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Enterprise Bankruptcy Institution in Lithuania and Kyrgyz Republic: Comparative Analysis

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Abstract

After becoming independent it was necessary to restructure the complete economic system of the country and reorient it to the market relations both in Lithuania and Kyrgyz Republic. At this stage such phenomena as setbacks in industry, economic crisis and absence of investments and stiffening of money-and-credit relations are inherent to the economy. Under the circumstances, enterprises in default (bankrupt) are inevitable. Due to it it becomes necessary to establish and develop bankruptcy institutions. In its turn bankruptcy institutions provide not only for writing of legislative acts but also for involving of relevant government authorities working with bankrupt enterprises. As for the matter of controlling bankrupt enterprises, Lithuania succeeded more than Kyrgyz Republic, what is proved by the statistic data. Therefore Kyrgyzstan may adopt the experience of Lithuania and improve operation of bankruptcy institutions.

Keywords: enterprise bankruptcy, bankruptcy law, bankruptcy institution, enterprise bankruptcy statistics, bankruptcy risk, bankruptcy prevention.

1. Introduction

A bankruptcy institution is the most important element of the market economy mechanism. It is destined for a voluntary and compulsory liquidation of insolvent legal entities, individual entrepreneurs, when their measures on prevention of bankruptcy, execution of pre-judicial restructuring or supervision or external management fail to ensure a necessary level of the organization's solvency. Besides that a bankruptcy institution serves as a powerful stimulus for effective work of business organizations, by simultaneously guaranteeing economic interests of creditors as well as of the government as a general market regulator.

In practice bankruptcy laws initially developed in two different directions. One of them is based on the principles of the British model, which considered bankruptcy as a way of repaying debts to creditors followed by liquidation of the debtor-defaulter (Levinthal, 1919). The American model provides another origin. The primary purpose of laws is to rehabilitate the company, restore its solvency (Skeel, 2001). However, in the last decades they both seem to draw towards saving the business in order to achieve stability of a socio- economic situation at different levels of society, as many research note. It is confirmed by research conducted under the sponsorship of the Trade and Development Conference of UN (UNCTAD), which showed that almost all countries of the world use such bankruptcy proceedings as liquidation of the company through clearance sale of its property and distribution of proceeds between creditors. However, problems originating due to such measures determined transition of the majority of countries to implement reorganization schemes instead of liquidation procedures (Lopez-de-Silanes, 2002).

A bankruptcy institution originated from the relationships of the debtor and its creditors and is based on these relationships, but it outgrew this level in the course of its development and cannot be viewed only from the economic and legal points of view, independently from social, political, organizational and moral issues.

One may trace the history of the development of the relationship between the debtor and creditors back to the time of a primitive society and slave-owning states, when they applied such punishments to the debtor incapable to repay its debts as a physical abuse, putting into a debt pit, expulsion from the community and enthrallment (Крашенинникова, Жидкова, 1997).

As far as trade developed and economic relations became complicated, a bankruptcy institution as an independent element of the system of debtors and creditors relationship in the field of commercial activities appeared.

Due to the development of the system that regulates relationships of debtors and creditors in countries with a developed market economy, a bankruptcy institution has formed, that can be described by the following characteristics:

- Priority of the public interest in whole against the interests of the debtor or certain creditors;
- Balance of protection of creditors, debtors, workers and other interested persons;
- Focus on providing the company with the opportunity to carry out its activity further in order to preserve jobs and protect investments, but not its winding-up;
- Protection and ensuring appreciation of debtor's assets;
- Using a bankruptcy institution for both legal entities subjected to reorganization and liquidation proceedings and individuals, who become out of debt after debt restructuring.

Currently they are succeeding in changing inefficient owners, saving socially significant and potentially profitable work and vice versa. Reorientation of loss-making enterprises, ensuring stability of property relations and guaranteeing workers employment.

A bankruptcy institution has recently started working in Lithuania and Kyrgyz Republic (only since independence). Therefore, there are shortcomings in this sphere, which should be eliminated with the development of the countries' economies. Nevertheless, the bankruptcy institute of Lithuania is more improved than of Kyrgyz Republic and the advantages of the Lithuanian experience can be introduced in the work of the Kyrgyzstan bankruptcy institution.

In the past years Lithuanian scientists have been paying much attention to research on bankruptcy. There have been especially many research on bankruptcy prediction in enterprises and commercial banks (Virbikaite, Berzinskiene, 2006; Stundziene, Boguslauskas, 2006, Garskaite, 2008, Podviezko, Ginevicius, 2010, Ginevicius, Podviezko, 2011, Brauers et al., 2012 etc.). But there have been no such research in Kyrgyz Republic.

