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USE OF THE EXPERIENCE OF LEGAL SUPPORT OF THE REHABILITATION OF BUSINESS ENTITIES IN BANKRUPTCY CASES IN THE UNITED STATES, FEDERAL REPUBLIC OF GERMANY AND THE UNITED KINGDOM

Abstract. ***Purpose.*** The goal of the study is to analyze the features of legal support for rehabilitation (reorganization) procedures in the legislations of the United Kingdom, Germany and the USA in order to identify the strengths and weaknesses of each of the approaches and the potential areas of improvement of Ukrainian legislation. ***Research methods.*** The article is developed using the general research and special methods, namely systemic-structural, comparative-legal, analytical-synthetic methods. ***Results.*** The article analyzes the legal features of the institution of rehabilitation within the framework of bankruptcy in countries with developed economies, as well as determines ways to improve Ukrainian legislation in accordance with advanced international standards. ***Conclusions.*** The conclusion emphasizes the need to reform Ukrainian bankruptcy legislation in accordance with modern requirements and referring to the foreign experience. In particular, the increase of the debtor's role in the rehabilitation process was proposed, including by expanding his opportunities to manage the enterprise during the whole procedure. In addition, it was offered to introduce an alternative of the American "cram-down" procedure in the Ukrainian legislature, when there is a consent of at least one class of creditors.

Within the framework of the German experience, a change in the payment system for trustees was proposed, tied to the final amount paid to the creditors. Another interesting feature of German law is the presumption of the consent of the creditors to the rehabilitation plan in case no objections were announced during a certain period of time.

Finally, the development of a multi-optional system for overcoming insolvency was proposed, in particular, with an easier access in the case of objective factors that led to bankruptcy.

Keywords: insolvency, bankruptcy, rehabilitation of the debtor, Code of Ukraine on bankruptcy procedures, Western experience, the United States Bankruptcy Code, German Insolvency Code, Insolvency Act of 1986, reforming the institution of bankruptcy rehabilitation.

1. Introduction

The importance of the institution of bankruptcy within the framework of the modern economic model that has developed in most countries of the world, in particular Ukraine, is beyond doubt. The effectiveness of mechanisms related to bankruptcy is the vital factor related to such issues as the preservation of the money supply in the economy, ensuring stability and improving economic relations within the state.

From the very beginning of the existence of the institution of bankruptcy, scientific opinions regarding its interpretation, content, and role in the economic and legal system differ. There are two main approaches: debtor- and creditor-oriented, which, respectively, are focused on macro- or micro-regulation of economic relations.

As noted by I.V. Novyk, "since the economy of the state is directly related to the state of the primary link, i.e., individual enterprises, the problems of the activity of legal entities ultimately have a negative impact on the national financial and economic stability" (Novyk, 2021, p. 3).

Given that bankruptcy is, of course, the last stage on the path of a deep crisis of a particular enterprise, there is an opinion that the main purpose of bankruptcy is to "cleanse" the market of inefficient entrepreneurs. Thus, supposedly only the "strongest" players remain on the field; the ones who contribute to the development of the economic system like no other.

However, this approach obviously has many gaps. First of all, inefficient management is not always the cause of bringing enterprises to bankruptcy. As the world events of recent years show, global objective factors such as a pandemic or large-scale military operations contribute to the liquidation of even the most successful enterprises no less than the inept actions of management. In addition, the Ukrainian bankruptcy institute practice, even until 2020, has repeatedly shown that the legal realities are quite far from the model laid down by the legislator. Abuse of rights and unfair competition have very often become the reason for the decline of enterprises with great potential.

Thereby there is another approach. It is focused on the perception of the bankruptcy procedure not only as a tool for screening players out of the market and preserving the money supply, but also as the "last chance" for falling companies to restore its own solvency with the help of legal mechanisms. I.V. Novyk indicates that a significant share of the so-called "crisis enterprises" are those that have fairly good prospects for overcoming temporary obstacles and effectively continuing their activities in the future (Novyk, 2021, p. 3).

