*UDC 347.738:629.7 (045)*

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# AVIATION ENTERPRISES RESTRUCTURING AS A WAY TO AVOID BANKRUPTCY

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**Abstract.**

***Purpose:*** *the task of scientific research is to determine legal methods to avoid the bankruptcy of aviation enterprises. Particularly, the article deals with the process of bail-out before the initiation of a bankruptcy case as one of the effective measures to avoid insolvent debtor of the aviation enterprises.* ***Methods:*** *comparative and systemic methods for disclosing the restructuring of aviation enterprises.* ***Discussion:*** *it was estimated that the most effective ways to avoid bankruptcy of the aviation enterprise are the bail-out of the debtor before the initiation of a bankruptcy case. The bail-out procedure is a system of measures to restore the debtor's solvency, which can be carried out by the founders of the debtor's company (participating partners and shareholders), owner of debtor's property (the body authorized to manage the property), the debtor's lender, other persons for the purpose to avoid bankruptcy of the debtor by taking organizational, economic, managerial, investment, technical, financial, economic, legal measures in accordance with the law until the violation of the laws in the case of bankruptcy.*

***Keywords:*** *to avoid bankruptcy, debtor, restructuring.*

## 1. Introduction

The current level of social and economic development of aviation enterprises in Ukraine largely depends on the manifestations of globalization and integration processes both at the interstate level and at the level of the country's economy. The problems of management of aviation industry, restructuring, appreciation of market value, financial firmness, co-operating, enterprises with an environment in the conditions of market relations are accompanied by the row of problems that create pre-conditions for the search of the newest approaches and requirements to the increase of competitiveness.

Results of the market reforms conducted in Ukraine confirmed the necessity of further realization of changes in the system of bankruptcy. At the same time, there is a practically unregulated problem of application measures to avoid bankruptcy of aviation enterprises. Conceptual provisions of the mechanism to avoid bankruptcy should be implemented in such areas as legal, economic and organizational-informational. Indisputably, in the sphere that we are considering, the main is the legal aspect the idea of which is to prevent the bankruptcy of aviation enterprises. Indeed, the legislator introduced amendments to the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt» about the use of measures to avoid the bankruptcy of the debtor. However, the problems of bankruptcy remain. But even the perfection of regulatory acts does not always mean the effectiveness of their functioning.

According to David M. Primo and Wm. Scott Green, the fears surrounding reduced entrepreneurship due to stricter bankruptcy laws may be overstated [1].

## 2. Results

In accordance with Michelle J. White, bankruptcy is the legal process by which the debts of firms, individuals, and occasionally governments in financial distress are resolved. Debtors file for bankruptcy because they cannot pay their debts as they come due and/or because they have liabilities in excess of their assets [2].

The Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt» (hereinafter - the Law) in the new version of 2011 provides that the founders of debtor's company (participating partners and shareholders), owner of debtor's property (the body authorized to manage the property), central executive body, the bodies of Autonomous Republic of Crimea, local self-government bodies are obliged under their authority to take timely measures to prevent the bankruptcy of the debtor [4].

In case of signs of bankruptcy, the head of the debtor of the aviation enterprise is obliged to send information about the presence of signs of bankruptcy to the founders of debtor's company (participating partners and shareholders), to the owner of the property of the debtor (the body authorized to manage the property).

The founders of debtor's company (participating partners and shareholders), owner of debtor's property (the body authorized to manage the property), the debtor's lender, other persons for the purpose to avoid bankruptcy of the debtor can be granted financial assistance for repayment of debtor's debts to creditors, including obligations to pay taxes and duties (mandatory payments), insurance payments on compulsory state pension and other social insurance and bail-out of the debtor before the initiation of the bankruptcy case [3].

When the debtor takes financial assistance he makes commitments before persons, who provided such assistance, to the in accordance with the procedure established by law.

Once a company is granted bankruptcy protection, it can terminate contractual obligations with workers and clients, avoid litigation claims, and explore possible avenues for reorganization [5].

One of the effective measures to avoid bankruptcy of the debtor of the aviation enterprises (hereinafter - debtor) is his the bail-out before the initiation of a bankruptcy case. The bail-out procedure is a system of measures to restore the debtor's solvency, which can be carried out by the founders of the debtor's company (participating partners and shareholders), owner of debtor's property (the body authorized to manage the property), the debtor's lender, other persons for the purpose to avoid bankruptcy of the debtor by taking organizational, economic, managerial, investment, technical, financial, economic, legal measures in accordance with the law until the violation of the laws in the case of bankruptcy.

