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CLASSIFICATION AND PROTECTION OF THE RIGHTS OF CREDITORS IN BANKRUPTCY CASES

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Purpose: the article investigates up-to-date issues of the institute's development of competitive creditors. Some types of creditors are classified according to the Code of Bankruptcy Procedures, and the Law of Ukraine «On Restoration of the Debtor's Solvency or Recognition as a Bankrupt», and their rights to ensure claims. **Methods of research:** a set of general and special methods of scientific knowledge – terminological, logical-semantic, comparative, system-structural, logical-normative. **Results:** the analysis of the current situation regarding the illustration of domestic normative sources in accordance with the Code of Bankruptcy procedures suggests that in order to protect the rights of creditors, the Code enhances their rights and improves their terms of participation in the bankruptcy procedure. Creditors can now initiate a bankruptcy case, participate in voting in decision-making. Also, a creditor may demand a court the decision to terminate the moratorium on its claims regarding the collateral. Key powers in bankruptcy cases are transferred from the creditors committee to the creditors meeting. If the first meeting of creditors is not considered to be hold due to the non-arrival of creditors with a sufficient number of votes, it may be possible to hold other meeting with the reduced quorum. **Discussion:** the main realities of the domestic legislative and regulatory framework, which need improvement, are proposed to be divided into separate groups of registers, current and privileged creditors with their internal delimitation.

Keywords: creditors; Code of bankruptcy procedures; Law of Ukraine «On restoration of debtor's solvency or recognition of bankruptcy».

Problem statement and its relevance. The rights' protection of creditors is one of the most important tasks of legal regulation and a guarantee of the stability of public economic order. Indicators of the effectiveness of influence on social relations is the return of debts to creditors by insolvent debtor. Violation by the Economic Court of a proceeding on a bankruptcy of a business entity may significantly affect the further economic activity of its creditors. Each of the creditors has a personal interest in the outcome of the bankruptcy case, since the effectiveness of the procedures, which is applicable to the debtor, depends on further satisfaction of the creditors' demands.

Analysis of recent researches and publications: The issue of protecting the rights of creditors during bankruptcy today is a subject of a sufficient number of studies, among which there are important works of such scientists as R.G. Afanasyev, O.M. Biryukov, O.M. Vinnik, V.K. Mamutov B.M. Polyakov. However, some issues remain unresolved, which requires the development of proposals for improvement and specification of creditors' types and protection of their rights. Thus, this study is relevant both from a theoretical and a practical point of view.

Presentation of the main research material. The term «creditor» is a commonly used notion, that refers to a subject of civil legal relations, which

has the right to demand from another subject certain behavior. According to Art. 1 of the Code of Bankruptcy Procedures (hereinafter referred to as the Code), adopted on February 26, 2018, a creditor is a legal or natural person, as well as income and fee bodies and other government bodies that have claims for monetary obligations to the debtor [1].

Also, the Code provides a classification of creditors, in particular: competitive creditors - creditors on claims to the debtor, which arose prior to the opening of proceedings in the bankruptcy case and the execution of which was not secured by mortgage of the debtor's property; current creditors - creditors on claims to the debtor, which arose after the opening of proceedings in a bankruptcy case; secured creditors - whose claims to the debtor or another person are secured by collateral of the debtor's property [1].

But having only claims of a monetary nature to the debtor are not enough to become a part to the bankruptcy case. Only the creditor who, in accordance with the procedure established by the Bankruptcy Law, will apply to the Economic Court with the relevant application, will be able to properly protect their rights and legitimate interests.

Several variants of creditors' classification have been proposed in the scientific literature. Thus, R.G. Afanasyev defined such criterias for the allocation of creditors as: the residency, enforceability, reason and time of claims, the legal status in the case [2, p. 189]. However, such classification is more theoretical and can not be entirely reflected in the law because of its diversity. According to the legal nature of the requirements, V.V. Djune notes creditors of public claims and creditors of private claims [3, p. 113]. To creditors of public claims, he relates the tax authorities and state bodies that control the correctness and timely collection of insurance premiums for compulsory state pension insurance and other types of the state social insurance, taxes and fees (mandatory payments). As noted in Article 16 of the Bankruptcy Code «Opening Bankruptcy Proceedings», except for the participants of the proceedings, also three creditors with the highest monetary claims to the debtor (as at the date of acceptance of the application to open a bankruptcy proceeding) have the right to participate in the preparatory meeting if the list of creditors and infor-

mation on the amount of their claims were provided by the debtor in their application about withdrawal or opening bankruptcy proceedings.

