

FIVE STEPS FOR BELARUS ON THE WAY TO HARMONIZATION OF BANKRUPTCY AND DEBT RESTRUCTURING REGULATION

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According to the Supreme Court of Belarus [1], on June 1, 2014, there were 1.805 cases of bankruptcy (in January 2014 – 1.648), of which 98.2% or 1.773 cases related to the bankruptcy of private enterprises (in January 2014 - 97.9% or 1.614). Only thirty-two cases involved state-owned enterprises and companies with state-owned shares in the authorized capital (in January 2014 - 34).

Development of the Belarusian National System of Bankruptcy (Insolvency) Institutions

The foundation of the modern system of bankruptcy institutions in Belarus was established by the Law ‘*On Economic Insolvency and Bankruptcy*’ dated 30 May 1991 (the ‘*Bankruptcy Law 1991*’). The *Bankruptcy Law 1991* consisted of 46 articles and was of conceptual nature only. It did not provide for detailed procedures and norms for the improvement of the financial situation at the time. The specifics of enterprises of different economic branches (i.e. private v. state-owned) were not taken into consideration, and different approaches to economical insolvency and bankruptcy procedures were not set out. The concept of quantitative estimation of insolvency, which was the basis for insolvency nomination, had evaluation nature and was not legally defined. Only in 1995 were the quantitative methods of estimation of changes in the balance sheet value and the structure of assets and liabilities for insolvency evaluation determined.

From 1991 to 2000, only minor amendments to the *Bankruptcy Law 1991* have been made. Because of the *Bankruptcy Law 1991* limitations, the number of bankruptcy cases in Belarusian courts was insignificant in the 1990s. There were only 56 bankruptcy proceedings in courts in 1998, approximately 200 – in 1999, and approximately 400 – in 2000. As a result, only 258 bankruptcy and insolvency cases were resolved by commercial courts over the period from 1991 to 2000.

Given the imperfections of the *Bankruptcy Law 1991*, the new Law ‘*On Economic Insolvency (Bankruptcy)*’ of 18 July, 2000, (the ‘*Bankruptcy Law 2000*’) was enacted effective 12 February, 2001.

The *Bankruptcy Law 2000* established the grounds for the recognition of the insolvent bankrupt by the Commercial Court and the declaration of the bankruptcy by the insolvent. It sets out the order and conditions of the procedure under the bankruptcy case, taking measures on prevention of the bankruptcy and other relations appearing at insolvency of the insolvent for

the purposes of conducting the readjustment. In the case of the impossibility of conducting the readjustment or non-presence of the grounds for it's conducting – during the process of liquidation of an insolvent corporate entity or the termination of the operations of the insolvent-individual entrepreneur and relieving it (him) from paying the debts.

The *Bankruptcy Law 2000* is innovative and experimental in nature. It sets out the mechanisms for the implementation of the legal and institutional framework for the bankruptcy (insolvency) in Belarusian economy. The effects and benefits of the Bankruptcy Law 2000 are evidenced by the growing numbers of bankruptcy cases in Commercial Courts during the last five years, as shown in Tables 1 and 2 and further detailed in Figures 1 and 2 below.

Modern Developments

Bankruptcy (insolvency) legislation can be broadly defined as the full set of legal norms and regulations that govern individual and corporate distress, administration, insolvency, and liquidation [2]. Well-designed bankruptcy (insolvency) legislation should meet a number of different, and sometimes competing, objectives:

- protecting creditors' rights;
- creating a company's repayment incentives;
- maximizing the total value of the recovered debt;
- balancing conflicting stakeholders' interests;
- encouraging entrepreneurship and risk taking;
- discouraging premature liquidation of sustainable businesses, but at the same time weeding out unprofitable businesses from the national economy;
- resolving bankruptcy and insolvency cases in a time and cost effective manner.