The article 106 of the Civil Code of Ukraine established that merger and acquisitions, division and distribution of legal entity carry out by the decision of its participants or a body of a legal entity authorized by the article of association, and in cases stipulated by law, by a court decision or relevant state bodies. The law may provide the relevant state authorities to obtain the consent of the termination of the legal entity by merger or acquisition [6].

In the case of the merger and acquisition of legal entity, all its rights and obligations are transferred to a new entity created.

Affiliation takes place when one or several legal entities are affiliated to the other legal entity already in operation, with all the rights and duties of the legal entity under reorganisation passing to the latter.

Distribution means distributing the rights and duties of the legal entity under reorganisation to other legal entities in operation.

In the case of the division the establishment of two or more new legal entities on the basis of one legal entity under reorganisation, to which the rights and duties of the reorganised legal entity pass in certain proportions on a ground of the separate act (balance sheet) [7].

The legislator in Part 3 of Art. 29 of the Law of Ukraine "On Restoring a Debtor's Solvency or Recognizing It Bankrupt" gives a definition of restructuring. Restructuring means the implementation of organizational-economic, financial-economic, legal, technical measures aimed at the reorganization of the legal enterprise, in particular, by its division with the transfer of debt obligations to a legal entity that is not subject of the bail-out, to change the form of ownership, management, organizational and legal form, which will facilitate the financial improvement of the enterprise, increase the efficiency of production, increase the volume of production of competitive products and fully or partially meet the requirements of creditors.

The successful definition of restructuring was proposed by A. Podderyogin. The restructuring means the implementation of organizational, economic, legal, production and technical measures aimed at changing the structure of the enterprise, its management, forms of ownership, organizational and legal forms that can lead the company to financial healing [8, p. 142]. According to V. Goncharov, the restructuring of the enterprise is a change in the technological, production, general and organizational structures, as well as in the balance sheet in order to preserve (expand) the markets for sales, income and capital [9, p. 78].

Consequently, the main content of the restructuring is the complete or partial change of the owner, the authorized capital of the legal entity and the change in the organizational form, the new organization of activity by changing the structure, principles and its types.

In our opinion, the reorganization should be understood as a new legal entity, to which, in the universal continuity of legal entity, all or part of the property rights and obligations that are based on a certain legal title have passed (ownership, a right of economic management, a right of operational management).

A.V. Cherep noticed that the reorganization of the enterprise might include the following measures:

– replacement of company management;

– partial or full privatization;

– partial closing;

– bankruptcy proceedings;

– division of large enterprises into parts;

– selling (or leasing) part of fixed assets of enterprises;

– the sale of unnecessary equipment, materials;

– reduction of the number of employees in the enterprise.

The most important condition for making decisions on the choice of specific reorganization measures is the availability feasibility studies When conducting the restructuring of the enterprise by its legal unbundling the main condition is to have the business plan of new enterprises [10, p. 169].

Consequently, one of the measures of bail-out before initiation of a bankruptcy case can be a procedure for termination of a legal entity by merger and accession, division and distribution on the basis of Art.107 of the Civil Code of Ukraine. However, Part 1 of Art. 59 of the Commercial Code of Ukraine states that the termination of the entity's activity is carried out by its reorganization or liquidation - by the decision of the owner (owners) or bodies authorized, by the decision of other persons - founders of the entity or their legal successors, and in cases stipulated by the laws, by a court decision. For example, by the decision of the Supreme Economic Court of Ukraine of 15.12.2010, No. 8/27, the Economic Court terminates the proceedings in the bankruptcy case, if the liquidation of a legal entity occurred before the opening of a bankruptcy case. According to the extract from the Unified State Register, the debtor was in a state of termination, and according to the report of the Department of State Registration of the Lviv City Council dated June 9, 2010, No. 2-6,600 / 03 / 01-1251 (ap.34), the state registration of the termination of the debtor was conducted only on 02.06.2010, that is, after the initiation of proceedings in this case on bankruptcy. Thus, the state registration of the termination of the debtor after the violation of the proceedings on his bankruptcy was carried out unreasonably [11].

