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THE PECULIARITIES OF THE BANKRUPTCY OF THE FARMER UNDER THE LEGISLATION OF UKRAINE

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SUMMARY

The article is devoted to the analysis of modern Ukrainian legislation governing the bankruptcy of the farm and the recognition of the insolvent individual entrepreneur. The article aims to identify the most profitable way of declaring a farm bankrupt in order to maximize the satisfaction of the creditor's claims and protect the interests of the debtor. The author of the article concludes that the adoption of a new code from bankruptcy procedures did not contribute to the elimination of conflicts in legislation governing the bankruptcy of farmers and did not solve the problem of uncertainty in the legal regulation of a farmer's bankruptcy in Ukraine. The author of the article concludes that the adoption of a new code from bankruptcy procedures did not contribute to the elimination of conflicts in legislation governing the bankruptcy of farmers and did not solve the problem of uncertainty in the legal regulation of a farmer's bankruptcy in Ukraine. The author comes to the conclusion that it would be advisable to apply the principle of the "special norm" in the legislation to solve this legal conflict, and therefore the author proposes to make textual changes to the current legislation of Ukraine governing the bankruptcy of farmers.

Key words: governing of the bankruptcy, bankruptcy of the farmer, bankruptcy procedure, individual entrepreneurs-farmers, debts, claims, collision.

ОСОБЕННОСТИ БАНКРОТСТВА ФЕРМЕРА ПО ЗАКОНОДАТЕЛЬСТВУ УКРАИНЫ

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АННОТАЦИЯ

Статья посвящена анализу современного украинского законодательства, регулирующего банкротство фермерского хозяйства и признание неплатежеспособным индивидуального предпринимателя. Статья направлена на выявление наиболее выгодного способа признания фермерского хозяйства банкротом с целью максимального удовлетворения требований кредитора и защиты интересов должника. Автор статьи подчеркивает, что принятие нового кодекса из процедур банкротства не способствовало ликвидации коллизии в законодательстве, регулирующем банкротство фермеров, и не решило проблемы неопределенности правового регулирования банкротства фермеров в Украине. Автор приходит к выводу, что целесообразно было бы применить принцип «специальной нормы» в законодательстве для решения указанной правовой коллизии, в связи с чем автор предлагает внести текстуальные изменения в действующее законодательство Украины, регулирующее банкротство фермеров.

Ключевые слова: процедура банкротства, банкротство фермеров, неплатежеспособность, должник, кредитор, коллизия, удовлетворение требований, гарантии.

Introduction. The number of registered farms in Ukraine after a series of reforms in agriculture is increasing every year. As of January 1, 2018, there were 45,035 farms in Ukraine, while in the same period last year they were 44,409. That is, during 2017, the number of farms in our country increased by 2% (or by 626 farms). Nevertheless, in the context of the growth of market relations in the field of agriculture, a significant part of the farms is bankrupt. According to experts, adoption of the Code of Ukraine on bankruptcy procedures will enable Ukraine to substantially improve the efficiency of bankruptcy procedures and increase in the Doing Business rating by 81 points by component (from 149 to 68 for the component) and by 9 position sand the overall rating.

Prof. Olha Kulinich believes that every able-bodied citizen of Ukraine, who has reached the age of 18 years, must have the right to establish a farmer, has expressed such a desire and has the right to own or lease an agricultural land of at least two hectares, and in the absence of land - has passed professional selection for the right to establish a farm [5, p. 84]. In addition, he proposes that the composition of the professional commission be formed not by the district (city) council, but by the district (city) or regional Association of Farmers and Private Landowners of Ukraine [1, p. 153].

In accordance with the amendments introduced in Part 4 of Art. 1 of the Law "On Farmers" in accordance with the Laws No. 1067-VIII of March 31, 2016, No. 2497-

VIII dated July 10, 2018, the farm is subject to state registration in two organizational and legal forms: as a legal entity and as an individual entrepreneur (further EI). Law No. 2497-VIII dated July 10, 2018, amends the Tax Code of Ukraine accordingly, giving the IE additional obligations to pay taxes related to their activities. The authors of the bill believe that one of the problems today is that specialist farms, as well as other individuals who produce a large part of agricultural products, do not have the official status of agricultural producers, and therefore are not on an equal footing with farmers' farms and other agricultural producers [2, p. 36].