One of the key mechanisms, which is provided precisely for giving the debtor a chance to get out of the crisis, is rehabilitation – a set of procedures aimed at restoring the solvency of a business entity. It allows not only saving the debtor from his "elimination" from the economic arena but also maximizing the amount of funds returned to creditors.

O. Kalchenko, in particular, agrees with the statement about the two-way benefit of rehabilitation, and provides the following definition: "rehabilitation is a complex of financial-economic, production-technical, organizational-legal, social measures, the purpose of which is to restore the solvency of the debtor enterprise, improve its financial condition, fully or partially satisfy creditors' demands and prevent the bankruptcy" (Kalchenko, 2020, p. 225).

It is obvious that maintaining a healthy balance between creditor- and debtor-oriented approaches, depending on the specific economic model, is the most rational decision for the policy development for legal regulation of bankruptcy.

As Ukrainian experience shows, the effectiveness of the bankruptcy and rehabilitation mechanisms in particular is under serious doubt. They are abused to delay time, withdraw additional funds from the enterprise, etc. Consolidation of the creditor-oriented approach during the development of the bankruptcy institute also raises doubts in part of the scientific community. As noted by B.M. Polyakov, the Bankruptcy Law (as amended in 1992), being purely "creditor-oriented", brought a lot of damage to the state's economy, because instead of treating economic entities, they were simply liquidated (Polyakov, 2003, p. 10).

Nowadays, the obsolete law was replaced by the Code of Ukraine on Bankruptcy Procedures (KUzPB), which, although it regulates the rehabilitation procedure, nevertheless rather protects the interests of creditors. As noted by T. Bila in relation to the KUzPB, compared to the norms of the current Law of Ukraine "On restoring the debtor's solvency or declaring him bankrupt", the legislator significantly expanded the ability of creditors to take an active part in debtors' bankruptcy procedures. Thus, we are talking about the scope of creditors' powers, reducing the quorum, voting for the approval of the rehabilitation plan by classes (Bila, 2019, p. 57). In our opinion, in order to maintain the balance, the regulatory legislation should be changed, including by borrowing the best methods from developed capitalist countries.

As a resuly, it is expedient to study the foreign legislation that regulates the rehabilitation procedure, namely, the relevant legal institutions of Germany, Great Britain and the USA – countries that not only demonstrate high indicators of economic development but also have significant practical experience in the application of bankruptcy legislation during crises.

It is crucial to conduct the study of these legal systems based on some specific criteria, namely: the legislation's subjective focus (debtor- or creditor-oriented), the availability of the rehabilitation mechanism, its effectiveness and efficiency in practice, as well as the methodology of conducting "remedial procedures".

Literature review. The issue of legal provision of rehabilitation in both domestic and foreign science is quite relevant. Let's single out some authors who dealt with the issue concerned: T.M. Bila (Bila, 2019), V.K. Bohatyr (Bohatyr, 2021), A.A. Butyrskyi (Butyrskyi, 2007, 2012, 2013), A. Gurrea-Martinez (Guerra-Martinez, 2023), P. Zhark (Zhark, 2012), O.M. Kalchenko (Kalchenko, 2020), L.S. Kozak (Kozak, 2010), I.V. Novyk (Novyk, 2021), F. Pink (Pink, 2000), B.M. Polyakov (Polyakov, 2003), V.L. Piantkovskyi (Piantkovskyi, 2006), M.A. Sarnat-

skyi (Sarnatskyi, 2021), E. Warren (Warren, Westbrook, 2009), Yu.V. Chorna (Chorna, 2018), and others. At the same time, certain aspects of the improvement of the rehabilitation institution are considered insufficiently or are outdated due to changes in the legal reality and development of new theoretical approaches to its understanding.