The obligation of notifying such creditors about their right to be present at the preparatory meeting and to participate in the appointment of the property manager in accordance with the procedure established by this Code and to provide the court with evidence of the fulfillment of this duty is on the debtor. Failure of such creditors to appear in the court session does not prevent the meeting from being held and can not be the reason for postponing the trial [1].

V.V. Djune notes that the classification of creditors may be carried out depending on the extension of the competition moratorium regime [3, p. 117]. Based on the results of the provisions' analyses of the Bankruptcy Law, B.M. Polyakov concludes that seven types of creditors can be distinguished: initiative, compulsory, mortgage, current payday loan, privileged, registered, creditors of repayment of arrears [4]. From the definition of a creditor according to the Bankruptcy Law, the following types of creditors can be distinguished: - creditors for monetary obligations arising from contractual relations; - Employees of the debtor with requirements for payment of wages; - bodies of the tax system of Ukraine; - state bodies that control the correctness and timeliness of insurance premiums for compulsory state pension insurance and other types of compulsory state social insurance, taxes and fees (mandatory payments). It can not be said that this distribution of creditors was conducted according to one criterion. These types of creditors in the bankruptcy procedure can be distinguished based on which individuals can be recognized as creditors in bankruptcy cases. Also, this classification can be carried out in such a factor as the legal nature of the requirements that constitute the subject of bankruptcy proceedings. However, it is still more appropriate to apply the first criterion. The Supreme Economic Court of Ukraine considers that the Law on Bankruptcy provides only four types of creditors. Yes, in clause 3.1.1. of Recommendations «On some issues of the practice of applying the Law of Ukraine «On restoring the debtor's solvency or recognizing it as a bankrupt» states that in Art. 1 Bankruptcy Law the following categories of credi-

tors were identified: creditors on claims to the debtor that arose prior to the commencement of proceedings in a bankruptcy case and the claims of which were not secured by the collateral of the debtor's property. Creditors whose claims to the debtor have arisen as a result of succession, if such claims arise from the commencement of proceedings in a bankruptcy proceeding. - Current creditors - creditors on claims to the debtor that arose after the bankruptcy proceedings. - Creditors on claims for payment of wages, alimony, and reimbursement of harm caused to health and life of citizens, royalties. To this category of creditors, whose claims to the debtor have arisen both before and after the commencement of proceedings in the bankruptcy case. - Creditors whose claims are secured by collateral of the debtor's property. As it is seen, this is more specific classification of creditors than the one directly cited by the Bankruptcy Act.

The initiator is the creditor, on whose application a bankruptcy case has been instituted. Those creditors, whose requirements are in compliance with the established part 3 of the article 6 of the Bankruptcy Law [5], are entitled to initiate a bankruptcy proceeding. According to such conditions the law includes: the uncertainty of the requirements; compliance with the amount of monetary claims equivalent to 300 minimum wages and failure to meet these requirements within three months after the deadline was set for their repayment. The creditor's claim may be based on the aggregate debtor's debts in respect of various obligations to that creditor. Taking into account the unequal economic position of creditors who can act as initiators, some of them may have a significant amount of debt that is lower than the limit established by the law. However, not all creditors, the requirements of which are sufficient and appropriate to initiate a bankruptcy case, may act as the initiators. Thus, from these creditors, the law excludes persons, obligations of the debtor which arose as a result of causing damage to life and health, payment of royalties, the founders (participants) of the debtor - legal entities for obligations arising from such participation. Also, initiating creditors can not be individuals whose claims are secured by collateral. Another group of creditors, forced or, as it is determined by V.V. Djune, the attached creditors, [3,

p. 118] are creditors who make their claims to the debtor, in respect of which a bankruptcy proceedings have already been opened or a ruling has been made to declare it bankrupt. The bankruptcy law provides clear limits on the acceptance of such claims by the court and their inclusion in the register. Thus, the claims of the creditors of this group are included in the register if they were declared after the publication of the announcement of the opening of proceedings in the bankruptcy case or the recognition of the debtor as a bankruptcy and the opening of the procedure for its liquidation. In the first case, all creditors apply to the court, regardless of the onset of their obligations, they have the right to file applications with monetary claims to the debtor. Creditors, whose term of claim has not yet come to the debtor, must contact the court for inclusion in the register. In the second case, creditors with monetary claims for obligations arising from the disposal of property and sanation apply to the court. As is clear, the feature of the legal status of these creditors is the condition of the Bankruptcy Law, which, that if they fail to submit their claims to the court, they are deprived of the right to meet their demands in the procedure of bankruptcy. In this case their claims will be considered to be repaid. Thus, in order to protect their rights, the creditors of this group are obliged to enter into a bankruptcy case.

