to the next highest bidder could considerably shorten the period of exploitation of the asset, it cannot be excluded in this case that the non-paying winner merely wanted to push up the prices in the auction in favour of some third party. It would thus be very likely that the current buyer would not pay a fair value but an artificial price. The new auction reduces this risk overall and increases the probability of achieving a fair value in the next auction. Thus, no change is made to the provision that prolongs the recovery procedure.

Art. 87

Each legal succession requires appropriate documentation. The basis for this is provided by Art. 87, although the provision of Art. 87 No. 2 does not fit in. If the auctioneer does not transfer the movable objects or claims to the winner in time, the auctioneer shall pay interest of 0.5% of the value per day as a penalty for default. If the customer is a bankruptcy trustee, this penalty payment will trigger direct personal liability for failure to fulfil his legally imposed obligations (Art. 25). The bankruptcy estate will therefore receive a claim for reimbursement against the bankruptcy trustee. In terms of content, the provision belongs more in the realm of Art. 82, but here the temporal course was certainly taken into account, so that the assignment to the realm of Art. 87 represents a further possibility. However, a separation of this provision would have been preferable.

Art. 88

In further detail of Art. 87, Art. 88 regulates the letters required for the transfer of ownership. These are deliberately kept simple and are a *lex specialis* to other transfers of ownership, as notarisation is also dispensed with. In this respect, reference is made to publicly available information on the auction and its conduct.

Art. 89

Finally, in this sec., Art. 89 also provides for a disclaimer of warranty for the parties acting on the seller's side, including ETS, as well as for those who have not acted fraudulently. Here, the local experts would have to supplement whether the regulation is necessary. In the opinion of the authors, this norm, which is also fundamental, actually belongs in the general legal regulations on auctions.

3. Results

The results of the individual articles can also be seen above from the comments of local colleagues as well as from the comments from an international perspective. However, in order to allow for the possibility of a timely adaptation of the law, a large number of the proposals - as stated in the text, not all of them - have already been recorded in a table amending the law and proposals for new regulations have been formulated. These can be found below in No. 7.

vi. Dismissal of the proceeding in bankruptcy case (Book 3, Sec. 6)

1. Overview of the provisions of the Chapter and local comments

A separate ground for the closure of the bankruptcy proceeding as a failure of the commercial court to establish the signs of insolvency of the debtor was introduced. In addition, the closure of a proceeding on this ground may occur at all stages of the bankruptcy proceedings.

2. Comparison to other ideas (WORLD BANK, UNCITRAL, EU, German ...)

The termination of the procedure is conclusively regulated in this provision. It serves as a collection point for all types of procedure terminations. As a purely regulatory provision, there are no comments on this.

vii. Peculiarities of proceedings on the bankruptcy cases of some categories of debtors (Book 3, Sec. 7)

The provisions of this chapter provide for the peculiarities of bankruptcy of certain types of debtors - insurance companies, professional participants in the securities market, the issuer or manager of mortgage certificates, the manager of the construction financing fund or the manager of the real estate operations fund, the farm and the peculiarity of bankruptcy of state-owned enterprises.

It is justified to determine the peculiarities of bankruptcy of certain categories of debtors. It is clear that the arbitration manager must be appropriately qualified to handle certain categories of debtors, and the state is involved in bankruptcy proceedings as a participant through government agencies.

This chapter defines that a separate category of debtors are state-owned enterprises and enterprises with a share in the authorized fund of at least 50 percent. The state at this stage failed to ensure an equal approach to debtors, regardless of the form of ownership, which will affect the efficiency of the bankruptcy of state-owned enterprises.

1. Overview of the provisions of the Chapter

Peculiarities of proceedings in the bankruptcy cases of some categories of debtors are stipulated in Chapter VII of the Code.

These categories are insurers (Art. 91); professional participants of the securities market (Art 93); issuer or manager of the mortgage certificates, construction financing fund manager or real estate transaction fund manager (Art .94); farmer (art. 95); and state-owned enterprises and enterprises with state share in charter capital exceeding 50%.

This list of creditors is shortened. The main discussion in a legal community happened regarding exclusion from this list of the debtors which are liquidated under non-bankruptcy law and transformed into the bankruptcy liquidation.

2. What is missing from a local perspective?

The section deals with the bankruptcy of certain types of debtors. The first kind of insurance company. The obligatory party to the bankruptcy procedure is a state body that oversees the activities of insurance companies. The arbitration manager has additional requirements for additional qualifications. Such arbitration manager shall have received special training and passed the relevant special program examination. There are doubts as to the expediency of passing additional examinations as a result of the training of this category of arbitration managers.

We believe that establishing the need to take the exam may be an additional impediment to the arbitration manager's access to the insolvency proceedings of the insurance companies. It is advisable to train arbitration managers in the bankruptcy procedure.

The specially authorized central body of the executive power in matters of supervision of insurance activity, as the participant of bankruptcy procedure, provides the mechanism of control of work of the arbitration manager. In case of declaring the insurance company bankrupt and opening the liquidation procedure, the procedure for satisfying the creditor's claims under insurance contracts is established.

Another separate type of debtor is the professional participant in the securities market. The obligatory party to the procedure is the state regulator National Securities and Stock Market Commission. The Code provides for the right of the state regulator to establish the peculiarities of bankruptcy of professional stock market participants, as well as measures to protect the rights and interests of clients in agreement with the state bankruptcy authority. That is, the body that regulates the debtor by agreement without the participation of the legislature and the self-regulatory organization of arbitration managers can determine the specifics of the bankruptcy procedure.

The provisions of this chapter stipulate that the National Securities and Stock Market Commission shall determine the procedure for preventing bankruptcy and conducting pre-litigation procedures for restoring the solvency of professional stock market participants. Undoubtedly, the authority of the

state body is not correctly defined, because there is no principle of separation of powers of the preventive mechanism and control functions between different bodies.

In addition, the property manager placed additional qualification requirements for special training and a certificate for the right to pursue professional activity with securities, issued by the National Commission on Securities and Stock Market.

A particular type of debtor is farming. Specific grounds for the initiation of bankruptcy have been identified, the grounds for insolvency of the debtor have been determined. Such grounds are the inability to satisfy the creditors' claim within 6 months after the end of the relevant period of agricultural work.

The peculiarities of the organizational form of the farm are taken into account. When filing for bankruptcy, the consent of all members of such a holding must be obtained. The procedure for the disposal of the debtor's property takes into account the particular cyclical period of work of the farm.

The liquidation procedure generally takes into account the specific features of the farm. Concerns arise about the demarcation of property belonging to the head and members of the farm in private ownership and farm property that is included in the liquidation estate. These issues will primarily be related to the shortcomings of the farm accounting system.

State-owned enterprises and enterprises with a share capital in the authorized capital are defined as a type of bankruptcy, which have their own peculiarities in carrying out the procedure.

The chapter defines that the state: takes measures to prevent the bankruptcy of state-owned enterprises and enterprises where the state's share is at least 50 percent, determines the optimal ways to restore their solvency and coordinates the actions of the relevant executive authorities, in order to prevent the bankruptcy procedure can be used bail.

In fact, it is said that the state as the owner is not interested in the bankruptcy procedures of its own enterprises and the general aim of the provisions of this code is to rescue such enterprises from the bankruptcy procedure.

A completely different approach to the bankruptcy procedure of state-owned enterprises and other types of bankruptcy is being followed. It is determined that in the bankruptcy procedure of state-owned enterprises, the determining role is played by the debtor-founder or debtor-co-owner, not the creditor.

3. Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...)

a. World Bank

Regarding peculiarities of proceedings on the bankruptcy cases of some categories of debtors we can say that these procedures are developed with taking into account of Principle C3 of the World Bank. Named in the Bankruptcy Code peculiarities of conducting of bankruptcy proceedings assure specifics of those debtors.

While comparing the former Law and the new Bankruptcy Code the list of categories to which special regime is applied is shortened. That was a reaction to the critics, including from the World Bank as it was not in line with Principle C3.

6. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law.

b. EU

EU law has no direct observations on the procedure in general terms.

r. German Insolvency Code and general remarks

Art. 92

This Article provides for special rules for insurance undertakings. It is particularly important that insurance contracts are not treated as normal assets, as the insurer's counterpart is not the delivery of a good or service, but in case of doubt always the payment of money. However, these contracts must also be subject to special protection. The provision of Art. 92 does this by including the competent authorities in the insolvency proceedings. Moreover, only other insurers can acquire the contracts. It must be ensured that this restriction can also be complied with when selling via the platforms in accordance with the provisions of this law. European law has also imposed restrictions on the insolvency of insurance companies, but the result of these restrictions is that policyholders are also protected in the best possible way. However, this objective cannot be achieved by the BCU4 rules alone, but the rules on the authorisation and operation of insurance undertakings would also have to be taken into account.

From the point of view of insolvency law, only the change in the order of creditors is striking. In particular, policyholders who have terminated their contract after insolvency and are entitled to a refund of premiums (*pro rata temporis*) are disadvantaged (Art. 92 No. 7). These will only receive their claims paid out after all claims that occurred prior to the insolvency have already been settled. It is also not quite clear where the usual statutory creditors are now to receive a claim to the quota, as they are not mentioned in the provision. According to the logic of Art. 91, they would only have to be classified after the provision of Art. 92 No. 9, but this would be a complete devaluation of these claims; all the more so as the classification could also be understood in such a way that the costs of the proceedings (bankruptcy trustee and court) would only be classified according to the groups of creditors named in Art. 92 No. 9.

Art. 93

Art. 93 deals with the insolvency of securities trading companies. A striking feature of this special regulation is the norm of Art. 93 No. 6, which recognises the assets of others and allows a considerably simpler procedure for returning these assets to the actual owner than is otherwise regulated by law. In fact, this provision would be the ideal (and more work-saving) provision for the separation of property belonging to third parties - whether or not it is securitised.

Due to the *de facto* objective of the winding up of the securities trading company, which is specified in this provision, which is the return of the deposits and realisation of the remaining securities, a continuation of the company is almost impossible and therefore, contrary to the wording of Art. 93 No. 5, cannot be expected. This understanding is further supported and required by the specifications of

Art. 93 No. 2 of the sub-legal regulations of the competent authority. These must also issue a de facto trading ban to protect other market participants. However, this means that a restructuring of the company is only still possible in extremely exceptional cases.

Art. 94

The particularities of the bankruptcy of the issuer or administrator of mortgage certificates, the administrator of the mortgage fund or the administrator of the real estate transaction fund are quickly summarized: This is where the laws on financial and credit mechanisms and the management of property during housing construction and real estate transactions come into play. In this respect, local colleagues must state whether this is reasonable and whether the then competent authorities have sufficient knowledge of the particularities of insolvent companies.

Art. 95

Special schemes for agricultural holdings are in principle an essential part of each country's existence, which is dependent on agricultural products. The primary objective of these regulations is - as here - to secure the production of the current marketing year and to collect and utilise the yields from the fields. If possible, the company and its components should not be exploited in advance.

Somewhat exceptional - but perhaps understandable from the other history - is the regulation of Art. 95 No. 9, which makes all assets the property of the enterprise, even if they are fractional or joint property with other enterprises. This provision is therefore certainly relevant for smaller agricultural holdings which had jointly purchased tractors or other equipment with others. In case of doubt, these farms must take very specific measures to protect themselves so that they are not left without agricultural implements or seeds in the coming agricultural year.

Against the background of the forthcoming land reforms and the possibility of land being purchased by third parties, this provision may have to be viewed critically once again by local colleagues, as in the event of insolvency a sell-off could be carried out more quickly than would be the case in normal business operations.

Art. 96

If more than 50% of a business enterprise is statutorily owned, these special regulations can be applied according to this regulation.

In this respect, the provision of Art. 96 No. 1, according to which the debtor is obliged to inform the court about the state ownership, is already confusing. Only then the special regulations can be applied at all. This is therefore astonishing, as the state itself should know in which companies it is directly or indirectly involved and should be able to inspect the corresponding registers. This knowledge is particularly difficult to determine for the debtor himself, especially in the case of multi-level indirect ownership - whereby the strict requirements of the money laundering prevention regulations are helpful here.

Apart from that, the provision concretizes in particular the requirement of the BCU4 according to which insolvencies by the owners are to be avoided as far as possible and also requires this from the state itself.

In addition, it is the first norm in the entire law that excludes application in Crimea (Art. 96 No. 10).

4. Results

From an insolvency law perspective, the provisions of this chapter are understandable. The sections are all properly delimited and the need for special standards is understandable. The problem is, however, that references to other laws are not comprehensible, so there is a considerable risk of regulatory gaps and inconsistencies. In case of doubt, however, these will only become apparent when the regulations are applied. It will then be the task of the courts and - if necessary - of Parliament to ensure that the rules are applied in the way originally intended.

As a matter of principle, consideration should be given to transferring the rules completely to special legislation and to regulate there how to deal with insolvencies of these companies. This approach should ensure that there are fewer loopholes in the regulations. This would mean that, in the event of doubt, insolvency law would always be the more specific law, which would then have to be adequately adapted. This could lead to a considerable increase in flexibility.

It is striking that there are entire areas which do not appear in the special regulations: In addition to companies in the banking industry, these include providers of payment services or other system-relevant areas (hospitals, armaments companies, etc.). This can only be explained by the fact that these sectors already have special regulations. This would, however, strengthen the previous desire to unify the rules - to gather the rules in one place and thus enable better coordination and avoid the later applications falling apart.

Ukraine does not have any international agreement on bankruptcy proceedings, so the Ukrainian system is not integrated into the international system. Project experts believe that the Ministry of Justice should do a lot of work to agree and conclude international agreements.

viii. Proceedings in the bankruptcy cases related to the foreign bankruptcy procedure (Book 3, Sec.

At the beginning of 2013, a new wording of the Law "On Restoring the Debtor's Solvency or Declaring it Bankrupt" came into forth, in which previously unknown in Ukraine rules on the conduct of bankruptcy cases related to foreign proceedings.

1. Overview of the provisions of the Chapter

Among the main mechanisms of the law (Section IX BCU3) become recognition of foreign bankruptcy proceeding, recognition of foreign Bankruptcy trustee, cooperation with foreign courts and foreign Bankruptcy trustees, provision and coordination of legal aid and others. These remedies shall be enforced with respect to the principle of reciprocity and public order concept (public policy).

Section IX BCU3, which contains provisions on bankruptcy cases related to foreign bankruptcy proceedings, has not been revised or amended during the latest reform.

2. Local comments

The Legislator then prescribed practically only a possibility of foreign proceeding's recognition, outlining what the bankruptcy judge can do after the court proceedings had been recognized.

It remains unanswered with what procedural rights the parties in the relevant case should or can participate in a bankruptcy proceeding opened in Ukraine.

The Law also does not specify what actions should be taken in a bankruptcy case before a bankruptcy case is terminated and how those decisions should be formalized.

The Bankruptcy Law introduced a new legal category – judicial assistance. It would be good to better describe the procedural aspects of providing such assistance.

This situation could be corrected by the introduction into the current Economic Procedure Code of Ukraine a separate section on opening and conducting this new category of cases – cases on recognition of foreign bankruptcy proceedings.