Research methods. To achieve the goal, the following research methods were used: systemic-structural, comparative-legal, analytical-synthetic, etc. Using the system-structural method, ways for improvement of KUzPB were determined. Using the comparative legal method, it was proposed to make changes to the KUzPB, in particular, in terms of regulating the debtor's role in the rehabilitation process, introducing the compulsory rehabilitation procedure, as well as changing the order of adoption of the rehabilitation plan and certain aspects of the work of the trustee.

Goal. The article aims to investigate the peculiarities of regulating rehabilitation and reorganization in the USA, Germany and Great Britain and to propose improvement of Ukrainian legislation on rehabilitation within the framework of a bankruptcy case.

2. Legal principles of rehabilitation in the USA

The case of the USA in the present study seems to be the most appropriate in view of both the world economic leadership in terms of the size of the economy and, in particular, the high indicator of GDP per capita ($70,250) (The World Bank, 2023).

In the USA, the institution of bankruptcy is regulated by the Bankruptcy Code adopted in 1979 (hereinafter – the US Code). Its key chapters regulate various procedures related to bankruptcy, in particular, the liquidation procedure (Chapter 7) and various types of restructuring (Chapters 11 and 13) – an analogue of Ukrainian rehabilitation.

Analysis of the norms of this regulatory act allows us to conclude that it is aimed, first of all, at protecting the debtor's interest, in particular, restoring his solvency, preventing liquidation. A number of scientists agree with this. Thus, L. Kozak points out that the main task of the US Code is to help the debtor in getting rid of part of the debts and preventing the liquidation of the enterprise. The purpose of the US Code is not liquidation, but rehabilitation, restoration of the enterprise (Kozak, 2010, p. 291).

The US Securities and Exchange Commission is the state body that regulates bankruptcy. In addition to it, there are other bodies of regulatory influence, such as state federal bankruptcy trustees, the main tasks of which are to prevent abuses by independent bankruptcy trustees, as well as fraudulent actions by other participants of the bankruptcy procedure.

V. Piantkovskyi notes that judicial proceedings in bankruptcy procedures in the USA are carried out by federal courts (in bankruptcy cases – specialized courts that are part of the district courts of the USA). A special body that deals with the administrative management of bankruptcy cases is part of the Department of Justice and is called the Executive Office for United States Trustees. It acts as bankruptcy supervisor on behalf of the US Attorney General. Its members, the federal executive heads, are employees of the federal government and are appointed by the attorney general (Piantkowski, 2006, p. 41).

As far as reorganization is concerned, from the provisions of the US Code (in particular, Chapter 11, which is devoted to reorganization), we can see that American law provides a relatively easy access to the procedure: there are no limitations or requirements regarding the amount of debt or income for the enterprise that plans restore its solvency (United States Bankruptcy Code, 2023).

On top of that, it is worth noting that in most cases during reorganization, the debtor himself remains the head of the company (so-called "debtor-in-possession"). A trustee is only appointed in exceptional cases, when facts of fraud are involved etc. Obviously, this approach helps to expand the amount of control of the debtor over the situation, although it increases the risks of abuse.

The debtor can apply to the court with the aim of taking advantage of the possibility of reorganization (chapters 11 and 13) both immediately or after approving the chapter 7 case.

There are several things making up the distiction between chapters 11 and 13. First, Chapter 11, unlike Chapter 13, has no limit on the maximum amount of debt, making it more accessible to large and medium-sized businesses. Chapter 13, on the other hand, is often called "wage earner" bankruptcy.

In addition, both chapters allow the development and implementation of a "recovery plan". The difference is that Chapter 13 is focused on paying off only part of the debt with the subsequent release of the debtor from paying the rest according to the plan, while Chapter 11 is focused on the reorganization of payments and less often provides the reduction of monetary obligations, and also has the primary task of preserving the operation of the enterprise and maintenance of the management of the debtor with the subsequent restoration of solvency.