Creditors of the next group, which notes B.M. Poliakov are mortgage creditors. Mortgage creditors are creditors whose claims to the debtor are fully secured by collateral under a contract or the Law of Ukraine «On Collateral» [6, p. 110]. It is due to the security of their claims that these creditors are deprived of the right to initiate a bankruptcy case. However, Part 9 of Art. 11 of the Bankruptcy Law states that the creditor, whose requirements are secured by a pledge, has the right to bring claims against the debtor in the part that is not secured by the pledge or the amount of the difference between the amount of the claim and the proceeds that may be obtained from the sale of the collateral if the value of the collateral is insufficient to fully satisfy its claim. From the content of this rule it can be concluded that, in accordance with the uncovered pledge to the requirements of the above-mentioned conditions, this creditor has the right to

initiate the opening of a bankruptcy proceeding. In relation to mortgage creditors, the Bankruptcy Act does not impose an obligation to make claims. Information about their claims is entered into the register also on the basis of the data of the debtor's account.

Despite the above-mentioned groups of creditors, the basis of the bankruptcy procedure is creditors' claims, whose claims are recognized and approved by the court in the register of creditors' claims. In particular, Art. 17 of the Code of Bankruptcy provides with ensuring the claims of creditors.

The Economic Court has the right, upon the request of the parties or participants in the bankruptcy case, or on its own initiative, to take measures to secure the claims of creditors.

Measures to secure the claims of creditors should be in accordance with the date of the introduction of the sanitation procedure and the appointment of its manager, or until a decision is made to declare the debtor bankrupt, to open a liquidation procedure and appoint a liquidator, or until the proceedings are closed.

The Economic Court has the right to cancel or change measures to ensure the claims of creditors prior to the above circumstances, which is the subject of a ruling.

Sufficiently appropriate is the notion of a moratorium on satisfaction of claims of creditors, which is indicated in Article 18 of the Code of Bankruptcy:

Moratorium on satisfaction of creditors' demands - suspension of fulfillment by the debtor of monetary obligations and obligations for payment of taxes and duties (mandatory payments), the term of which has come to the day of the moratorium, and the termination of measures aimed at ensuring the fulfillment of these obligations and obligations to pay taxes and duties (mandatory payments) applied prior to the moratorium's day.

During the moratorium on satisfaction of claims of creditors:

- Recovery is prohibited on the basis of executive and other documents containing property claims, including the subject of a pledge, for which the recovery is carried out in or out of court in accordance with the law, except for cases of recovery

proceedings at the stage of distribution of the debts surrendered from the debtor (including the debtor's property acquired from the sale), property being at the stage of sale from the moment the information about the sale is disclosed, as well as in the case of foreclosure and implement of decisions in non-property disputes;

- It is prohibited to fulfill the requirements, which are subject to a moratorium;

- There is no penalty (fine) and no other financial sanctions are applied for non-fulfillment or improper fulfillment of obligations to meet all requirements which are subject to a moratorium;

- The running of the limitation period during the moratorium is stopped;

- The inflation rate does not apply for the entire time of delay in the implement of a monetary obligation, three percent per annum from the overdue amount, etc.

A moratorium on the satisfaction of creditors' claims is applied to claims of creditors in respect of compensation for losses that arose due to the refusal of the debtor to implement transactions (contracts) in the sanitation procedure in the order prescribed by this Code.

The moratorium on satisfaction of creditors' claims does not apply to current creditors' claims; for payment of wages and accrued on these amounts of insurance premiums for compulsory state pension and other social insurance; compensation for damage caused to the health and life of citizens; for the payment of royalties, alimony, as well as claims for requirements for documents of a non-property nature, obliging the debtor to perform certain actions or refrain from their commission.

The moratorium does not apply to the response of creditors' claims in case of simultaneous fulfillment of the creditors' claims in the procedure of disposal of property by the manager of sanitation in accordance with the plan of rehabilitation, as well as the liquidator in the liquidation procedure in the order of priority, established by this Code.

The legal effects of a moratorium on meeting the requirements of creditors' claims do not apply if the proceedings are closed because the insolvency of the debtor has not been revealed by the economic court [1].