This study analyses the bankruptcy institution of Lithuania and Kyrgyz Republic and performs comparative analysis of statistical data in these two countries. Moreover, the work states the advantages of the Lithuanian bankruptcy institution, which might be applied to Kyrgyz Republic.

Research aim: to analyze the Lithuanian bankruptcy institution in order to apply experience of this country for improvement of the work of the bankruptcy institute in Kyrgyz Republic.

Research object:

1. Bankruptcy institute of Lithuania and Kyrgyz Republic.

2. Bankruptcy institutions in Lithuania

The law of the Republic of Lithuania on corporate bankruptcy passed within a relatively short period of time "survived" as three main editions and amendments (Garskiene, Garskaite, 2003). On 15 September 1992 the Supreme Council of the Republic of Lithuania passed the first bankruptcy law, the Law on Enterprise Bankruptcy of the Republic of Lithuania. The Law was replaced by the Law on Enterprise Bankruptcy of the Republic of Lithuania enacted by the Seimas on 17 June 1997. The latter, after several revisions as well as some inconsistencies with the practice of Lithuanian courts, was replaced on 20 March 2001 by a completely new Law on Enterprise Bankruptcy of the Republic of Lithuania which came into force on 1 July 2001 along with the set of other new corporate laws (Doing Business in Lithuania).

2.1. General provisions of the bankruptcy laws in Lithuania

Under Article 1 of the Law on Enterprise Bankruptcy of the Republic of Lithuania its purpose is to regulate enterprise bankruptcy processes and apply it to all enterprises, public agencies, banks and credit unions (hereinafter enterprises), registered in the Republic of Lithuania in the manner laid down by law. The specific features of the bankruptcy process of banks, credit unions, insurance companies, agricultural enterprises, intermediaries of public trading in securities, investment companies and other enterprises and institutions may be established by other laws regulating the activities of the said enterprises and public agencies.

According to the Law on Enterprise Bankruptcy bankruptcy means the state of an insolvent enterprise where bankruptcy proceedings have been instituted in court or the creditors are performing extrajudicial bankruptcy procedures in the enterprise. The enterprise in bankruptcy means the enterprise, against which bankruptcy proceedings have been instituted or in respect of which extrajudicial bankruptcy procedures are applied.

Under Article 5 of the Law on Enterprise Bankruptcy of the Republic of Lithuania the creditor/creditors, the owner/owners and the head of the enterprise administration shall have the right to file a petition for the institution of the enterprise bankruptcy proceedings. These persons may file a petition for bankruptcy with the court if at least one of the following conditions is present:

- The enterprise fails to pay wages and other employment-related amounts when due;
- The enterprise fails to pay, when due, for the goods received, work performed/ services provided, defaults in the repayment of credits and does not fulfill other liabilities assumed under contracts;

- The enterprise fails to pay, when due, taxes, other compulsory contributions prescribed by law and/or the awarded sums;
- The enterprise has made a public announcement or notified the creditor /creditors in any other manner of its inability or lack of intent to discharge its liabilities;
- The enterprise has no assets or income from which debts could be recovered and therefore the bailiff has returned the writs of execution to the creditor.

2.2. Bankruptcy process

Under Article 2 of the Law on Enterprise Bankruptcy of the Republic of Lithuania bankruptcy proceedings mean a civil case opened in court over disputes arising from legal relations connected with bankruptcy.

The purpose of *bankruptcy* proceedings is: to ensure a uniform treatment of requirements of creditors and satisfy requirements of creditors after having realized a debtor's assets in the order established by laws.

The aim of the *restructuring* procedure is: to capacitate enterprises that have temporary financial embarrassments and that have not seized their economic – commercial activity to maintain, develop the activity, repay obligations, renew solvency and avoid bankruptcy.

Under effectual laws, *restructuring*, as insolvency proceeding, may only be formal. *Bankruptcy* proceedings can be both formal and informal. Bankruptcy proceedings may be enacted not following judicial order if there are no cases in court wherein there are material claims including claims regarding labor relations, also if an enterprise is not being levied under enforceable instruments issued by courts or other institutions.

There are two equivalents of formal insolvency proceedings for administration purposes in Lithuania: restructuring and making a composition with creditors in bankruptcy proceedings. Composition with creditors means an agreement between the creditors and the enterprise to continue the activities of the enterprise where the latter assumes certain liabilities, whereas the creditors agree to defer the satisfaction of financial claims or to reduce the amount thereof or to waive their claims (Bankruptcy – Lithuania).