3. Comparison to other ideas (WORLDBANK, UNCITRAL, German ...)

The World Bank contains important recommendations regarding the cross-border insolvencies. The Principle C15 says that effective system of handling cross-border matters should include several important procedures.

Several rules are in the new Bankruptcy Code, for instance: foreign insolvency representatives should have access to courts and other relevant authorities; courts and insolvency representatives to cooperate in international insolvency proceedings. But the practice of these provisions application does not exist.

Regarding another recommendation regarding assurance a clear and speedy process for obtaining recognition of foreign insolvency proceedings is not supported in the Ukrainian courts.

The only court decision on recognition of a foreign bankruptcy proceeding shows that the recommendation on granting relief to recognition of foreign insolvency proceedings in Ukraine is not fulfilled.

The rule that a non-discrimination treatment should be provided between foreign and domestic creditors is difficult to foresee as there is not practice exist.

Recommendations.

During the latest reform of bankruptcy legislation these provisions (cross-border insolvency rules) practically were not changed. The new Bankruptcy Code provides the main procedures that allow coordinate the bankruptcy case with multiple proceedings.

Notwithstanding this the Bankruptcy Code does not implement some important instruments, among which are:

- the Bankruptcy Code does not provide the rules for choosing a proper jurisdiction to file the only bankruptcy proceeding in a proper jurisdiction;
- the concept of center of main interests should be clearly developed;
- recognition of foreign bankruptcy proceeding should be automatically or at least simple, without formal barriers.

Additionally, the inconsistencies between the Bankruptcy Code and the Law on Private International Law should be liquidated.

In this area of insolvency regulation Ukrainian Legislator used several international documents, among the most important are 1997 UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation 2015/848 on Insolvency Procedures (former by Regulation 1346 of 2000).

Ukraine has implemented the main legal mechanisms recommended by international organizations to handle bankruptcy cases that are filed a more than one jurisdiction, including the World Bank's Principles (Principle C15) for Effective Insolvency and Creditor/Debtor Regimes.

Thus, the basic in the country conditions are created in order to solve the problems related to the conflict of Ukrainian and foreign legal systems.

4. Results

Existing difficulties related to application of these rules related to conduct of bankruptcy cases related with similar foreign proceedings could be overcome by introducing a separate section in the current Commercial Code of Ukraine on the initiation and conduct of this new category of proceedings – the cases on recognition of foreign bankruptcy proceedings.

Articles 97 to 112 deal exclusively with international insolvency law. Ukraine has adopted the already established provisions of the BCU3 unchanged. These provisions originated from the UNCITRAL Model law. In theory, Ukraine thus has regulations that correspond to the globally recognized standard.

These standard regulations are also subject to constant change and a comparison between the regulations used, the currently already updated regulations of Model Law and case law is advisable. Especially the latter, however, should not only be compared within Ukraine, but also with other countries whose international regulations are also based on the above mentioned standard law. However, the scope of this analysis would be considerably extended, so that this topic should be reserved for a supplementary or further analysis.

e. Restoring solvency of an individual (Book 4)

The fourth and last book of the law enters completely uncharted area for Ukraine - private bankruptcy. Insolvencies of natural persons who were not also self-employed have not been part of any regulations in Ukraine so far.

However, private insolvency does not only consist of regulations in insolvency law. Rather, private insolvency comprises all areas of a natural person's life and must therefore be integrated into the relevant legislation and supplementary regulations. Otherwise, debt relief for private households would

only be a partial area, which would not, however, lead to the desired results of an economically better trained, debt-free and now economically responsible company.

It should also be borne in mind that private insolvency law was planned as a separate law and was only integrated into BCU4 in the course of its deliberations. This also makes it easy to understand why a large number of provisions are essentially analogous to those in the section on legal entities, thus creating apparent duplication.

In contrast to Germany, for example, private insolvency law in the Ukraine consists of a large number of regulations. These will be explained and evaluated in more detail below. (Alexander)

i. Overview of the provisions of the Chapter (Book 4)

1. *Starting the proceeding in the insolvency case (Book 4, Sec. 1)*

Only a debtor – individual can file an application for insolvency.

A debtor may apply to the Commercial Court for insolvency if 1) the amount of the debtor's overdue obligations to the creditor (s) is at least 30 minimum wages; 2) the debtor has deferred the repayment of loans or other scheduled payments of more than 50 percent of the monthly payments on each of the credit and other obligations within two months; 3) the enforcement officer issues a decree about the absence of the property, which can be recovered.

In addition, the threat of insolvency is a ground for opening the proceedings - this is when there are circumstances confirming that the debtor will not be able to fulfil its obligations in the near future or continue to make ordinary current payments.

2. *Restructuring of debts of the debtor (Book 4, Sec. 2)*

The main procedure in the insolvency of individuals is the debt restructuring procedure.

The plan of restructuring may contain any measures, including the following conditions for restoring of solvency: sale of part of the debtor's property, change of the method and procedure of repayment of debts, reduction of the amount of debt and change of maturity, as well as deferral, installment and forgiveness of part of debts, execution of obligations' by third parties (guarantors), other ways of improving the financial condition of the debtor, such as re-qualification of the debtor and his employment.

The debtor shall independently develop and submit a restructuring plan, indicating to which creditors what amount of debt and at what expense he will repay it. The plan must specify the amount of money that will go for repayment of the loan and the amount of money that the debtor has to cover the household needs for himself and the persons who depends on him (one subsistence minimum is allowed for each person).

The debtor's debt restructuring plan is to be approved by the court. If it is not approved within three months from the date of opening the proceeding, the court takes a decision on the bankruptcy of the debtor and the starting of the debt repayment procedure.

3. Declaring the debtor bankrupt and introducing debt settlement procedure (Book 4, Sec. 3)

After the debtor is declared bankrupt and in the course of the procedure of debt repayment the list of property of the debtor with its value is formed. This property is being sold to repay creditors' claims. The liquidation estate includes all the property of the debtor, even if it is part of the common joint property.

The debtor can not take away the only home of his and his family (by law, this is an apartment of not more than 60 square meters or a living space of not more than 13.65 square meters per family member or a house of not more than 120 square meters), and only if it is not a mortgage.

Also, the money on the debtor's pension accounts and social insurance funds cannot be included in the liquidation mass.

The debtor can apply for the exclusion of certain property from liquidation estate, if it is insignificant, it cannot be sold by its nature and its value is less than 10 minimum wages. Property may also be excluded from liquidation estate if the debtor proves that it is necessary for urgent needs.

To conduct the procedure of debt repayment Bankruptcy trustee is appointed.

The Code provides for three priorities of debt repayment by the debtor:

- first: alimony, damages, pension contributions, insurance premiums;
- second: taxes and creditors' claims;
- the third turn: fines, penalties.

4. Consequences of dismissal of the proceeding in the bankruptcy case (Book 4, Sec. 4)

After the bankruptcy procedure is completed, the court decides to release the debtor from debts.

A debtor who has forgiven all debts cannot re-declare by himself bankrupt for five years.

A bankrupt must also notice that he or she has been declared bankrupt before taking out loans or acting as a guarantor. He cannot be considered that has a perfect business reputation for three years. In the register of private entrepreneurs will be a record of his bankruptcy.

The economic court, when making a decision to close the procedure of debt repayment and to terminate the insolvency proceeding, releases the individual from the debt.

An individual shall not be exempted from the further fulfillment of creditors' claims after the completion of insolvency proceeding and the obligation to repay outstanding debts in respect of:

- 1) compensation for damage to the life and health of citizens;
- 2) alimony;
- 3) other claims that are linked to the individual's personality.

This kind of claims, which have not been paid in the insolvency proceeding, may be claimed after the completion of the insolvency proceeding in full or in part.

Article 90 does not provide such a basis for closing bankruptcy proceedings as concluding a settlement agreement.

In addition, the problems mentioned above regarding the lack of a section on a settlement agreement lead to the fact that the mechanisms provided for in Article 1 are not fully disclosed to repay creditors' claims by terminating, replacing obligations, which could be reflected precisely in a settlement agreement.

5. Proceedings in the insolvency cases of some groups of individuals (Book 4, Sec. 5)

The Code provides for the peculiarities of the administration of the cases regarding insolvency of debtors who are engaged in agricultural activity.

In these cases a debt restructuring plan is developed taking into account the seasonality of agricultural business and its dependence on the natural and climatic conditions.

In such cases, decisions regarding land ownership or permanent or temporary use shall be made taking into account the requirements of the land legislation.

In cases of insolvency of an entrepreneur the entries shall be made on the opening and closing of insolvency proceedings shall be made in Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Undertakings.

ii. Local comments

Since the Code was entered into October 2019, there are only a few court practices yet in place. It is also difficult to foresee perspectives of effectiveness of such procedures. However, it should be noted that the courts will apply the relevant rules to determine whether this system will work properly and whether it will be effective enough to solve the property difficulties of individuals, including entrepreneurs.

Nevertheless, some expectations can be expressed, based on the current state of the economy as a whole, as well as the development of consumer credit and the improvement of the enforcement practice of the court decisions in disputes related to the repayment of debts by individuals.

Some specific caveats are below.

Only the debtor can initiate the opening of insolvency proceedings, and the creditors will not be able to use this legal mechanism.

The Code requires quite a big list of documents the debtor needs to submit to the court supporting the bankruptcy petition. The court practice will show whether this is an obstacle to the natural persons willing to use these mechanisms. Nevertheless, it is advisable to review provisions of Art 116 No. 3 in the future in order to optimize the information the judge needs to make a decision on opening the bankruptcy proceeding.

There are no clear insolvency criteria, which on the one hand may complicate the work of judges, on the other - it gives judges a great deal of discretion to decide whether a person will be able to fulfill his or her property obligations without applying insolvency proceedings.

There is a lack of procedural rules of applying insolvency procedures to entrepreneurs. The current provisions of the Code may not be sufficient to formulate a unified court practice to distinguish between the debts of a non-business individual and an entrepreneur.

The high cost of bankruptcy proceedings for individuals and the lack of state support for such debtors. Such reasons for the lack of a large number of cases in courts are named by the experts.

iii. Comparison to other ideas (WORLDBANK, UNCITRAL, EU, German ...)

1. World Bank

There was no legislation on insolvency of individuals in Ukraine prior to the adoption of the Bankruptcy Code. Book Four, "Restoring Solvency of an Individual," is a completely new system of rules in the context of general bankruptcy law.

Recommendation in C1 of the World Bank Principles suggests to take measures in order to prevent improper use of the insolvency system. This recommendation is very important for the system of natural persons bankruptcy.

Additionally, it is appropriate to mention that the World Bank adopted in 2013 a specific document devoted to the natural persons insolvency. We advise in the future reform compare Ukrainian system of natural persons insolvency with the World Bank Report on the Treatment of the Insolvency of Natural Persons Insolvency.²³

2. UNCITRAL Model Law

There is no content in the UNCITRAL Model law that complies with the rules set out in this chapter. This is due to the purely cross-border nature of model law. Nevertheless, the Model Law can be used when developing provisions regarding cross-border insolvencies of natural persons.

3. EU

The EU has issued several regulations on the subject. Most of them have, however, already been incorporated into German law, so that a commentary is provided together.

The only exception is Directive 2019/1023 of 20.06.2019²⁴. The essential change there - a reduction of the time until discharge of residual debt to three years - is of no importance in Ukrainian law, as discharge of residual debt is granted immediately upon the end of the proceedings (Art. 134).

²³ Report on the Treatment of the Insolvency of Natural Persons, URL: <https://openknowledge.worldbank.org/handle/10986/17606>.

²⁴ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), CELEX: 32019L1023, URL: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32019L1023> (last reviewed: Apr. 13th, 2020)

4. *German Insolvency Code and general remarks*

a. Chapter I

Articles 113 to 115 deal with general considerations. Art. 114 already contains the requirements for the bankruptcy trustee and Art. 115 the possibilities of opening insolvency proceedings for the debtor.

Art. 113

Art. 113 declares the provisions of this book to be *lex specialis* to the provisions of the preceding books. However, this implies the application of the other provisions. Especially in comparison with Art. 91, it is clear that a general application of the other provisions is required. This also follows directly from Art. 114, which directly mentions different types of insolvency proceedings for legal entities.

Art. 114

Art. 114 describes the rights of the bankruptcy trustee. No. 1 describes the rights to access information. This is intended to enable the bankruptcy trustee to obtain all information from the public documents or the documents to be kept under contract (e.g. from credit institutions). Provided that this standard is applied in a broad sense, the objective can also be achieved. If, on the other hand, rights were to be restricted for other reasons, this would be disadvantageous for creditors. It must also be ensured that the bankruptcy trustee not only has access to the current documents, but also to the registrations of the last three years in order to be able to recognise shifts in assets (and to enforce claims under Art. 42). This has been included for clarification.

Art. 114 No. 2 meets the expectations and can be understood as a summary of the tasks in private insolvency proceedings. It is striking that the legislator has already included special provisions for the opening of special accounts under Art. 114 No. 2 para. 3. This provision is reinforced by Art. 114 No. 3, according to which the bank must ensure that in case of doubt, funds are transferred to the new insolvency administrator after the previous one has been voted out of office. However, these provisions have been added to the already proposed provisions of Art. 12 No. 2 sec. 12, so that the provision of Art. 114 No. 3 can be omitted; all the more so as the provision of Art. 28 No. 4 para. 4 has also been adapted.

Art. 114 No. 4 and 5 also correspond to the basic idea of modern insolvency administration and therefore actually belong in the regulations to the legal persons. However, since the legislator has expressly included this special provision only for the insolvency of natural persons, this should be left as a conscious decision.

Art. 115

Art. 115 limits the possibilities of opening insolvency proceedings. Thus, proceedings under Art. 115 No. 1 can only be opened at the debtor's request. However, the debtor has the right to do so only if the grounds of Art. 115 No. 2 are present. These include a minimum debt of 30 minimum salaries, the partial cessation of debt service, the determination by a court that there are no enforceable assets and that there is a risk of insolvency. How the latter is to be calculated is not exactly explained. Nor is it clear on what basis the 30 minimum salaries are to be calculated - with the exception that according to Article 115 No. 3 penalties, interest and taxes are not to be taken into account.

In comparison with German law, these restrictions are considerable. In Germany, the debtor can apply for insolvency regardless of the amount actually owed. This is also due to the fact that even small amounts can have a considerable impact on the economic performance of natural persons. In addition, a minimal sum often means that the debtor must first take on further debt before he can then call on help with debt relief. This, in turn, can be a disadvantage, especially when it comes to new incurrance of eligible debts (consumption, credit institutions). It should also be examined whether in this case there is still a punishable credit fraud...

6. Chapter II

Articles 116 to 123 deal with the initiation of insolvency proceedings, including the first essential procedural elements.

Art. 116

Art. 116 deals with the documents to be attached to the request for the opening of insolvency proceedings by the debtor. These are, in a simplified form, all information on assets and debtors, both current and retrospective for the last three years. From these documents, all parties involved should quickly obtain an overview of the existing assets and debts.