Consequently, in a bankruptcy case, the court having established the fact of the illegitimate liquidation of the debtor, must decide on the cancellation of the state registration of the termination of the legal entity - the debtor in accordance with the Law of Ukraine «On State Registration of Legal Entities, Natural Persons - Entrepreneurs and Public Formations».

The creditor may require from the legal entity whose performance of the obligation is not secured, the termination or pre-execution of the obligation or the performance of the obligation, except in cases provided for by law. Upon expiration of the deadline for claims by creditors and satisfaction or rejection of these claims, the termination fee of a legal entity consists of a transfer or distribution balance sheet, which must contain a succession clause regarding all obligations of the terminated legal entity in respect of all its creditors and debtors, including obligations disputed by the parties. The

transfer act and the balance of payments are approved by the participants of the legal entity or the body that has decided to terminate it, except in cases established by law.

Signed by the chairman and members of the commission on termination of the legal entity and approved by the participants of the legal entity or the body that has made the decision to terminate the legal entity, copies of the transfer act and balance of payments are transferred to the body that carries out the state registration of the suspended legal entity at the place of its state registration, as well as to the body which carries out the state registration of the legal entity - the successor, at the place of its state registration.

Violations of Part 2 and 3 of Article 107 of the Civil Code of Ukraine are grounds for refusal to enter into a single state register of the record on termination of a legal entity and state registration of created legal entities - successors [6].

The successor legal entity formed as a result of the division of the legal entity has a subsidiary liability for the obligations of the suspended legal entity, which, according to the distributive balance, have been transferred to another legal entity, the successor. If the successor legal entities formed as a result of the division, more than two, they both bear subsidiary liability in responsibility. There are cases in which there are several legal successor of the legal entity and it is impossible to determine the legal successor in relation to the specific obligations of a suspended legal entity. The successors legal entities share responsibilities to creditors of a legal entity that has ceased to exist.

A distribution of a legal entity is a change in its organizational and legal form. In case of distribution, a new legal entity gets all property, all rights and obligations of the previous legal entity.

A division of a legal entity is the transition from according to a distributive balance of a part of the property, the rights and obligations of a legal entity to one or several newly created legal entities. After making a decision about the division, the participants of the legal entity or the body that adopted the decision on the allocation, draw up and approve the distribution balance.

The reorganization of the enterprise subject to compulsory separation is exercised by the monopolist at his own discretion.

Forced separation does not apply to:

a) the impossibility of organizational or territorial separation of enterprises, structural units;

b) the existence of a tight technological connection between enterprises, structural units (if the share of domestic turnover in the total volume of gross production of the enterprise is less than 30%) [7, p. 170].

The court, having decided on a division, in its decision determines the participant of the legal entity or the supreme body of the legal entity, which is obliged to draw up and approve the distribution balance.

The legal entity formed as a result of the division has a subsidiary liability for the obligations of the legal entity from which the division was made, which, according to the distribution balance, did not transfer to a legal entity formed as a result of the division.

The legal entity from which the division was made has a subsidiary liability for the obligations that, according to the distributive balance, have been transferred to a legal entity which was created due to the division.

If, after the division, it is impossible to establish the obligations of a person for a separate obligation that existed in the legal entity before the division, the legal entity from which the division was made and the legal entities created as a result of the division are bear the joint liability to the creditor for such obligation (Article 104 of the Civil Code of Ukraine).

Liquidation of legal entity is one of the most extreme ways to avoid bankruptcy. The legal entity is liquidated:

1) upon the decision of its participants or the body of a legal entity authorized by the constituent documents, in connection with the expiration of the term for which the legal entity was created, the achievement of the purpose for which it was established, as well as in other cases stipulated by the constituent documents;

2) by a court decision on the liquidation of a legal entity through the mistakes which was made

during its creation and which can not be eliminated, or in other cases established by law.

The requirement to liquidate the legal entity on the grounds specified in paragraph 2 of Part 1 of Article 110 of the Civil Code of Ukraine may be brought before a court by the body that carries out the state registration, a participant of a legal entity, and an appropriate body of state power in cases established by law.

A manager of the legal entity, its executive body or plaintiff may be appointed as a liquidator or included in the composition of the termination commission of a legal entity according to the court decision on the liquidation of a legal entity.

If the value of the property of a legal entity is insufficient to satisfy the claims of creditors, the legal entity carries out all necessary actions, established by the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt» (Article 110 of the Civil Code of Ukraine).