Formal insolvency proceedings for liquidation purposes are a declaration of bankruptcy of an enterprise and its liquidation.

It should be noted here that bankrupt enterprises are subjected to all bankruptcy proceedings in Lithuania. Even if the percentage ratio of proceedings to be applied to recover the business is not so big as application of special administration procedures such as liquidation, relevant government authorities treating enterprises in default still try to recover the enterprise's activities in the first place.

2.3. Restructuring of enterprises

An important feature of the Law on Enterprise Bankruptcy is that it does not allow rehabilitation or similar procedures to take place after bankruptcy proceedings have been instituted against the enterprise. Restructuring of enterprises is governed by a separate law - Law on Restructuring of Enterprises of the Republic of Lithuania of 20 March 2001. Restructuring of an enterprise may only be attempted prior to the institution of bankruptcy proceedings against such enterprise. No restructuring is possible after bankruptcy proceedings are in place. After bankruptcy proceedings are started, i.e. application for bankruptcy is approved, the enterprise may only wound up and be liquidated, or recovered through an amicable settlement with the creditors.

The Law on Restructuring of Enterprises came into effect simultaneously with the Law on Enterprise Bankruptcy on 1 July 2001. The law governs restructuring of enterprises and public establishments which face temporary financial difficulties, its main aim being to avoid bankruptcy. The purpose of the Law is to allow enterprises that face temporary financial difficulties and have not ceased commercial activity to preserve and maintain their activity, as well as to settle their debts and restore their solvency. Unlike the Law on Enterprise Bankruptcy, it applies only to enterprises, not to other types of legal entities. Moreover, it does not apply to banks, credit unions, other credit institution, insurance companies, investment companies, pension and other funds or to securities brokers. It gives priority to restructuring over bankruptcy proceedings by establishing that restructuring petitions will prejudice bankruptcy petitions against the enterprise, i.e. if the petition for restructuring of the enterprise is provided simultaneously or after the petition for bankruptcy, then the bankruptcy petition will be decided only if the restructuring petition is dismissed (Doing Business in Lithuania).

2.4. Bankruptcy policy in Lithuania

Institutions involved in the bankruptcy process are: the Department of Enterprise Bankruptcy Management under the Ministry of Economy, the National Association of Business Administrators, the National Association of Bankruptcy Administrators, The State Social Insurance Fund Board, the State Tax Inspectorate.

The Ministry of Economy is responsible for implementation the Programme for Enterprise Restruc-

turing and Bankruptcy aiming to reduce the number of companies in temporary financial difficulties and still continuing their business activities, and to speed up bankruptcy processes of insolvent enterprises.

Key tasks of the Department of Enterprise Bankruptcy Management under the Ministry of Economy (hereinafter DEBM) include implementation of the Government policy in the activity, restructuring and bankruptcy areas of loss-making enterprises, activity analysis of enterprises undergoing the processes of restructuring and bankruptcy as well as bankrupt enterprises. Furthermore, DEBM implements supervision and control of the aforementioned enterprises within the powers granted by the Government and/or the Ministry of Economy.

Within the process of problem analysis and decision-making DEBM follows the principle of improving business conditions thus pursuing the following targets: to make the conditions for ineffectively operating economic entities as well as those willing to terminate their operation to withdraw from the market; and to restructure viable economic entities by the process of decentralisation and commercialisation.

The Bankruptcy Management Department under the Ministry of Economy, the primary regulator for administrators, lacks capacity to effectively implement and monitor the system. The Bankruptcy Management Department is responsible for ensuring that administrators comply with the requirements of relevant laws and court decisions, and execute resolutions of the meetings of creditors and creditors' committees. The Department lacks the necessary staffing to carry out this supervisory function on a large scale and systematic basis; rather, it responds to complaints lodged with it by participants in proceedings. Another responsibility of the Department is to establish licensing standards and criteria and to administer professional examinations for prospective administrators.

Qualification standards and licensing procedures are inadequate and result in licensing of professionals that are ill-equipped to handle the duties of an administrator. The Commission for Certification of Administrators has been qualifying administrators and issuing the license necessary for appointment as an administrator since 1997. The qualifying test, generally preceded by a preparatory training course, does not address management or other practical skills often required for handling insolvency matters and does not require an adequate understanding of the law. The Commission has the authority to request MoE to revoke the administrator‘s license if the administrator violates the terms of any legal act or the ethics code. The administrator's license may be revoked for other reasons relating primarily to formal qualifications to act in this capacity.