Both creditors and the debtor have the right to propose a rehabilitation plan. However, dur-

ing the first 120 days after the opening of the proceedings, the corresponding right is only granted to the debtor. Together with the tendency not to change the management of the company, it plays even more into the hands of the potential bankrupt. Then, the plan must be approved by creditors. Voting takes place by classes. First, all creditors are divided into classes, after which voting takes place within each of them. The plan is considered to be approved by a specific class if at least half of all creditors holding 2/3 of the class's obligations have voted for it. So-called "unimpaired classes", in relation to which the obligations of the debtor according to the plan remained unchanged, do not have the right to vote and are considered to have accepted the plan. Only if all classes of creditors agree to the plan is it approved by the court.

However, even here the debtor-oriented approach of the US Code is clearly visible. The US legislation provides a possibility of carrying out the "craw-down" procedure – the forced approval of the rehabilitation plan by the court in case at least one class agrees to its implementation (even if all other classes have voted against it). Section 1129(b) of the United States Bankruptcy Code allows the "craw-down" procedure if a judge finds the plan to be fair and equitable to all participants (United States Bankruptcy Code, 2023).

In fact, during the development of the plan, all parties to the process have the right to offer their own vision of the current state and further development of the enterprise. The valuation of the debtor's assets is of great importance in this process, on which the subsequent redistribution of new ownership shares depends. For the implementation of the plan, it is allowed to carry out a whole range of measures: partial sale of the debtor's assets, reorganization of production, partial liquidation of non-profit departments, rejection of part of the claims by creditors or their exchange for obligations in the future (United States Bankruptcy Code, 2023).

The possibility of additional "debtor-in-possession" financing (so-called "DIP financing") is provided too. Obligations of this type have the highest priority in the order of repayment. As A. Gurrea-Martinez points out, in the absence of any mechanism that would stimulate the debtor's counterparties to continue providing labor, loans, goods and services, the value of the enterprise may be reduced. In many cases, this loss of value can cause viable firms to become unviable businesses that must be closed down. DIP financing is a financing regime designed to help preserve viable businesses that would otherwise disappear (Gurrea-Martinez, 2023, p. 556).

Although the focus of US legislation on the preservation of the debtor allows a large number of enterprises to use the rehabilitation procedure, in practice, only a small part of them completes the procedure, preserving the structure of the enterprise and preventing liquidation. As of 2002, only 17.5% of enterprises were able to survive 12 months from the date of approval of the reorganization plan, and 8.35% – 24 months. Currently, this percentage is increasing, but, nevertheless, remains quite low (Warren, 2009, p. 621). In addition, despite the fact that the liquidation procedure (Chapter 7) remains the most popular among companies, as noted by the American Bankruptcy Institute, the number of reorganization applications for the year increased from 1,766 in early 2022 to 2,973 in early 2023 (American Bankruptcy Institute, 2023).

The US experience is interesting for Ukrainian legislation, primarily because it implements the opposite – debtor-oriented approach, while keeping the debt repayment rate at a relatively higher level. There are also practical problems in the implementation of the reorganization procedure, in particular, a low percentage of its full implementation, but over time the popularity and effectiveness of the American debtor recovery mechanism is steadily increasing.

3. Legal principles of rehabilitation in the Federal Republic of Germany

Another example of a successful economy is Germany, which is one of the European leaders in terms of GDP per capita ($51,200) (The World Bank, 2023).

Legal regulation of the field of bankruptcy and, in particular, rehabilitation procedures of the Federal Republic of Germany is carried out by the Insolvency Act (hereinafter referred to as the German Bankruptcy Law). It regulates both classical bankruptcy and a number of similar procedures, such as rehabilitation.

Despite the fact that Chapter I "Goals of Bankruptcy Proceedings" of the German Bankruptcy Law states the satisfaction of creditors' is its priority goal, it can hardly be called entirely creditor-oriented. The German model maintains a balance between the interests of creditors and the debtor (Insolvenzordnung, 2022). M. Sarnatskyi agrees with this, describing the rights of process participants both at the stage of initiating bankruptcy procedures and during the process. Summing up, M. Sarnatsky notes that "the German authorities are oriented towards the joint protection of the interests of both the debtor and the creditor" (Sarnatsky, 2021, p. 82).