The legislator believes that the adoption of the draft law will promote the development of organized agricultural production



by increasing the number of official actors in the agricultural market and regulating the rules of their activities in this area, which, in turn, will help eliminate tax obstacles in their activity and growth of the rural population as a general [3]. Moreover, according to the agricultural legislation of the EU, farms can acquire the status of both legal and natural persons (Article 4 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17.12.2013 regarding the establishment of rules for direct payments farmers according to schemes of support within the framework of the common agricultural policy) [4].

Literary Review. At the general theoretical level, the problems of recognition of subjects of agrarian state-building by bankrupt were investigated by T.O. Kovalenko, M.Ya. Vashchyshyn, V.V. Nosik, O.O. Pogribny, T.P. Protzenko, N.I. Titov, M.S. Dolinska and others.

The relevance of the article is conditioned by the fact that the procedure for recognizing the bankrupt of a farmer in the form of an individual-enterprise did not find its clear legislative consolidation either in the Law "On Farmers" nor in the new Code of Bankruptcy Procedure, which causes conflicts in the legal regulation of such a procedure. To confirm the relevance of this article also serves as the absence of a comprehensive doctrinal study of the bankruptcy of farm enterprises in the organizational and legal form of an individual entrepreneur (IE).

The purpose of the article is to analyze the peculiarities of the bankruptcy procedure of a farmer and identify the main conflict vectors in Ukrainian legislation governing farm bankruptcy issues under the new bankruptcy laws of Ukraine. We also purposed our research to determine which of the proposed procedures corresponds as much as possible with the nature of the farmer's gosoprand and will be optimal for both the debtor and the creditor.

Code material presentation. On the 3-d of April 2019, a new Bankruptcy Code (hereinafter the Bankruptcy Code), adopted by the Verkhovna Rada in October this year, got in force. The Law of Ukraine "On Restoration of the Debtor's Solvency and Recognition as a Bankrupt", which remains in force after the adoption of the Bankruptcy Code, specifies the special bankruptcy procedures of the individ-

ual entrepreneur and the farmer separately and does not regulate the bankruptcy procedure of the self-employed farmer, which causes a conflict between the Law "On farms" and the Law "On Restoration of the debtor's solvency and recognition of it as a bankrupt".

According to Art.95 of the Bankruptcy Code, the ground for recognizing a farm as a bankrupt is its inability to satisfy, within six months after the end of the relevant agricultural work period, the claims of creditors for monetary obligations and / or obligations to pay taxes and duties (mandatory payments), insurance for obligatory state pension and other social security, the return of unused social insurance Fund of Ukraine. Statement by the head of the farm on opening bankruptcy proceedings shall be filed by a person with the economic court in the presence of the written consent of all members of the farm.

The peculiarity of such a statement is that it is obligatory to add documents containing information about the composition and value of the property of the farm; with treasure and the value of property belonging to members of the farm on the property right; about the amount of income that can be obtained by the farmer after the end of the relevant period of agricultural work.

Significantly, the right to file an application to open a bankruptcy proceeding on a farmer is also assigned to a creditor, then the corresponding additional documents are joined to the claimant's claim by the lender from the head of the farm.

The peculiarity of the procedure for recognizing a farmer as a bankrupt by the requirements of the Code of Bankruptcy as a subject of agrarian production is that, if the implementation of measures envisaged by the plan for the restoration of plostsprom germination of the farm, will enable the farm, in particular at the expense of income that can be obtained by the farmer economy after the end of the period of agricultural work requirements for cash to repay commitments, the economic court procedure introduced trustinstituting farm property.

It should be emphasized that the procedure for the disposal of property of a farm is introduced for the term of the corresponding period of agricultural work, taking into account the time required for the implementation of the cul-

tivated (produced and processed) agricultural products, which is due directly to the characteristics of the farm, which is aimed at the production of seasonal products. However, the legislator is bound to the aforementioned deadline, stating that it can not exceed fifteen months, which follows from the general-temporal principles of seasonal commodity production.

Another feature of the procedure for the disposal of property of a farm is that it may be prematurely terminated by a commercial court on the application of the property manager or any of the creditors in case of non-fulfillment of the measures provided for in the plan to restore the solvency of the farm; the presence of other circumstances that indicate his impossibility of restoring the solvency of the farm.

After the early termination of the procedure for disposal of the property of the farm, the farm is declared bankrupt by the economic court and the liquidation procedure is opened.

It is essential that for the procedure of disposal of property of a farm business economic court appointed by the administrator of the property in accordance with the procedure established by the Code of Bankruptcy.