Restructuring administrators are responsible for supervising the debtor enterprise during the period when the restructuring plan is being prepared, and are accountable to the enterprise or the creditors for any damage their actions cause. However, the concept of damage by such a professional is not well-developed in Lithuania, and the administrators are not required to either post bonds or, unlike accounting professionals, carry professional liability insurance. Judges complain that administrators lack the requisite knowledge of the law, forcing judges to handle routine tasks administrators. Results have been more positive where the administrator is a legal entity that engages a number of different professionals (including some lawyers). Even among legal entities, however, the level of skills and services provided is inconsistent (Bivainis and Garskaite, 2006).

3. Bankruptcy institution of Kyrgyz Republic

The Law on Bankruptcy (Insolvency) of Kyrgyz Republic was adopted two years later than in Lithuania. The first wording of the Law was put in force on 15 January 1994. The second and currently acting wording of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic was put in force on 15 October 1997. Since that time, six amendments and additions have been introduced thereto within ten years. Five of them were introduced on 30 December, 1998; 7 July 1999; 29 September 2000; 17 June 2002; 7 March 2005. The last amendments and additions to the Law on Bankruptcy (Insolvency) of Kyrgyz Republic were introduced on 27 January 2006 and are deemed to be the latest.

3.1. General provisions of bankruptcy laws in Kyrgyz Republic

The issues related to bankruptcy are regulated by the Law on Bankruptcy (Insolvency) of Kyrgyz Republic adopted by the Legislative Assembly of Kyrgyz Republic Jogorku Kenesh on September 22 1997 (as amended), Regulations on the Procedure of Using Bankruptcy Proceedings, approved by the Decree of Kyrgyz Republic of 30 December 1998.

Under Article 1 of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic it establishes grounds to recognize (declare) an insolvent debtor as bankrupt (insolvent), regulates the order of exercising of procedures to be applied in the bankruptcy process: special administration, reorganization, rehabilitation, amicable agreement, conservation and other relations originating when the debtor is incapable of meeting creditors' claims to the full extent.

The Law on Bankruptcy (Insolvency) of Kyr-

gyz Republic is applied to debtors-legal entities that are commercial organizations and are based on the state, communal and private property, including foreign legal entities and legal entities with foreign participation, which are established and registered as consistent with the legislation on the territory of Kyrgyz Republic.

The Law is also applied to debtors-individuals: citizens of Kyrgyz Republic, citizens of other states and stateless persons registered as individual entrepreneurs in a prescribed legal procedure and carrying out entrepreneurial activities on the territory of Kyrgyz Republic.

The present law is applied to debtors-legal entities that are non-commercial organizations, established and registered as consistent with the legislation on the territory pf Kyrgyz Republic, in cases expressly provided for by the Law - cooperative and public fund, or by other regulatory legal acts of Kyrgyz Republic, regulating the matters of establishment and legal organizational form of specified nonprofit organizations.

According to part 3 of Article 1 of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic the Law is not applied to government and other institutions as well as to liquidation of insolvent legal entities under the grounds specified in part 2 of Article 96 of the Civil Code of Kyrgyz Republic, subject to the requirements set forth in Article 16 of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic.

3.2. Bankruptcy process

The bankruptcy process is activities of the authorized government bodies, courts, administrators and creditors controlled by laws, which are focused on the claims of the debtor's creditors as well as recovering of the debtor's solvency or its liquidation. The date when the administrator is appointed is the beginning of the bankruptcy process.

The bankruptcy process might be initiated (Article 27-2 of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic) by the creditor (several creditors); the debtor; the bankruptcy governing body.

Proceedings that might be applied after initiating of the bankruptcy process or in the course of the debtor's bankruptcy are special administration (liquidation with regard to legal entity), reorganization (with regard to legal entity), and bankruptcy of a private entrepreneur and reorganization, rehabilitation, amicable agreement.

According to the Law on Bankruptcy (Insolvency) of Kyrgyz Republic methods of special administration consist of:

- Liquidation, which is applied in respect to the legal entity; provides for seizure, alienation as well as subsequent distribution of the debtor's assets included into liquidation estate in favor of its creditors; when liquidation proceedings are completed, the record in the State Register of Legal Entities is voided and the activity of the debtor is terminated.
- Reorganization of the debtor-legal entity. The present method is used with regard to the legal entity; it provides for replacing of the participant (participants) and establishing of a new or several new legal entities; a new or several new legal entities as well as remained assets of the debtor are sold (alienated) in order to meet the claims of the creditors; when restructuring proceedings are completed the activity of the debtor is terminated.
- Bankruptcy of an individual entrepreneur is applied with respect to the individual, who is registered as the individual entrepreneur; the process is carried out through courts; provides for seizure and alienation as well as subsequent distribution of assets included into liquidation estate in favor of its creditors; the court may disqualify the individual entrepreneur, that is, prohibit him from carrying out entrepreneurial activities within a given time.