The above policy objectives became the foundation of the new Law '*On Economic Insolvency (Bankruptcy)*' signed by the President of the Republic of Belarus on 13 July 2012 (the '*Bankruptcy Law 2012*') and effective 25 January 2013.

The *Bankruptcy Law 2012* incorporates all the amendments made to the national bankruptcy (insolvency) legislation of the Republic of Belarus during the past 14 years. It is up to date with the current stage of the economic development of the Republic of Belarus and reflects the positive experience gained in the bankruptcy and insolvency practice since 2000. The *Bankruptcy Law 2012* consists of 20 chapters and 242 articles, which define:

- The legal terms, such as 'the debtor', 'the creditor', 'insolvency', 'the crisis manager', etc;
- The parties entitled to file for insolvency at the Commercial Court and the grounds for such applications;
- The liability of directors and officers of an insolvent company in a case of the insufficient allocation or lack of resources to satisfy the creditors' claims;

Table 1. Bankruptcy Cases in Commercial Courts in 2010-2014

As of	Supreme Court	Brest region	Vitebsk region	Gomel region	Grodno region	Mogilev region	Minsk region	Minsk city	Total
01.01.2010	10	107	141	184	46	92	149	671	1 400
01.01.2011	3	137	121	126	90	103	159	747	1 486
01.01.2012	1	124	116	145	124	89	151	767	1 517
01.01.2013	1	123	111	146	73	97	179	827	1 557
01.01.2014	1	152	128	185	64	124	229	765	1 648

Table 2. Bankruptcy Cases in Commercial Courts in 2014

As of	Supreme Court	Brest region	Vitebsk region	Gomel region	Grodno region	Mogilev region	Minsk region	Minsk city	Total
01.01.2014	1	152	128	185	64	124	229	765	1 648
01.02.2014	1	158	131	191	70	123	249	676	1 599
01.03.2014	1	157	132	187	67	130	268	669	1 611
01.04.2014	1	160	142	191	77	134	285	697	1 687
01.05.2014	1	155	136	193	79	134	293	727	1 718
01.06.2014	1	157	137	190	83	135	311	791	1 805

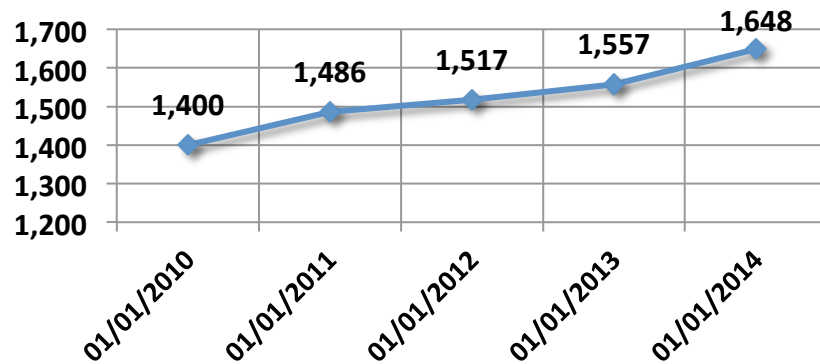


Fig. 1. Dynamic of bankruptcy cases in 2010-2014

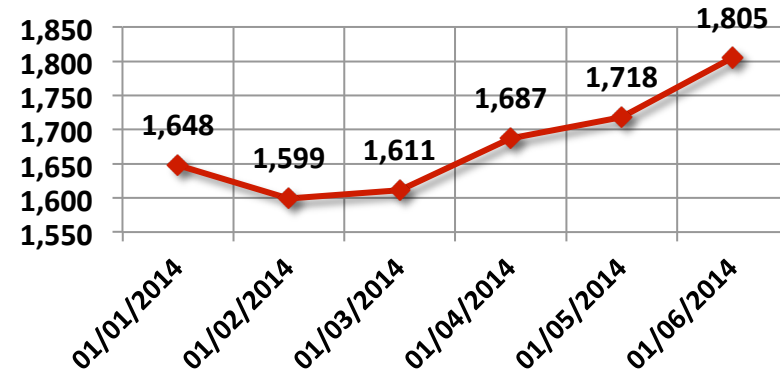


Fig. 2. Dynamic of bankruptcy cases in 01-06 of 2014

- The legal steps in the insolvency proceedings;
- The rights and obligations of crisis managers;
- The procedures for the settlement of creditors' claims;
- The rehabilitative procedures in the course of the insolvency proceedings; and
- The procedures for liquidation of insolvent businesses.

