

BANKRUPTCY PROCEDURES AND CONDITIONS OF USE

VIOLETTA PRATSYTO, INNA SAPEGO
Polotsk State University, Belarus

In this article procedures of bankruptcy in relation to the debtor are examined. The existing procedures in Republic of Belarus are analyzed. The new procedure is offered: "the preliminary analysis" which needs to be considered further in more detail. On the basis of the conducted research the author proposes to develop this procedure in according to the legislation of Republic of Belarus.

In the analyses of the concepts "inability to pay", "insolvency" and "bankruptcy" the author concluded that a commercial organization is a bankrupt on condition of recognition by the court and acknowledged the dissimilarities of the concepts.

Conditions and order for recognition of the company bankrupt are based on the specific legal procedures. At the same time procedures are considered from a position of the debtor and from a creditor's position.

Let's consider the general procedures of bankruptcy with the debtor's positions which are offered by the author after studying normative legal acts and opinions of economists (fig. 1.1).

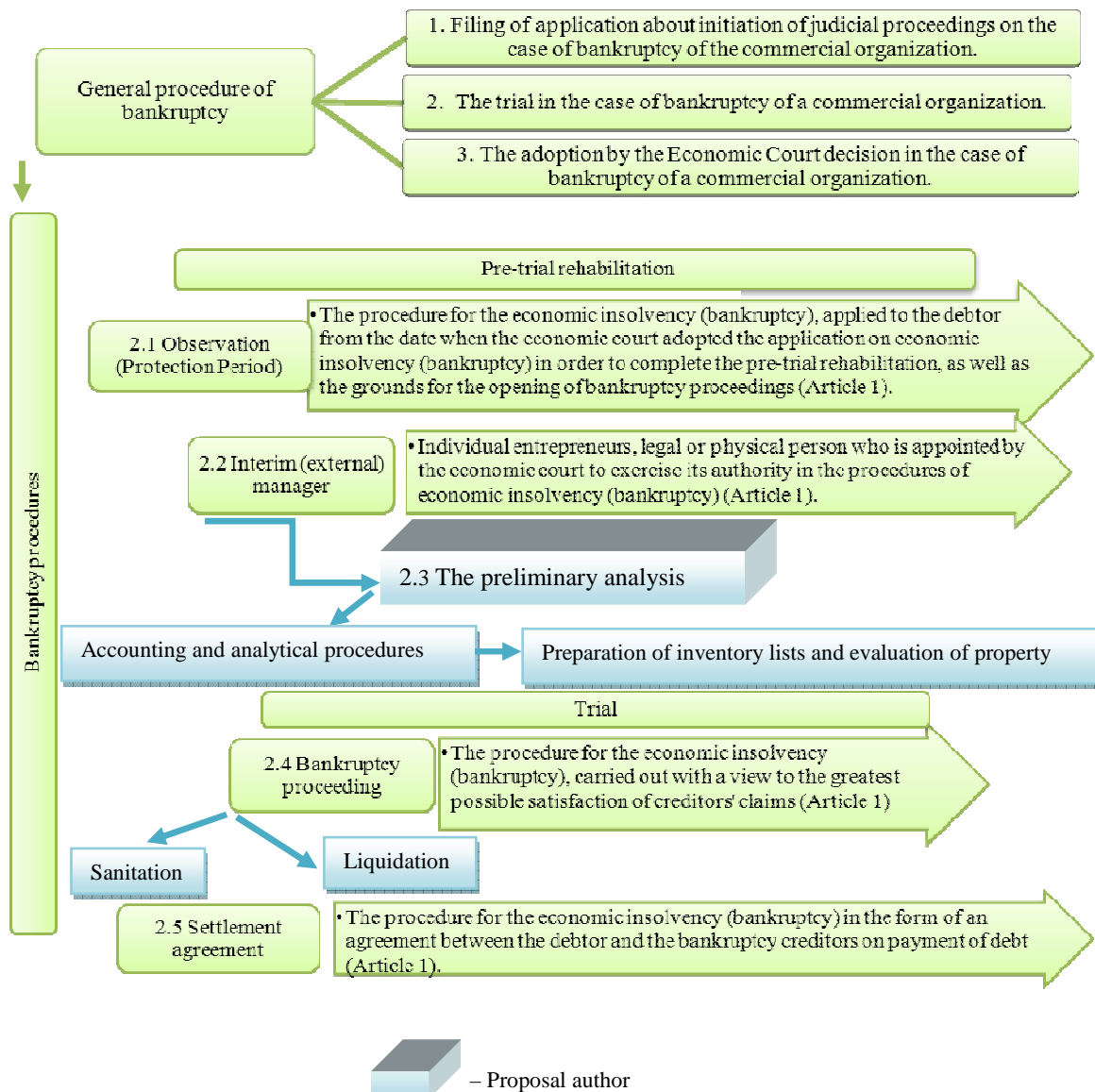


Fig 1. The proposed algorithm of bankruptcy proceedings against the debtor

Briefly describe the general procedure for the definition of bankruptcy:

1. *Filing of the application for initiation of judicial proceedings on the case of bankruptcy of the organization.*

The application of the debtor is submitted writing form and signed by the head of the debtor or the debtor – individual entrepreneur, and in the case established by a part of the second article 243 of the present Law – the chairman of the liquidating commission (liquidator).

2. *The trial in the case of bankruptcy of the organization.*

The purpose of the trial:

- The establishment of the real reasons for the insolvency of the organization;
- The ability to form and eliminate insolvency;
- The presence of prerequisites for successful overcoming of the financial crisis in the future.

3. *Adoption of the Economic Court decision in the case of bankruptcy of the organization.*

This solution may take the following forms:

– deviation of application in identifying the financial viability of the organization of the debtor if the insolvency of the organization of a technical nature ("technical bankruptcy"), i.e., available assets allow the debtor to fully satisfy all financial obligations and to carry out further economic activities;