A debt rescheduling plan should also be included (Art. 116 No. 4). The courts will have to deal with the ZERO plans in this way in a timely manner. These are plans which provide for a payment of ZERO or almost ZERO to the creditors. These plans are very often offered in Germany, since on the one hand a binding proposal must be made, but on the other hand there are no realisable assets available.

From a German point of view, the provision of Art. 116 No. 5, according to which declarations on the economic circumstances of the family members are also concerned, is interesting. Although the background to this provision is obvious, since a transfer of assets within the family should be identified in this way, the provision is far too extensive and unnecessary. If the debtor had assets and gave them away, squandered them or used them in any other way, this can be seen from the documents that the debtor himself must produce. It is unnecessary to place the whole family under general suspicion and demand that they disclose all their assets and sums of money; they are not liable for the debtor's debts. From a local perspective, this provision is extremely obstructive and has therefore been deleted.

The provision also has another disadvantage: the family members are not involved in the proceedings. The statements made by them within the proceedings are therefore legally non-existent. This means that false statements outside the proceedings cannot be prosecuted. However, this leads to the fact that the provision invites abuse. It should rather be in the interest of all parties involved that the debtor reports truthfully and completely on his assets and the development of his assets. If mistakes are made in this respect, the debtor as applicant can also be held accountable for this - in simpler cases by refusing discharge of residual debt, in more complex cases also by additional criminal liability. This would serve legal certainty more than the artificial inflation of files.

In purely practical terms, the provision of Art. 116 No. 5 is already difficult in any case, since most natural persons never know what their financial situation was like three years ago - and certainly not backed up by documentary evidence. This will be the task of the bankruptcy trustee, with the support

of all those involved and on the basis of his rights to information, to recognise and determine these findings. In its current form, the provision is a procedural obstacle norm.

Art. 117

The provision in your No. 1 and 2 corresponds in principle to Art. 35 and would therefore be dispensable. Only No. 3 sets out the court's duties to provide information on the initiation of proceedings in somewhat more detail. However, it should be considered here as well whether this provision would not already be taken over in Art. 35 and thus the complete Art. 117 could be dropped.

Art. 118

The safeguarding measures for the insolvency estate are basically a general standard, even if the personal restrictions (such as the ban on travel abroad) seem rather strange. However, all measures ensure that the debtor can still be reached by appointed bankruptcy trustees even after an application has been filed and thus cannot escape the proceedings by personal absence. From an European perspective, we would rather remove the personal restrictive measures, but since this seems to be a common measure in other Ukrainian laws as well, we have not included this deletion for the time being.

Art. 119

This provision governs the preparatory meeting, the rules being essentially the same as those governing the legal entity. Only the fact that additions for natural persons have been included is particularly significant here as well. As a result, it will be necessary to assess, on the basis of the local wording, whether the provision deviates to such an extent that it is justified, or whether, by analogy with Art. 117, its deletion would be preferable in order to keep the law permanently uniform.

Art. 120

Art. 120 regulates the lodging of claims by creditors and enables the confirmation of provisional decisions under Art. 118 even after the opening of insolvency proceedings. This is a primarily clarifying norm.

Art. 121

Art. 121 is again a genuine special standard. This is already due to the reduction of the period of the moratorium from 170 days for legal persons (Art. 41) to 120 days in this provision. Otherwise, the provision fits well into the Ukrainian system of insolvency proceedings.

Art. 122

This provision also corresponds, with modified deadlines (60 days instead of 70 days of Art. 47), to those for legal persons. Here, too, consideration should be given to laying down the requirement of the amended time limit and otherwise waiving the provision itself.

Art. 123

Art. 123 regulates the creditors' assembly. It is worth noting that every creditor already has the right by law to vote in writing and this vote must be taken into account (Art. 123 No. 6). This is a clear improvement on the situation currently depicted in German law and therefore definitely capable of being incorporated into German law. However, it should be considered not to adopt this provision as a special provision for private insolvency proceedings, but rather to make it a general rule in Ukrainian law and therefore to incorporate it into the provision of Art. 48 No. 1 para. 12. A corresponding proposal has been incorporated.

B. Chapter III

Articles 124 to 129 deal with the restructuring of the debt of the debtor. In particular, restructuring by means of an insolvency plan is considered, so that the procedure can be completed promptly and to the satisfaction of all creditors. Attention should also be paid to the debtor's viability by leaving certain assets within the scope of the plan. At the same time, the debtor's debts should be settled amicably with the creditors. Ukrainian law takes up the possibilities of the German insolvency plan procedure as well as the considerations of the judicial debt settlement plan.

Art. 124

The regulation contains very detailed specifications on the contents and possibilities of the plan, as is customary in Ukrainian law. Unlike in the previous chapter, this provision is also significantly different from the parallel provision on legal entities in terms of the other circumstances to be considered. The special circumstances of the debtor and his family members are taken into account (even if this is done automatically in Germany by the always applicable regulations for protection against attachment). At the same time, the maximum terms for the duration of the plan are limited to five years for ordinary debts and a maximum of 10 years for the repayment of housing loans (Art. 124 No. 6). In contrast to German law, financiers of insolvency plans may also officially participate in negotiations and meetings (Art. 124 No. 5).

Art. 125

Art. 125 contains the debts that cannot be settled - it could also be formulated that these debts may not be changed by an insolvency plan. These are, in particular, liabilities for outstanding alimony and social security payments or claims for damages based on mutilation, death or damage to the health of persons (Art. 125 No. 1). The plan may only be approved by the court once these debts have been paid (Art. 125 No. 3). As with legal persons, tax debts for the past three years are declared irrecoverable and permanently written off (Art. 125 No. 2).

The privileging of individual creditors or groups of creditors is an essential part of the acceptance of the entire system. Ukrainian law therefore also declares individual debts as non-negotiable and definitely recoverable. These will always be exempt from residual debt discharge. With regard to tax debts, Ukrainian law assumes different conditions than German law. However, due to the order of non-recoverability, numerous legal issues will never arise and the authority will be considerably relieved of administrative activities for the future at this point. This is certainly even advantageous from the point of view of opportunity, and may even serve as a model.

Articles 126 to 129

In these articles, the further procedure, the voting on the plan, the approval by the court and the respective effects of the plan are presented and regulated in detail. It would therefore also be urgently necessary to consider repealing these provisions and, as already proposed elsewhere, to refer to the provisions from the reorganisation procedure for legal persons, which may be applicable with slight modifications.

г. Chapter IV:

As is already the case with legal entities, a failed amicable procedure is followed by tough insolvency proceedings for natural persons. This is regulated in Articles 130 to 133.

Art. 130

Art. 130 is the classic transitional provision on procedure. It again refers to the maximum period of the moratorium (120 days) or the previous decision of the creditors' meeting as the starting point of these new proceedings. In contrast to legal entities, the bankruptcy trustee must now begin with the detailed inventory and valuation of the debtor's assets.

Art. 131

The provision of Art. 131 regulates the determination of the insolvency estate and for the first time also refers to non-garnishable assets (Art. 131 No. 6) and even extends this to include further items from the pension scheme (Art. 131 No. 7). The provision of Art. 131 No. 8, according to which sales may only be made in accordance with the provisions of the law, is again to be understood purely declaratory. This already follows from the general provision of Art. 113.

Art. 132

The provision of Art. 132 should actually have been expected rather in the area of general enforcement provisions. It deals with the possibility that assets can be declared unseizable upon application by the debtor. Here it is not understandable why there should be different rules within the general enforcement proceedings than those applicable to individual enforcement proceedings. Nor can the thresholds be any different for all creditors than those that must also apply to an individual creditor. This provision would thus have to be moved as a whole to the law of individual compulsory enforcement (and thus to another law). However, since it cannot be ruled out that such a provision does not yet exist, it was not deleted for the time being.

Art. 133

The order of satisfaction of the new and old creditors and the costs of the proceedings are beautifully regulated in Art. 133. Such a norm would have been very desirable in the area of legal persons and has been tried to create by the adjustments in Art. 44a. However, no changes would be recommended for natural persons. This applies in any case as long as the legislator wishes to retain the different classes of creditors and does not unify them and put them on an equal footing overall.

д. Chapter V:

This Chapter contains in its Articles 134 and 135 provisions for the termination of proceedings.

Art. 134

No. 1 of this regulation only regulates the technical procedure of cancellation. No. 2 also regulates which claims are excluded from a discharge of residual debt. This concerns, on the one hand, compensation for damage caused by mutilation, damage to health or death of other persons, maintenance payments and other claims inseparably linked to the personality of the debtor. The latter are not further defined and have a considerable potential for judicial clarification. Here, an enumerative enumeration would have been better and more desirable.

Art. 135

Art. 135 No. 1 imposes a blocking period of 5 years for the initiation of new insolvency proceedings. This blocking period is relatively short. In Germany, the period has been left at 10 years even after various other changes in private insolvency law. The period chosen here could also lead to abuses, especially since Art. 42 does not cover the entire period mentioned.

The obligation according to Art. 135 No. 2 para 1 to inform the contracting parties about the former insolvency is also well-intentioned, but will regularly be bought empty when loans are passed on or taken over. In these cases, the disclosure obligation does not exist, so that abuses are possible. The introduction of a register would be more helpful here. In addition, the non-disclosure is not punishable under this law, so in practice it can also be "forgotten".

e. Chapter VI:

The provisions in Art. 136 and 137 logically follow the special provisions of Chapter VIII of Book 3. This means that both the income of persons engaged in agriculture is taken into account and assessed differently (Art. 136) and special regulations for sole traders are made which are both mandatory and logical in content.

iv. Results

The provisions 116 to 123 correspond to those concerning legal persons, with a few exceptions. It should be urgently considered to make the provisions more legible and to list only the actual deviations. Otherwise, it is to be feared that the very well structured and almost identical procedures will diverge at a later date, thus creating unnecessary further complexity in the procedures. At the same time, it is evident that the legislator has also incorporated new ideas when drafting the new regulations on private insolvency. These must be preserved, so that proposals for the generalization of regulations were also helpful and necessary in our view.

Delicate rules for insolvency plans, as laid out in Articles 124 to 129, are helpful, but also inhibiting. They do not fit every debtor's situation. Greater flexibility would be desirable in this respect, even according to the wording of the law. However, since the regulations and the complete set of instruments have been newly introduced into Ukrainian law, a certain degree of support from all parties involved is also evident from the regulations now in place. This is also very helpful for the further procedure and the development of the law. Only in this way can practice demonstrate the need for change or, by applying numerous standard plans, enable the desired acceleration of procedures. However, all this cannot be depicted without a retrospective assessment of the case law and the practice of debt relief for natural persons. Therefore, in addition to the proposal to streamline the law by repealing standards, the subsequent evaluation of legal practice will also play a decisive role; however, this is only part of the further analysis.

In contrast to the other areas, obviously singular regulations have been made in Art. 130 to 133. These are exceptional in their clarity for the entire law. With the exception of a few repetitions, which have certainly remained due to the lack of adaptation to the now unified law, there are no requests for changes in this chapter.

The regulations in Art. 134 and 135 on the conclusion of proceedings basically correspond to the general requirements, even if the short time available for new proceedings is surprisingly short and the after-effects are surprisingly debtor-friendly. Here, practice will have to show whether both serve the intention of the legislator or rather invite abuses.

f. Final and transitional provisions

The final and transitional provisions are intended to address the issue of regulating the entry into force of the provisions of the new code. The most sensitive issue is the application of the new provisions of the Code to existing bankruptcy procedures.

Lack of jurisprudence to apply the provisions of the new Code and the lack of understanding of the new provisions of the Code affect the general practice of application.

The transition issues for the new Code should be governed by this section.

i. Overview of the provisions of the Chapter and local comments

From the date of entry into force of the provisions of this Code, regulations governing the above procedure, and a key document for individuals of the Law of Ukraine "On moratorium on foreclosure on property of citizens of Ukraine, provided as collateral for foreign currency loans should cease to operate. However, the Verkhovna Rada decided to extend such a temporary moratorium until January 1, 2022. The Bill is not yet in Force.

It was the moratorium on foreclosure, provided as collateral for foreign currency loans, that prevented creditors from recovering such property and obtaining funds from debtors. The temporary moratorium lasted for almost 5 years, which certainly had a bad impact on the banking system as a whole.

Corresponding changes are made to the current legal acts on bankruptcy procedures for individuals and legal entities.

The procedure for applying the provisions of this Code to bankruptcy cases opened before the entry into force of the new Code is regulated. It is determined that all cases except for the stage of reorganization are considered under the provisions of the new Code. This provision is the most debatable among bankruptcy participants and judges.

A five-year transition period has been established for bankruptcy proceedings for debtors who have foreign currency loans secured by a mortgage on an apartment or apartment building, which is the sole place of residence of the debtor.

The established features of the procedure enable such a debtor to either restructure its obligations or repay the amount of the market value of a single home. This transition period for individuals' debtors gives them the opportunity to choose and get a second chance to recover their credit history. The terms, norms and specific conditions for restructuring of previously concluded contracts have been set.

An important part of this chapter is the commitment of the Cabinet of Ministers on the issue of passing necessary draft laws to the Verkhovna Rada to amend some legislative acts of Ukraine in connection with the adoption of this Code. The deadline for holding the constituent assembly of arbitrators is set - 1 month from the date of entry into force of the Code.

ii. General Comments from abroad

No. 1 only contains regulations on the entry into force and therefore is not to be considered further.

No. 2 contains considerable adaptations of other laws. Especially the old bankruptcy laws (BCU3) cease to be in force.

No. 2 and para. 1-3 are of major significance in terms of legal reality in the area of transitional provisions, as they stipulate that other laws will be ceased on/before the current BCU4 comes into force. This concerned in particular the previous laws on insolvency law. With these laws, the requirements for the previous licensing of insolvency administrators have also been abolished. Without these requirements, however, the existing licenses are not based on a valid legal act and are therefore inherently invalid. The new licensing was only possible according to the regulations of the new BCU4.

The same applies to insolvency proceedings. In the absence of an applicable transitional legal provision, their continued existence is also problematic. The old regulations have been expressly repealed.

This creates a legally unsustainable situation in several respects. It must therefore be ensured that a proper transition of licences and procedures into the new law is possible. The proposed solution corresponds in principle to actual, but not legally justified, action: The previous procedures and licences will be recognised on the basis of the old law, which will thus continue to apply (previously through actual action by the judiciary/ministries) and will then be converted to licences under the new law within a transitional period. A similar procedure can currently be observed in court proceedings, where a mixture of regulations is used which is not uniform. Consequently, the legislator must also set clear guidelines here.

In our opinion, it is no longer possible from a dogmatic legal point of view to allow the old law to continue to apply. Rather, the old law must be brought into force again in order to make it possible to step out of force in an orderly manner later. For this we have suggested the trick of a time machine: We pretend that all procedures opened before Oct. 20th, 2019 23:59h are back to the state of Oct. 20th, 2019 23:59h and regulate what happens to the interim changes up to day x (Date of the amendment law + 10 days). But we will have to take another close look at whether we have already discovered all points or whether we still have to regulate supplementary topics.