The main goals of the *Bankruptcy Law 2012* are:

- to create modern, transparent, and harmonized rules for enterprises to commence insolvency proceedings by the Commercial Court;
- to create monitoring mechanisms for the financial condition of the state-owned enterprises to avoid crisis;
- to define the liability of directors and officers, participants, and government agencies in relation to insolvent enterprises;
- to establish rehabilitative mechanisms for insolvent enterprises;
- to improve the economy by removing inefficient enterprises from the market;
- to provide the mechanisms for settling creditors' claims in a fair way and preserving the wholeness of the enterprises where possible;
- to reduce the time and cost of the insolvency proceedings; and
- to define the state guaranties for the social protection of workers' rights.

One of the most important innovations of the *Bankruptcy Law 2012* is the creation of the Unified Data Register of Economic Insolvency (Bankruptcy) in 2014. The creation of the Register provides the public with free on-line information about any debtor being in insolvency proceedings, the list of the assets for sale, the time and place of the auctions, information about all crisis managers in the Republic of Belarus and in which insolvency proceedings they are involved, the Commercial Courts' decisions in each of the proceedings, and other related information. The establishment of the Unified Data Register of Economic Insolvency (Bankruptcy) will create conditions for:

- the improvement of the transparency and currency of the information about all insolvency proceedings, including the list of assets being disposed; and
- the substantial reduction of the instances of fraud and abuse of powers in this field.

The *Bankruptcy Law 2012* also aims at streamlining the current system of training of crisis managers and regulating their activities, especially in the process of disposition of the debtor's property (including the ability to prevent the raider attacks).

Pursuant to the *Bankruptcy Law 2012*, the term of companies' bailout is extended to avoid an unnecessary legal action. It also introduces stricter conditions for the commencement of bankruptcy proceedings, expands the circle of persons, involved in the bankruptcy case, as well as the power of the court for appointment of Governors.

According to the drafters of the law, the established legal and regulatory framework will ensure the economic security of the state and help strategically important entities turned

into insolvency for various reasons to remain operational. The drafters also hoped for improving the ranking of Belarus in terms of ‘Resolving Insolvency’ of the World Bank [3].

At the present time, the Department for Insolvency of the Ministry of Economy is developing additional regulations to improve the bankruptcy (insolvency) legislation, taking into consideration the experience of other countries. The most significant recent changes in national bankruptcy (insolvency) legislation and their consequences are analyzed in Table 3 below.

Table 3. The list of recent reforms in Belarusian bankruptcy (insolvency) legislation

