

UDC 658.114:005.334.4(477)

PROBLEMS OF BANKRUPTCY INSTITUTE IN UKRAINE**Konieva T.A., Arkhyenko A.Yu., Tselhna D.V.**

Petro Mohyla Black Sea National University

The article is about the problems of bankruptcy institute development in Ukraine. It was analyzed the level of unprofitable domestic companies, the duration of the repayment of accounts payable, other causes of financial instability and bankruptcy. The place of Ukraine was determined in the world ranking of Doing Business index, in particular on the criterion of the insolvency resolving. The main directions of improvement of the national bankruptcy institute were defined in the article.

Keywords: insolvency, bankruptcy institute, losses, accounts payable, the doing business index, insolvency resolving.

Problem setting. The realities of the Ukrainian enterprises in conditions of unstable economy are characterized by an increasing number of bankrupts and liquidated enterprises.

Today, the bankruptcy of enterprises in Ukraine is perceived in society is ambiguous, because, on the one hand, bankruptcy is important as a mean of elimination from the market of insolvent companies that provides opportunities fore more stable businesses to capture a larger market share. In addition, it stimulates efficient capital allocation in the competitive sector. On the other hand, the introduction of a wide system of bankruptcy with existing low technical level and a significant number of insolvent companies, can lead to the disruption of the whole system of national economy of Ukraine.

Bankruptcy as an economic phenomenon is associated directly with decreased efficiency. Must admit that with the increase of loss-making enterprises, official and hidden unemployment is increasing, as observed in recent years. The combination of such negative factors as tax and administrative pressure because of objective economic circumstances that forced businessmen to leave into the shade or stop the activity and «freeze» the business for better times.

Unfortunately, the existing problems of bankruptcy institute development in Ukraine, in particular, lead to low rating of the domestic economy according to the international experts.

Formation of bankruptcy institute in Ukraine is in very difficult conditions. This institute is used for

efficient and rapid process of economic reform and as a means of deliberate finishing to bankruptcy of viable enterprises for the purpose of purchasing them at minimal price. The imperfection of state regulation of the procedures adversely affects the economic development of the country.

Elimination of drawbacks in bankruptcy institute in Ukraine requires such actions:

- be more timely bankruptcy procedures;
- to minimize the cost of carrying out the procedure;
- to increase the effectiveness of the procedure;
- to change the status of arbitration managers and monitor their activities;
- to balance the protection of the interests of all participants [5].

Latest research and publication analysis. The problem of bankruptcy of enterprises devoted to the work of many scientists. Many domestic and foreign scientists have made significant contribution to the study of crisis management and bankruptcy: A. Tereshchenko, A. M. Skog, E. Altman, I. Blank, W. Biewerr, M. A. Titov.

Selection of the problem unsolved parts. Along with this, the economic situation in the world and Ukraine is rapidly changing. Every year an increasing number of unprofitable, insolvent domestic enterprises. It necessitates constant monitoring of the situation and finding ways to improve and reform the institution of bankruptcy that will ensure the effective redistribution of resources in the economy in the current circumstances.

The object of this research. Based on the analysis of the condition and reasons of domestic enterprises insolvency to determine the direction of bankruptcy institution improving in Ukraine.

Key research findings. The present-day dynamic conditions of economic development urge enterprises to fairly strict conditions. Because of it, business management and organization have to adapt quickly and radically to respond to other environmental conditions with the aim to remain profitable and competitive in the market place.

Bankruptcy is defined as the procedure of liquidation of the business, which cannot fully reconcile to pay its debts from its current assets. Bankruptcy can be declared as the insolvent debtor («voluntary bankruptcy»), but it can be given with the court order by creditor petition. Two main objectives of bankruptcy are:

- 1) Fair settlement of legal claims of creditors by distributing the debtor's assets;
- 2) Providing the opportunity for a new start for debtor [1].

The economic crisis in the world and particularly in Ukraine, has led to the growth of enterprises that were on the brink of financial crisis. All business entities during the period of its activity have high probability to turn out to be in a crisis situation. Large enterprises usually maintain their position, but this does not apply to small and medium enterprises which are quite often on the verge of bankruptcy.