It was also important to us to regulate the liability issues in this context: On the one hand, the Bankruptcy Trustee could be liable, because he has reduced the insolvency estate in contravention of the regulations (even if only by not acting and letting go). On the other hand, the state or the courts/judges could also be liable because they have caused damage. In Germany we have the construct of state liability for such damages - we have tried to exclude this as well; but we do not know whether this is permissible under Ukrainian (constitutional) law.

No. 3 contains only amendments to other laws. These effects must be conclusively assessed by local colleagues.

No. 4 contains the transition of the previous procedures into the new law. This provision is difficult and disadvantageous because of the significant changes in fact and content of BCU4 compared to BCU3. As a result, many proceedings are transferred from one law to another without the stages of the insolvency proceedings, which logically build on each other in this law, being observed. This makes it

more difficult to process the proceedings and makes them very confusing for creditors. Here too, it would have been better if the previous proceedings had been conducted to the end under the old law. In Germany, this was decided upon when the Insolvency Code was introduced in 1999, and even today there are still a few ongoing bankruptcy proceedings under the previous law. A transition would not have been possible, however, if only because of the change in the creditor groups and the ranking groups.

No. 5 contains special regulations for loans in foreign currencies. In Ukraine, it was long common practice for real estate financing to be made in EUR or USD. Due to the considerable exchange rate differences between the time of conclusion of the loans and the exchange rates now in force, these special regulations are necessary to protect consumers as well as the banks, which still enter these loans on their books as outstanding or even irrecoverable debts. It is up to local colleagues to judge whether this has resulted in a successful balance of interests for all those involved. This was amended by law ### on July 16th, 2020. The special regulation stays now in force till Jan 1st, 2022.

No. 6 is an appeal to Parliament. As far as can be seen, these tasks have not yet been fulfilled.

No. 7 regulates special features of the founding congress of the SGOs. This took place on Nov. 20th, 2019, so that the provision is obsolete in terms of content.

6. Results from the previous analysis in Sep. 2019

a. Results and Remarks

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

i. 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.

ii. 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.

iii. [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.

iv. [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 EIR²⁵ or at least to other international requirements. This lack of correlation

²⁵ 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.

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.

v. [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, Bankruptcy 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 – 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 answer.

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.

vi. 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.

vii. 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.

b. 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 | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|---|---|--|---|---------|
| | | 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. | |
| 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 state in the bankruptcy cases regardless of whether this state 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. | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|---|---|---|---------|
| 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. | |
| 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 | Suggested to remove | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | | special agent liable under art. 364-370 of the Criminal Code). That is an additional criminal liability. | | |
| 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 | |
| 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 | Anyone can file a complaint about activities of a bankruptcy trustee and a repeated inspection will be performed | Upon request of bankruptcy proceeding participants | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|-------------|---|--|---|---------|
| | 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. | | | |
| 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 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 | Conviction of a bankruptcy trustee for any crime would be a reason for termination of their activities. In | The reason for termination of activities of the bankruptcy trustee is as follows: | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | trustee is as follows: entry of a judgment of conviction against the bankruptcy trustee into force. | other professions, like notary, private enforcement officer, deprivation of the special status is possible only for an intended crime. | 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 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. | The scope of information to be contained in an application to start the proceeding in the bankruptcy case is not full | In addition to the information provided for in part one of this article, application of the creditor shall contain information on the amount of the creditor's claims to the debtor, indicating separately the amount of fine (penalty, charge) payable with proper calculation of these claims | 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.. |
| 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 |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | | | | 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 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 | It is not possible to notify parties staying in the temporarily occupied territories | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | bankruptcy trustees registered with the Unified 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 | How can debtor's property be preserved in the temporarily occupied territories? | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|---|--|-----------------------|--|
| | its own 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. 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 |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | | | | 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 two months from initiation of the bankruptcy proceedings; | It is not possible to take inventory of debtor's property in the temporarily occupied territories? | | |
| 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 | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|---|--|--|
| 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 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. | How should the result of a bankruptcy case action proceeding be finalized? Decision, ruling or order. | To add... in the form of a decision. | If a claim is heard within an action proceeding, then its consideration on the merits should result in a decision as it is established by the Economic Procedure Code of Ukraine. |
| 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 | The term Escrow is not articulated. | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|--|--|---------|
| | imposed only within the rehabilitation procedure, provided that 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 | It is technically impossible to enforce this provision. | Rehabilitation plan and voting results minutes in each class of creditors shall be | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|--|--|---------|
| | each class of creditors shall be submitted by the property administrator to the commercial court within one business day of the voting. | | submitted by the rehabilitation administrator to the 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/ EC, Directive 80/987, the European Convention on Certain International Aspects | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|---|--|---|--|
| | | international treaties on bankruptcy. | of Bankruptcy, UNCITRAL Model Law on transborder insolvency | |
| 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 | |
| 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 | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|---|--|--|---------|
| | | | 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. | |
| 50 | Book 4 Article 116 part 5 | An obligation of debtor's family members to file asset declaration cannot be a debtor's obligation, | 5 Asset declaration is filed by debtor for three years (for each year separately) preceding filing of the | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|---|--|---------|
| | | 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. | 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 | 3 Liquidation Estate may include share of | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|------------------------------|---|--|---------|
| | | Family Code of Ukraine in order to protect debtor's family members. | the debtor in the joint property. In this case debtor's share is allocated from the joint 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 | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|---|---------------------------|--|-----------------------|---------|
| | | <p>concerning land law and civil law:</p> <ol style="list-style-type: none"> 1) If debtor is a farming enterprise, special 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 | | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|---|--|---------|
| | | <p>members of the farming enterprise shall not be included into liquidation estate.</p> <p>4) Procedure of suspension for a farming enterprise.</p> | | |
| 57 | <p>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.</p> | <p>Procedure for handling complaints filed by participants of bankruptcy proceeding is not established.</p> | <p>In the liquidation procedure, commercial court handles complaints against actions (inaction) of participants.</p> | |
| 58 | <p>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.</p> | <p>Suggestion of a bankruptcy trustee</p> | <p>Claims of creditors, filed after expiration of the term established for submission thereof, shall be considered discharged.</p> | |
| 59 | <p>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.</p> | <p>Suggestion of a bankruptcy trustee</p> | <p>To remove that rule</p> | |
| 60 | <p>Book 3 Article 60 part 4 Applications with claims of post-bankruptcy creditors are handled by commercial court in the sequence of their</p> | | <p>To add the following: A court ruling provides the grounds for liquidator to include these claims to the</p> | |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| | submission. Following review of these applications, commercial court rules to recognize or reject (fully or partially) creditors' claims. | | relevant creditors' register. | |
| 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 SGO + 1 Judge + 2 MoJ |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
|----|--|--|--|---|
| 64 | Article 2 part 4 under the Code, political parties, local self-government bodies and state bodies can go into bankruptcy. The only exception is treasury enterprises | To complement the list | To extend the list of exceptions in Article 2 part 4 | Political parties are allowed to go bankrupt |
| 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 ceased are established with no conditions. |

| # | Issue/problem/shortcoming | Solution (reason) | Proposal of Amendment | Comment |
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| 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 |

7. Amendment law (proposal)

| # | Source | Code as is | new |
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| 1 | Art. 1 No. 1 para 6 | Parties related to the debtor - [...] of the debtor, inculding those dismissed from three years before opening of a bankruptcy case, [...] | Parties related to the debtor - [...] of the debtor, including those dismissed within the last twelve month before opening of a bankruptcy case, [...] |
| 2 | Art. 3 No. 1 subpara 6 | [...] establishes the procedure for excercising control over activities of bankruptcy trustees, verification of their activities management, compliance with the bankruptcy laws by them; [...] | [...] establishes the procedure for exercising control over activities of bankruptcy trustees, verification of their activities management, compliance with the bankruptcy laws by them - as long as the SGO has not directly taken over these issues [...] |
| 3 | Art. 4 No. 1 | Founders (members, shareholders) of the debtor, owner of the property of the debtor (the body authorized to manage the property), central executive body, the bodies of Autonomous Republic of Crimea, local self- government bodies are obliged under their authority to take timely measures to prevent the bankruptcy of the debtor. | Founders (members, shareholders) of the debtor, owner of the property of the debtor (the body authorized to manage the property), central executive body, the bodies of Autonomous Republic of Crimea, local self- government bodies are required under their authority to take timely and reasonably measures to prevent the bankruptcy of the debtor. |
| 4 | Art. 12 No. 1. para 5) | request and obtain documents or copies thereof from legal entities, public authorities, local governments and natural persons with their consent; | request and obtain documents or copies thereof from legal entities, public authorities, local governments and natural persons with their consent free of charge ; |
| 5 | Art. 12 No. 1 para 6) | receive information from the state registers | receive information from the state registers free of charge |
| 6 | Art. 12 No. 2 para 5) | [...] and ensure updates of such information at least once a month in accordance with the procedure established by the state agency for bankruptcy | [...] and ensure updates of such information at least once every six month, unless there have been changes exceeding 5% of the balance sheet of the debtor (if there are automatic updates within the electronic system possible, they have to be done within 24 hours after every change within the reporting figures) in accordance with |

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| | | | the procedure established by the state agency for bankruptcy |
| 7 | Art. 12 No. 2 sec. 10a) | Empty (regarding changes in Art. 57 No. 4 para 5) | 10a) prepare and send the report as rehabilitation manager according to Art. 57 in due time |
| 8 | Art. 12 No. 2 sec. 10b) | Empty (regarding changes in Art. 42 No. 8 (new version)) | 10b) the reporting obligation pursuant to Art. 42 No. 8 para 2 |
| 9 | Art. 12 No. 2 sec. 10c) | Empty (regarding changes in Art. 70 No. 2) | 10c) the transfer of information to the central database according to Art. 70 No. 2 |
| 10 | Art. 12 No. 2 sec. 12 | Empty (regarding changes in Art. 61 No. 3 para 1, 2 and Art. 114 No. 3) | <p>During the Procedure, the bankruptcy trustee is obliged to use only one (insolvency) account of the Debtor in the bank. The balance of other accounts is transferred to the (insolvency) account of the Debtor.</p> <p>The funds recovered from the Procedure are credited to the (insolvency) account of the Debtor. After repaying the expenditures related to the Procedure and paying the main and additional reward to the Insolvency Practitioner, the payments are made to the Creditors in the order of precedence set forth in this Code.</p> <p>The bankruptcy trustee must ensure that the continuing account is maintained with a bank that is sufficiently protected against insolvency. In case of doubt, the bankruptcy trustee has the option of opening an account directly with the [National Bank of Ukraine or one of the state owned banks] in favour of the debtor for the administration of the funds.</p> <p>If the Insolvency Practitioner is suspended from execution of powers, the banks in which the special account for settlements with Creditors is opened are obliged to transfer funds from this account to the account of the new Insolvency Practitioner appointed by the Commercial Court to fulfill the duties of restructuring manager or Debtor's property sale manager.</p> <p>The bank transfers funds to the special account for settlements with Creditors opened by the new</p> |

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| | | | Insolvency Practitioner on the ground of payment request of this Insolvency Practitioner. |
| 11 | Art. 12 No. 4a | Empty | The bankruptcy trustee must ensure compliance with tax laws, statistical reporting requirements under applicable laws, customs and sanctions regulations, as well as AML regulations. |
| 12 | Art. 12 No. 5a | Empty | The bankruptcy trustee is personally, but subsidiarily to the represented debtor, liable for damages caused to the state by incorrect or incomplete information or reporting. |
| 13 | Art. 12 No 9 | Empty (former Art. 28 No. 5) | The bankruptcy trustee shall, in advance, notify the body authorized to manage the state-owned property, about time, place and agenda of the meeting of creditors and meetings of the committee of creditors of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital. The bankruptcy trustee shall timely report to the body authorized to manage the state-owned property on implementation of the plan for the reorganization of a state enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital. |
| 14 | Art. 12 No. 10 | Empty (former Art. 28 No. 6) | The bankruptcy trustee shall report to the body authorized to manage the state-owned property on the implementation of the rehabilitation plan of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital. Report of the bankruptcy trustee managing rehabilitation of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital, that has been considered by the committee of creditors, and protocol of the meeting of committee of creditors shall be sent to the body authorized to manage the state-owned property not later than five days from the day of the meeting. |
| 15 | Art. 14 No. 2 | A citizen of Ukraine who has higher legal or economic education of a first level, proficient in the state language, may be an assistant bankruptcy trustee. The assistant | A citizen of Ukraine who has higher legal or economic education of a first level, proficient in the state language, may be an assistant bankruptcy trustee. The assistant bankruptcy trustee shall be subject to the restrictions provided |

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| | | bankruptcy trustee shall be subject to the restrictions provided for in paragraphs 1-4 of part two of Article 11 of this Code. | for in paragraphs 1-4 of part two of Article 11 of this Code. Within the first six (6) months of his employment, he must provide evidence of at least three (3) further training courses at the Academy of the SGO or an equivalent institution in order to continue to be employed as an Assistant Bankruptcy Trustee after this period. Subsequently, at least one further training course during the six-month period is obligatory. The SGO keeps appropriate registers of the persons trained. The insolvency administrator as employer is always entitled to inspect the documentation at the SGO or to receive copies of certificates. The Assistant Bankruptcy Trustee receives copies of the letters. |
| 16 | Art. 15 No. 2 | Qualification commission consists of seven persons, three of whom are appointed by the order of the head of the state agency for bankruptcy, and four persons are appointed by the congress of bankruptcy trustees. The term of powers of members of the qualification commission is two years. | Qualification commission consists of seven persons, three of whom are appointed by the order of the head of the state agency for bankruptcy, and four persons are appointed by the congress of bankruptcy trustees. The term of powers of members of the qualification commission is two years. The members may be re-elected or appointed a maximum of 2 times. |
| 17 | Art. 17 No. 2 | The state agency for bankruptcy shall, not later than on the tenth day after receipt of recommendation of the qualification commission, issue a certificate allowing to practice as a bankruptcy trustee and makes an entry to the Unified Registry of Bankruptcy Trustees of Ukraine. | The state agency for bankruptcy shall, not later than on the tenth day after receipt of recommendation of the qualification commission, issue a preliminary certificate allowing to practice as a bankruptcy trustee. The state agency for bankruptcy makes an entry to the Unified Registry of Bankruptcy Trustees of Ukraine; if the bankruptcy trustee also proves his insurance or the insurance is proven by the insurer and the Bankruptcy trustee shows the preliminary certificate. At that time the final certificate for the Bankruptcy trustee is issued and the preliminary certificate is treated as invalid. |
| 18 | Art. 20 No. 1 para 1 | Control over activities of bankruptcy trustees is carried out by the state authority for bankruptcy or self-regulatory organization of bankruptcy trustees. | Control over activities of bankruptcy trustees is carried out by the state authority for bankruptcy until the foundation of the SGO and a local division of the SGO. Afterwards only the self-regulatory organization of bankruptcy trustees is carrying out the control. |