Actually, the analysis of the articles of the following sections of the German Bankruptcy Law reveals the peculiarities of this bal-

anced approach of the legislator. On the one hand, the German Bankruptcy Law allows the use of the bankruptcy procedure (and subsequent rehabilitation) subject to compliance with a number of strict conditions – lack of liquidity (which is determined by the inability to pay 90% of debts), the need to resolve excessive indebtedness (when the amount of the debtor's obligations exceeds the amount of his assets), as well as a period of two years of negative liquidity (Insolvenzordnung, 2022).

Certain mechanisms of the bankruptcy procedure, such as recognition of the invalidity of contracts concluded within twelve years before the opening of proceedings, also play in the interests of creditors. In addition, liquidation/rehabilitation procedures are characterized by a change in the management of the debtor company, which is strikingly different from the American approach.

At the same time, the position of the German Supreme Federal Court is rather debtor-oriented. It clarifies that if the debtor can objectively be expected to settle the obligations within three weeks, then such a situation will not be classified as insolvency. P. Jark points out that a temporary delay in payments cannot immediately be the basis for declaring a person insolvent. Insolvency begins when the debtor is unable to meet 10% or more of the total debt obligations due (Jark, 2012).

There are interesting peculiarities of the participation of state bodies and arbitration administrators (a German analogue for trustees, "Insolvenzverwalter") in the case; the degree of their involvement in the process varies significantly. Yu.V. Chorna marks that the insolvency institute of the Federal Republic of Germany is built on the close interaction of judicial authorities with arbitration administrators. At the same time, the participation of the executive body in the bankruptcy procedure (Federal Ministry of Justice) is carried out on a general basis (Chorna, 2018, p. 4).

German bankruptcy legislation regulates the procedure for choosing an arbitration administrator very thoroughly. Article 56 of the Law of the German Bankruptcy Law defines only general requirements for the relevant candidacy, and specialized directives regulate this issue in more detail. As in Ukraine, a bankruptcy trustee is an individual who is independent of creditors and the debtor and is knowledgeable in economic affairs. In addition, German legislation also provides such a procedural figure as an expert (temporary manager), who becomes a manager in the case after the appointment. His/her task is to determine the property status of the debtor and establish the circumstances regarding the availability of funds to cover court costs, which is a condition for opening bankruptcy proceedings.

Finally, for the reorganization process, § 274 of the German Federal Law defines a bankruptcy administrator ("Sachwalter") who is responsible for examining the economic situation of the debtor and controls the costs of administration in the event that the debtor chooses the "self-administration" procedure ("Eigenverwaltung"). This procedure is a kind of analogue of the American "debtor-in-possession". Instead of a court-appointed bankruptcy administrator the owners carry out the reorganization themselves under the supervision of the bankruptcy administrator (Insolvenzordnung, 2022).

An interesting difference between German and Ukrainian legislation is in the specifics of the regulation of the bankruptcy trustee's activities: according to § 63 of the German Bankruptcy Law, the amount of his remuneration depends on the value of the insolvency estate at the end of the proceedings in the case, unlike in Ukraine, where the remuneration of the arbitration administrator does not depend on the quality of the work performed. In Germany, the remuneration of a trustee in rehabilitation cases is set at the level of 60% of the remuneration of a trustee in liquidation cases, in accordance with § 12 of the Insolvency Remuneration Ordinance (Insolvenzrechtliche Vergütungsverordnung, 2020).

The rehabilitation procedure itself in Germany can be started after the opening of the proceedings in the case. Moreover, the latter is not oriented to the preservation of the enterprise in advance. The rehabilitation plan is approved in the case of the consent of the creditors and their vision of the prospect of saving their capital. An interesting aspect is the presumption of the creditor's agreement with the requirements of the plan in the absence of objections from their side within a month (Insolvenzordnung, 2022).