According to the New Generation Research, different types of business suffered bankruptcy: energetics, ship building, telecommunications, oil field. Bankrupt industrial giants such as Energy Future Holdings Corp., with total assets amounting 40,970 million USD, NHI Holdings – 8,679 million USD, Genco Shipping & Trading Limited – 2,957 million USD [1].

New Generation Research reports that among public and private companies number of bankrupts has been decreasing since 2007 and 2014 year is not an exception: in 2014 there was a decrease in the number of prosecutions on bankruptcy by 19%.

Ukrainian enterprises were not excluded from the global turmoil on the global corporate level.

The bankruptcy process is a kind of criterion for the selection of inefficient enterprises.

In overall Ukraine has two waves of general changes for the last years in bankruptcy legislation. In 2012 improved the current bankruptcy legislation and provided more guarantees for creditors. With support and consultancy of foreign institutes (WB, IMF) was required to improve and provide more appropriate conditions for insolvency overcoming. Ukrainian bankruptcy legislation position decreasing the time of the procedures. In 2014 the changes were also oriented on the strengthening secured creditors rights, proposed new rehabilitation mechanisms, making easier to invalidate suspect transactions and shortening suspect periods for several steps of the insolvency process. As a result, the law was constructed in such a way to provide more abilities for a bankrupt solvency resumption while protecting creditors interests [2]. The aim was to approach to the European model and principles. In fact, the legislation structure was not changed radically but was corrected apparently.

According to Ukrainian law, the enterprise could become a bankrupt under conditions of occurred four criteria's:

- 1) Total amount of debts is more than 300 minimal salaries set in Ukraine, currently 960 000 UAH (the minimal salary set at 3200 hryvnas on 01/01/2017).

- 2) The debts must be in a money form.

- 3) Debts should be proved documentary. It could be approved by debt securities, court approval in a documentary form like court order.

- 4) Accused legal entity in bankruptcy don not pay off debts during 3 months from the date of executive procedure beginning [3].

In other foreign advanced countries these criteria are relatively much stricter. It is explained by the enterprises' financial condition including their liquidity. Nowadays enterprises suffers great losses regardless of size. On the table 1 is presented financial results of medium and large enterprises.

According to the presented data, every branch of economy has suffered losses for the last 5 years except education. In last year wholesale and retail

Table 1

Net profit (loss) of large and medium enterprises by economic in 2012-2016 years (mln. hrn)

	2012	2013	2014	2015
Total	35067,3	-22839,7	-590066,9	-373516,0
agriculture, forestry and fishery	26787,2	14984,5	21481,3	102849,1
industry	2592,4	-4181,1	-178730,9	-188267,9
construction	-1012,7	-5893,2	-27948,8	-25861,9
wholesale and retail trade; repair of motor transport and motorcycles	210,6	-13248,5	-133219,4	-88161,0
transport, warehousing, postal and courier activities	3127,7	-1423,4	-22591,6	-17847,8
temporary accommodation and catering	984,3	-1416,7	-6641,9	-6874,9
information and telecommunication	3739,1	4881,5	-17137,1	-12590,2
financial and insurance activity	10769,4	5157,1	-5550,3	-9573,5
activity with real estate	-9338,0	-10192,2	-105425,7	-64369,0
professional, scientific and technical activity	-1820,2	-8390,3	-100347,2	-48656,0
activities in the field of administrative and support services	3576,4	-1555,2	-9543,2	-9860,6
education	112,8	119	62,5	80,7
health and social care provision	-77,3	-149,7	-1185,3	-1042,3
art, sport, entertainment and leisure	-2547,6	-1495,2	-3244,0	-3566,3
Other services	-68,2	-36,3	-45,3	225,6

Source: [4]

trade acquired profit, maintenance of transport; transport, warehousing, postal and courier activities; professional, technical and scientific activity; activities in the field of administrative and support