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| 19 | Art. 20 No. 4 | Representatives of the state authority for bankruptcy and its territorial bodies with the possibility of involvement of the most experienced and highly skilled bankruptcy trustees in accordance with the procedure established by the state authority for bankruptcy, take part in the inspection. | Representatives of the state authority for bankruptcy and its territorial bodies, as long as they are competent , with the possibility of involvement of the most experienced and highly skilled bankruptcy trustees in accordance with the procedure established by the state authority for bankruptcy, take part in the inspection. |
| 20 | Art. 22 No. 2 | The disciplinary commission consists of seven persons, three of whom are appointed by the order of the head of the state agency for bankruptcy, and four persons are appointed by the congress of bankruptcy trustees. The term of powers of members of the qualification commission is two years. | The disciplinary commission consists of seven persons, three of whom are appointed by the order of the head of the state agency for bankruptcy, and four persons are appointed by the congress of bankruptcy trustees. Art. 15 No. 2 sentences 2 and 3 have to be applied accordingly. |
| 21 | Art. 24 No. 1 | The bankruptcy trustee signs with the insurer the liability insurance contract for damage caused by unintentional or erroneous actions during exercising powers of the bankruptcy trustee. | The bankruptcy trustee signs with the insurer the liability insurance contract for damage caused by unintentional or erroneous actions during exercising powers of the bankruptcy trustee after receiving his preliminary certificate. The insurer sends a copy of the preliminary certificate to the State Agency for Bankruptcy. |
| 22 | Art. 24 No. 2 | The bankruptcy trustee insures liability within three working days from the date of entry to the Unified Registry of Bankruptcy Trustees of Ukraine about the right to practice as the bankruptcy trustee. Practicing as the bankruptcy trustee without conclusion of the liability insurance contract is prohibited. | The bankruptcy trustee insures liability within three working days from the date of entry to the Unified Registry of Bankruptcy Trustees of Ukraine about the right to practice as the bankruptcy trustee. Practicing as the bankruptcy trustee without conclusion of the liability insurance contract is prohibited. The Bankruptcy trustee must provide proof of its insurance on an annual basis or have it provided by the insurer. |
| 23 | Art. 25 No. 3 | The damage caused to a person as a result of intentional actions or failure to act of the bankruptcy trustee shall be compensated by the bankruptcy trustee. | The damage caused to a person as a result of intentional actions of the bankruptcy trustee shall be compensated by the bankruptcy trustee. |

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| 24 | Art. 25 No. 4 | empty | If a dispute concerning the appointment of the insolvency administrator is pending (Art. 28 No. 4), the insolvency administrator shall be liable for any deterioration for which he is responsible in accordance with the provision of Art. 25 No. 3. |
| 25 | Art. 26 No. 1 para 3) | entry of a judgment of conviction against the bankruptcy trustee into force | entry of a judgment of conviction against the bankruptcy trustee into force regarding the offenses regarding Art. ### of the Criminal Code of Ukraine |
| 26 | Art. 26 No. 1 para 7) | death of the bankruptcy trustee. | death of the bankruptcy trustee, in this case the certificate shall be revoked with immediate effect. |
| 27 | Art. 26 No 2 | If termination of the activities of the bankruptcy trustee, his certificate shall be revoked. | If termination of the activities of the bankruptcy trustee, his certificate shall be revoked. |
| 28 | Art. 28 No. 2 subpara 1 | In the decision to accept initiation of proceedings in the case, the Commercial Court proposes to three automatically selected bankruptcy trustees to apply for participation in the case. | In the decision to accept initiation of proceedings in the case or at a time when a new bankruptcy trustee needs to be appointed , the Commercial Court proposes to three automatically selected bankruptcy trustees to apply for participation in the case. |
| 29 | Art. 28 No. 4 subpara 3 and 4 | The committee of creditors has the right, any time, to apply to the commercial court with a petition for dismissal of the bankruptcy trustee from exercising the powers, regardless of the grounds that may be. | The committee of creditors has the right, any time, to apply to the commercial court with a petition for dismissal of the bankruptcy trustee from exercising the powers, regardless of the grounds that may be. The Court has to decide on this application in a formal procedure open to appeal. Until the decision becomes final, the insolvency administrator shall remain in office, taking into account increased liability under Art. 25 No. 4. |
| 30 | Art. 28 No. 4 subpara 4 | If there are grounds for dismissal of the bankruptcy trustee from exercising the powers or at request of the committee of creditors, the commercial court shall, within 14 days, adopt a ruling on dismissal of the bankruptcy trustee from exercise of the powers. | If there are grounds for dismissal of the bankruptcy trustee from exercising the powers or at request of the committee of creditors, the commercial court shall, within 14 days, adopt a ruling on dismissal of the bankruptcy trustee from exercise of the powers. |
| 31 | Art. 28 No. 5 | The bankruptcy trustee shall, in advance, notify the body authorized to manage the | The bankruptcy trustee shall, in advance, notify the body authorized to manage the state-owned property, about time, place and agenda of the |

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| | | <p>state-owned property, about time, place and agenda of the meeting of creditors and meetings of the committee of creditors of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital.</p> <p>The bankruptcy trustee shall timely report to the body authorized to manage the state-owned property on implementation of the plan for the reorganization of a state enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital.</p> | <p>meeting of creditors and meetings of the committee of creditors of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital. The bankruptcy trustee shall timely report to the body authorized to manage the state-owned property on implementation of the plan for the reorganization of a state enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital.</p> <p>=> transferred to Art. 12 No. 9</p> |
| 32 | Art. 28 No 6 | <p>The bankruptcy trustee shall report to the body authorized to manage the state-owned property on the implementation of the rehabilitation plan of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital.</p> <p>Report of the bankruptcy trustee managing rehabilitation of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital, that has been considered by the committee of creditors, and protocol of the meeting of committee of creditors shall be sent to the body authorized to manage the state-owned property not later than five days from the day of the meeting.</p> | <p>The bankruptcy trustee shall report to the body authorized to manage the state-owned property on the implementation of the rehabilitation plan of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital. Report of the bankruptcy trustee managing rehabilitation of a state-owned enterprise or enterprise with a state-owned share exceeding 50 percent of its authorized capital, that has been considered by the committee of creditors, and protocol of the meeting of committee of creditors shall be sent to the body authorized to manage the state-owned property not later than five days from the day of the meeting.</p> <p>=> Transferred to Art. 12 No. 10</p> |
| 33 | Art. 30 No. 3 para 1 | <p>The additional monetary remuneration of the</p> | <p>Subject to the provision in Art. 30 No. 3a, the additional monetary remuneration of the</p> |

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| | | bankruptcy trustee is determined in the amount of: | bankruptcy trustee is determined in the amount of: |
| 34 | Art. 30 No. 3a | Empty | The remuneration of the property administrator is based on Art. 30 No. 3 para. 1, whereby remuneration is only payable for exploitations initiated and carried out by him. Previously initiated exploitation shall be divided equally between the parties involved after deduction of the costs. |
| 35 | Art. 30 No. 7 | Empty | The above remuneration is in each case a net amount under tax law. If the remuneration of this Art. If taxes are payable on the remuneration of this type, these are to be paid additionally by the respective fee payer. |
| 36 | Art. 32 No. 6a | Empty | Art. 15 No. 2 sentences 2 and 3 have to be applied accordingly. |
| 37 | Art. 34 No. 6 para 3 | Empty | The provisions of this clause as well as Art. 4 No. 2 do not apply to the head of state-owned companies being debtors, while this companies are state-owned. |
| 38 | Art. 35 No. 1 para 5 | the obligation of the applicant, debtor and other persons to provide the court with additional information necessary to resolve the issue of initiation of bankruptcy proceedings; | the obligation of other persons than the applicant to provide the court with additional information necessary to resolve the issue of initiation of bankruptcy proceedings; |
| 39 | Art. 36 No. 1 | The debtor shall, before the date of the preparatory meeting, submit a response to application for initiation of proceedings in the commercial court and the applicant. The debtor's response shall be followed by evidence of sending a copy of response to the applicant. | The debtor shall, before the date of the preparatory meeting, submit a response to application for initiation of proceedings in the commercial court and the applicant. The debtor's response shall be followed by evidence of sending a copy of response to the applicant. Absence of response to application for initiation of proceedings in a case does not interfere proceedings in the case. |
| 40 | Art. 36 No. 2, 3 | 2. In addition to the information provided for in the Commercial Procedure Code of Ukraine, the following shall be indicated in response of the debtor: | 2. In addition to the information provided for in the Commercial Procedure Code of Ukraine, the following shall be indicated in response of the debtor: Objection of the debtor regarding the claims of the applicant (applicants); |

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| | | <p>Objection of the debtor regarding the claims of the applicant (applicants); the total amount of the debtor's debt to the creditors in respect of obligations that involve payment of monetary funds, including from payment of taxes and fees (mandatory payments), from payment of wages;</p> <p>information about the debtor's property, as well as all accounts of the debtor at banks and other financial and credit institutions, details of accounts; information on all accounts, which kept records of rights to securities belonging to the debtor at the depositories, details thereof;</p> <p>information about activities carrying out by the debtor that is related to the state secrecy;</p> <p>Evidence of unreasonableness of the applicant's claims (if any).</p> <p>3. Response of the debtor may also contain other information relevant for consideration of the case.</p> <p>Response of the debtor request may also be followed by procedural request of the debtor.</p> <p>The certificate of the privatization bodies (bodies authorized to manage state-owned objects) about presence or absence of state-owned property on the books of the company with respect to which the application for initiation of proceedings was filed, that was not included in its authorized capital in the process of privatization (corporatization).</p> | <p>the total amount of the debtor's debt to the creditors in respect of obligations that involve payment of monetary funds, including from payment of taxes and fees (mandatory payments), from payment of wages;</p> <p>information about the debtor's property, as well as all accounts of the debtor at banks and other financial and credit institutions, details of accounts;</p> <p>information on all accounts, which kept records of rights to securities belonging to the debtor at the depositories, details thereof;</p> <p>information about activities carrying out by the debtor that is related to the state secrecy;</p> <p>Evidence of unreasonableness of the applicant's claims (if any).</p> <p>3. Response of the debtor may also contain other information relevant for consideration of the case.</p> <p>Response of the debtor request may also be followed by procedural request of the debtor.</p> <p>The certificate of the privatization bodies (bodies authorized to manage state-owned objects) about presence or absence of state-owned property on the books of the company with respect to which the application for initiation of proceedings was filed, that was not included in its authorized capital in the process of privatization (corporatization).</p> |
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| 41 | Art. 36 No. 4 | Absence of response to application for initiation of proceedings in a case does not interfere proceedings in the case. | Absence of response to application for initiation of proceedings in a case does not interfere proceedings in the case. => transferred to Art. 36 No. 1 and added there |
| 42 | Art. 38 No. 6 para 5 | The Debtor does not have the right to withdraw application for initiation of proceedings in a case filed by him in accordance with the requirements of part six of Article 34 of this Code | The Debtor does not have the right to withdraw application for initiation of proceedings in a case filed by him in accordance with the requirements of part six of Article 34 of this Code |
| 43 | Art. 40 No. 2 para 3 | Empty | For the appointment of the property administrator the provision of Art. 28 applies accordingly. The remuneration of the property administrator is based on Art. 30 No. 3. |
| 44 | Art. 41 No. 9 | The legal effects of a moratorium on satisfaction of creditors' claims are not applicable if the proceedings are closed because the commercial court did not reveal signs of the debtor's bankruptcy. | The legal effects of a moratorium on satisfaction of creditors' claims are no longer applicable, starting from the date the proceedings are closed because the commercial court did not reveal signs of the debtor's bankruptcy. |
| 45 | Art. 42 No. 5 | Empty | If the recipient of a contestable benefit restores what has been obtained, his claim shall be revived. |
| 46 | Art. 42 No. 6 | Empty | Consideration shall be refunded from the assets involved in the insolvency proceedings to the extent that it is still distinguishably present therein or to the extent that the assets involved in the insolvency proceedings have been enriched by their value. In addition, the recipient of the contestable performance may only assert the claim for restitution of the consideration as a creditor of the insolvency proceedings. |
| 47 | Art. 42 No. 7 | Empty | The entitlement under Art. 42 No. 1 and 2 applies to all bankruptcy trustees regardless of the specific designation of their office and the specific designation of the sub-proceedings, including the bankruptcy trustees acting in proceedings concerning natural persons. |
| 48 | Art. 42 No. 8 | Empty | If the insolvency proceedings experience a change in the specific type of proceedings or are terminated, the bankruptcy trustee who brought the action may continue to actively pursue the |

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| | | | <p>action in his specific capacity. In case of doubt, this shall apply until a legally binding decision is reached. He is also entitled to represent the debtor in subsequent proceedings (execution, determination of costs, etc.). For his remuneration, Art. 30 No. 3 para 2 applies accordingly, provided that no special regulations intervene.</p> <p>The bankruptcy trustee must also report quarterly to the current bankruptcy trustee and the court on the status of the proceedings. The deadline is calculated from the date of filing the action.</p> |
| 49 | Art. 44 No. 1 para 2 | The commercial court shall adopt a ruling about appointment of the property administrator. | <p>The commercial court shall adopt a ruling about appointment of the property administrator.</p> <p>=> part of Art. 39 No. 8 para 6</p> |
| 50 | Art. 44 No. 3 | <p>The property administrator shall be required to:</p> <p>consider creditors' petitions for monetary claims against the debtor that arrive following the procedure established by this Code;</p> <p>keep a register of creditors' claims;</p> <p>notify creditors about the outcome of their claims;</p> <p>take measures to protect the debtor's property;</p> <p>to conduct an analysis of the financial and economic situation, the investment and other activities of the debtor and the situation on the markets of the debtor</p> <p>identify (if any) signs of fictitious bankruptcy, bring to bankruptcy, concealment of persistent financial insolvency, unlawful actions in the event of bankruptcy;</p> <p>convene meeting and committee of creditors and arrange holding thereof;</p> | <p>The property administrator shall be required to:</p> <p>consider creditors' petitions for monetary claims against the debtor that arrive following the procedure established by this Code;</p> <p>keep a register of creditors' claims;</p> <p>notify creditors about the outcome of their claims;</p> <p>take measures to protect the debtor's property;</p> <p>to conduct an analysis of the financial and economic situation, the investment and other activities of the debtor and the situation on the markets of the debtor</p> <p>identify (if any) signs of fictitious bankruptcy, bring to bankruptcy, concealment of persistent financial insolvency, unlawful actions in the event of bankruptcy;</p> <p>convene meeting and committee of creditors and arrange holding thereof;</p> <p>to provide the state registrar via the e-services portals of legal entities, natural persons – individual entrepreneurs in e-form necessary for maintenance of the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, in accordance with the procedure established by the state agency for bankruptcy;</p> <p>to provide the commercial court and committee of creditors with a report on his activities, as well as to disclose to the creditors information on</p> |

