

Банкротство как способ реформирования компании

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Аннотация

В статье представлены теоретические основы понятий «банкротство» и «реорганизация предприятий». Перечислены основные задачи риск-менеджмента, и определено использование финансовых результатов организации в целях оценки ее финансово-хозяйственного состояния. Выявлены рекомендации по устранению возникших проблем. Объяснена необходимость применения качественных профессиональных навыков риск-менеджмента.

Ключевые слова: предпринимательская активность, банкротство, процедура банкротства, реорганизация, финансовые показатели.

Financial crisis management of organization

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Abstract

The article presents the theoretical foundations of the concept of bankruptcy and reorganization of enterprises. The main tasks related to the assessment of its financial and economic status are listed. Recommendations for resolving the problems have been identified. The necessity of applying high-quality professional risk management skills is explained.

Keywords: entrepreneurial activity, bankruptcy, bankruptcy proceedings, reorganization, financial performance.

An integral part of the market economy is the institution of bankruptcies. It serves as a powerful incentive for the effective work of business structures, guaranteeing at the same time the economic interests of creditors, as well as the state as a General regulator of the market.

The issue of insolvency (bankruptcy) is one of the most important for the economy of any country. The Russian economy is going through hard times today. These are such negative phenomena as non-payment crisis, structural crisis, lack of investments, imbalance of expenditure and revenue parts of the state budget, contradictions between laws and other regulations, etc. These features cause a special predisposition of many Russian enterprises to crisis and pre-bankruptcy phenomena.

Currently, in Russia there is a high socio-economic importance of the institution of bankruptcy, as well as the need to improve the legal acts of insolvency (bankruptcy).

The relevance and practical significance of the topic of this work is due to a number of reasons:

First, in a market economy, with fierce competition of economic entities, the very concept of insolvency and bankruptcy will always take place.

Secondly, the key problem in the Russian economy today is the debt crisis, and a good half of Russian enterprises should be declared bankrupt, and funds should be redistributed in favor of efficient production, which undoubtedly contributed to the recovery of the Russian market.

Thirdly, the problem of bankruptcy of organizations lawyers have to face every day more often, and the literature that covers this issue in detail is not enough.

Bankruptcy (insolvency) is the inability of the debtor recognized by the arbitration court to fully satisfy the claims of creditors on monetary obligations and (or) fulfill the obligation to pay mandatory payments.

The concept of bankruptcy is divided into several main types:

1. The present bankruptcy. This type is characterized by the inability of the enterprise to restore its solvency due to real losses of equity and debt capital. The high level of capital losses,

the increase in the share of accounts payable make it impossible to conduct business, as a result of which it is declared insolvent by the arbitration court in accordance with the bankruptcy law.

2. Business bankruptcy. The term business bankruptcy is used by Dun & Bradstreet, the largest Agency for bankruptcy statistics, as a characteristic of this type of business that has ceased operations, causing losses to its creditors. Thus, the business of "Dun & Bradstreet" is defined as insolvent, even if it has not formally passed the bankruptcy procedure [10].

3. Temporary (conditional) bankruptcy characterizes the state of insolvency of the organization, which is caused by the excess of the asset of the balance sheet of the enterprise over its liability, as well as a large amount of receivables and overstocking of finished products. Such type of bankruptcy of the enterprise at anti-crisis management with use of means of sanitary processing does not lead to its liquidation. Within the framework of arbitration procedures of administrative and external management, there is a real opportunity to restore the solvency of the enterprise, reorient production taking into account the requirements of the market and ensure its sustainable development in the long term.

4. Intentional (intentional) bankruptcy, is associated with the deliberate creation of managers and owners of the state of its insolvency, causing economic harm (theft of enterprise funds in various ways) in the personal interests and interests of other persons. the Bankruptcy Trustee identified the facts of intentional bankruptcy are transferred to the court to bring the perpetrators to criminal responsibility.

5. Fictitious bankruptcy is a false Declaration of insolvency by an enterprise in order to mislead creditors in order to obtain benefits from them to pay financial obligations, or to repay the debts of the company with non-competitive products. Guilty of false Declaration of the enterprise insolvent, in concealment of assets for repayment of accounts payable are pursued on representation of arbitration managers.

Forms of bankruptcy:

Bankruptcy is conditionally divided into voluntary and compulsory, but in both cases the enterprise can be liquidated only in the presence of the corresponding decision of court.

1. Voluntary-if the revival of the company is unprofitable, according to creditors, it is subject to voluntary liquidation. Voluntary liquidation is carried out by applying to the court of the head, the insolvency of the enterprise is considered on a voluntary basis.

2. Compulsory-compulsory bankruptcy can be based only on a court decision, in case of appeal to the Arbitration court of creditors. Forced bankruptcy can develop in two ways:

– In the appeal to the court of a competitor who bought the debt in order to declare the company bankrupt and seize its assets

– When applying to the court of the main creditors in order to obtain debt from an insolvent company.