When the bankruptcy process is initiated, the following procedures might be applied:

- Sanation. The present procedure is applied to the legal entity; provides for availability of special guarantees to protect the interests of the creditors and complete payment of their claims within a given time; if reorganization is successfully conducted and the debtor will be able to restore its solvency, then it may continue its economic activities; does not provide for changing of participants, unless otherwise provided by agreement of the parties.
- Rehabilitation, which is applied towards both a legal entity and an individual entrepreneur; it is conducted with regard to the individual entrepreneur only through courts; provides for presenting of the rehabilitation plan by the debtor and approval thereof by the creditors; the rehabilitation plan allows continuing of the debtor's business activity for complete or partial meeting of the creditors' claims; may transfer to the procedure of special administration; does not provide for changing of participants, unless otherwise provided by agreement of the parties.
- Amicable agreement is applied in the bankruptcy process juridical both with regard to a legal entity and an individual entrepreneur; provides for agreements between the debtor and the creditors wherein the latter agrees with meeting of all or

part of requirements on a contractual basis without appointing of the administrator by court; does not provide for changing of participant (participants), unless otherwise provided by agreement of the parties.

Nevertheless, they use only special administration procedures in practice – liquidation and reorganization. But the method of special administration procedure, reorganization, is used only in respect to state enterprises and enterprises with government share in the enterprise capital. Such bankruptcy proceedings as sanation, rehabilitation and amicable agreement, focused on restoration of the activities of the enterprise in default, have never been applied from the beginning of the work of bankruptcy institutions in Kyrgyz Republic.

3.3. Bankruptcy governing authority

As it is known, the first bankruptcy institution was established in Kyrgyz Republic when the Law on Bankruptcy (Insolvency) of Kyrgyz Republic was adopted on 15 January 1994. In order to create organizational, economic and other conditions required for implementation of acts on bankruptcy, enterprises for reorganization and liquidation administration under the Decree of Kyrgyz Republic of 28 May 1994 were established. Later the Bankruptcy Administration became a legal successor of the Administration. The Bankruptcy Administration was transformed into the Bankruptcy Department under the Decree of the Government of Kyrgyz Republic of 29 October 2009. At the moment the Bankruptcy Department is under the Ministry of Economy and Antimonopoly Policy.

According to Article 17 of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic the Bankruptcy Department was awarded the status of the government bankruptcy authority, which exercises the state policy in the field of bankruptcy and its prevention.

Since adoption of the Law on Bankruptcy (Insolvency) of Kyrgyz Republic on 15 October 1997 and subsequent adoption of the Laws of Kyrgyz Republic On Introduction of Amendments and Additions to the Law of Kyrgyz Republic On Bankruptcy (Insolvency) of 17 June 2002 and On Introduction of Amendments and Additions to Certain Legislative Acts of Kyrgyz Republic of 22 June 2002, the authority of the Bankruptcy Department were significantly broadened. Thus the Bankruptcy Department together with the authorities that were earlier provided began also carrying out:

- Licensing of the activities of administrators and their attestation;
- Appointment, disqualification and dismissing of administrators;
- Initiating of bankruptcy process procedures of debtors wherein the government acts as the creditor;
- Consideration of cases on administrative violations;
- Submission of conclusions on the administrator‘s reports to court;
- Control over execution of bankruptcy legislation requirements by administrators.

One of the areas of the activities of the Bankruptcy Department is to record and analyze large insolvent, economically and socially significant economic entities, submission of proposals concerning their financial rehabilitation. The present function proposes analyzing of financial and economic indicators based on the accounting reports.

Work has been performed preparing and conducting sessions of commissions for examination of materials focused on initiation of the bankruptcy process.

It should be noted that the majority of materials received for initiation of the bankruptcy process are missing debtors.

In pursuance of the Government Decree of Kyrgyz Republic On Approval of the Provision on Specialized Fund under the Government Authority on Bankruptcy of the Government of Kyrgyz Republic of 18 December 2000, in order to ensure the bankruptcy process in respect to the missing debtor, the sector organizes work of the commission on a specialized fund under the Government Authority on Bankruptcy.

The specialists of the Bankruptcy Department execute functional obligations on legal support of the Department’s interests, on representing the interests thereof in courts, ministries and departments.