The final stage in the event of the bankruptcy of the economic court of a farmer's recognition and the opening of a liquidation procedure is the inclusion in the liquidation mass of the farm of real estate owned by the members of the farm, including plantings, economic and other buildings, land reclamation and other structures, productive and work in ganimals, poultry, agricultural and other machinery and equipment, vehicles, inventory, and other property acquired for the farm and the total funds of its members, as well as the right to lease the land and other property rights belonging to the farm business and have a monetary valuation [1, p. 155]. The property belonging to the head and members of the farm on the right of private property, as well as other property, which has been proved to be earned on incomes which are not common ownership of members of the farm economy, are not included in the liquidation mass. The new Code of Bankruptcy is that real estate, as well as property rights related to real estate, which are included in the liquidation mass of the farm, can be sold and only at auction, the manda-



tory conditions of which is preservation of the intended purpose of agricultural objects, which are sold. From the day of the adoption of the resolution on recognition of the farm economy as a bankrupt and the opening of the liquidation procedure, the activity of the commercial enterprise ceases.

At the same time, Law of Ukraine “On Farmers” in Art. 36 sets up the order of termination of activity of the farm rule, that the decision to terminate the farm’s activity is taken in the event of a bankruptcy of the farm – in accordance with the law. The property remaining after satisfying the claims of the creditors is distributed among the members of the farm in accordance with its Statute, which is undeniable advantage of the procedure recognizing the farm as a bankrupt due to the legislation on farms.

A positive peculiarity of these procedure also is that in case of termination of the activity of the farm before the expiration of the term of granting the economy tax breaks, the economy pays to the budget for the whole period of its activity the amount of tax calculated in the amount established for the farm, except in cases provided by the Law and the redemption of land for public needs or forcible alienation of it from the motives of public necessity.

In order to determine the optimal procedure for recognizing the bankruptcy of the federal economy established in the organizational and legal form of a natural person-enterprise, we will find out the peculiarities of considering cases of insolvency of individuals entrepreneurs under the new Code of Bankruptcy Procedures.

According to the provisions of Art.137 of the Code, in case of opening and closing proceedings in the case of insolvency of an individual entrepreneur in the Unified State Register of Legal Entities, individuals – entrepreneurs and public formations, an appropriate entry shall be made. Bankruptcy payroll for the new Code of bankruptcy procedures in article 113 of the new Code, we find that the bankruptcy of the EI is carried out in the manner prescribed by this Code for legal entities, taking into account the relevant features. This means that for the bankruptcy of EI, the new code introduces the same rules as for bankruptcy of legal entities with a few innovations.

An insolvency proceedings against a sole proprietor may be opened only on the application of a debtor (as opposed to a proceeding concerning the issuance of a farm in bankruptcy in accordance with the procedure foreseen for farms, where the relevant proceeding may be opened and at the request of the creditor).

It is necessary to pay attention to the difference in the procedures according to the size when the disclosure about the openness of the insolvency proceedings can be filed with the court, therefore the application can be filed in court if the debt is not less than 30 minimal salaries, that is 125 190 UAH.(as of March 25, 2019) the debtor has stopped paying more than half of the payments within 2 months, or there are other proofs that in the near future the debtor will not be able to pay with the creditor. After opening insolvency proceedings, the debtor adds a property declaration for the last 3 years, which contains all data on the income, expenses and property of the debtor and his family and exceeds 125 190 UAH.

Following the opening of insolvency proceedings, a 120-day moratorium on satisfaction of creditors’ claims is introduced. At this time, the debtor is not calculated with creditors and no financial sanctions such as fines or penalties are not charged. Not later than 60 days after the opening of proceedings, the commercial court shall pre-examine the case and make a ruling.

After recognizing the debtor (IE) bankrupt, all his property is recognized as a liquidation mass. The exception is the accumulation of the debtor in pension or insurance funds and housing, which is the only place of residence of the debtor. Lenders whose claims relate to obligations incurred as a result of damage to life and health of citizens, lenders who have claims for the payment of alimony, as well as other claims on obligations that are inextricably linked to the person of the creditor, have the right to state their claims during the bankruptcy proceedings.

