



SOME PROCEDURAL FEATURES OF THE CONSIDERATION OF CASES OF INSOLVENCY OF AN INDIVIDUAL: NATIONAL AND INTERNATIONAL EXPERIENCE

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Abstract

the article analyzes some procedural features of the consideration of cases of insolvency of an individual under the legislation of the Republic of Uzbekistan and foreign countries. In particular, the signs of insolvency, the subordination and jurisdiction of these categories of cases, the subjects who have the right to apply to the court about the insolvency of an individual, the specifics of initiating and considering a case on the recognition of an individual as insolvent were studied.

Keywords: insolvency, bankruptcy, individual, insolvency procedures, subordination, jurisdiction, debtor, creditor.

НЕКОТОРЫЕ ПРОЦЕССУАЛЬНЫЕ ОСОБЕННОСТИ РАССМОТРЕНИЯ ДЕЛ О НЕПЛАТЕЖЕСПОСОБНОСТИ ФИЗИЧЕСКОГО ЛИЦА: НАЦИОНАЛЬНЫЙ И МЕЖДУНАРОДНЫЙ ОПЫТ

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Аннотация

в статье анализируются некоторые процессуальные особенности рассмотрения дел о неплатежеспособности физического лица по законодательству Республики Узбекистан и зарубежных стран. В частности, изучены признаки неплатежеспособности, подведомственность и подсудность данных категории дел, субъекты, имеющие право обращаться в суд о неплатежеспособности физического лица, особенности возбуждения и рассмотрения дела о признании физического лица неплатежеспособным.





Ключевые слова: неплатежеспособность, банкротство, физическое лицо, процедуры неплатежеспособности, подведомственность, подсудность, дебитор, кредитор.

Consideration of cases of insolvency of an individual is regulated by the Economic Procedure Code[1] and the law “On Insolvency” of the Republic of Uzbekistan[2]. Chapter 14 (“Insolvency of an Individual”) of the Law “On Insolvency” of the Republic of Uzbekistan comes into force on January 1, 2023.

The analysis of substantive and procedural norms on the insolvency of an individual and experience of foreign countries makes it possible to calculate some of the procedural features of these categories of cases.

Signs of the insolvency of the debtor (an individual). By the Law “On Insolvency” of the Republic of Uzbekistan, the concept of insolvency means — the debtor's inability recognized by the court to fully satisfy creditors' claims for monetary obligations and (or) fulfill their duties on taxes and fees.

Signs of the insolvency of the debtor - an individual is the inability to satisfy the claims of creditors for monetary obligations and (or) to fulfill their duties on taxes and fees in full:

- if the relevant obligations and (or) obligations for mandatory payments are not fulfilled by the debtor - an individual within three months from the date of their occurrence;
- if the claims against the debtor - an individual amount to at least two hundred times the size of the base settlement value.

Unlike Uzbekistan, in foreign countries, in particular in Russia, a citizen is obliged to apply to an arbitration court with an application for declaring him bankrupt if satisfaction of the claims of one creditor or several creditors leads to the impossibility of the citizen to fulfill monetary obligations and (or) the obligation to pay mandatory payments in full to other creditors and the amount of such obligations and obligations in the aggregate is not less than five hundred thousand rubles, no later than thirty working days from the day when he knew or should have known about it[3].

In addition, on the basis of paragraph 2 of Article 213.4. of the Law "On Insolvency (Bankruptcy)" of the Russian Federation, a citizen has the right to file an application for declaring him bankrupt in the arbitration court in the event of foreseeing bankruptcy in the presence of circumstances that clearly indicate that he is unable to fulfill monetary obligations and (or) the obligation to pay mandatory payments within





the prescribed period, while the citizen meets the signs of insolvency and (or) signs of insufficiency of property.

To declare yourself bankrupt in Canada (Quebec), a citizen must have a debt to creditors of at least \$ 1,000 and be unable to fulfill his obligations [4]. In the UK, an individual is considered insolvent if they do not have sufficient assets to cover their debts or if they cannot pay debts as they fall due [5].

Subordination and jurisdiction of insolvency cases. Cases on the insolvency of an individual, according to the rules of exclusive subordination, fall within the competence of economic courts[6].

The insolvency case is considered by the court on the basis of an application of a person (body) who has the right to appeal to the court at the place of residence of an individual. The general rule of territorial jurisdiction applies[7].

In the United States, bankruptcy is determined by special bankruptcy courts based on the Bankruptcy Code. Also, in Germany, bankruptcy cases of individuals and legal entities are subject to consideration only in court. The procedure for considering cases and declaring bankruptcy proceedings is enshrined in the legislative acts of the Federal Republic of Germany on the insolvency of individuals and legal entities.

Subjects entitled to apply for insolvency of an individual. Subjects that can apply to the court with an application for declaring an individual insolvent:

- Debtor – an individual;
- Creditor;
- Body of the state tax service;
- Other authorized bodies.

In the cases provided for by paragraph two of part one of Article 9 of the Law “On Insolvency”, if the total amount of all obligations of an individual is not less than two hundred times the amount of the base settlement amount, the individual, no later than thirty days from the date of the occurrence of such a circumstance, must apply to the court with an application for initiating insolvency proceedings against itself.