According to the Law on Bankruptcy (Insolvency) of Kyrgyz Republic licensing of the activities of persons carrying out bankruptcy proceedings is one of the main functions of the Bankruptcy Department (collecting documents, organizing the activities of the license commission, holding proficiency examinations and re-attestation of administrators, checking persons aspiring to carry out administrators’ activities in the internal affairs bodies, maintening the administrators’ register, preparing documents for revocation of licenses). Thus, the Bankruptcy Department performs organizational work in terms of preparing and conducting sessions of the license commission.

The specialists fulfill the obligations imposed on the Bankruptcy Department as on the grantor of licenses to persons aspiring to receive the license of an administrator. As of 28 May 2012 the number of persons who obtained such licenses amounts to 436, 300 out of them were recalled, the number of acting special administrators amount to 136.

Bankruptcy is a complicated element of economy; we need a very careful and competent approach, which defines a need for narrow specialization. For successful work of the Bankruptcy Department par-

ticularly focuses on improving the regulatory legal base, we need to analyze the regulatory legal base and study experience of departments engaged in the issues of bankruptcy and its prevention in the near and far-abroad countries. However, the Bankruptcy Department has no relations with such departments.

4. Enterprise bankruptcy statistics in Lithuania and Kyrgyz Republic

Over 1993–2010 bankruptcy was instituted in 10308 enterprises in Lithuania (Table 1). In 9917 enterprises, bankruptcy processes were instituted in court, while 391 enterprises were subject to extra-judicial bankruptcy processes. Bankruptcy processes were completed in 6658 enterprises (64.6% of the total number of enterprises in bankruptcy and bankrupt enterprises). Out of that number, 6481 enterprises were liquidated, 3 – reorganized, 17 – sanified, while bankruptcy processes were terminated or composition with the creditors was concluded in the rest of 157 enterprises. In 3650 enterprises bankruptcy processes are still in progress: 2484 enterprises are under liquidation and in 1166 enterprises a decision concerning the execution of bankruptcy procedures has not been adopted yet (Bankruptcy of Enterprises in 2010).

Table 1

Enterprise bankruptcy process in Lithuania

Year	Started	Completed											Currently in progress
		1993-2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total	
1993	6	4	-	2	-	-	-	-	-	-	-	6	-
1994	27	16	7	3	1	-	-	-	-	-	-	27	-
1995	37	22	5	2	1	2	3	2	-	-	-	37	-
1996	78	53	6	7	6	3	-	-	1	-	-	76	2
1997	107	61	18	8	8	3	3	2	-	1	1	105	2
1998	98	61	15	10	7	4	-	-	-	-	-	97	1
1999	247	131	16	28	12	7	-	1	1	-	-	246	1
2000	415	118	166	76	30	10	6	2	1	1	-	410	5
2001	590	15	210	215	87	39	9	5	1	3	2	586	4
2002	799	-	49	330	224	117	34	19	10	3	7	793	6
2003	621	-	-	71	214	176	87	36	15	7	5	611	10
2004	709	-	-	-	56	304	176	83	35	24	11	689	20
2005	773	-	-	-	-	103	328	167	88	41	17	744	29
2006	759	-	-	-	-	-	118	362	139	49	37	705	54
2007	606	-	-	-	-	-	-	107	259	103	50	519	87
2008	957	-	-	-	-	-	-	-	121	265	231	617	340
2009	1844	-	-	-	-	-	-	-	-	61	279	340	1504
2010	1635	-	-	-	-	-	-	-	-	-	50	50	1585
Total	10308	481	542	752	646	768	764	786	6718	558	690	6658	3650

Unfortunately, bankruptcy statistics data in Kyrgyz Republic are very limited. From 1995 till 2012 bankruptcy was instituted in 4168 enterprises in Kyrgyz Republic (Table 2) and bankruptcy processes were completed in 1209 enterprises. It makes up about 30% of the total number of enterprises in bankruptcy and bankrupt enterprises. 7 enterprises are still in the reorganization process and the reorganization process was completed in 2 enterprises.

Table 2

Enterprise bankruptcy process in Kyrgyz Republic

Years	Number of enterprises in the bankruptcy progress
1995-2001	526
2002	357
2003	334
2004	314
2005	316
2006	344
2007	338
2008	359
2009	355
2010	344
2011	292
2012	289
Total	4168

In Lithuania bankruptcy was instituted in 6 140 enterprises, 67.9% more than in Kyrgyzstan. In the Republic of Lithuania bankruptcy processes were completed in 5 449 enterprises, 46.4% more than in Kyrgyz Republic. There were 4 times more reorganized enterprises in Lithuania than in Kyrgyzstan, no enterprises were sanified and terminated or composition with the creditors was concluded in Kyrgyzstan. Meanwhile 17 enterprises were sanified in the Republic of Lithuania, in the rest of 157 enterprises bankruptcy processes were terminated or composition with the creditors was concluded. All above shows that the Lithuanian bankruptcy institution works more effectively than in Kyrgyz Republic.