To carry out rehabilitation and pay creditors, the debtor can redistribute his assets, convert them into liquid assets, sell and lease means of production, etc. The legislation also allows the enterprise to postpone payments on debt until it becomes profitable.

If the plan is not accepted within three months, the court starts liquidation.

According to the statistics department of the German government 18,368 companies used the bankruptcy procedure for the period from 2011 to the end of 2018. Of these, 828 (about 4.5%) chose and completed the restructuring procedure, which is somewhat less, but generally corresponds to the level of success of reorganization in the USA (De Statis, 2020).

4. Legal basis of rehabilitation in Great Britain

Great Britain is a country not only with a successful economy (GDP per capita – $46,510) (The World Bank, 2023), but also with a huge experience in regulating bankruptcy procedures. It was in the British Empire that several centuries ago the foundations of insolvency procedures were laid and they are used in the legislation of developed countries to this day.

The institution of bankruptcy within the framework of the British legal system is the closest to the Ukrainian one: the legislator determined the main task of bankruptcy procedures, as in the case of Germany, to be the return of funds to creditors, however, with the actual implementation of the provisions in practice.

The main legal acts governing bankruptcy procedures in Great Britain are: The Insolvency Act 1986, the Insolvency Rules 1986 (SI 1986/1925, replaced in England and Wales from 6 April 2017 by the Insolvency Rules (England and Wales) 2016 (SI 2016/1024) – see below), the Company Directors Disqualification Act 1986, the Employment Rights Act 1996 Part XII, the EU Insolvency Regulation, and case law. Numerous other Acts, statutory instruments and cases relating to labour, banking, property and conflicts of laws also shape the subject. The role of the state bankruptcy authority is performed by the Insolvency Service (Pink, 2000, p. 120).

It should be noted that in Great Britain, the concept of "bankruptcy" is only applicable to natural persons. A legal entity cannot legally "become bankrupt" but immediately proceeds to the liquidation procedure or agrees on one of the options provided for by law. Consequently, the management of the company gathers a meeting of shareholders (for voluntary liquidation, the consent of 75% of shareholders is required), goes to court (in this case, a requirement of a minimum of 750 pounds of debt is added), or submits a "Declaration of solvency" (in the case when the company is solvent, but for certain reasons the owner wants to stop its activity). Also, legal proceedings can be started at the request of the creditor (UK Insolvency Act 1986, 2023).

At the request of the debtor, the bankruptcy process begins on the condition that he realizes that he cannot repay his financial obligations and therefore wishes to come under the protection of insolvency legislation. Although English law allows the opening of bankruptcy proceedings by a court decision, in practice such cases are almost rare. The petition to declare the debtor insolvent is submitted to the special court for insolvency and bankruptcy cases at the place of residence or location of the legal entities submitting the specified petition. In connection with this, the territory of England is divided into districts for insolvency cases.

Pointing out the important role of the insolvency practitioner, it is necessary to emphasize that the decisive role in bankruptcy procedures belongs to the court, which exercises control at all its stages. It is the court that gives permission to carry out particularly significant actions of the insolvency practitioner, passes a decision on the release of the debtor from debts, restoration of his rights to manage the property remaining after the distribution among creditors (UK Insolvency Act 1986, 2023).

In English law, there are the following options for settling company debts:

1. CVA (Company Voluntary Arrangement) – a company's voluntary arrangement is the closest equivalent of the American "chapter 11" and Ukrainian rehabilitation. In this case, the company can continue to function with a certain reorganization of its assets.

A voluntary agreement of a person is called IVA (Individual Voluntary Arrangement) and is separately regulated.

2. Selling the business as a "going concern" to another company – this decision also involves the possibility of continuing the business (albeit with a change of owners), for example, retaining customers, workforce or orders.

