

## LEGAL ASPECTS OF JUDICIAL REHABILITATION IN A BANKRUPTCY CASES: LEGISLATION OF UZBEKISTAN

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### **Abstract**

In this article studied and analyzed issues of application of judicial rehabilitation in a bankruptcy cases, protection of the entrepreneurs' rights, restoring solvency of the debtor and satisfaction of creditors' claims, consequences of introduction of judicial rehabilitation, rights and obligations of rehabilitation manager, judicial rehabilitation plan, completion of judicial rehabilitation in accordance with the bankruptcy law of the Republic of Uzbekistan.

**Keywords:** bankruptcy, judicial rehabilitation, debtor, creditor, rehabilitation manager, judicial rehabilitation plan

We should accelerate the work started on further deepening the reforming and liberalization of economy, structural changing its branches and sectors. Such issues as modernizing the sectors and areas, increasing the level of their competitiveness and developing their export potential should constantly be in the focus of our attention. For this purpose, we need to more actively attract the foreign investments, advanced technologies and information-communication systems to all spheres. On this particular basis we should increase the gross domestic product of our country over two-fold by 2030<sup>1</sup>.

Judicial rehabilitation – bankruptcy process applied by the economic court to the legal entity debtor for the purpose of restoring its financial ability and repaying its debts to creditors, without the transfer of powers to manage the debtor's affairs to the rehabilitation manager (Art.3, Law “On Bankruptcy” of Republic of Uzbekistan).

A judicial rehabilitation can only contemplated if there is a possibility of survival. If not, the debtor must go into final liquidation. The main advantage of a judicial rehabilitation compared to a final liquidation is the fact that the business can be kept going and it is not necessary to stop trading immediately. The business does not have to be broken up, so that potentially the cataclysmic fall in values commonly experienced on a fire-side bankruptcy sale is not so serious – although serious enough. The group structure is maintained. In addition, the rehabilitation plan can usually accommodate a conversion from debt to equity so the creditors can benefit from a recovery, if it occurs. There is a lesser risk of a cascade of insolvencies. A sale of a going concern can be arranged behind a protective curtain of stays on creditors.<sup>2</sup>

In the process of judicial rehabilitation, current payments are monetary obligations and mandatory payments which arise after the court accepts the petition, and those payments which arise before the court accepts the petition, but mature after

the introduction of judicial rehabilitation against the debtor, as is provided in Paragraph 19 of the Resolution of the SEC Plenum No.142, and also payments of claims subject to preferential satisfaction stipulated in Article 134. It is considered that payments of claims of citizens which are incurred out of labour law relations and claims for alimony and for remuneration under copyright agreements, and also claims of citizens to whom the debtor is liable for damage to life or health and moral damage should be preferentially made, regardless of the order of priority of other claims. Such claims are not subject to inclusion in the creditors' register.

Judicial rehabilitation is introduced by the economic court by virtue of an application of the debtor, founders (participants) or the property owner of the debtor, or a third party, or upon an application of the creditors' meeting, filed upon its resolution. Judicial rehabilitation is introduced, as a rule, on the basis of a resolution of the creditors' meeting passed by the majority vote in value of all creditors. The economic court appoints a rehabilitation manager and specifies the period of judicial rehabilitation in its ruling to introduce judicial rehabilitation. The period of judicial rehabilitation is determined in view of the judicial rehabilitation plan and the debt repayment schedule, and must not exceed twenty-four months as a general rule. The application to introduce judicial rehabilitation is presented with the judicial rehabilitation plan and the debt repayment schedule. When founders (participants) or the property owner of the debtor, or a third party applies for judicial rehabilitation, evidences that they grant security to ensure the performance of the debts repayment schedule by the debtor should be attached to their application. In this case, the amount of granted security must exceed the amount of the debtor's obligations by not less than 20 per cent<sup>3</sup>.

Judicial rehabilitation shall be introduced by the economic court on the ground of a resolution of the creditors' meeting, except as envisaged by Paragraph 3 of Article 75 of this Law. The economic court ruling to introduce judicial rehabilitation must specify the period of judicial rehabilitation, contain the debt repayment schedule approved by the economic court, information on the sureties, the amount and form of such security, the appointment of a rehabilitation manager and the amount of his/her remuneration. The economic court ruling to introduce judicial rehabilitation may be appealed (protested). An appeal (protest) against the specified ruling shall not suspend the execution of the ruling. Judicial rehabilitation shall be introduced for the period of not more than twenty-four months, which may be extended by the economic court for not more than six months for the sureties to satisfy creditors' claims.

When several entities apply to the creditors' meeting for the application to the economic court for the introduction of judicial rehabilitation, they enter into an agreement which determines the liability of each of them to ensure the debtor's implementation of the debt repayment schedule.

On the date of the introduction of judicial rehabilitation:

- provisional measures to preserve creditors' claims which were taken earlier shall be cancelled;

- attachment of the debtor's property and any other restrictions on the debtors' powers to dispose of property owned by the debtor may be imposed solely within the framework of the bankruptcy process;

- penalties (fines, late payment interest) and other economic (financial) sanctions for not performing or improperly performing monetary obligations and duties on mandatory payments which have arisen before judicial rehabilitation, and interest payable shall not accrue.

Creditor's claims for monetary obligations and (or) mandatory payments subject to be satisfied according to the debt repayment schedule shall accrue interest in the manner and amount envisaged by Article 327 of the Civil Code of the Republic of Uzbekistan. Such interest shall accrue on creditor's claims from the date when the economic court renders a ruling to introduce judicial rehabilitation and up to the date when these creditor's claims are discharged, and if the claims are not discharged, - up to the date when the court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings.