Reforms	Consequences	Legislation	Come into Force
1. Creditors’ assembly cannot approve selling of debtor’s assets above 100 base values without auction	It maximized the profitability of the sales, reduced the duration of satisfaction of creditors’ claims and shortened bankruptcy terms. The reform also prevented creditors collusion and limited the main creditors’ power	Law of the Republic of Belarus No. 104-Z of 4 January 2014	April 4, 2014
2. Debtors’ assets could be sold without any obligations and commitments arising out of labor relations and causing damage to life and health of individuals by debtor. Debts are excluded from the cost of debtors’ assets. These debts can be redeemed at the expense of profit from selling of the enterprise.	It shortened bankruptcy terms (unencumbered assets are more attractive for investors, fasten registration of documents and affiliation), ensured transparency, maximized the profitability of the sales, cut down other expenses and provided bigger amount of recovery of the creditors’ claims	Law of the Republic of Belarus No. 104-Z of 4 January 2014	April 4, 2014
3. Creditors’ assembly has the right to choose buyer and price for assets that haven’t been sold during the auction	It shortened bankruptcy terms (unencumbered assets are more attractive for investors, fasten registration of documents and affiliation), ensured transparency, maximized the profitability of the sales, cut down other expenses and provided bigger amount of recovery of the creditors’ claims	Law of the Republic of Belarus No. 104-Z of 4 January 2014	April 4, 2014
4. During bankruptcy procedures in case of a failure of auction the assets are sold to sole bidder at a starting price plus 5%. In case of failure of bidding – on bidder terms	It shortened bankruptcy terms and minimized bankruptcy procedures expenses	Law of the Republic of Belarus No. 104-Z of 4 January 2014	April 4, 2014
5. Asset’s starting price during first repeated auction as a part of bankruptcy procedure could be reduced up to 10% without creditor’s permission, second and third repeated auction – with creditor’s permission up to 50%, fourth and other repeated auction – with creditor’s permission more than 50%.	It shortened bankruptcy terms and bigger amount that can be recovered of the creditors’ claim	Law of the Republic of Belarus No. 104-Z of 4 January 2014	April 4, 2014
6. Unified Data Register of Economic Insolvency	It shortened bankruptcy terms, reduced bankruptcy procedures expenses and	Law of the Republic of	3Q 2014

(Bankruptcy) has been launched	bigger amount that can be recovered of the creditors' claim	Belarus No. 104-Z of 4 January 2014	
7. Quick access to information about debtor and minimization of possible debtor's delay tactics	Shortened bankruptcy terms, more clear debt enforcement procedure and bigger amount that can be recovered of the creditors' claim	Resolution of the Council of Ministers of Belarus No. 391 of 18 May 2013	May 23, 2013
8. The platform for electronic trading by debtor's assets has been created	It reduced the duration of satisfaction of creditors' claims, ensured transparency and maximized the profitability of the sales	Resolution of the Ministry of Economy of Belarus No. 100 of 21 November 2012	January 25, 2013
9. The list of legal entities of strategic importance for Belarusian economy that could not be bankrupted has been strongly reduced	It allowed ensuring creditor's right to claim assets of debtor belonging to the State (fully or partially), guaranteeing turnover of bankruptcy assets and engaging the property in civil turnover	Resolution of the Council of Ministers of Belarus No. 339 of 30 April 2013	1 May, 2013

In spite of all modern changes in the present Belarusian bankruptcy (insolvency) legislation, the Republic of Belarus has improved its Doing Business 2014 ranking and moved to 63 places from 64 only. Table 4 lists the overall 'Ease of Doing Business' ranking (out of 189 economies) and the rankings by topic. As we can see, the Belarusian level of 'Resolving Insolvency' topic has moved down by 18 positions from 2013 to 2014.

Table 4. Doing Business 2014 data for Belarus [4]

Topics	DB 2014 Rank	DB 2013 Rank	Change in Rank
Starting a Business	15	20	5
Dealing with Construction Permits	30	37	7
Getting Electricity	168	175	7
Registering Property	3	3	No change
Getting Credit	109	105	-4
Protecting Investors	98	95	-3
Paying Taxes	133	135	2
Trading Across Borders	149	150	1
Enforcing Contracts	13	13	No change
Resolving Insolvency	74	56	-18

To analyze the efficiency of insolvency frameworks across economies, Doing Business measures the time, cost and outcome of insolvency proceedings involving domestic entities. The time of recovering creditors' loans is recorded in calendar years. The cost of proceedings is recorded as a percentage of the value of the debtor's estate. The recovery rate for creditors depends on whether the distressed company emerges from the proceedings as a going concern or its assets are sold separately. The recovery rate is recorded as cents per dollar recouped by secured creditors through reorganization, liquidation or debt collection (foreclosure or receivership) proceedings.