Conclusions

1. A bankruptcy institution is an integral part of the market economic system. The bankruptcy institution of Lithuania and Kyrgyz Republic has recently begun developing and there are shortcomings in this field. Improving the work of the bankruptcy institution the whole ecomomy of the country shall improve. Lithuania chalked up in working with enterprises in default as compared to Kyrgyz Republic. Kyrgyz Republic can improve the field by studying Lithuania's experience and adopting good practice of its bankruptcy institution.
2. The following bankruptcy proceedings are used in Lithuania: liquidation, restructuring and composition with the creditors. It should be noted that all proceedings specified in the Law on Enterprise Bankruptcy of the Republic of Lithuania are used working with enterprises in default. It means the bankruptcy institution of Lithuania is trying to recover the activities of enterprises in default but not dissolve them.

   The bankruptcy institution of Lithuania pays much attention to restructuring. In 2001 the Law on Restructuring of Enterprises was adopted. It enables bankrupt enterprises to recover their activities but not to terminate them, which is a negative result for both the enterprise itself and country's economy on the whole.
3. The following bankruptcy proceedings are used in Kyrgyz Republic: liquidation, reorganization, sanation, rehabilitation and amicable agreement. But in practice only these special administration proceedings are used: liquidation and reorganization. Moreover, the restructuring procedure is used only in state enterprises. Private enterprises are only dissolved.
4. Both countries, Lithuania and Kyrgyz Republic, have set up departments ro deal with the bankruptcy process. In Lithuania it is the Department of Enterprise Bankruptcy Management under the Ministry of economy, in Kyrgyzstan – the Bankruptcy Deportment under the Ministry of Economy and Antimonopoly Policy.
5. Over 1993–2010 bankruptcy was instituted in 10 308 enterprises of Lithuania. Bankruptcy processes were completed in 6 658 enterprises (64.6% of the total number of enterprises in bankruptcy and bankrupt enterprises). Out of that number, 6 481 enterprises were liquidated, 3 – reorganized, 17 – sanified, while in the rest of 157 enterprises bankruptcy processes were terminated or composition with the creditors was concluded.
6. Unfortunately, bankruptcy statistics data in Kyrgyz Republic are very limited. Until 2012 bankruptcy processes have been still in progress in 289 enterprises of Kyrgyz Republic and bankruptcy processes have been completed in 1 209 enterprises. 7 enterprises are still in the reorganization process and the reorganization process has been completed in 2 enterprises.
7. To improve the bankruptcy institution of Kyrgyz Republic, firstly we need to improve the existing laws on bankruptcy. It is required to put in force the effect of such bankruptcy proceedings as reorganization, rehabilitation and amicable agreement and improve restructuring proceedings. It means that we need to focus on restoration of the enterprise's solvency, what has been already done in Lithuania for over 10 years.
8. The bankruptcy institution of Kyrgyz Republic needs to strengthen protection of the debtors and the creditors in a bankruptcy case. Chapter 5 of the Law on Enterprise Bankruptcy of the Republic of Lithuania provides for protection of the debtors, creditors and third parties's rights where bankruptcy proceedings have been instituted. The Law on Bankruptcy (Insolvency) of Kyrgyz Republic does not provide for that.
9. For more effective work of the bankruptcy institution the Bankruptcy Department of Kyrgyz Republic needs to establish relations with such departments in other countries. It is necessary to analyze thebankruptcy institution in other countries and use their experiencey in Kyrgyz Republic.
10. It is necessary to create a bankruptcy of enterprises prevention system in order to improve the work of the bankruptcy institution. Prediction and prevention of an enterprise's bankruptcy must be an integral part of the bankruptcy institution, what will lead to bankruptcy risk reduction and improve the country's economy on the whole.