The economic court shall be entitled to dismiss the debtor's manager from his/her duties upon an application of the creditors' meeting, the sureties or the rehabilitation manager which contains information that the debtor's manager has failed to implement or has implemented improperly the judicial rehabilitation plan or that his/her conduct (omission) has violated the rights and legitimate interests of the debtor, creditors or the sureties. In this case, the economic court shall be entitled to impose the duties of the debtor's manager on the rehabilitation manager. The economic court shall render a ruling to dismiss the debtor's manager from his/her duties, which may be appealed (protested).

Without the consent of the creditors' meeting or creditors' committee, founders (participants) or the property owner of the debtor shall not be entitled to pass resolutions carrying out reorganisation (merger, affiliation, division, spin-off, transformation) and liquidation of the debtor, and the debtor shall not be entitled to make transactions:

- related to the offering of immovable property by lease or as security, the offering of such property as an in-kind contribution to the charter fund (charter capital) of business partnerships and limited liability and additional liability companies, or the disposing of such property in any other way;

- related to the disposing of the debtor's property the balance value of which is more than 10 per cent of the balance value of the debtor's total assets;

- related to the receiving and offering of loans (credits), the issuing of guarantees or any other guarantees as a surety, the assigning of rights of claims, the transferring of debts, and the entering into of a contract for trust management of the debtor's property;

- involving the interest of the rehabilitation manager or creditors in the manner established by the legislation.

The rehabilitation manager and creditors shall have the right to apply for the invalidation of transactions of the debtor in the manner established by the legislation.

Candidates for a rehabilitation manager shall be proposed to the economic court by the creditors' meeting or by the sureties.

The rehabilitation manager shall act from the date of the introduction of judicial rehabilitation and up to the completion or the early termination of judicial rehabilitation. The rehabilitation manager may be dismissed by the economic court from his/her duties upon his/her own application or upon an application of the creditors' meeting or the sureties, and also in other cases envisaged by this Law. The economic court ruling to dismiss the rehabilitation manager from his/her duties, which simultaneously appoints a new rehabilitation manager, may be appealed (protested). Such appeal (protest) shall not suspend the execution of the ruling.

The termination of bankruptcy proceedings in connection with the restoration of the debtor's financial ability during judicial rehabilitation shall result in the termination of powers of the rehabilitation manager.

At the end of the observation period, the court decides on a rehabilitation plan, under which the firm either continues to operate (if the debtor can produce a plan for settlement of the liabilities) or is sold (if one more third parties apply to acquire its assets: goodwill, trade accounts, clientele, premises, leasehold, etc.)<sup>4</sup>.

The rehabilitation manager shall be entitled to:

- request the debtor's manager to provide information on current activities of the debtor and on the progress of the implementation of measures envisaged by the judicial rehabilitation plan and the performance of the debt repayment schedule;

- request the debtor's manager to transfer monetary assets to repay creditors' claims punctually and in full;

- participate in inventory when the debtor inventories its property;

- oversee the debtor's punctual payment of current creditors' claims;

- agree to transactions and resolutions of the debtor in cases envisaged by Paragraph 5 of Article 79 of this Law, and to furnish information on such transactions and resolutions to creditors;

- appeal to the economic court against the debtor's confirmation of claims or admission of grounds for confirming claims, or its omission in respect of the consideration of creditors' claims in cases and in the manner established by Articles 59 and 70 of this Law;

- apply to the economic court for the dismissal of the debtor's manager from his/her duties in cases established by Paragraph 4 of Article 79 of this Law.

- apply to the economic court for additional measures to preserve the debtor's property, including a measure to entrust property to third parties for keeping, and also for the cancellation of such measures.

The rehabilitation manager shall be obliged to:

- maintain the creditors' register;

- convene the creditors' meetings in cases envisaged by Article 12 of this Law;

- consider reports submitted by the debtor on the progress of the implementation of the judicial rehabilitation plan and the debt repayment schedule, and submit the relevant opinions to the creditors' meeting;

- provide information on the progress of the realization of the judicial rehabilitation plan for the creditor's meeting and creditors' committee and also to the state body for bankruptcy proceedings, if the charter capital of the debtor enterprise partially or wholly belongs to the state.

Not later than fifteen days prior to the expiry of the period set for judicial rehabilitation, the debtor's manager shall be obliged to submit to the economic court a report on the results of judicial rehabilitation. The balance sheet of the debtor as of the latest date, the profit and loss account of the debtor, the creditors' register with the amount of discharged claims and documents confirming such discharge, the opinion of the rehabilitation manager on the report of the debtor's manager, and complaints of creditors with undischarged claims must be attached to the report of the debtor's manager on the results of judicial rehabilitation. The report and creditors' complaints shall be considered by the economic court at session. The rehabilitation manager shall be obliged to notify all creditors with claims included in the debt repayment schedule, of the date, time and place of a court session on the consideration of the report of the debtor's manager on the results of judicial rehabilitation in the manner established by the legislation.

## References:

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<sup>1</sup> Address by SHavkat Mirziyoyev at the joint session of the chambers of Oliy Majlis dedicated to a solemn ceremony of assuming the post of the President of the Republic of Uzbekistan. <http://press-service.uz/en/news/5395/>

<sup>2</sup> Philip R Wood. Law and practice of international finance. Principles of international insolvency. Second edition. London. SWEET & MAXWELL. 2007. P. 36.

<sup>3</sup> The Commentary on the Bankruptcy Law of the Republic of Uzbekistan Coauthor:Azimov M.K.and others – Tashkent:2007. P. 148.

<sup>4</sup> Bankruptcy and judicial liquidation proceedings. Conference organized by the Council of Europe with the financial support of the Japan Foundation. Palais de l'Europe, Strasbourg, 10-13 October 1994. P. 22

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