The code of laws, which establishes a number of legal rules governing bankruptcy, has a complex structure. It is based on the following regulations:

1. Federal law No. 127 of 2002 on insolvency;
2. Civil code of the Russian Federation, separate chapters on bankruptcy of an individual entrepreneur (natural person) and a legal entity;
3. Other laws adopted to regulate the insolvency industry and the participants of property relations in this situation.

Legal entities: legal regulation of insolvency of legal entities is carried out by article 65 of the Civil code of the Russian Federation. It is applied if the legal entity which is the commercial enterprise (except for state institutions), cannot pay off in due time debt at the expense of the property. Thus satisfaction of requests of creditors is made in the separate priority provided by the Civil code of the Russian Federation in Art. 64. Other issues related to the recognition of bankruptcy of legal entities are regulated by the legislation of the Russian Federation [4].

Civil regulation: as a result of the initiative of the legislators, the provisions related to the regulation of bankruptcy of citizens have gained special importance. This is evident in comparison with other Federal laws adopted after the introduction of the insolvency law [6].

In accordance with the Civil code of the Russian Federation, This Federal law establishes the grounds for declaring the debtor insolvent (bankrupt), regulates the procedure and conditions for the implementation of measures to prevent insolvency (bankruptcy), the procedure and conditions for bankruptcy procedures and other relations arising from the inability of the debtor to satisfy in full the claims of creditors.

This Federal law applies to all legal entities, except for state-owned enterprises, institutions, political parties and religious organizations.

The relations connected with insolvency (bankruptcy) of citizens, including individual entrepreneurs, are regulated by this Federal law. The rules governing the insolvency (bankruptcy) of citizens, including individual entrepreneurs, and contained in other Federal laws may be applied only after the relevant amendments and additions to this Federal law.

If an international Treaty of the Russian Federation establishes other rules than those provided for by this Federal law, the rules of the international Treaty of the Russian Federation shall apply.

The provisions of this Federal law shall apply in relations regulated by this Federal law with the participation of foreign persons as creditors, unless otherwise provided by an international Treaty of the Russian Federation.

Decisions of foreign courts on insolvency (bankruptcy) are recognized in the territory of the Russian Federation in accordance with international treaties of the Russian Federation [2].

In the absence of international treaties of the Russian Federation, decisions of courts of foreign States in cases of insolvency (bankruptcy) are recognized in the territory of the Russian Federation on the basis of reciprocity, unless otherwise provided by Federal law [12].

Reorganization of a legal entity – the legal procedure for converting the structure of the organization, followed by amending the title documents and transfer of rights and obligations to other entities. There are several legally approved forms of reorganization of enterprises: merger, accession, division, separation, transformation. The main reasons that lead to the need to change the legal form of ownership:

1. the growth of the business (for example, converted into the LLC, CJSC, OJSC);
2. deterioration of the financial situation (there is a need to join one company to another);
3. liquidation of a legal entity (alternative form-one of the legal types of reorganization);
4. creation of a joint venture on the basis of an existing firm;
5. change of specialization of the company (change of structure of the organization).

All legal aspects related to the reorganization process are specified in articles 57-60 of the Civil code of the Russian Federation. According to statistics, every year 12% of small enterprises in Moscow and the Moscow region initiate the procedure of reorganization, 5-6% of them expand their business, 4% - join large companies, 2% - sell firms (new owners transform enterprises, changing the legal form).

Rules of voluntary reorganization of LLC are defined in Art. 51 of the civil code "on limited liability companies", provisions on succession at reorganization regulate Art. 52-56 of the civil code of the Russian Federation, rules on labor relations are fixed in article 75 of the Labor code of the Russian Federation [10].

Phases (stages) reorganization of enterprises [11]:

The first stage: training is the basis for the successful implementation of the entire reorganization program and ensuring in practice the effectiveness of mobilization, organization and creation of interest of employees who should implement it. Always keep in mind not to lose sight of the fact that the reorganization process is not only technical and organizational, but also social, affecting the interests of different groups - owners, managers and employees at different levels. The results of the work at this stage should be: the development of a kind of "reorganization mandate" for the entire organization, including the organizational structure, composition and position of the group that will be directly involved in the reorganization, an action plan and actions.

Second stage: gathering information and identifying problems-the objective of this stage is to identify consumer goods and services. To this end, customers, their long-term and current needs are identified; activities necessary for the successful implementation of the goal are identified; activities are defined. Active and perspective structural schemes of the organization, the required resources, volumes and periodicity of production and rendering of services are specified; systematization of processes of reorganization is carried out.

Third stage: developing a common and complete understanding of the problems to be solved the aim of this stage is to develop ideas that can lead to the early achievement of the goal. This stage allows to reveal organizational problems of the current process, information flows. The activities of the current process, tasks and opportunities for its improvement are planned, the planned changes are coordinated [8].

Stage four: organizational and technical design, the purpose of this stage is to give a technical description of the reorganization process. The technology, standards, procedures, systems and controls used in the reorganization process are described. Models of interaction of social and technical elements are created simultaneously with social construction. At this stage preliminary plans of systems and procedures of development, software for service, re-equipment of production capacities are made.