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| | | <p>to provide the state registrar via the e-services portals of legal entities, natural persons – individual entrepreneurs in e-form necessary for maintenance of the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, in accordance with the procedure established by the state agency for bankruptcy;</p> <p>to provide the commercial court and committee of creditors with a report on his activities, as well as to disclose to the creditors information on financial situation of the debtor and the progress of the proceedings;</p> <p>not later than two months from initiation of the bankruptcy proceedings to make inventory of the debtor's property and determine its value if possible, to carry out rehabilitation of the debtor, to develop a debtor's rehabilitation plan and submit it for consideration to the meeting of creditors;</p> <p>to perform other powers provided for by this Code.</p> | <p>financial situation of the debtor and the progress of the proceedings;</p> <p>not later than two months from initiation of the bankruptcy proceedings to make inventory of the debtor's property and determine its value if possible, to carry out rehabilitation of the debtor, to develop a debtor's rehabilitation plan and submit it for consideration to the meeting of creditors;</p> <p>to perform other powers provided for by this Code.</p> <p>=> part of Art. 12</p> |
| 51 | Art. 44 No. 4 | Property administrator shall be responsible for his actions or failure to act in accordance with the laws. | <p>Property administrator shall be responsible for his actions or failure to act in accordance with the laws.</p> <p>=> regulated in Art. 25</p> |
| 52 | Art. 44 No. 5 para 1 | During procedure of the property disposal, the debtor's management bodies shall not have the right to decide on: | <p>During procedure of the property disposal, the debtor's management's decisions on the following topics are void bodies shall not have the right to decide on:</p> |
| 53 | Art. 44 No. 5 para 10 | Empty | <p>Should the managing directors make void decisions that are implemented and cause financial outflows on the part of the company, the managing directors who brought about the</p> |

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| | | | decision have to jointly replace the financial outflow to the bankruptcy estate. |
| 54 | Art. 44 No. 7 para 6 | Under the asset disposal procedure, the debtor may not, without the consent of the creditors' committee (or meeting of creditors prior to election of the creditors' committee), commit significant transactions, prohibited by this Code. | Under the asset disposal procedure, the debtor may not, without the consent of the creditors' committee (or meeting of creditors prior to election of the creditors' committee), commit significant transactions, prohibited by this Code. |
| 55 | Art. 44 No. 8 | Under the asset disposal procedure, the debtor may not, without the consent of the creditors' committee (or meeting of creditors prior to election of the creditors' committee), sale of significant assets of the debtor. | Under the asset disposal procedure, the debtor may not, without the consent of the creditors' committee (or meeting of creditors prior to election of the creditors' committee), commit significant transactions, prohibited by this Code. |
| 56 | Art. 44 No. 9 | Property administrator is entitled to file an action to the commercial court to declare invalid contracts (agreements), including the concluded by the debtor in violation of the procedure established by this Law and actions to declare invalid of acts adopted in the procedure of property disposal due to change of the debtor's legal form. | Property administrator is entitled to file an action to the commercial court to declare invalid contracts (agreements), including the concluded by the debtor in violation of the procedure established by this Law and actions to declare invalid of acts adopted in the procedure of property disposal due to change of the debtor's legal form. |
| 57 | Art. 44a | (Empty - moved from Art. 61 No. 3 para 3-6 and adjusted) | <ol style="list-style-type: none"> 1. Repayment of expenditures related to the Procedure is performed as follows: 2. in the first order of precedence, the expenditures related to the Procedure are repaid and the reward of the bankruptcy trustee is paid as well as additional court fees; 3. in the second order of precedence, obligations are fulfilled to the persons who made loans, supplied feedstock, components on the deferred-payment basis after the start of the bankruptcy case proceedings. 4. The collateral sale revenues are used to cover costs related to maintenance and preservation of this property, to pay the |

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| | | | <p>reward to the electronic platform operator. The structure and amount of these expenditures are to be approved as set forth in this Code.</p> <p>5. The funds remaining after these payments are used exclusively to satisfy the claims of Creditors on liabilities secured by this property.</p> <p>6. Unless supplemented by more specific provisions, this distribution applies in all types of proceedings for the realisation of assets or claims.</p> |
| 58 | Art. 45 No. 1 para 1 | With respect to claims 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. | With respect to claims 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. |
| 59 | Art. 45 No. 2 para 4 | Composition and value of the monetary claims of creditors are determined in the national currency of Ukraine. If the debtor's obligations are denominated in foreign currency, the composition and value of the monetary claims of the creditors shall be determined in the national currency at the rate established by the National Bank of Ukraine on the date of submission of the application by the creditor with monetary claims to the debtor. | Composition and value of the monetary claims of creditors are determined in the national currency of Ukraine. If the debtor's obligations are denominated in foreign currency, the composition and value of the monetary claims of the creditors shall be determined in the national currency at the rate established by the National Bank of Ukraine on the date of initiation of the bankruptcy proceeding. |
| 60 | Art. 45 No. 2 para 7 | Creditors send copies of the corresponding applications and the documents attached thereto the debtor and property manager of the property. | Creditors send copies of the corresponding applications and the documents attached thereto the debtor and property administrator. |

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| 61 | Art. 45 No. 8 para 1, 2 | <p>The property administrator is obliged to inform the commercial court separately about the creditors' claims secured by collateral of the debtor's property, according to their applications, and in absence of such applications, according to the debtor's records, as well as separate information about the debtor's property of the debtor, which is subject to pledge in accordance with the relevant state register. The property administrator is obliged to inform separately the commercial court about claims for payment of wages, royalties, alimony, as well as claims for compensation for damage caused to human life and health, according to applications of such creditors and/or registration information of the debtor.</p> | <p>The property administrator is obliged to inform the commercial court separately about the creditors' claims secured by collateral of the debtor's property, according to their applications, and in absence of such applications, according to the debtor's records, as well as separate information about the debtor's property of the debtor, which is subject to pledge in accordance with the relevant state register.</p> <p>The property administrator is obliged to inform separately the commercial court about claims for payment of wages, royalties, alimony, as well as claims for compensation for damage caused to human life and health, according to applications of such creditors and/or registration information of the debtor.</p> |
| 62 | Art. 45 No. 10 | <p>In the property disposal procedure, the property administrator with participation of the debtor shall develop a plan for rehabilitation of the debtor in accordance with the requirements of this Code and submit it for consideration of the creditors' meeting.</p> | <p>In the property disposal procedure, the property administrator with participation of the debtor may develop a plan for rehabilitation of the debtor in accordance with the requirements of this Code and submit it for consideration of the creditors' meeting. The intervention of the property administrator requires prior appointment by the court or the creditors' committee. In addition, the work of the property administrator is paid for by doubling his remuneration for a period of two months.</p> |
| 63 | Art. 46 No. 4 | Empty | <p>The communication between the court and the creditor and between the creditor and the court must be sent in copy to the parties mentioned in Art. 45 No. 2 para. 7. Incomplete transmissions from the court will affect the validity of the court's decision, as the other parties to the proceedings did not have the opportunity to submit their own request for correction. If the creditor fails to send the docuement to the other parties, it shall be deemed as not to have been sent as a whole.</p> |

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| 64 | Art. 47 No. 1 | The preliminary sitting of the commercial court shall be held not later than 70 calendar days, and in the case of a large number of creditors – not later than three months from the date of the preparatory meeting of the court. The parties, as well as other participants in the bankruptcy proceeding, which are recognized as such in accordance with this Code, shall be notified of the preliminary court hearing | The preliminary sitting of the commercial court shall be held not later than 70 calendar days, and in the case of a large number of creditors – not later than three months from the date of the preparatory meeting of the court. The parties, as well as other participants in the bankruptcy proceeding, which are recognized as such in accordance with this Code, shall be notified of the preliminary court hearing. |
| 65 | Art. 48 No. 1 para 11 | (empty) | The invitation should be accompanied by an agenda with concrete proposals on the individual points of Art. 48 No. 5 for voting. The proposals shall be briefly substantiated so that the creditors can understand the proposals from within themselves. |
| 66 | Art. 48 No. 1 para 12 | (empty, former Art. 123 No. 6) | The Creditor has the right to vote in absentia in the written form on each issue of the agenda of the Meeting of Creditors. Unless another procedure of voting in absentia is approved by the Meeting of Creditors, the Creditor who votes in absentia is obliged to send the results of his voting in writing to the address of the Insolvency Practitioner at least five days prior to the day of holding of the Meeting of Creditors. The result of voting of this Creditor is announced to other Creditors by the Insolvency Practitioner at the Meeting of Creditors and is taken into account when identifying results of voting on each issue of the agenda. |
| 67 | Art. 48 No. 2 para 1 | The first meeting of creditors shall be considered competent if there are present creditors with at least two thirds of the votes. If the first meeting did not take place due to the lack of creditors with the required number of votes, the repeated first meeting is held within two weeks, which is considered to be competent if there are | The first meeting of creditors shall be considered competent if there are present creditors with at least two thirds of the votes. If the first meeting did not take place due to the lack of creditors with the required number of votes, the repeated first meeting is held within two weeks, which is considered to be competent if there are present creditors with at least more than a half votes. If, however, these meetings were not held due to the lack of creditors with the required number of votes, the following first meetings are held within |

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| | | present creditors with at least more than a half votes. If, however, these meetings were not held due to the lack of creditors with the required number of votes, the following first meetings are held within two weeks, which is considered to be competent if there are present creditors with more than one-quarter of votes. | two weeks, which is considered to be competent if there are present creditors with more than one-quarter of votes. The first meeting shall be considered competent if the creditors have been informed properly [letters should be delivered like judgements]. If no creditors attends, the suggestions of the property administrators given according to the suggestions given in Art. 48 No. 1 para 11 and 12. |
| 68 | Art. 48 No. 4 | Unsecured creditors at the meeting of creditors shall have the number of votes, proportional to value of creditors' claims included in the register of the creditors' claims based on results of the preliminary sitting of the commercial court and divisible by one thousand hryvnias. In determining the number of votes of creditors with the decisive vote, the amount of penalty (fine, charge), other financial sanctions, non-pecuniary damage, court fees in bankruptcy proceedings, declared or paid by creditors in the bankruptcy proceedings, are not taken into account. | Unsecured creditors at the meeting of creditors shall have the number of votes, proportional to value of creditors' claims included in the register of the creditors' claims based on results of the preliminary sitting of the commercial court and divisible by one thousand hryvnias. In determining the number of votes of creditors with the decisive vote, the amount of penalty (fine, charge), other financial sanctions, non-pecuniary damage, court fees in bankruptcy proceedings, declared or paid by creditors in the bankruptcy proceedings, are not taken into account. |
| 69 | Art. 50 No. 10 | If violation by the parties of the terms of transactions carried out under the rehabilitation plan, during the rehabilitation procedure, protection of the right violated in the rehabilitation procedure shall be carried out within the proceedings on bankruptcy. | If violation by the parties of the terms of transactions carried out under the rehabilitation plan, during the rehabilitation procedure, protection of the right violated in the rehabilitation procedure shall be carried out within the proceedings on bankruptcy. |
| 70 | Art. 51 No. 2 | Measures for restoring debtor's solvency in the rehabilitation plan may include: restructuring of the enterprise; conversion of production; | Measures for restoring debtor's solvency in the rehabilitation plan may include: restructuring of the enterprise; conversion of production; closure of unprofitable production facilities; |

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| | | <p>closure of unprofitable production facilities; deferred payments, installment payments, or forgiveness of a debt or a portion thereof; performance of the debtor's obligations by the third persons; other satisfaction of the creditors' claims that does not contradict the Code; discharge of the debt receivables; restructuring of debtor's assets pursuant to the requirements of this Code; sale of a part of the debtor's property; performance of obligations of the debtor by the debtor's owner and his liability for non-fulfillment of the obligations assumed; disposal of property and discharge of the creditors' claims by substituting assets; dismissal of the debtor's employees who can not be involved in the process of carrying out the rehabilitation plan; obtaining credit to pay severance benefits to debtor's employees who are dismissed pursuant to the rehabilitation plan, to be reimbursed pursuant to the requirements of this Law on a preferential basis through the sale of the debtor's property; obtaining loans and credit, purchase of goods on credit; other means of restoring the debtor's solvency.</p> | <p>deferred payments, installment payments, or forgiveness of a debt or a portion thereof; performance of the debtor's obligations by the third persons; other satisfaction of the creditors' claims that does not contradict the Code; discharge of the debt receivables; restructuring of debtor's assets pursuant to the requirements of this Code; sale of a part of the debtor's property; performance of obligations of the debtor by the debtor's owner and his liability for non-fulfillment of the obligations assumed; disposal of property and discharge of the creditors' claims by substituting assets; dismissal of the debtor's employees who can not be involved in the process of carrying out the rehabilitation plan; obtaining credit to pay severance benefits to debtor's employees who are dismissed pursuant to the rehabilitation plan, to be reimbursed pursuant to the requirements of this Law on a preferential basis through the sale of the debtor's property; obtaining loans and credit, purchase of goods on credit; other and means of restoring the debtor's solvency.</p> |
| 71 | Art. 51 No. 3 | Structural transformation of the enterprise shall mean the implementation of organizational and business, | Structural transformation of the enterprise shall mean the implementation of organizational and business, financial and economic, legal, technical measures aimed at structural transformation of |

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| | | financial and economic, legal, technical measures aimed at structural transformation of the enterprise, in particular, by division thereof with the transfer of debt obligations to a legal entity that is not subject to rehabilitation, change of the ownership, management, organizational and legal form, which will promote financial rehabilitation of the enterprise, increase efficient production, increase production volumes of competitive products and discharge of creditors' claims in full or in part. | the enterprise, in particular, by division thereof with the transfer of debt obligations to a legal entity that is not subject to rehabilitation, change of the ownership, management, organizational and legal form, which will promote financial rehabilitation of the enterprise, increase efficient production, increase production volumes of competitive products and discharge of creditors' claims in full or in part. |
| 72 | Art. 52 No. 5 para 2 | If the rehabilitation plan involves discharge of a separate unsecured creditor's claims immediately after approval of the rehabilitation plan, such claims are not taken into account in voting for approval of the rehabilitation plan. | If the rehabilitation plan involves discharge of a separate unsecured creditor's claims immediately after approval of the rehabilitation plan but before the Court decision regarding Art. 52 No. 7 in full , such claims are not taken into account in voting for approval of the rehabilitation plan. |
| 73 | Art. 52 No. 5 para 3 | Rehabilitation plan may include a condition for granting one or more secured creditors the right to collect on collateral after approval of the rehabilitation plan by the commercial court. In such event, such secured creditors (within the limits of claims secured by collateral) do not vote in favor of approval, amendment or rejection of the rehabilitation plan. | Rehabilitation plan may include a condition for granting one or more secured creditors the right to collect on collateral after approval of the rehabilitation plan by the commercial court. In such event, such secured creditors (within the limits of claims secured by collateral) do not vote in favour of approval, amendment or rejection of the rehabilitation plan. |
| 74 | Art. 52 No. 9 | The Commercial Court shall adopt a resolution recognizing the debtor a bankrupt and initiate the liquidation procedure if the rehabilitation has not been approved by the court within the term established by this Code. | The Commercial Court shall adopt a resolution recognizing the debtor a bankrupt and initiate the liquidation procedure if the rehabilitation has not been approved by the court within the term established by Art. 51 No. 1 para 4 sentence 1 of this Code. |