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Lietuvos ir Kirgizijos Respublikų bankroto institutų lyginamoji analizė

Santrauka

Bankroto institutui tenka ypatingas vaidmuo šalies rinkos ekonomikoje. Atgavus nepriklausomybę, kaip ir Lietuvoje, taip Kirgizijos Respublikoje, buvo būtina struktūrizuoti visą šalies ekonominę sistemą ir ją orientuoti į rinkos santykius. Šiandien jai būdingi tokie reiškiniai kaip pramonės gamybos apimčių mažėjimas, ekonominė krizė, investicijų trūkumas ir piniginių–kreditinių santykių sugriežtėjimas. Tokiomis sąlygomis neišvengiamas nemokių įmonių atsiradimas (bankrotai). Tai lėmė bankroto instituto atsiradimą ir plėtrą. Lietuva šioje srityje turi didesnę patirtį, kurią sėkmingai gali perimti Kirgizija. Straipsnyje pateikiama Lietuvos ir Kirgizijos bankroto institutų darbo analizė, ugdant respublikų statistinius duomenis. Be to, nurodomi tie Lietuvos bankroto instituto privalumai, kuriuos gali perimti Kirgizija. Tai pagrindinis straipsnio tikslas.

Remiantis Lietuvos ir Kirgizijos Respublikų bankroto institutų veiklos įstatymų leidimo bankroto klausimais bei valstybinių institucijų darbo su bankrutuojančiomis įmonėmis analize, buvo padarytos atitinkamos išvados ir pateiktos rekomendacijos.

Lietuvoje taikomos tokios bankroto procedūros: likvidavimas, restruktūrizacija ir susitarimai su kreditoriais. Taikomos visos procedūros, kurios numatytos Bankroto įstatyme, t. y. Lietuvos bankroto institutas visų pirma stengiasi atstatyti bankrutuojančių įmonių veiklą, o ne jas likviduoti. Ypatingas dėmesys skiriamas restruktūrizacijai. 2001 m. buvo priimtas Įmonių restruktūrizacijos įstatymas. Jis irgi leidžia bankrutuojančioms įmonėms pirmiausia atstatyti savo veiklą.

Kirgizijos Respublikoje gali būti taikomos tokios bankroto procedūros: likvidavimas, restruktūrizavimas, sanavimas, reabilitacija ir taikos susitarimas. Praktiškai taikomos tik specialaus administravimo procedūros – likvidavimas ir restruktūrizavimas. Pastarasis būdas taikomas tik valstybinėms įmonėms, o privačios tik likviduojamos.

Tiek Lietuvoje, tiek Kirgizijoje su bankrutuojančiomis įmonėmis dirba specializuotos valstybinės tarnybos: Lietuvoje – įmonių bankroto valdymo departamentas,

esantis prie ekonomikos ministerijos; Kirgizijoje – Bankroto departamentas prie Ekonomikos ir antimonopolinės politikos ministerijos.

1993–2010 m. Lietuvos Respublikoje bankroto procedūros buvo pradėtos 10 308 įmonėms. Jos buvo baigtos 6 658 įmonėse (64,6 proc. nuo bendro minėtų įmonių skaičiaus). Iš jų 6 481 įmonė buvo likviduota, 3 įmonės reorganizuotos, 17 įmonių sanuotos. Likusiose 157 įmonėse bankroto procesas buvo nutrauktas arba buvo pasiektas sutarimas su kreditoriais.

Kirgizijos Respublikoje tokia statistika, deja, labai ribota. 2012 m. bankroto procedūros vykdomos 289 įmonėse, o 1 209 įmonėse – jau baigtos; 7 įmonės reorganizuojamos, 2 įmonėse šis procesas jau baigtas.

Siekiant pagerinti Kirgizijos bankroto instituto darbą, pirmiausia reikia tobulinti su įmonių bankrotu susijusius įstatymus. Būtina plačiau taikyti sanavimo, reabilitavimo ir taikos susitarimo procedūras. Lietuvos Respublikos įmonių bankroto įstatymo 5 straipsnis numato skolininko, kreditoriaus ir trečių šalių interesų apsaugą tose įmonėse, kurioms pradėtos bankroto procedūros. Tačiau panašiame Kirgizijos Respublikos įstatyme to nėra.

Norint pagerinti Kirgizijos bankroto instituto darbą taip pat būtina tobulinti normatyvinę–teisinę bazę ar užsienio šalių žinybas, kuruojančias bankroto klausimus, atlikti jų darbo patirties analizę. Tai leistų panaudoti jų teigiamą patirtį tobulinant Kirgizijos bankroto instituto darbą.

Lietuvos ir Kirgizijos bankroto institutų darbui pagerinti tikslinga suformuoti įmonių bankroto prevencijos sistemą. Ji turėtų tapti viena svarbiausių bankroto instituto funkcijų. Tokios sistemos įdiegimas ir taikymas gerokai sumažintų įmonių bankroto pavojų ir gerintų visos šalies ekonominę padėtį.

Pagrindiniai žodžiai: įmonių bankrotas, bankroto teisė, bankroto institucija, įmonių bankroto statistika, bankroto rizika, bankroto prevencija.

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