If an economy had no reorganization, liquidation, receivership or foreclosure cases over the past 5 years, it receives a ‘no practice’ classification – meaning that creditors are unlikely to recover their money through a formal legal process, in or out of court. The ranking of the ease of resolving insolvency are based on the recovery rate, which is affected by the time, cost and outcome associated with the most likely insolvency procedure applicable to the indicator’s case study in each economy [5].

According to the above mentioned methodology Belarus has only 74th Ease of Resolving ranking (Table 5). Creditors of insolvent enterprises in Japan have higher recovery rates than in any other economy, and West Bank and Gaza had no reorganization, liquidation, receivership or foreclosure cases over the past 5 years.

Table 5. The Top 10 Economies with the Highest Ranking of Resolving Insolvency (compared to Belarus and West Bank and Gaza) [6]

Economy	Time (years)	Cost (% of estate)	Recovery rate (cents on the dollar)	Ease of resolving insolvency (percentile)	Ease of Resolving RANK
Japan	0,6	4	92,8	-	1
Norway	0,9	1	91,3	0,01	2
Finland	0,9	4	90,2	0,01	3
Singapore	0,8	3	89,4	0,02	4
Netherlands	1,1	4	89,2	0,02	5
Belgium	0,9	4	89,0	0,03	6
United Kingdom	1,0	6	88,6	0,03	7
Ireland	0,4	9	87,6	0,04	8
Canada	0,8	7	87,3	0,04	9
Denmark	1,0	4	87,0	0,05	10
Iceland	1,0	4	84,5	0,05	11
New Zealand	1,3	4	83,3	0,06	12
Germany	1,2	8	82,9	0,06	13
Austria	1,1	10	82,4	0,07	14
...
Belarus	3,0	22	36,9	0,39	74
...
West Bank and Gaza	no practice	no practice	-	1,00	189

However, the Doing Business Law Library (the largest free online business law library, <http://www.doingbusiness.org/law-library>) unfortunately has no reference of the above discussed Bankruptcy Law 2012 or any other recent amendments in the Belarusian bankruptcy (insolvency) legislation (see Table 3 above). The 2014 Doing Business Report [7] only indicates that Belarus, along with the Bahamas, Moldova and Ukraine, made the insolvency resolution easier in 2012/13 by implementing the regulation of profession of insolvency administrators (as an example, the Bahamas clearly defined professional requirements, duties, powers and remuneration of insolvency practitioners and liquidators).

The Doing Business summarizes the recent developments in the Belarusian bankruptcy (insolvency) legislation were as follows (Table 6):

Table 6. Business Reforms for Resolving Insolvency in Belarus [8]

Date	Description
DB 2014	Belarus improved its insolvency process through a new insolvency law that, among other things, changes the appointment process for insolvency administrators and encourages the sale of assets in insolvency. The law also regulates the liability of shareholders and directors of the insolvent company
DB 2013	Belarus enhanced its insolvency process by exempting the previously state-owned property of a privatized company from the bankruptcy proceeding, requiring that immovable property not sold in the auction be offered to creditors for purchase and allowing immovable property to be sold without proof of state registration in a bankruptcy auction if there are no funds to pay for the registration
DB 2011	Belarus amended regulations governing the activities of insolvency administrators and strengthened the protection of creditor rights in bankruptcy

Current Challenges

With respect to pre-bankrupt conditions at many state-owned enterprises on the micro-economic level, experts mentioned extremely incompetent management and poor accounting practices complicated by excessive labor force, high stock of unsold manufactured goods and low production efficiency.

Making such companies boost gross production would only aggravate their state of distress, with losses twice as high as the value of the production output increase, experts said.

As for the macro-economic reasons, experts mentioned incompetence of the government agencies, and a total discrepancy among tax, customs and price policies of the government. As a result, more than 40% of industrial companies of Belarus have no turnover assets whatsoever.

At the same time, experts support the idea of setting up a special fund to finance extrajudicial bankruptcy proceedings, as the readjustment requires a \$1,200 debt relief fee per worker.