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| 75 | Art. 57 No. 1 | 15 days before the end of the Rehabilitation Procedure Term identified in the Rehabilitation Plan, if there are grounds to stop the Rehabilitation Procedure, the Rehabilitation Manager is obliged to submit the written Report to the Meeting of Creditors and inform the Creditors about the time and venue of the Meeting of Creditors. | 15 days before the end of the Rehabilitation Procedure Term identified in the Rehabilitation Plan, if there are grounds to stop the Rehabilitation Procedure, the Rehabilitation Manager is obliged to submit the written Report to the Meeting of Creditors and inform the Creditors about the time and venue of the Meeting of Creditors. |
| 76 | Art. 57 No. 4 para 5 | If there are circumstances, which constitute grounds for stopping the Rehabilitation Procedure, the Meeting of Creditors may make the corresponding decision without the Rehabilitation Manager Report. | If there are circumstances, which constitute grounds for stopping the Rehabilitation Procedure, the Meeting of Creditors may make the corresponding decision without the Rehabilitation Manager Report. |
| 77 | Art. 57 No. 6 | If the Meeting of Creditors did not make any of the decisions identified in the Item 5 of this Article or this decision was not filed to the Commercial Court within 15 days after the end of the Rehabilitation Procedure term, the Commercial Court reviews the options to close the bankruptcy case or to declare the Debtor bankrupt and to start the Liquidation Procedure. | If the Meeting of Creditors did not make any of the decisions identified in the Item 5 of this Article or this decision was not filed to the Commercial Court within 15 days after the end of the Rehabilitation Procedure term, the Commercial Court reviews the options to close the bankruptcy case or to declare the Debtor bankrupt and to start the Liquidation Procedure. |
| 78 | Art. 57 No. 12 | The Rehabilitation Procedure term is extended by the Commercial Court after making corresponding changes (additions) to the Debtor's Rehabilitation Plan. Changes to the Rehabilitation Plan are adopted by the Meeting of Creditors and approved by the Commercial Court according to the requirements of this Code. | The Rehabilitation Procedure term is extended by the Commercial Court after making corresponding changes (additions) to the Debtor's Rehabilitation Plan. Changes to the Rehabilitation Plan are adopted by the Meeting of Creditors and approved by the Commercial Court according to the requirements of this Code. |
| 79 | Art. 58 No. 1 | 1. In the cases specified by this Code the Commercial Court at the court session with | 1. In the cases specified by this Code the Commercial Court at the court session with participation of parties renders the decision on |

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| | | <p>participation of parties renders the decision on declaring the Debtor bankrupt and starts the Liquidation Procedure.</p> <p>The court sets the term in which the Liquidator is obliged to perform the liquidation of the Debtor. This term cannot exceed 12 months.</p> <p>Non-attendance of persons who were properly notified about time and venue of the session does not prevent the proceedings on the case.</p> | <p>declaring the Debtor bankrupt and starts the Liquidation Procedure.</p> <p>The court sets the term in which the Liquidator is obliged to perform the liquidation of the Debtor. This term cannot exceed 12 months. => new Art. 58 No. 2</p> <p>Non-attendance of persons who were properly notified about time and venue of the session does not prevent the proceedings on the case. => new Art. 58 No. 3</p> |
| 80 | Art. 58 No. 2 | Empty (former Art. 58 No. 1 para 2) | 1. The court sets the term in which the Liquidator is obliged to perform the liquidation of the Debtor. This term cannot exceed 12 months. |
| 81 | Art. 58 No. 3 | Empty (former Art. 58 No. 1 para 3) | 1. Non-attendance of persons who were properly notified about time and venue of the session does not prevent the proceedings on the case. |
| 82 | Art. 60 No. 2 | The Liquidator exercises his powers until the end of the Liquidation Procedure as set forth in this Code. | The Liquidator exercises his powers until the end of the Liquidation Procedure as set forth in this Code. |
| 83 | Art. 60 No. 3 | In the Liquidation Procedure, the Commercial Court reviews the complaints against actions (inaction) of the Liquidator and exercises other powers specified in this Code. | In the Liquidation Procedure, the Commercial Court reviews the complaints against actions (inaction) of the Liquidator and exercises other powers specified in this Code. |
| 84 | Art. 61 No. 3 para 1, 2 | <p>During the Liquidation Procedure, the Liquidator is obliged to use only one (liquidation) account of the Debtor in the bank. The balance of other accounts is transferred to the liquidation account of the Debtor.</p> <p>The funds recovered from the Liquidation Procedure are credited to the liquidation account of the Debtor. After repaying the expenditures related to the Liquidation Procedure and paying the main</p> | <p>During the Liquidation Procedure, the Liquidator is obliged to use only one (liquidation) account of the Debtor in the bank. The balance of other accounts is transferred to the liquidation account of the Debtor.</p> <p>The funds recovered from the Liquidation Procedure are credited to the liquidation account of the Debtor. After repaying the expenditures related to the Liquidation Procedure and paying the main and additional reward to the Insolvency Practitioner, the payments are made to the Creditors in the order of precedence set forth in this Code.</p> <p>=> moved to Art. 12 No. 2 sec. 12</p> |

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| | | and additional reward to the Insolvency Practitioner, the payments are made to the Creditors in the order of precedence set forth in this Code. | |
| 85 | Art. 61 No. 3 para 3-6 | <p>Repayment of expenditures related to the Liquidation Procedure is performed as follows:</p> <p>in the first order of precedence, the expenditures related to the Liquidation Procedure are repaid and the reward of the Liquidator is paid;</p> <p>in the second order of precedence, obligations are fulfilled to the persons who made loans, supplied feedstock, components on the deferred-payment basis after the start of the bankruptcy case proceedings.</p> <p>The collateral sale revenues are used to cover costs related to maintenance and preservation of this property, to pay the reward to the electronic platform operator. The structure and amount of these expenditures are to be approved as set forth in this Code. The funds remaining after these payments are used exclusively to satisfy the claims of Creditors on liabilities secured by this property.</p> | <p>Repayment of expenditures related to the Liquidation Procedure is performed as follows: in the first order of precedence, the expenditures related to the Liquidation Procedure are repaid and the reward of the Liquidator is paid; in the second order of precedence, obligations are fulfilled to the persons who made loans, supplied feedstock, components on the deferred-payment basis after the start of the bankruptcy case proceedings. The collateral sale revenues are used to cover costs related to maintenance and preservation of this property, to pay the reward to the electronic platform operator. The structure and amount of these expenditures are to be approved as set forth in this Code. The funds remaining after these payments are used exclusively to satisfy the claims of Creditors on liabilities secured by this property. => moved to Art. 44a</p> <p>The provision of Art. 44a applies accordingly.</p> |
| 86 | Art. 61 No. 6 | <p>Actions (inaction) of the Liquidator can be contested in the Commercial Court by the participants of the bankruptcy case, if their rights were infringed by these actions (inaction).</p> | <p>Actions (inaction) of the Liquidator can be contested in the Commercial Court by the participants of the bankruptcy case, if their rights were infringed by these actions (inaction).</p> |
| 87 | Art. 64 No. 8 | Empty (new \triangleq Art. 199 GIC) | <p>If the claims of all creditors of the insolvency proceedings can be adjusted in full, the liquidator</p> |

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| | | | shall return any remaining surplus to the debtor. If the debtor is not a natural person, the liquidator shall return to each person involved in the debtor that part of the surplus to which he would be entitled if the company would have been wound up outside the insolvency proceedings. |
| 88 | Art. 66 No. 2 | Severance pay for dismissed staff of the Debtor is paid by the Insolvency Practitioner according to the procedure and in the amounts set forth in the legislation on labour and employment of the population. | Severance pay for dismissed staff of the Debtor is paid by the Insolvency Practitioner according to the procedure and in the amounts set forth in the legislation on labour and employment of the population. The bankruptcy trustee is allowed to take the money from the administered assets. |
| 89 | Art. 69 No. 2 | Electronic trading system shall be generally accessible, non-discriminatory and shall guarantee equal rights and access to information to all interested parties. During exchanging and saving data and documents, it has to ensure bidders data integrity at the auction and their confidentiality until the end of the auction. | Electronic trading system shall be generally accessible, non-discriminatory and shall guarantee equal rights and access to information to all interested parties. During exchanging and saving data and documents, it has to ensure bidders data integrity at the auction and their confidentiality until the end of the auction. |
| 90 | Art. 70 No. 2 | (empty) | The operator of the central database shall be entitled to automatically read out the central website of the Ministry of Justice on which the decisions of all insolvency courts are published in order to comply with the deadline pursuant to No. 1. In doing so, the operator of the central database may automatically store all decisions which only contain the opening of partial proceedings under this Act. On the basis of this storage, the operator of the central database is entitled to write to the appointed bankruptcy trustee on the day after his order and to request the data required to conduct the auction in accordance with No. 1. If the bankruptcy trustee sends these data within ten days after sending the letter (receipt by the central database is to be decided), the period of No. 1 shall continue to apply. If the response of the bankruptcy trustee is delayed, the deadline under No. 1 is extended to the date 10 calendar days after receipt of the |

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| | | | <p>letter from the bankruptcy trustee. The bankruptcy trustee must ensure that his reply can be allocated by the central database; this can be done by using an electronic reply facility or by specifying a unique file number.</p> <p>If the answer of the bankruptcy trustee is that no decision under Art. 75 has yet been taken, the trustee must inform the creditors of the expected date of this decision. On the day after the expected date of sentence 1, the bankruptcy trustee must inform the central database, without being requested to do so, whether a decision has been taken by the creditors (Art. 75 No. 6 para. 2 or 3) or whether a court decision is to be obtained under Art. 75 No. 7. In case of creditors' decision, the bankruptcy trustee will also send the necessary details for the bidding procedure additionally and send a copy of everything the debtor immediately. In case of Art. 75 No. 7, the central database must read the following court decision on its own responsibility.</p> <p>If no reply from the bankruptcy trustee has been received within 10 calendar days of the dispatch of the letter, the operator of the central database shall send a corresponding reminder. A copy of this reminder is sent to the supervisory authority responsible for the bankruptcy trustee.</p> <p>If no reply is received from the bankruptcy trustee within 40 days of the first letter being sent, the operator of the central database sends a corresponding reminder to the supervisory authority responsible for the bankruptcy trustee and to the court that made the decision.</p> <p>These letters of para 3 and 4 can be created automatically. For damages resulting from incorrectly sent letters, central database shall be liable in accordance with the regulations for errors in business operations.</p> |
| 91 | Art. 72 No. 3 | 3. If the auction is cancelled, the operators of authorized electronic platforms refund the deposits to the bidders within three banking days. | <p>3. If the auction is cancelled, the operators of authorized electronic platforms refund the deposits to the bidders within three banking days.</p> <p>=> moved to Art. 84 No. 5</p> |

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| 92 | Art. 75 No. 7 | If the Committee of Creditors or secured Creditor made a decision to deny consent on property sale or made no decision at the session of the Committee of Creditors or within 20 days after the date when secured Creditor received or should have received the conditions of sale, or if the Insolvency Practitioner does not agree with the decision made by the Committee of Creditors or the secured Creditor, the Insolvency Practitioner is obliged to apply to the Court. In this case, the conditions of sale are determined by the Court. | If the Committee of Creditors or secured Creditor made a decision to deny consent on property sale or made no decision at the session of the Committee of Creditors or within 20 days after the date when secured Creditor received or should have received the conditions of sale, or if the Insolvency Practitioner does not agree with the decision made by the Committee of Creditors or the secured Creditor, the Insolvency Practitioner is obliged to apply to the Court. In this case, the conditions of sale are determined by the Court and the Court has to inform the debtor about the auction. |
| 93 | Art. 76 No. 1 | When the right of claim is sold at the auction, the Debtor is also notified about holding of the auction. | When the right of claim is sold at the auction, the Debtor is also notified about holding of the auction. => moved to Art. 75 No. 7 sentence 2 (COURT) and Art. 70 No. 2 para 2 (Creditors). |
| 94 | Art. 76 No. 2 | When the real estate is sold at the auction, the announcement shall be also placed at this real estate. | When the real estate is sold at the auction, the announcement shall be also placed at this real estate. |
| 95 | Art. 76 No. 3 | The client of the auction ensures the access to information on the property to be sold as well as the ability to see the property and its location. | The client of the auction ensures the access to information on the property to be sold as well as the ability to see the property and its location. |
| 96 | Art. 76 No. 4 | 4. The access to information published in the electronic trading system is free. | The access to information published in the electronic trading system is free. |
| 97 | Art. 76 No. 5 | 5. The additional conditions of announcement and notification about the auction are established by the Cabinet of Ministers of Ukraine. | The additional conditions of announcement and notification about the auction are established by the Cabinet of Ministers of Ukraine. |

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| 98 | Art. 78 No. 1 | The Public Authority on Bankruptcy, administrator of the electronic trading system, client and operator of authorized electronic platform are banned from any actions to provide other persons information about auction participants. | The Public Authority on Bankruptcy, administrator of the electronic trading system, client and operator of authorized electronic platform are banned from any actions to provide other persons information about auction participants or to participate themselves within the auctions. |
| 99 | Art. 80 No 1 | The first auction is held without the option of initial price reduction. The repeated auction may be held with the option of initial price reduction only by consent of the secured Creditor for the pledged property or by the consent of the Committee of Creditors for other property to be sold. | The first auction is held without the option of initial price reduction. The repeated auction may be held with the option of initial price reduction only by consent of the secured Creditor for the pledged property or by the consent of the Committee of Creditors for other property to be sold. => moved to Art. 80 No, 2 para 1 |
| 100 | Art. 80 No. 2 | The Committee of Creditors or secured Creditor, providing the consent for the holding of the first repeated auction with the initial price reduction option, have the right to set the price limit to which the initial price can be reduced during the auction. | The repeated auction may be held with the option of initial price reduction only by consent of the secured Creditor for the pledged property or by the consent of the Committee of Creditors for other property to be sold. The Committee of Creditors or secured Creditor, providing the consent for the holding of the first repeated auction with the initial price reduction option, have the right to set the price limit to which the initial price can be reduced during the auction. |
| 101 | Art. 81 No. 1 | If the pledged property of the Debtor is not sold at the repeated auction, within 20 days after the finish of this auction the Creditor secured by this property has the right to apply to the Insolvency Practitioner with the request to sell this property to him. | If the pledged property of the Debtor is not sold at the repeated or second repeated auction, within 20 days after the finish of this auction the Creditor secured by this property has the right to apply to the Insolvency Practitioner with the request to sell this property to him. |
| 102 | Art. 81 No. 2 | Within 3 days the Insolvency Practitioner draws up the protocol on sale of property to the secured Creditor at the initial price of the repeated auction. | Within 3 days the Insolvency Practitioner draws up the protocol on sale of property to the secured Creditor at the initial price of the repeated auction or - if using the possibility after the second repeated auction - at the initial price of the second repeated auction. |