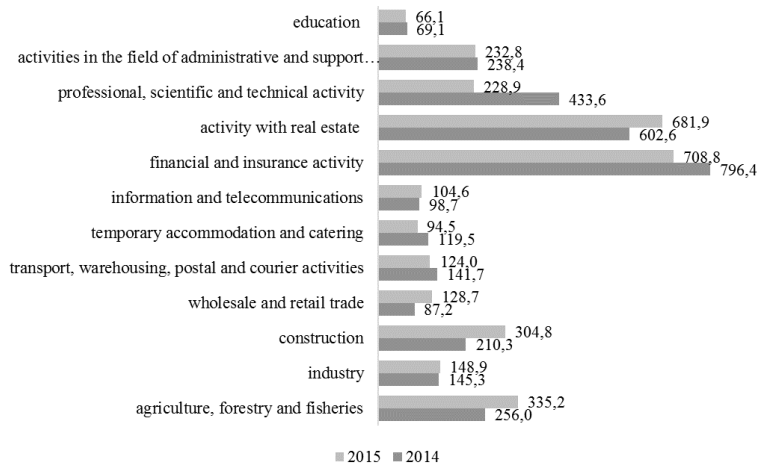


Fig. 1. Turnover payable by branches in 2014-2015, in days (personal calculation)

Source: developed by authors basing on the data [4]

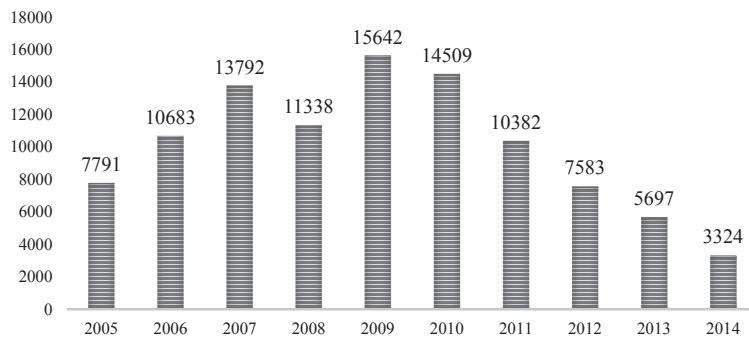


Fig. 2. The number of enterprise bankruptcy offences in 2005-2015 years

Source: [4]

services; education and other activities achieved positive financial results. The most financially prosperous used to be financial and insurance activity in 2012, when in 2015 this field had losses – 305,6 million hryvnas. The overall picture indicates weak financial health that does not give opportunity to evolve operational, financial and investment activities of enterprises (Fig. 1).

Another problem that occurred and entails insolvency is a not quitted payables. On the Fig. 1 is seen average accounts payable turnover by branches in Ukraine. Even in branches where the product turnover is rapid as in trade the figures are quite high. In 2015 the values have increased in the most significant and structural business types in the country as agricultural production (335 days), industry (149 days), wholesale and retail trade (129 days), etc. Hence, receivables do not allow disbursing with creditors and it decelerates money turnover and complicates economic relations among service and good producers.

Should be analyzed the number of prosecutions for bankruptcy to assess the situation of the crisis phenomena of Ukrainian enterprises (Fig. 2). The highest figures of the bankruptcy proceeding instituted was on the period of the world crises. In 2014 the number of bankruptcy cases has decreased almost by 5 times in comparison with 2009.

A major number of bankrupt enterprises has become in agriculture field and there is a growing number of bankrupt state enterprises. The financial result in 2014 as a whole amounted to 128.5 billion UAH (Earning Before Taxation) against

Table 2

The structure of bankruptcy consideration cases in Ukraine in 2015

	Was under consideration	Considered	Approved fully or partially
Bankruptcy cases	34961	24799	17858
Property disputes with claims against the debtor, including:	1747	1530	1406
the invalidation of agreement conclusion (contracts) with the debtor	43	23	8
payment of taxes, fees (obligatory payments)	207	139	89
wages exaction	1307	1299	1292
the re-employment of officials and officers of the debtor representors	1	1	-
a monetary claim of the creditor against the debtor	10587	8076	6782
auction for sale of debtor property	175	141	58
Activity of court-appointed trustee	4629	4164	2948
complaints against decisions, actions or inaction of government and other bodies	24	21	11
the removal of the debtor head	57	48	30
approval or dissolution of composition or its invalidation	69	61	34
cancellation of seizure, release of the debtor's assets	619	564	489
invalidation of transactions and the denial of property actions of the debtor	137	88	36
the approval of the financial assistance plan of the debtor before prior case of bankruptcy proceedings	8	7	4
complaints against actions or inaction of Governmental Executive Department	38	33	15
other	7396	6855	5739