Stage five: social design the purpose of this stage is to identify the social aspects of the reorganization process. At the stage of social design, a description of the company, personnel, nature of work, career, incentives used in the reorganization, a plan of interaction of social and technical elements is drawn up. At the same time, preliminary plans are being developed for hiring employees, training and education, and new staff placement.

Stage six: transformations the objective of this stage is to develop a pilot version and a complete production reorganization project. Some tasks at this stage can be repeated.

Forms of reorganization of enterprises

The civil code of the Russian Federation provides for 5 forms of reorganization of the enterprise: accession, division, merger, separation and transformation:

1. Accession - reorganization of a legal entity, as a result of which one or more enterprises are excluded from the list of property with the transfer of all rights and obligations to another legal entity. The rights and obligations of the subsidiary are transferred to the successor in accordance with the transfer act. As a result of the transaction, a new legal entity is not formed, but ceases to exist independently added firm (liquidation by accession). The accession takes place on the basis of the decision of the management of the legal entity (successor and affiliate), as evidenced by the minutes of the meeting of the Company. Joining LLC to LLC is One of the ways

to keep unprofitable or inefficient business, guarantee the preservation of jobs and production capacity.

2. Separation is one of the most common forms of transformation of diversified enterprises in Russia. Separation means the termination of the enterprise by dividing it into several new firms. In this case, the original organization ceases to exist as a legal entity. Very often, household organizations that provide services to the population are divided into several firms specializing in one direction. For example, the company was engaged in translations, gave foreign language lessons, provided legal services. As a result of the work of the division, several organizations were formed, each of which provides professional services at a high professional level. Reorganization is considered to be completed after making records on the establishment of legal entities in the property register (on the basis of the separation balance). The dividing balance sheet is a document reflecting the provisions on the succession of a legal entity under obligations to creditors, partners, debtors, budget organizations.

3. Merger-a characteristic feature of this form of reorganization is that all participants in the transformation process are liquidated, and their rights and obligations are transferred to the newly created legal entity. The procedure begins with the adoption of a decision on the reorganization of each enterprise participating in the legal transaction and the conclusion of an appropriate contract between them. The IRS takes over the tax records of the old company and registers the new organization. Paragraph 50 of the Tax code establishes that the successor is obliged to pay all taxes of the reorganized enterprise. If the liquidation of the company will be held brokerage firm, the management of the enterprise must submit to specialists all the documents of title (Charter, Memorandum, certificate of registration) and the minutes of the General meeting, orders for new managers, balance sheet. The merger of several LLC in one enlarged enterprise allows a new legal entity to increase assets, pay debts to creditors, develop new economic activities. In some cases, the reorganization of a legal entity in the form of a merger saves unprofitable firms from ruin, profitable organizations from raider attacks.

4. Selection-if the management of one of structural divisions wants to create the separate enterprise, in this case reorganization of LLC by a method of allocation is initiated. The rights and obligations to new enterprises are transferred on the basis of the separation balance. In case of separation and separation of several legal entities from one enterprise, the decision on reorganization may be made against the will of the management of the existing enterprise, on the basis of a court decision or a decision of the authorized bodies (Antimonopoly Committee).

5. Transformation is a change in the legal form of an existing legal entity. According to Russian legislation, economic companies can be transformed by choosing the most convenient form of doing business. A joint-stock company can be transformed only into an LLC or a production

cooperative. A limited liability company may change the form of ownership and be transformed into a subsidiary, joint stock company (JSC or CJSC), partnership or production cooperative. The decision on the transformation is made by the General meeting of the company's members, which determines the procedure and conditions, develops a new Charter, transfer act.

The first three of the described variants of reorganization of the enterprises entail their termination (liquidation) of one or several companies as a result of reorganization.

Having studied all aspects of bankruptcy we can say that it has become a fact in Russia. On the one hand bankruptcy-collapse, death of the enterprise. But on the other hand - it is a push to change for the better, the possibility of revival, taking into account past mistakes. The order of withdrawal of the enterprise from a crisis state is established by the law.

In the course of my internship, I discovered that the reorganization and liquidation (bankruptcy) of an enterprise is an independent legal institution in Russian civil law. These are transactions, the subject of which is the property complex, and in this regard (on the basis of the subject) they are on a par with other contracts that have an identical subject, in particular, with contracts of sale and lease of property complexes.

The dualistic nature of such transactions is a feature of Russian civil law and is manifested, on the one hand, in the fact that it includes the principle of succession between entities-reorganized enterprises, and on the other-the principle of " succession " in respect of a special subject - the property complex. The first is characterized by a universal sequence, the second by a singularity. This gives rise to the internal inconsistency of this institution in domestic law.

As a result of the internship, I can add the following: at present, it is hardly possible to talk about a unified approach to a number of key issues arising in the reorganization in any form. It should be noted that there are significant gaps in the reorganization legislation. Unclear formulations, inconsistency of opinions of various state bodies only increase the list of controversial issues.

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