The procedure for the liquidation of a legal entity is carried out in the following manner. Since the date of the entry into the Unified State Register of Legal Entities and Individuals - Entrepreneurs of a record of the decision of the founders (participants) of a legal entity, a court or a body authorized by them to liquidate a legal entity, the liquidation commission (liquidator) is obliged to take all necessary measures to recover the receivables of the legal entity who is being liquidated, and in writing inform each of the debtors about the termination of the legal entity within the time limits established in Part 2 of Art. 60 Civil Code of Ukraine - up to two months, which is general. However, the Law establishes a special term - twelve months in case of bankruptcy proceedings.

The liquidation commission (the liquidator) claims for recovery of debts from a debtor of a legal entity. It is obliged to inform the participants of the legal entity, the court or the body that has decided to terminate the legal entity, about its participation in other legal entities and/or to provide information about its established business partnerships, subsidiaries.

During conducting measures to liquidate the legal entity before the expiry of the deadline for the presentation of claims by creditors, the liquidation commission (the liquidator) closes accounts opened in financial institutions, except for the account used for settlements with creditors during the liquidation of the legal entity.

The liquidation commission (the liquidator) takes measures to inventory the property of the terminated legal entity, as well as the property of its branches and representative offices, subsidiaries, economic partnerships, as well as property, which confirms its corporate rights in other legal entities, identifies and takes measures for returning property that is in the third party.

In cases established by the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt», the liquidation commission (the liquidator) ensures an independent assessment of the property of the legal entity which is terminating her activity. It also takes measures to close separate entities of the legal entity (branches, representative offices) and, in accordance with the labor legislation, dismisses the employees of the terminated legal entity.

Licenses, permits and other documents, as well as seals and stamps, which are subject to return to state authorities, bodies of local self-government, are returned to them by the liquidation commission (the liquidator).

Until the approval of the liquidation balance, the liquidation commission (the liquidator) draws up and submits to the bodies of the State Tax Service, the Pension Fund of Ukraine and social insurance funds the reporting for the last reporting period.

The liquidation commission (the liquidator) after the expiration of the deadline for claims by creditors makes an interim liquidation balance sheet, which includes information about the composition of the property of the legal entity being liquidated, a list of claims submitted by creditors and the outcome of their consideration. The interim liquidation balance sheet is approved by the participants of a legal entity, court or body that has made a decision on the liquidation of a legal entity.

Payment of cash to creditors of the legal entity that is being liquidated, including taxes, fees, the Uniform Social Tax and other funds to be paid to the state or local budget, the Pension Fund of Ukraine, social insurance funds, is carried out in

order of priority, established by art. 112 of the Civil Code of Ukraine [6]. If the liquidated legal entity does not have enough money to meet the claims of the creditors, the liquidation commission (the liquidator) organizes the realization of the property of the legal entity. The liquidation commission (the liquidator), before the approval of the liquidation balance, draws up and submits to the bodies of the State Tax Service, the Pension Fund of Ukraine and social insurance funds the reporting for the last reporting period.

After completion of settlements with creditors, the liquidation commission (the liquidator) makes a liquidation balance, ensures its approval by the participants of the legal entity, the court or the body that has decided to terminate the legal entity, and ensures submission to the bodies of the state tax service

The property of the legal entity remaining after the satisfaction of claims of the creditors are transferred to the participants of the legal entity, unless otherwise provided by the constituent documents of the legal entity or by law. Documents subject to mandatory storage shall be transferred to the relevant archival institutions in accordance with the procedure established by law.

The liquidation commission (the liquidator) provides submission to the state registrar of documents stipulated by the Law of Ukraine «On State Registration of Legal Entities, Natural Persons - Entrepreneurs and Public Formations» for the state registration of the termination of a legal entity within the term established by law (Article 111 of the Civil Code of Ukraine).

In the event of liquidation of a solvent legal entity, the claims of its creditors are satisfied in the following order:

1) in the first place satisfied the requirements for compensation for damages caused by injury, other damage to health or death, and claims by lenders secured by a mortgage or by other means;

2) in the second place satisfied the requirements of employees related to labour relations, the requirements of the author of the fee for using the result of his intellectual, creative activities;

3) in the third-place satisfied the requirements for taxes, fees (mandatory payments);

4) in the fourth place satisfied all other requirements.

Requirements of one queue are met in proportion to the number of claims belonging to each lender of this queue.