– the suspension of the proceedings in connection with the reorganization proceedings. These procedures are aimed at preventing the liquidation of the organization and its way out of the financial crisis (trust management of property of the debtor company and its sanitation);

– recognition of the organization of the debtor bankrupt and its liquidation, i.e., made special liquidation procedures (opens bankruptcy proceedings).

In the absence of signs of bankruptcy, the economic court refuses to accept the relevant application of the bankruptcy debtor.

However, the presence of such signs (inability of the debtor at the moment to repay financial obligations and pay taxes to the budget) does not mean that the debtor as a bankrupt will be subject to compulsory liquidation.

In addition to the procedure of bankruptcy proceedings, applied in the liquidation of the debtor – legal entity, for it can be used and other procedures: observation; asset management; settlement agreement.

On bankruptcy proceedings instituted by the economic court, on the basis of an application for a bankruptcy.

When considering the bankruptcy case the debtor – legal entity shall apply bankruptcy procedures specified in Figure 1 (2.1 – 2.5), which will be presented in the following analysis.

2.1 Observation (Protection Period) Article 39 Law of Republic of Belarus «On economic insolvency (bankruptcy)» № 415-Z from 13.07.2012g.

When hearing the bankruptcy case by the economic court introduces procedure of Observation (Protection Period) in relation the organization of the debtor.

The meaning of this procedure – at the time of the economic court to produce applications for debtor bankruptcy is not yet clear whether it is in fact insolvent (ie, in a state if it satisfy the claims of creditors on monetary obligations and (or) execute a duty to make compulsory payments in full). Introduction observation (protection period) and limiting the powers of its head to determine the state of solvency of the debtor and the preservation of its property.

2.2 Interim (external) manager

According to with the «On economic insolvency (bankruptcy)» № 415-Z interim (external) manager has its own rights and obligations, which are written in Article 41 and Article 42 of this Law.

Interim (external) manager conducts accounting and analytical procedures, one of which is an inventory of assets and liabilities in accordance with the Regulations on the inventory of assets and liabilities, approved by Decree of the Ministry of Finance of the Republic of Belarus of 30.11.2007g. № 180.