According to the Art. 92 of the Law “On Restoration of the Debtor’s Solvency and Recognition as a Bankrupt”, features of satisfaction of claims of creditors of physical person recognized as a bankrupt to meet the creditors’ claims from funds deposited in a special bank account, the expenses related to the implemen-

tation of the bankruptcy of the physical person and the execution of the ruling of the economic court on the recognition of the physical person as bankrupt. Claims of creditors are satisfied in the following order:

1) in the first place satisfy the requirements of creditors for obligations secured by mortgage of physical assets people; the requirements of citizens, through which an individual is liable for causing damage to life and health of citizens, by capitalizing the corresponding periodic payments, including the Social Insurance Fund of Ukraine for citizens who are insured in this Fund in accordance with the procedure established by the Cabinet of Ministers of Ukraine, requirements for the payment of alimony; payments for the payment of outgoing assistance and wages to persons who work under an employment contract (contract) and for the payment of royalties, as well as for the payment of royalties arising from obligations to pay premiums for mandatory state pensions and other social benefits insurance;

2) secondly, the requirements for paying taxes and duties (obligatory payments) are met;

3) in the third place, settlements with other creditor are conducted.

Due to insufficient funds to meet the full requirements of one queue, funds are distributed among the creditors of the respective queue in proportion to the amount of their claims.

Claims by creditors for compensation for damage caused to life and health of citizens, claims for the payment of alimony, as well as other demands of a person of a gross nature who were not satisfied in the order of execution of a ruling of the Economic Court on the recognition of physical Persons who are bankrupt or who have been partially or partially declared after the recognition of aEI bankrupt, can be declared after the completion of proceedings in the case of bankruptcy physical persons in full or in the dissatisfied part in accordance with the procedure established by civil law.

The procedure for imposing a levy on the property of an individual entrepreneur is regulated by Art. 52 of the Law “On Enforcement Proceedings” of 02.06.16 in the wording of 19.01.19. The listing of property which can not be recovered under the executive



documents, specified in the annex to this Law. In particular, a penalty can not be levied on such property belonging to the individual debtor on the right of ownership or is its share in the joint property necessary for the debtor, members of his family and persons who are in his possession, among which: used for non-business purposes, pedigree, dairy and livestock (one unit), rabbits (2 pairs), poultry (5 pieces), feeds necessary for their maintenance before chasing pastures; seed is required for regular seeding, but uncropped crop – for persons engaged in individual agriculture (except for land plotted for levying); agricultural inventory [2, p. 31].

Another side of bankruptcy of the farm proceeding by the legislation as an individual entrepreneur is that The Economic Court may, on a motivated petition of any of the participants in a bankruptcy, arbitration manager, or own initiative, may not allow the release of a physical persons from obligations, if the debtor: avoided fulfilling obligations to repay debts; has acted on the concealment of property; did not provide the necessary information or provided inaccurate information to the economic court that is considering the bankruptcy case, which are additional advantages for creditors. On the prohibition of the release of the physical person from obligations in connection with the closure of proceedings in bankruptcy business court makes a ruling that is subject to immediate execution.

On the other side a view to restoring the debtor's solvency and meeting the requirements of the creditors, the reorganization plan may include the sale of part of the debtor's property. The initial value of the property of the debtor being auctioned shall be determined in accordance with the Law of Ukraine "On valuation of property, property rights and professional appraisal activity in Ukraine" and other normative legal acts.

Conclusions. Having a thorough analysis of the legislation of Ukraine, which regulates bankruptcy of farmers, we can conclude that:

Firstly, the adoption of the new code on bankruptcy procedures did not resolve the problem of uncertainty of Ukrainian legislation regarding bankruptcy of farmers. The Code of Bankruptcy procedures virtually duplicates the provisions of the Law "On restoring the debtor's solvency and recognizing it as a bank-

rupt" and the Law "On Farmers' and in fact does not define a clear legal position of bankruptcy of farmers.

Secondly, the procedure for the bankruptcy of farmers under special legislation is appropriate for application, is effective, consistent and meets all the requirements of the modern mechanism of the cessation of the activity of the farmer, covering such a wide range of characteristics specific to the farm state support.

Thirdly, to resolve the question of the definition of the legislation governing bankruptcy of farmers, we propose to apply the principle of "special legal norm" and therefore strongly recommend to make changes to the special rule – Art. 36 of the Law "On Farms" and, accordingly, to Art. 95 of the Code of Bankruptcy Procedure, which provides that the bankruptcy of farmers should be carried out in accordance with the procedure provided for farms with the obligatory consideration of the particularities of farming by a farmer as a private entrepreneur.

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