Undoubtedly, creditors have the right to judicial protection of their violated rights; however, the opening of bankruptcy proceedings stops enforcement proceedings. That is, even in the presence of a court decision, creditors who failed to declare their claims in due time in bankruptcy proceedings will be denied their coercive enforcement. However, in case of the conclusion of a bankruptcy case by a settlement agreement or restoration of the solvency of the debtor, the creditors of the redeemed indebtedness will be able to meet their claims. Of course, the fact that the bankruptcy procedure has been applied to the debtor should be taken into account when establishing the limitation period. In this case, the debtor's declaration of bankruptcy, the creditors lose the right to receive their funds. From the analysis of this classification it is clear that in certain cases there is no clear distinction between different categories of creditors. So, for example, as N.M. Kamsha suggests, some differences among the competitive creditors require their additional, internal, classification. Based on the Bankruptcy Law, she classifies competitive creditors as initiators, forced and privileged [7, p. 69]. With this classification one can agree on the following considerations. Indeed, based on the provisions of the Bankruptcy Law regarding the identity of a creditor and the nature of its claims, the following conclusion can be drawn. All competitive creditors have the right to initiate bankruptcy proceedings. When one of them first takes advantage of this right, others automatically become forced creditors. Individual competitive creditors who did not take any advantages of the possibility of filing an application to initiate a bankruptcy proceeding, are endowed by the Bankruptcy Law with the right to submit their claims to the court at any time. The claims of such creditors will not be considered to be repaid in any case. However, this applies only to creditors with wage claims that relate to privileged creditors.

As the scientist notes, among the privileged creditors, it is appropriate to distinguish between two varieties. The first one can include creditors for wages, compensation for damage, alimony, royalties, that is, creditors whose claims are repaid even without them being brought to court. The second kind includes mortgage creditors. Taking into account the position of the law on bankruptcy, the

indebtedness privileges in satisfaction of claims are creditors of current debts. Therefore, in a group of privileged creditors, such division of creditors is possible: 1) privileged creditors whose claims to the debtor arose prior to the bankruptcy proceedings; 2) mortgage creditors; 3) creditors whose claims to the debtor have arisen during certain procedures within the bankruptcy case, that is, the creditors of current debts [8, p. 123].

Due to the fact that the significant part of creditors' claims at the time of opening bankruptcy proceedings is enforced, this fact can also be taken as a criterion for dividing creditors into two groups. The first group includes creditors who have declared their claims to the debtor, in accordance with the procedure and term of the Bankruptcy Law. The second group includes creditors who have not declared their claims in accordance with the Bankruptcy Law. Of course, their claims will be considered to be cancelled. Claims of creditors of the first group are included in the register of creditors' claims, and subsequent settlements with them within the framework of the bankruptcy procedure. Claims of the second group have lost any right to collect debts from the debtor. As a consequence, the recognition of their claims is canceled; the enforcement of such creditors is subject to closure.

Conclusion. Based on the analysis of the specified creditors' classifications it can be proposed one more classification taking into account some features of the legal status of individual creditors. Thus, it would be appropriate to separate current and privileged creditors into different groups of registry. The group of registry creditors primarily includes creditors who have the right to initiate a failed bankruptcy case that is initiating. These creditors include those, whose monetary claims to the debtor are indisputable, they form, separately or in aggregate, at least three hundred times the minimum wage and were not satisfied with the debtor within three months after the due date for their repayment. Secondly, the competitive creditors include persons whose requirements do not correspond to some of these conditions, since the Bankruptcy Law does not specify that the claims of all competitive creditors should have all of these characteristics. It would be logical to mention such creditors as forced. Also, this group may include

creditors of the next group, in case their claims were not satisfied during the conduct of bankruptcy proceedings or arose during the liquidation procedure. These requirements can be presented only within the limits of the liquidation procedure (Article 23 of the Bankruptcy Law). After that, they are entered in the register of claims of creditors and implement in the appropriate order. The group of current creditors consists of persons whose claims to the debtor have arisen after the bankruptcy proceedings have been instituted. Requirements of these creditors include monetary claims for civil - contractual obligations and obligations for payment of taxes, duties and other obligatory payments. A moratorium on satisfaction of creditors' claims does not apply to creditors' claims of this group. Among current creditors, it is possible to distinguish their types depending on the stage of bankruptcy proceedings, which influences the order of their implementations. So, depending on this, different creditors can be differed, the requirements of which occurred during the disposal of property, sanitation and liquidation. The claims of creditors that arose during the first two specified judicial procedures are satisfied not depending on the prosecuted bankruptcy case. In case of the debtor's debt to the creditors at the stage of liquidation, the creditors on these requirements must file them in court. In case of dissatisfaction with the requirements of current creditors to the liquidation procedure, they should also be entered in the register of creditors' claims. Such requirements are subject to satisfaction in the fourth turn. Thus, current creditors, in order to protect their rights, are obliged to sue their claims to the debtor before the beginning of the liquidation procedure. Of course, except those that arose already during its conduct. However, these requirements must be declared to the court.