At this stage, an interim (external) manager can be concluded that: can a commercial organization to restore its solvency within a three-year protection period, or a persistent inability to repay its financial obligations and other reasons that lead to the institution of proceedings of a commercial organization.2.3 Предварительный анализ прогнозирования банкротства коммерческих организаций

As part of a interim (external) manager the author offers to conduct a preliminary analysis of the predictive capability of bankruptcy of commercial organizations.

Evaluation of the bankruptcy of commercial organizations in the Republic of Belarus is based on a whole range of different indicators. In this work the author proposes to use a series of the following indicators: cash ratio, current ratio and the ratio of financial liabilities security assets. These indicators characterizing liquidity organizations are listed in table 1.

Economics

Table 1 – Indicators of liquidity of the organization

Indicator	Calculation procedure	Characteristic
Cash Ratio	$(\text{short-term investments} + \text{Cash} + \text{Cash Equivalents}) / \text{Current Liabilities}$	It describes what part of the short-term liabilities can be repaid at the expense of the available balance of cash and short-term investments
Current Ratio	$\text{Current Assets} / \text{Current Liabilities}$	It characterizes the degree of coverage of short-term debt by circulating assets of the organization
Ratio of financial liabilities security assets	$\text{Short-term liabilities} + \text{Fixed liabilities} / \text{Balance currency}$	This ratio shows that if an organization is able to repay its debt after the sale of existing assets; how the firm is independent of the creditors.

Source: own development on the basis of the instructions on the procedure for calculating the solvency ratios, and analysis of financial condition and solvency of business entities.

The author doesn't take into account the ratio of its own working capital, as in western countries practice this ratio is not calculated, as the right of ownership and a sphere the production of differentiated and interrelated, and the availability of liability from the organization in no way affect the financial position of the organization. However, it should pay attention to the ratio of financial liabilities security assets, as this indicator shows whether the organization is able to pay its debts and the normative value of the index does not depend on the industry trade organization.

2.4 Bankruptcy proceeding

The adoption of the economic court decision to declare the debtor bankrupt entails the opening of bankruptcy proceedings.

Since the opening of the economic court bankruptcy proceedings occurs the first meeting of creditors, which may apply to the debtor in order to meet their requirements only in the manner prescribed by this Law.

Bankruptcy proceedings entered a period of not less than one year. The term of bankruptcy proceedings may be extended by the economic court for six months (Art. 140).

Bankruptcy proceedings – one of the bankruptcy procedures applicable to the debtor declared bankrupt, in order to proportionate satisfaction of creditors' claims.

For the implementation of the bankruptcy proceedings, the economic court appoints an antichrists manager from among the candidates to be proposed by the meeting of creditors.

2.5 Settlement agreement

At any stage of the process the economic court of a bankruptcy case the debtor and creditors have the right to the settlement agreement.

The decision to conclude the settlement agreement by the bankruptcy creditors and authorized bodies is accepted by the creditors meeting. The decision of the creditors' meeting on the conclusion of a settlement agreement by a majority vote of the total votes of the bankruptcy creditors and the authorized bodies in accordance with the register of creditors' claims and deemed to be accepted, provided that voted for him all creditors on liabilities secured by pledge of property of the debtor (Article 152).

Obligatory condition of the settlement agreement is that it can be concluded after the repayment of the claims of the creditors first and second stage.

Law of the Republic of Belarus «On economic insolvency (bankruptcy)» № 415-Z from 13.07.2012g. provides a number of pre-trial procedures, rehabilitation and trial. In the above normative document has no practical guidelines for conducting bankruptcy procedures. As a result, the author developed an algorithm of bankruptcy proceedings against the debtor and creditors. The developed algorithm is system-oriented in nature, aimed at a consistent gradual bankruptcy proceedings, namely, the author has been offered at the stage of monitoring (guard period), temporary (external) to conduct a preliminary analysis.

REFERENCES

- 1 On economic insolvency (bankruptcy) : Law of the Republic of Belarus 13.07.2012, № 415.
- 2 On approval of Instruction on the procedure for calculating solvency ratios and analysis of financial condition and solvency of business entities : Resolution of the Republic of Belarus, the Ministry of Finance, Ministry of Economy of the Republic of Belarus of December 27, 2011 № 140/206.