An application for the insolvency of an individual may be filed by a creditor, the state tax service or another authorized body if there is a court decision that has entered into legal force confirming the claims of creditors for monetary obligations and duties on taxes and fees.

In the absence of a court decision, an application for declaring an individual insolvent may be submitted by the creditor according to the following requirements:

- Claims based on notarized transactions;
- Requirements certified by the executive inscription of a notary;





- Claims on the basis of documents submitted by the creditor for monetary obligations recognized but not fulfilled by an individual;
 - Claims for the recovery of alimony for minor children who do not need to establish paternity, renounce paternity (maternity) or involve other interested parties.
- Insolvency proceedings. Unlike a legal entity and an individual entrepreneur, when considering a case on the insolvency of a debtor - an individual, the following procedures are applied:
- Debt restructuring;
 - Bankruptcy and sale of property.

In the Russian Federation, insolvency cases are regulated by the Federal Law “On Insolvency (Bankruptcy)” dated October 26, 2002 No. 127-FL[3]. The procedure for declaring a citizen bankrupt is regulated by Chapter 10 of the Federal Law “On Insolvency (Bankruptcy)”. In the consideration of cases related to the bankruptcy of citizens, mechanisms are used to restructure the debts of an individual, the sale of property by a citizen, and a settlement agreement is applied (Article 213.2. Procedures used in a citizen's bankruptcy case). It should be noted that, under national law, a settlement agreement is not an independent procedure. But the Law allows the conclusion of a settlement agreement in the course of proceedings on the insolvency of an individual. The conclusion of a settlement agreement is the basis for terminating proceedings on the insolvency case of an individual (Article 225 of the Law “On Insolvency” of the Republic of Uzbekistan).

It should also be noted that new rules on the insolvency of citizens are enshrined in Russian legislation. In particular, the Unified Federal Register of Bankruptcy Information was formed. This register displays information about bankrupt citizens, as well as bankrupt legal entities. In addition, a procedure has been established for considering a bankruptcy case of a citizen in the event of his death, as well as an out-of-court bankruptcy procedure for a citizen.

Features of the initiation and consideration of a case on the recognition of an individual as insolvent. Not later than five days from the date of receipt of an application for declaring a debtor - an individual insolvent, the judge issues a ruling on accepting the application and initiating an insolvency case or on refusing to accept or return the application.

In the ruling on initiating a case on the insolvency of an individual, the court imposes on the debtor - an individual the obligation, within fifteen days from the date of receipt of the court ruling, to submit to the court a written opinion with the following documents attached:





- Copies of real estate documents, securities, shares in the authorized capital (authorized capital) of a legal entity, vehicles, as well as transactions concluded by an individual in the period three years prior to the date of application;
- An extract from the register of shareholders (participants) of a legal entity in which an individual is a shareholder (participant) (if any), etc.

It should be noted that this rule does not apply if an application for insolvency is filed by a debtor - an individual.

Based on the results of consideration of the case on declaring an individual insolvent, the court adopts one of the following judicial acts:

- Decision on the introduction of the procedure for restructuring the debt of an individual;
- The decision to declare an individual bankrupt and start the procedure for selling the property of an individual;
- Decision to reject the application.

Unless proven otherwise, an individual is considered insolvent if at least one of the following circumstances exists:

- In case of non-fulfillment of more than ten percent of the total amount of monetary obligations and (or) obligations to pay taxes and fees for more than one month from the date when such obligations must be fulfilled;
- The amount of debt of an individual exceeds the value of his property;
- If there is a decision to terminate enforcement proceedings due to the absence of property from an individual.

If there is information about the opening of an inheritance in respect of an individual, the court has the right to suspend proceedings on the insolvency case of an individual until the issue of the fate of the inheritance is resolved.

It should be noted that, in contrast to national legislation, the bankruptcy procedure of a citizen in all countries has such consequences as restrictions on the property and civil rights of the debtor, which may be more significant or less significant. Serious restrictions in relation to the debtor are provided by the legislation of the USA, Japan, France, Spain, when the debtor, in addition to property, may be deprived of certain civil rights. In the UK, for example, the debtor cannot be a member of a bar association, a real estate agent, a bankruptcy trustee, a stock broker, or a head of a commercial structure. The status of bankrupt has prolonged consequences, as a rule, for a period of five or more years, restrictions are imposed on him when obtaining loans, when crossing the border and doing business (France, Great Britain, Australia). In France, banks are blacklisted, so a former debtor may have difficulty getting a new loan over the next eight years[8].



Based on the foregoing, in conclusion we can note that in each foreign countries the consideration of cases of insolvency of an individual has specific procedural features. Since the institution of insolvency of individuals is a novelty in the national legislation, further monographic scientific research of these categories of cases and improvement of legislation is required. In particular, it is proposed to create a unified register of information on the insolvency of legal entities and individuals, to establish in the legislation the procedure for considering a case on the insolvency of an individual in the event of his death and an out-of-court procedure for the insolvency of individuals. The inclusion of these norms in national legislation serves to ensure the protection of the rights of individuals and creditors.

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