Source: [6]

profit of 1.3 billions UAH. Loss-making enterprises in 2015 accounted for 50% of the total number against 45.3 per cent in early 2014. Table 2 shows the structure of bankruptcy consideration cases in Ukraine in 2015.

Afresh, wages take valuable part out of reasons for opening bankruptcy case in Ukraine. After the case opening, prevalent is to apply to court appointed trusty services. Less cases of considered bankruptcy case due to unpaid obligatory payments. Despite different available ways of bankruptcy settlement, the financial assistance is not widespread. Only 7 considered cases of financial assistance before prior case of bankruptcy proceedings. More popular is a composition and cancellation of seizure, release of the debtor's assets. The next one is auction procedures that concludes generally partial sale. Such tendency points on absence of interest of business support and saving integrity of the enterprise. All the enumerated aspects demonstrates lack of insolvency surmounting efficiency yet.

Among the main reasons of Ukrainian enterprises insolvency are [7]:

- Unstable political and economic situation. In particular, price growth on gas, petrol and other resources providing the cost of production increasing.
- Devaluation of the national currency
- Financial and currency markets volatile state
- Inflational process. Inflational index achieved 143,3% in comparison with 2014, it was 124,9%, in 2013 – 100,5%, and in 2012 – 99,8% [8].

Foreign enterprises support practice of bankruptcy determination for 1.5 to 2 years. It is possible to identify early signs of bankruptcy prediction «rates the company» in the short and long term. The company value is given to the real-time streams of payments to creditors and shareholders. The company value could fall below the amount of creditors liabilities. It means that equity «disappears». This is the complete bankruptcy – the shareholders bankruptcy. The value may even drop below the residual value of the assets. Then the scrap value will be considered as a price, and the liquidation of the company becomes more profitable of its operation. In this case, shareholders lose their capital.

World practice shows that the efficacy of the bankruptcy mechanism, assuming the use of all possible tools is quite high. However, the necessary prerequisites are the availability of a developed economy, the stability of the financial system, adoption and stability the relevant normative-legal acts on bankruptcy, effective investment policy, introduction of system of monitoring the application of anti-crisis measures aimed to prevent bankruptcy.

The consequences of bankruptcy are generally negative for Ukraine. Among them are reducing the number of enterprises, which leads to a reduction in the supply of goods, works or services; increasing the level of unemployment, additional benefits to unemployed; decrease in tax revenues to the state budget, etc.

Therefore, the timely detection of the enterprise crisis state of the enterprise and its comprehensive analysis can prevent the insolvency of the enterprise in the early stages, in the framework of existed initiated bankruptcy proceedings.

Indicator comparison of Ukraine and average meaning on Asia and Europe in the Table 3.

Among proposed indicators for evaluating Doing Business the resolving insolvency has the lowest figures among Ukrainian achieved criteria – 150 rank and recovery rate – 27,0 out of 190 countries [3].

According to the data of the World Bank (Table 3) group in 2017 Ukraine achieved overall 80 rank. The previous countries are: Sierra Leona – 148 rank and 10,9; Guatemala – 149 and 27,9. Following countries after Ukraine are Bungladesh – 151 rank and 27,0 and Yemen – 152 rank and 20,5.