3. Sale of company assets as part of liquidation. In this case, the collected money will be paid to creditors, and the company will be liquidated.

4. Liquidation of the company – in case of absence of assets (UK Insolvency Act 1986, 2023).

Of the above procedures, CVA is the most related to the subject of this study. It is with its help that rehabilitation is carried out in Great Britain. The essence of the procedure is similar to both Ukrainian rehabilitation and "Chapter 11/13" of the US Code. CVA procedure is regulated by the Part I of the Insolvency Act 1986.

Subdivision 2 of section 1 of part 1 of the Act states that the bankruptcy officer will draw up an "arrangement" that will cover the amount of debt that can be paid by the debtor and a schedule of payments. English law provides up to a month for this after appointment.

The plan itself should contain the following information:

1. Causes of financial difficulties.

2. Up-to-date information on the company's financial condition, including detailed information on all assets and liabilities.

3. The amount of money the company can afford to pay each month based on financial projections.

4. Projected duration of CVA.

Once the plan is developed, creditors are notified of the agreement and invited to vote. A CVA is considered approved if it is supported by 75% (by the amount owed) of the voting creditors and 50% of the unrelated creditors. The legislation provides, in particular, that a CVA cannot affect the rights of any secured creditor of the company without its consent (UK Insolvency Act 1986, 2023).

In the case of approval of the plan, the further settlement takes place through the mediation of a bankruptcy specialist by means of a monthly payment, which includes the commission for the services of the specialist himself. During the development of a CVA, a specialist can propose various measures to improve the financial situation. Those are, in particular, termination of non-profit contracts, rental/leasing agreements, etc., dismissal of full-time employees, etc. Arrangements can also be negotiated through a profit-based payment, a lump-sum payment – such as selling the property and moving into a rental property to free up funds, or any other suitable offer.

Regarding the question of the effectiveness of CVAs, since these procedures are usually performed over a period of time (2-5 years) and can fail at different stages of the process, it is difficult to determine the ultimate success rate. However, House of Commons information document No. 6944 of 11 June 2019 states that in 2014, 40% of proposed CVAs were successful.

5. Conclusions

Summarizing the above, it is worth noting that the development of the institution of bankruptcy and rehabilitation as part of it is extremely important for the functioning of the entire Ukrainian economy, which is currently going through difficult times. In the context of this issue, the use of the experience of developed Western countries could become a basis for determining the weak and strong sides of domestic legislation, reforming it in accordance with established world practice.

KUzPB strives to protect, first of all, the interests of creditors. This corresponds to judicial practice, which is focused on the realization of the debtor's property and its liquidation. While a similar approach is observed in Great Britain, the experience of countries such as the USA and Germany shows either the opposite or a more balanced approach. Not least this is caused by the desire of the American and German legislators to ensure the maintenance of economic stability, the preservation of economic potential, and the easing of the social burden on the state. The approach of English law is creditor-oriented evidently due to the preference for micro-regulation to which the British elite gravitate and which, given the high level of economic development and, more importantly, stability, the country can afford.

Obviously, the level of stability of the Ukrainian economy, its development potential, and the investment climate compared to Western countries in recent years (and especially after the start of full-scale war) were relatively weak. In the conditions of an aggression, when the economic situation does not contribute to the development of fair capitalist relations, balancing the interests of the debtor and the creditor seems more appropriate.

Considering that most of the bankruptcies of the last period were obviously not caused by inefficient management, but by objective factors, the expansion of the debtor's rights during the rehabilitation procedure, as is happening in the USA, could be more favorable for preserving the potential of enterprises.

In addition, taking into account the unpopularity of the rehabilitation procedure in Ukraine in general, as well as the existence of entire industries of enterprises that are under threat as a result of military operations, an additional regulatory mechanism could be formed on the basis of the "cram-down" procedure. It would allow the courts to forcibly approve the rehabilitation plan, of course, in the presence of a number of strict conditions. In particular, the consent of at least a minimal part of the creditors, the reality of the terms of the plan, as well as control over its implementation by both the creditors and the court.