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| 103 | Art. 81 No. 3 | If the pledged property of the Debtor is not sold at the second repeated auction, within 20 days after the finish of the auction the Creditor secured by this property has the right to apply to the Insolvency Practitioner with the request to sell this property to him. | If the pledged property of the Debtor is not sold at the second repeated auction, within 20 days after the finish of the auction the Creditor secured by this property has the right to apply to the Insolvency Practitioner with the request to sell this property to him. |
| 104 | Art. 81 No. 4 | Within 3 days the Insolvency Practitioner draws up the protocol on sale of property to the secured Creditor at the initial price of the second repeated auction. | Within 3 days the Insolvency Practitioner draws up the protocol on sale of property to the secured Creditor at the initial price of the second repeated auction. |
| 105 | Art. 82 No. 2 para 2 | (empty) | If payment is made on the claim after the start of the auction, these amounts are considered to be the first payment of the winner of the auction on the amount bid. The bankruptcy trustee shall inform the central database of the receipt of such amounts after the end of the auction and shall ensure that the purchase price still to be paid is reduced accordingly. Should the winner of the auction nevertheless make overpayments, the bankruptcy trustee shall immediately repay these amounts to the winner. The bankruptcy trustee shall have no right of retention for any reason whatsoever or any possibility of offsetting this amount. |
| 106 | Art. 82 No. 3 | The conditions of purchase and sale agreement for the right of claim of the Debtor shall envisage that the right of claim is transferred only after it is fully paid for. | The conditions of purchase and sale agreement for the right of claim of the Debtor shall envisage that the right of claim is transferred only after it is fully paid for. The conditions of Art. 79 are applicable accordingly. The starting price can be reduced to the book value of the claim within the last checked balance pre insolvency or other similar documents. |
| 107 | Art. 84 No. 3 | The deposit is non-refundable if the auction finished without determining the winner (except for cases when property defects were identified which were not mentioned in the announcement on holding of the auction). The deposit is non-refundable to the auction | The deposit is non-refundable if the auction finished without determining the winner (except for cases when property defects were identified which were not mentioned in the announcement on holding of the auction). The deposit is non-refundable to the auction winner if he did not fulfill the duty of paying the price according to the requirements of this Code. Non-refundable deposits (with deduction of the reward of the |

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| | | winner if he did not fulfill the duty of paying the price according to the requirements of this Code. Non-refundable deposits (with deduction of the reward of the operator of the authorized electronic platform from the deposit of the winner) are transferred to the Debtor within the term specified in the Item 1 of this Article. | operator of the authorized electronic platform from the deposit of the winner) are transferred to the Debtor within the term specified in the Item 1 of this Article. |
| 108 | Art. 84 No. 5 | (empty) => former Art. 72 No. 3 | If the auction is cancelled, the operators of authorized electronic platforms refund the deposits to the bidders within three banking days. |
| 109 | Art. 114 No. 1 | The Insolvency Practitioner in the insolvency case of the individual has all rights of the Insolvency Practitioner as set forth in the legislation including the right to: 1) request and receive documents or their copies from legal entities, public agencies, local government and individuals upon their consent on property of the individual Debtor including those which contain confidential information and/or bank secrecy; 2) receive information from state registers including the credit history bureaus as specified in the legislation; 3) perform inspection of property of the Debtor; 4) receive information on the cashflows at the accounts of the Debtor according to the Law of Ukraine "On banks and banking". | The Insolvency Practitioner in the insolvency case of the individual has all rights of the Insolvency Practitioner as set forth in the legislation including the right to: 1) request and receive documents or their copies from legal entities, public agencies, local government and individuals upon their consent on property of the individual Debtor including those which contain confidential information and/or bank secrecy; 2) receive information from state registers including the credit history bureaus as specified in the legislation; 3) perform inspection of property of the Debtor; 4) receive information on the cash flows at the accounts of the Debtor according to the Law of Ukraine "On banks and banking". If in doubt, all information must be provided for the period of three years before the procedure is initiated. |
| 110 | Art. 114 No. 3 | If the Insolvency Practitioner is suspended from execution of powers, the banks in which the special account for settlements | If the Insolvency Practitioner is suspended from execution of powers, the banks in which the special account for settlements with Creditors is opened are obliged to transfer funds from this |

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| | | <p>with Creditors is opened are obliged to transfer funds from this account to the account of the new Insolvency Practitioner appointed by the Commercial Court to fulfill the duties of restructuring manager or Debtor's property sale manager.</p> <p>The bank transfers funds to the special account for settlements with Creditors opened by the new Insolvency Practitioner on the ground of payment request of this Insolvency Practitioner.</p> | <p>account to the account of the new Insolvency Practitioner appointed by the Commercial Court to fulfill the duties of restructuring manager or Debtor's property sale manager.</p> <p>The bank transfers funds to the special account for settlements with Creditors opened by the new Insolvency Practitioner on the ground of payment request of this Insolvency Practitioner.</p> <p>=> transferred to Art. 12 No. 2 sec 12.</p> |
| 111 | Art. 116 No. 5 | <p>5. The asset declaration is filed by the 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 the information on property, income and expenditures of the Debtor and his family members which exceed 30 minimal salaries.</p> <p>The family members of the Debtor include persons married to the Debtor (including if the marriage is dissolved within three years before the day of filing of the declaration) as well as their children, including children of majority age, parents, persons in guardianship or custody of the Debtor, other persons who live jointly with the Debtor, related by the household activities, have mutual rights and duties (except for persons whose mutual rights and duties with the Debtor do not have the family nature), including persons who live jointly but are not married.</p> | <p>5. The asset declaration is filed by the 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 the information on property, income and expenditures of the Debtor and his family members which exceed 30 minimal salaries.</p> <p>The family members of the Debtor include persons married to the Debtor (including if the marriage is dissolved within three years before the day of filing of the declaration) as well as their children, including children of majority age, parents, persons in guardianship or custody of the Debtor, other persons who live jointly with the Debtor, related by the household activities, have mutual rights and duties (except for persons whose mutual rights and duties with the Debtor do not have the family nature), including persons who live jointly but are not married.</p> |

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| 112 | Art. 123 No. 6 | <p>The Creditor has the right to vote in absentia in the written form on each issue of the agenda of the Meeting of Creditors. Unless another procedure of voting in absentia is approved by the Meeting of Creditors, the Creditor who votes in absentia is obliged to send the results of his voting in writing to the address of the Insolvency Practitioner at least five days prior to the day of holding of the Meeting of Creditors.</p> <p>The result of voting of this Creditor is announced to other Creditors by the Insolvency Practitioner at the Meeting of Creditors and is taken into account when identifying results of voting on each issue of the agenda.</p> | <p>The Creditor has the right to vote in absentia in the written form on each issue of the agenda of the Meeting of Creditors. Unless another procedure of voting in absentia is approved by the Meeting of Creditors, the Creditor who votes in absentia is obliged to send the results of his voting in writing to the address of the Insolvency Practitioner at least five days prior to the day of holding of the Meeting of Creditors. The result of voting of this Creditor is announced to other Creditors by the Insolvency Practitioner at the Meeting of Creditors and is taken into account when identifying results of voting on each issue of the agenda.</p> <p>=> transferred to Art. 48 No. 1 para 12</p> |
| 113 | Final & Trans. No. 2 para 1-3, 2a, 2b | <p>From the enactment day of this Code the following legislation ceases to be in force:</p> <p>the Law of Ukraine “On restoring solvency of the Debtor or declaring him bankrupt” (Gazette of the Verkhovna Rada of Ukraine, 1992, N 31, page 440 with further amendments)</p> <p>the Resolution of the Verkhovna Rada of Ukraine “On enactment of the Law of Ukraine “On bankruptcy” (Gazette of the Verkhovna Rada of Ukraine, 1992, N 31, page 441).</p> <p>[...]</p> | <p>2. From the enactment day of this Code the following legislation ceases to be in force:</p> <p>the Law of Ukraine “On restoring solvency of the Debtor or declaring him bankrupt” (Gazette of the Verkhovna Rada of Ukraine, 1992, N 31, page 440 with further amendments)</p> <p>the Resolution of the Verkhovna Rada of Ukraine “On enactment of the Law of Ukraine “On bankruptcy” (Gazette of the Verkhovna Rada of Ukraine, 1992, N 31, page 441).</p> <p>[...]</p> <p>2a. (Reentry into force of the old laws)</p> <p>The laws mentioned under 2 (old laws) enter into force on (date of amendment +10 days, date of amendment) with the following proviso:</p> <p>1) The legal status of Oct. 20th, 2019, 23:59h will be fully restored.</p> <p>2) Already made changes to this legal status remain unchanged, if they</p> <p>a) are based on Law 2597-VIII (as of 18.10.2018, new law) or</p> <p>b) have been made on the basis of judicial decisions.</p> |

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| | | | <p>3) Pursuant to subsection 2), orders of the Bankruptcy trustee shall also remain effective and valid if they were made before the date of amendment.</p> <p>4) The Bankruptcy Trustee shall not be liable for dispositions in accordance with subsection 3) if dispositions would have been permissible and effective either on the basis of the old laws or of the new law.</p> <p>5) Clause 4) does not apply to sales of assets, which must be made exclusively on the basis of the provisions of the new law.</p> <p>6) The liability of the courts, the judge or judges acting, or the State shall cease if the acts or decisions of fact or of law which they have performed would have been effective if they had been permissible and effective either under the old laws or under the new law.</p> <p>2b. (new transitional provisions)</p> <p>1) The old laws remain valid for the proceedings already opened on Oct. 20th, 2019, 23:59h, until a court decision on the request of those entitled to file an application under the old laws or new law changes the proceedings to a new state. There will be no automatic transition to the new law.</p> <p>2) Bankruptcy trustees registered on the basis of the old laws shall re-register within 12 months of the entry into force of this amending law in accordance with the provisions of the new law. Timely dispatch to the competent authority is sufficient for compliance with the deadline.</p> |
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8. Annex: List of existing Moratoria

MORATORIA ON BANKRUPTCY AND ENFORCEMENT**1. NEW / RECENT MORATORIA IN LIGHT OF COVID-19 CRISIS**

| No. / Date | Current Status in Rada | Beneficiary Sector / Companies | Type of Debt Concerned | Moratorium Regime / Comments | Sunset Date / Clause |
|----------------------|---|---|---|---|---|
| 2276 5 June 2020 | Adopted at second reading as the Law | 1. SOEs and budget institutions 2. Water and heating companies | All debt Debt owed to energy (electricity) suppliers | - Disallowing new bankruptcy proceedings (including entering restructuring in bankruptcy, declaring debtor bankrupt or opening liquidation proceedings) | 1. None 2. Subject to company staying on Debtor Register |
| 2390 20 May 2020 | Adopted at first reading | Electricity suppliers - SOE "Energorynok" | All debt | - Disallowing new bankruptcy proceedings (including entering restructuring in bankruptcy, declaring debtor bankrupt or opening liquidation proceedings) - Suspension of all open bankruptcy proceedings | None |
| 3322 18 June 2020 | Adopted at second reading as the Law | All companies | All debt | - Suspension of all open bankruptcy proceedings - Debtors relieved from obligation to go before court to file for bankruptcy - Dissallowing claims of secured creditors - Creditors cannot initiate bankruptcy during 90-day period after lockdown termination with regard to debtors liability existing from 1 February 2020 - Remote creditor meetings - Bankruptcy Trustee released from liability for omissions if such omissions occur because of pandemic - Risks and costs of maintenance of debtor's property will be borne by creditors who have decided to postpone sales of liquidation of estate | During official lockdown and 90 days after it is over |

2. MORATORIA EXISTING BEFORE COVID-19 CRISIS

| | | | | | |
|-------------------------------|-----------|---------------------------------|-----------------------------|---|------|
| 2864-III (On Moratorium of | In effect | 1. All real property, equipment | All debt Exceptions: | - Disallowing forced sale of real property, equipment and equity of SOEs | None |
|-------------------------------|-----------|---------------------------------|-----------------------------|---|------|

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| Forced Sale of SOEs Assets) 5 January 2002 | | and equity of SOEs 2. All companies where State owns more than 25% | - Salaries and other payments to employees - payments to Pension Fund and Social Insurance Fund | - Disallowing enforcement on real property, equipment and equity of SOEs | Until Rada adopts law which will regulate forced sale of these assets |
| 1414-VIII (On Financial Restructuring) 19 October 2016 | In effect | Financial institutions | All debt | - Debtors relieved from obligation to satisfy any creditor claims - Disallowing forced sale of debtor's assets - Fines for non-enforcement of obligations are not imposed - Debtor cannot apply for restructuring or relief - Suspension of all open bankruptcy proceedings | 19 October 2022 Application period to one company should not exceed 180 days |
| 4442-VI (On Ukrainian Railways) 23 February 2012 | In effect | SOE Ukrainian Railways Ltd (UkrZalznitsya, UZ) and its subsidiaries | All debt | - Disallowing forced sale of assets of UZ subsidiaries of Donetsk and Luhansk regions in respect of which public authorities temporarily do not exercise their jurisdiction - Disallowing forced sale of all debtor's property in ongoing bankruptcy proceedings - Disallowing seizure of debtor's property for purpose of enforcing court decision (concerns only debts of UZ subsidiaries of Donetsk and Luhansk regions in respect of which public authorities temporarily do not exercise their jurisdiction) | None Moratorium expires under condition if inventory and assessment of assets of company is in place |
| 2269-VIII (On Privatisation of State and Municipal Property) 7 March 2018 | In effect | All companies where State owns more than 50% | All debt | - Disallowing new bankruptcy proceedings regarding companies which are on privatisation list - Disallowing new bankruptcy proceedings regarding companies that have been privatised | None During and after one year from privatisation |
| 2021-VIII (On Recovering Solvency of State Coal Mining Enterprises) 24 May 2017 | In effect | SOEs in coal mining sector | All debt | - Suspension of all pending enforcement proceedings - Disallowing new bankruptcy proceedings | 1 January 2022 |
| 2508-VII (On Debt of UkrOboronPr om) 22 August 2018 | In effect | SOE UkrOboronPr om (UOP) and its subsidiaries | Debt owed to Russian Federation and Russian companies | - Suspension of all pending enforcement proceedings - Disallowing new bankruptcy proceedings | None |

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|--|-----------|---|--|---|------------------|
| 399-IX (On Chornomorna ftogaz) 29 December 2019 | In effect | SOE Chornomorn aftogaz | All debt | - Suspension of all pending enforcement proceedings - Disallowing new bankruptcy proceedings - Termination of pending bankruptcy proceedings | 31 December 2022 |
| 145-IX (On Repeal of Law On SOEs Which May Not Be Subject to Privatisation) 2 October 2019 | In effect | SOEs where State owns more than 50% of shares, except UkrOboronProm | All debt | - Suspension of all pending enforcement proceedings - Disallowing new bankruptcy proceedings | 1 October 2022 |
| 1304-VII (On moratorium on enforcement of property provided as collateral of credits in foreign currency) 03 June 2014 | In effect | Natural person | Immovable that is the subject of collateral or mortgages on foreign currency loans | - Disallowing enforcement of real property which is subject to moratorium | 21 October 2020 |

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