Table 3
Advanced countries according to the criteria of the Doing Business Rating

Country	Resolving insolvency rank	Recovery rate (cent on the dollar)
Finland	1	90,3
Japan	2	92,1
Germany	3	84,4
Korea,Rep	4	84,5
United States	5	78,6

Source: [2]

Basing on the data resolving insolvency takes 2.9 years and costs 42% of debtors estate that in most cases goes on partial sale. The cost is calculated on the basis of questionnaire responses and includes court fees and government levies; fees of insolvency administrators, auctioneers, assessors and lawyers; and all other fees and costs. Major expenses are comprised of attorneys' fees (up to 10%), fees of insolvency representative (up to 15%) and other professionals involved in the insolvency proceedings (up to 5%). Auctioneer's fees are up to 10-15% of the value of the sold assets. Court fees and notification costs are around 2%. Strength of insolvency framework index consists of creditors' and debtors' abilities during insolvency proceeding. Consequently, debtors and creditors have less freedom and capabilities in participation of the process in parallel with Asian, European and other advanced countries. Recovery rate shows that a creditor receive in average 7,5 cents per dollar from an insolvent object [3]. Obviously it does not fulfil interests of creditors.

Table 4
Scores of Resolving Insolvency according the Doing Business

Indicator	Ukraine	Europe & Central Asia	OECD high income
Recovery rate (cents on the dollar)	7,5	38,2	73,0
Time (years)	2,9	2,2	1,7
Cost (% of estate)	42,0	13,1	9,1
Strength of insolvency framework index (0-16)	7,5	9,9	12,1

Source: [3]

One more obstacle for enterprises due to growth minimal salary in 2017. Debts on wages on

the 1 July 2016 reached 2 billions 46 millions and 414 thousands hryvnas at the minimal salary – 1450 hryvnas (Table 4) [5].

The increased number of bankrupt enterprises motivates the postulation of the fact that the state is losing taxpayers, workers, jobs, and the creditors do not receive the full amount of the refund. At the same time, the institution of bankruptcy in Ukraine is still imperfect. Thus the necessity exists to focus on the main problems of Ukrainian companies:

- support lack of insolvent enterprises of private form ownership from government;
- advisory centers lack for insolvent companies;
- lack of methodology and the prevention of bankruptcy for enterprises by kinds of economic activities;
- state control lack on the level of bankruptcy among enterprises in Ukraine and the implementation of measures for its reduction;
- imperfection of the legislative framework towards the regulation of enterprises bankruptcy, which requires further development despite reforms [7].

Due to the growth in the number of bankruptcy, it is a catalyst that leads to search and analysis more efficient and effective ways of solving the crisis. This leads to deterioration in the financial condition: solvency, profitability, liquidity. In this regard, it could be distinguished the following solutions:

- provision of advisory services to insolvent enterprises through the establishment of consultancy centers;
- increase participation of the state in regulating and tracking the level of bankruptcy among enterprises;
- improving the legislation on insolvency of enterprises;
- establishment of a separate regulatory body to deal with the problem of bankrupt enterprises, to pursue a common, open information system analysis and evaluation of situations at the Ukrainian enterprises and their issues.

Necessity exists to create system of governance that clearly would react to frequent changes in external and internal environments: the development and competitiveness of the partners, create the optimum labor, material and financial resources – this would ensure normal and efficient functioning of enterprises and it would significantly reduce the likelihood of bankruptcy [9].

Conclusions. Nowadays bankruptcy takes substantial role in supporting healthy economic position. Bankruptcy allows eliminating weak and insolvent enterprises and improving the economic relationships and distribution of financial resources among existed one. It is hard to approve this function in the country when the most part of enterprises experience great losses and disability to repay debts.

The legislation of bankruptcy has been undergone significant changes since its independence. For the last years according to analysis was made a conclusion of incompetence of the legislation structure to coincide European model and provide forcible financial recovery of legal entities. The gaps was figured out with foreign institutes and advised by them. Eventually, the legislation was corrected insignificantly. Nevertheless, it brought some positive results it could be seen in total figures of bankruptcy cases during 2005-2014 years. Consequently, lawmaking is improving but with quite creeping speed.