It should be noted that the order of satisfaction of claims of creditors under insurance contracts is determined by the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt».

In case of refusal of the liquidation commission in satisfaction claims of creditor or evasion from their consideration, the creditor shall have the right within a month from the date when he learned or should have been aware of such refusal to apply to the court with a claim to the liquidation commission. Under the decision of the court, the claims of the creditor can be satisfied at the expense of the property remaining after the liquidation of the legal entity.

The claims of the creditor declared after the expiration of the deadline set by the liquidation commission for their presentation, are satisfied with the property of the legal entity that is being liquidated, which remains after the satisfaction of the claims of the creditors, stated in due time.

But there are exceptions. Claims of creditors not accepted by the liquidation commission (if the creditor within a month after the receipt of the notification of full or partial refusal to recognize his claims did not apply to a court of law), whose satisfaction was refused by the court to the creditor, as well as claims which are not are satisfied because of the lack of property of the legal entity that is being liquidated are considered to be repatriated.

**3. Discussion**

The distinctive feature of the bail-out of state-owned enterprises to a bankruptcy case is that it is carried from the State Budget of Ukraine, state-owned enterprises and other sources of financing.

The number of funds from the State budget of Ukraine for the bail-out of state enterprises is set annually by the law on the State Budget of Ukraine.

The conditions and procedures for carrying out the bail-out of state enterprises before the bankruptcy proceedings are initiated at the expense of other sources of financing shall be agreed with the subject of management of state-owned objects in ac-

cordance with the procedure established by the Cabinet of Ministers of Ukraine.

It should be noted that the bail-out of state enterprises before the bankruptcy proceedings is conducted in accordance with Article 6 of the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt».

Consequently, measures to prevent the bankruptcy of the debtor-aviation enterprise and out-of-court bankruptcy procedures can be considered as a way to avoid bankruptcy.

The primary task of the system of measures to avoid the bankruptcy of the aviation enterprise is the approval of the principles and goals that must be achieved by the results of the functioning of their mechanisms.

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**РЕСТРУКТУРИЗАЦІЯ АВІАЦІЙНИХ ПІДПРИЄМСТВ ЯК СПОСІБ ПОПЕРЕДЖЕННЯ БАНКРУТСТВА**

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***Мета**: завданням є дослідження правових способів запобігання банкрутства авіаційних підприємств та більш детально розкрити санацію до порушення справи про банкрутство як один із ефективних заходів запобіганню банкрутству боржника - авіаційного підприємства. **Методи**: порівняльний та системний для розкриття реструктуризації авіаційних підприємств. **Результати**: встановлено, що найбільш ефективними способами попередження банкрутства авіаційного підприємства є санація боржника до порушення справи про банкрутство як система заходів щодо відновлення платоспроможності боржника, які може здійснювати засновник (учасник, акціонер) боржника, власник майна (орган, уповноважений управляти майном) боржника, кредитор боржника, інші особи з метою запобігання банкрутству боржника шляхом вжиття організаційно-господарських, управлінських, інвестиційних, технічних, фінансово-економічних, правових заходів відповідно до законодавства до порушення провадження у справі про банкрутство.*

***Ключові слова:** запобігання банкрутства, боржник, реструктуризація.*

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**РЕСТРУКТУРИЗАЦИЯ АВИАЦИОННЫХ ПРЕДПРИЯТИЙ КАК СПОСОБ ПРЕДОТВРАЩЕНИЯ БАНКРОТСТВА**

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***Цель**: исследование правовых способов предотвращения банкротства авиационных предприятий и санации к возбуждению дела о банкротстве как одного из эффективных способов предупреждения банкротства должника – авиационного предприятия. **Методы**: сравнительный и системный для раскрытия реструктуризации авиационных предприятий. **Результаты**: установлено, что наиболее эффективными способами предупреждения банкротства авиационного предприятия является санация должника до возбуждения дела о банкротстве как система способов по восстановлению платежеспособности должника, которые может осуществлять учредитель (участник, акционер) должника, собственник имущества (орган, уполномоченный управлять имуществом) должника, кредитор должника, другие лица с целью предотвращения банкротства должника путем принятия организационно-хозяйственных, управленческих, инвестиционных, технических, финансово-экономических, правовых мер в соответствии с законодательством до возбуждения производства по делу о банкротстве.*

***Ключевые слова:** предотвращение банкротства, должник, реструктуризация.*