The experience of Great Britain is also useful, since its legislation regulates the issue of bankruptcy quite effectively, in particular, forming a number of procedures that can be applied to save the enterprise. Perhaps, such a variable approach could be borrowed by domestic legislation, especially, taking into account the events of recent years, when objective factors contributed to the increase of bankruptcies several times. The development of similar procedures for restoring solvency, in particular, with easier access and other features (reduction of financial requirements, application of the "cram-down" procedure in the case of good faith actions of the debtor and the absence of signs of inefficient management, etc.) could be a useful development, especially for increasing the chance of insolvent enterprises for survival.

In our opinion, it is also appropriate to borrow a part of the German experience. In particular, in the issue of regulating the fees of trustees depending on the repaid debt amount, which would contribute to increasing the efficiency of their work. In addition, a positive change could be the establishment of the presumption

of creditors' agreement with the rehabilitation plan in the event of no objections on their part during a certain period. It would increase the interest of the parties in discussing rehabilitation, prevent a number of abuses, and rationalize the use of procedural terms.

In this regard, reforming the legislation in the field of bankruptcy from the point of view of balancing the interests of creditors and the debtor, introducing a more effective and profitable rehabilitation mechanism, expanding the debtor's participation in the management of the enterprise undergoing the rehabilitation procedure, together with strengthening the control over the responsible persons seem necessary for stabilization of the economic situation and establishing the trust of domestic and foreign investors in the Ukrainian economic system.

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ВИКОРИСТАННЯ ДОСВІДУ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ САНАЦІЇ ЮРИДИЧНИХ ОСІБ У СПРАВАХ ПРО БАНКРУТСТВО У США, ФЕДЕРАТИВНІЙ РЕСПУБЛІЦІ НІМЕЧЧИНА І ВЕЛИКІЙ БРИТАНІЇ

Анотація. ***Мета.*** Ціль дослідження полягає в аналізі особливостей правового забезпечення процедур санації (реорганізації) у законодавствах Великої Британії, Німеччини та США з метою визначення сильних і слабких сторін кожного з підходів і потенційних напрямів удосконалення українського законодавства. ***Методи дослідження.*** Стаття виконана із застосуванням загальнонаукових і спеціальних методів, зокрема системно-структурного, порівняльно-правового, аналітико-синтетичного. ***Результати.*** У роботі проаналізовано правові особливості інституту санації в рамках банкрутства в країнах із розвинутою економікою, а також визначено шляхи вдосконалення законодавства України відповідно до передових міжнародних стандартів. ***Висновки.*** У висновку наголошується на необхідності реформування законодавства України у сфері банкрутства відповідно до сучасних вимог із використанням зарубіжного досвіду. Зокрема, запропоновано підвищення ролі боржника в процесі санації, у тому числі шляхом розширення його можливостей в питанні управління підприємством протягом усієї процедури. Крім того, пропонується запровадити альтернативу американської процедури *cram-down*, коли є згода хоча б одного класу кредиторів.

У рамках досвіду Німеччини запропоновано змінити систему оплати роботи арбітражних керуючих, прив'язану до кінцевої суми виплати кредиторам. Ще однією цікавою особливістю німецького законодавства є презумпція згоди кредиторів із планом санації, якщо протягом певного часу не було оголошено жодних заперечень.

Нарешті, запропоновано розробку багатоваріантної системи подолання неплатоспроможності, зокрема, з полегшеним доступом у разі наявності об'єктивних факторів, що призвели до банкрутства.

Ключові слова: неспроможність, банкрутство, санація боржника, Кодекс України з процедур банкрутства, західний досвід, Кодекс США про банкрутство, Кодекс Німеччини про банкрутство, Закон про неспроможність 1986 р., реформування інституту санації у сфері банкрутства.

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