The biggest group is made up of privileged creditors. Individuals with such status in the bankruptcy procedure differ from the two previous groups by the fact that the Bankruptcy Law has established guarantees of priority satisfaction of their claims. However, creditors of this group are deprived from some important procedural authorities. Thus, privileged creditors include creditors whose claims are secured by collateral, creditors that are obliged to pay wages, royalties, alimony and compensation for

life and health of citizens. These requirements are also not subject to a moratorium on meeting creditors' demands. At first glance, this group almost does not differ from the second group - current creditors. However, the feasibility of allocating these creditors to a separate group is due to the fact that, first, the claims of these creditors are satisfied in the first two queues, and secondly, even if privileged creditors do not declare their claims at all, they will in any case not be considered as repayment. Creditors whose claims under the Bankruptcy Act will be considered as repayments are not included in the proposed classification. This can be explained by the fact that these creditors generally do not take part in bankruptcy cases. Therefore, it seems inappropriate to allocate them as a separate group, and assignment to any of the listed groups.

As a result of the classification of creditors under the Code of Bankruptcy procedures compared with the Law «On restoring the debtor's solvency or recognizing it as a bankrupt», it can be concluded that the previous version did not contain a definition of a secured creditor, it was only a creditor whose claims were secured by collateral. The current law clarifies that secured creditors are creditors, whose requirements are secured by collateral of the debtor's property (property guarantor). A wider concept of a secured creditor is envisaged by the draft Code: secured creditors - creditors whose claims to the debtor are secured by pledges of property of the debtor and / or property guarantor, as well as creditors whose claims to other persons are secured by collateral of the debtor's property. In order for the creditor to be able to participate in the bankruptcy proceedings, it is important to make claims. Unlike the provisions of the old version of the Law, currently secured creditors are obliged to file a claim for monetary claims to the debtor during the bankruptcy proceeding only in respect of claims that are unsecured or subject to waiving of collateral. Previously, filing applications containing such claims was a right, not a duty.

Undoubtedly, the bill is designed to strengthen the protection of creditors' rights, given the large number of debtors' outstanding debts and the long duration of existing bankruptcy procedures, as well as to stimulate the financial and credit system. And this comprehensive approach to the settlement of

economic problems of mass default of debts has great social and economic significance.

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**КЛАСИФІКАЦІЯ ТА ЗАХИСТ ПРАВ КРЕДИТОРІВ
У СПРАВАХ ПРО БАНКРУТСТВО**

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Мета: в статті досліджено актуальні питання розвитку інституту конкурсних кредиторів. Виділено окремі види класифікації кредиторів згідно Кодексу з процедур банкрутства, та Закону України «Про відновлення платоспроможності боржника або визнання його банкрутом», та їхні права щодо забезпечення позовних вимог. **Методи дослідження:** сукупність загальних і спеціальних методів наукового пізнання – термінологічний, логіко-семантичний, порівняльний, системно-структурний, логіко-нормативний. **Результати:** проведений аналіз поточної ситуації з приведення вітчизняних нормативних джерел у відповідність до Кодексу з процедур банкрутства засвідчує, що для захисту прав кредиторів Кодекс розширює їх права та покращує їх умови участі в процедурі банкрутства. Кредитори відтепер можуть ініціювати справу про банкрутство, брати участь у голосуванні при ухваленні рішень. Також кредитор може вимагати від суду рішення про припинення мораторію щодо його вимог щодо предмету забезпечення. Ключові повноваження в справах про банкрутство передаються від комітету кредиторів до зборів кредиторів. Якщо перші збори кредиторів не вважаються проведеними через неприбуття кредиторів з достатньою кількістю голосів, можна провести повторні збори зі зменшеним кворумом. **Обговорення:** основні реалії вітчизняної законодавчої і нормативно-правової бази, які потребують удосконалення, пропонується виділити в окремі групи рестрових, поточних та привілейованих кредиторів із їх внутрішнім розмежуванням.

Ключові слова: кредитори; Кодекс з процедур банкрутства; Закон України «Про відновлення платоспроможності боржника або визнання його банкрутом».