



Ukraine: Country's first ever Insolvency Code

On 18 October 2018 a Ukrainian parliament – Verkhovna Rada – adopted the very first Ukrainian Insolvency Code. The adopted Code underwent more than 1 300 amendments of which approximately 40% were rejected.

Having an extremely high support from international lenders, such as IMF and WB, the country obtained a brand-new law for dealing with distressed debt, applicable both to natural and legal persons.

First of all, the Code sets much more flexible conditions for both debtors and creditors in legal person insolvency. These are:

- Cancelling a debt threshold for initiation of an insolvency case for legal persons. For private entrepreneurs this will be an unpaid debt of minimum USD 1 500; however, for legal persons, the court may open insolvency proceedings irrespectively of the debt amount at stake. It is expected that case law of the renovated Ukrainian Supreme Court will determine whether a cash flow test or a balance sheet

insolvency will be the main criteria for the vast majority of cases.

- Allowing to initiate insolvency proceedings without prior collection through courts and/or enforcement services. This is surely a positive development for creditors, as they are no longer required to spend significant amounts (€12,000 for the State Court fee in the first instance) for litigating the debt before switching a debtor to the insolvency case.
- Fixing the principal length of each stage (e.g. assets management, restructuring or liquidation) to prevent the cases from being deliberately delayed.
- Returning key rights to secured creditors. For almost five years the latter (most of which are Ukrainian banks) were mere spectators to insolvency procedures, having no voting right in either creditors' GM or the creditors' committee. This apparently deprived them of the possibility to have any influence over an IP candidature, as well as over stage changing or the pre-fire sale process. The Code reinstates secured creditors in all the basic rights available to non-secured ones.
- Allowing e-sales of all and

any debtor's assets under transparent valuation and bidding process and court supervision over substantial assets sale. For a decade, fire-selling of assets was used in many Ukrainian insolvency cases, legitimising closed auctions with non-transparent bidding and discounting terms. New developments will allow to sell the debtors' assets via e-trading services exclusively, with little-to-none limitations for participation in bidding. Moreover, should any securities be fire-sold or be subject to an inadequate discount, a security creditor is to be allowed to take the security into his possession.

One of the main innovations of the Code is introduction of the natural person insolvency. Earlier, such an approach was only available for private entrepreneurs and for their commercial debts only. Nowadays any natural person with either commercial or consumer debts in distress may apply for a commercial court protection, requesting either:

- debt management (i.e. write off some debts and scheduling instalment for the remaining under a creditor- and court-approved repayment plan); or
- regular debt collection when most of the debtor's property is sold and the amounts received are to be distributed between the creditors.

To sum up, the Code aims to provide a reliable protection of the creditors' interests by reducing not only the duration of the procedures and the excessive formalities, but also the costs of these procedures. The Code is expected to be officially published within 1 month. After official publication, it will enter into force within at most 6 months, setting special transition periods for new fire-sale terms and the distressed loans secured by mortgaged housing.



ANTON MOLCHANOV
Head of Insolvency,
Arzinger law firm, Ukraine



ANASTASIA IVASHCHENKO
Lawyer,
Arzinger law firm, Ukraine



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MAIN
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