Anyway, the main barrier for normal business functioning of enterprises is feeble financial capacity evoked by macroeconomic shortcomings in Ukraine. According to the data of the World Bank, resolving insolvency hinder performance in overall rank of the Doing Business. By contrast of Europe and Asia scores, Ukraine legs behind at all points. Initially bankruptcy procedure takes 2,9 years and the law is targeted to continue to shorten time. It is not in great request to overcome inability to pay off debts with the help of more economic attractive ways as financial rehabilitation, composition, etc. One more aim is to be done to guarantee more alternatives and rights for both sides, make the legislative mechanism more clear and flexible. By virtue of the fact that Ukrainian law on bankruptcy is always being blamed on contradictions in its contest. Enterprises need consultancy and access to necessary information for functioning during their operative crisis. Therefore, it is proposed advisory institute that would help to determine course.

Generally financial indices among enterprises wishes better. Great debts, long accounts receivable turnover therefore extension of operational cycle, illiquid showings, not favorable structure of capital provokes such a number of insolvency cases. In addition, the present situation is embrangled with changes in tax legal system and employment protection legislation. In fact, providing one more hardship for enterprises.

References:

1. Business dictionary [Electronic Resource]. – Available online at: <http://www.businessdictionary.com/>
2. Doing Business in Ukraine [Electronic Resource]. – Available online at: <http://www.doingbusiness.org/data/exploreconomies/ukraine>
3. Law on bankruptcy [Electronic Resource]. – Available online at: <http://zakon3.rada.gov.ua/laws/show/2343-12>
4. Державна служба статистики України [Electronic Resource] / – Available online at: <http://www.ukrstat.gov.ua/>
5. [Electronic Resource]. – Available online at: [http://ru.golos.ua/ekonomika/dolgi_predpriyatiy_po_vyiplate_zarplat_s_kajdyim_godom_rastut_na_27_ekonomist_8239]
6. Official web portal of Judicial authority of Ukraine, reports [Electronic Resource]. – Available online at: http://court.gov.ua/sudova_statystyka/Sud_statustuka_Zvit_2015/
7. Олександренко І.В. Основні причини банкрутства підприємств / Олександренко І.В., Іщук Л.І. // Економічний форум. – № 2 – 2015.
8. Индекс инфляции (Украина), финансовый портал МинФин [Electronic Resource] / – Available online at: <http://index.minfin.com.ua/index/infl/?2015>

9. Коломієць Н.І. Запобігання банкрутства малих підприємств / Н.І. Коломієць // Лісове господарство, лісове, паперова і деревообробна промисловість: міжвідочий наук. – техніч. збірний. – 2004. – Вип. 29. – С. 248-256.

Конєва Т.А., Архипенко А.Ю., Цегельна Д.В.

Чорноморський національний університет імені Петра Могили

ПРОБЛЕМИ ІНСТИТУТУ БАНКРУТСТВА В УКРАЇНІ

Анотація

Стаття присвячена виявленню проблем розвитку інституту банкрутства в Україні. У рамках дослідження було проаналізовано рівень збитковості вітчизняних підприємств, тривалість погашення кредиторської заборгованості, інші причини їхньої фінансової нестабільності та банкрутства. Визначено місце України у світовому рейтингу країн за показником Легкості ведення бізнесу, зокрема за критерієм вирішення неплатоспроможності. Встановлено основні напрямки вдосконалення вітчизняного інституту банкрутства.

Ключові слова: неплатоспроможність, інститут банкрутства, збитки, кредиторська заборгованість, індекс легкості ведення бізнесу, рішення неплатоспроможності.

Конєва Т.А., Архипенко А.Ю., Цегельная Д.В.

Черноморский национальный университет имени Петра Могили

ПРОБЛЕМЫ ИНСТИТУТА БАНКРОТСТВА В УКРАИНЕ

Аннотация

Статья посвящена раскрытию проблем развития института банкротства в Украине. В рамках исследования были проанализированы уровень убыточности отечественных предприятий, продолжительность погашения кредиторской задолженности, другие причины их финансовой нестабильности и банкротства. Определено место Украины в мировом рейтинге стран по показателю легкости ведения бизнеса, в частности по критерию решения неплатежеспособности. Установлены основные направления совершенствования отечественного института банкротства.

Ключевые слова: неплатежеспособность, институт банкротства, убытки, кредиторская задолженность, индекс легкости ведения бизнеса, решения неплатежеспособности.