We suggest the following key measures (based on our research of the bankruptcy and insolvency institute in the European Union and other developed economies), in order to harmonize the Belarusian bankruptcy and insolvency legislation with all-European, increase Belarus's investment attractiveness, and optimize its analytical procedures in accordance with the international practice [9-14]:

1. The research and implementation of the Resolving Insolvency methodology of Doing Business report of the World Bank and the International Monetary Fund to provide the directions for the Republic of Belarus ranking growth (currently – the 74th place);
2. The harmonization of indicators for evaluation of bankruptcy probabilities, as well as their calculation methods used in the Republic of Belarus and the European Union;
3. The development of national models of evaluation of bankruptcy probabilities using the databases of the National Statistical Committee of the Republic of Belarus, the Credit

Register of National Bank of the Republic of Belarus, Department on Debt Restructuring and Bankruptcy of the Ministry of Economics of the Republic of Belarus, and also the Unified Data Register of Economic Insolvency (Bankruptcy);

4. The development of an integrated methodology for assessing the bankruptcy probabilities based on domestic techniques to improve the accuracy and reliability of the forecasts;

5. The amendment of the current legislation, particularly the national Temporary Guidelines for Developing Financial Recovery Plan, to include methodologies for assessing the bankruptcy probabilities as a part of the national debt restructuring regulation.

Conclusion

‘Bankruptcy laws help people who can no longer pay their creditors get a fresh start ...’ – claims the Judicial Branch of the U.S. Government [15]. Notwithstanding the importance of all the reforms mentioned above, as plainly set out in our study, Belarus has considerable room for improvement of transparency and providing future development of bankruptcy and debt restructuring regulation in conformity with global standards.

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ПЯТЬ ШАГОВ БЕЛАРУСИ НА ПУТИ К ГАРМОНИЗАЦИИ ОТНОШЕНИЙ В СФЕРЕ БАНКРОТСТВА И САНАЦИИ

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Ключевые слова: Банкротство, платежеспособность, Ведение бизнеса

Гармонизация экономических отношений в сфере регулирования процессов банкротства и санации с общеевропейскими для повышения инвестиционной привлекательности национальной экономики и оптимизации аналитических процедур, связанных с санацией и ликвидацией в соответствии с международной практикой и подходами помимо исследования теории и практики института банкротства в Евросоюзе и в странах с развитой рыночной экономикой, регламентации различных процедур банкротства, потребует решения следующих основных задач:

1. Исследовать методику оценки показателя «Разрешение проблем неплатежеспособности предприятий» (Resolving Insolvency) по рейтингу Doing Business Всемирного банка и Международного валютного фонда и обосновать возможные пути и направления повышения рейтинга Республики Беларусь по данному показателю (в настоящее время – 74 место);

2. Обосновать возможность гармонизации состава показателей для оценки вероятности банкротства, а также методик их расчета, используемых в Республике Беларусь и странах Европейского союза;

3. Инициировать исследования с целью разработки отечественных моделей оценки вероятности банкротства с привлечением информационных ресурсов и баз данных Национального статистического комитета Республики Беларусь, Кредитного регистра Национального банка Республики Беларусь, Департамента по санации и банкротству Министерства экономики Республики Беларусь, а также создаваемого в настоящее время Единого реестра сведений об экономической несостоятельности (банкротстве);

4. Разработать интегральную методику оценки вероятности банкротства на основе отечественных методик с целью повышения точности и достоверности получаемых прогнозов;

5. Внести изменения в действующее законодательство и в частности во Временные методические рекомендации по разработке плана финансового оздоровления с целью включения методик оценки вероятности банкротства в качестве обязательных для обоснования плана санации.

Реализация перечисленных выше шагов позволит не только обосновать реальные достижения экономической науки, но и будет способствовать финансовому оздоровлению предприятий, выполнению ими объективно четких критериев банкротства, устранению причин его возникновения.

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