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DETERMINATION, CRITERION AND EFFICIENCY EVALUATION OF INSOLVENCY IN THE INTERNATIONAL AND BELARUSIAN RESTRUCTURING AND INSOLVENCY PRACTICE

An analysis of approaches to the determination of insolvency in the bankruptcy codes of 45 countries of the world, including the European Union, is presented in the article. Some specific fiches of the national regulations and establishing of insolvency in international practice are observed. The methodology of Doing Business Review 2018 by World Bank and the results of the efficiency assessment of the Belarusian practice of resolving insolvency (debt enforcement) has been investigated. The possible directions of improving the approaches to the debtors' insolvency at the present stage of economic development in the Republic of Belarus have been revealed.

Keywords: *Insolvency, Liquidity ratios, solvency ratios, cash-flow test, balance-sheet test, bankruptcy code, efficiency of resolving insolvency*

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УСТАНОВЛЕНИЕ НЕПЛАТЕЖЕСПОСОБНОСТИ И ЕЕ КРИТЕРИИ. ОЦЕНКА ЭФФЕКТИВНОСТИ РАЗРЕШЕНИЯ НЕПЛАТЕЖЕСПОСОБНОСТИ В МЕЖДУНАРОДНОЙ И БЕЛОРУССКОЙ ПРАКТИКЕ

Представлен анализ подходов к определению неплатежеспособности в законодательстве о банкротстве 45 стран мира, включая Европейский союз. Раскрыты некоторые особенности регулирования и установления неплатежеспособности в отечественной практике и за рубежом. Исследована методика и результаты оценки эффективности белорусской практики разрешения неплатежеспособности Doing Business Review 2018 Всемирного банка. Определены возможные направления совершенствования подходов к установлению неплатежеспособности должника на современном этапе экономического развития в Республике Беларусь.

Ключевые слова: *платежеспособность, коэффициенты ликвидности, коэффициенты платежеспособности, тест оценки платежеспособности по денежным потокам, тест оценки платежеспособности по бухгалтерскому балансу, законодательство о банкротстве, эффективность разрешения неплатежеспособности*

Introduction

Insolvency is one of the basic and fundamental concept in real business. There are many definitions of insolvency with one main meaning: a situation in which a person or company does not have enough money to pay debts, buy goods, etc. [2]. Commonly, determination and establishing of insolvency is closely related and based on liquidity and solvency, which are measured by liquidity and solvency ratios.

In general, liquidity measures the ease with which an individual or company can meet their financial obligations with the liquid assets available to them. There are several ratios that express liquidity: Current Ratio (a comparison between current assets and current liabilities), Quick Ratio or Acid-test Ratio (calculated by deducting inventories from current assets and then dividing the remainder by current liabilities) and Cash Ratio (ratio of cash and cash equivalents of a company to its current liabilities). The first is one of the most frequently used indicator as solvency measure and it shows whether the current assets are enough to settle current liabilities. A current ratio of 1.0 or more means that current assets are more than current liabilities and a company should not face any liquidity problem.

Solvency directly relates to the ability of an individual or business to pay their long-term debts including any associated interest. To be considered solvent, the value of an entity's assets, whether in reference to a company or an individual, must be greater than the sum of its debt obligations. Therefore, solvency ratios assess the long-term financial viability of a business i.e. its ability to pay off its long-term obligations such as bank loans, bonds payable, etc. Information about solvency is critical for banks, employees, owners, bondholders, institutional investors, government, etc. Key solvency ratios are: Debt Ratio or Debt to Assets Ratio (calculated by dividing total debt of a business by its total assets), Debt to Equity Ratio (the ratio of total liabilities of a business to its shareholders' equity), Debt to Capital Ratio (measures the proportion of interest-bearing debt to the sum of interest-bearing debt and shareholders' equity), etc. The first ratio (Debt ratio) is a ratio which measures debt level of a business as a percentage of its total assets and indicates of a business's financial risk, the risk that the business' total assets may not be sufficient to pay off its debts and interest thereon. Since not being able to pay off debts and interest payments may result in a business being wound up.

Methodology

Literature analysis, analysis of existing legislation and various approaches to the determination of insolvency in the bankruptcy codes based on The Restructuring Review by Christopher Mallon, Getting the Deal Through by Leonard Bruce, The European, Middle Eastern and African Restructuring Review 2017 by Global Restructuring Review and some other sources have been used to formulate conclusions.

For understanding existing differences between jurisdictions and approaches for treatment of wage and pension claims, terminology specifics and the challenge of comparative research should be taken into consideration. For instance, different jurisdictions use the words insolvency and bankruptcy to distinguish different stages in an insolvency proceeding or to distinguish commercial or consumer treatment of financial distress, whereas other jurisdictions use the terms interchangeably. For this reason it is important to bear in mind that certain descriptions or terminologies must be understood in the context in which they are being referred to, in terms of the broader social, economic and legal framework of a jurisdiction.

The Resolving insolvency methodology and indicators presented and analysed in Doing Business have been investigated as to provide an objective basis for measuring the efficiencies of the Belarusian practice of resolving insolvency (debt enforcement). While the Doing Business project provides objective measures of business regulations and their enforcement across 190 economies and selected cities at the subnational and regional level, some limitations (Assumptions about the business) of this methodology should be taken into account. So, when considering the advantages of Resolving insolvency methodology by Doing Business, the fact that the Doing Business project looks at domestic small and medium-size companies and measures the regulations applying to them through their life cycle should be taken into consideration.

The results of combination of liquidity and solvency

The result of combination of liquidity and solvency gives us three situations any company possible to have:

a) Technical insolvency. A company is technically insolvent if it cannot meet its current obligations as they come due, despite the value of its assets exceeding the value of its liabilities (cash-flow insolvency).

b) Accounting insolvency. A company is legally insolvent if the value of its assets is less than the value of its liabilities (balance-sheet insolvency).

c) Bankruptcy. A company is bankrupt if it is unable to pay its debts and files a bankruptcy petition.

From the point of view of the legislation that applicable to insolvencies and reorganisations it is important to understand what criteria are applied in the country to determine if a debtor is insolvent. From the legal point of view, the Bankruptcy Code of the country may adopt:

a) The cash-flow test: the only criteria to determine if a debtor is insolvent is when it is unable to regularly meet its payment obligations when they fall due in the usual course of business (is continuously unable to pay his outstanding monetary obligations). For this kind of test the creditor usually must establish that a debtor has failed to comply with a statutory demand of a debt within a certain deadline.

b) The balance-sheet test for insolvency: an entity shall be considered insolvent if its obligations are greater than its assets (the sum of the debtor's debts is greater than all of the debtor's property at fair value). In other words, the balance-sheet test shall ascertain whether a legal entity shall be considered to be over-indebted.

Two above mentioned tests (with some limitations) can be used both separate and together and in different jurisdictions and circumstances can lead to different consequences. They also can be combined with extra tests and conditions that shows the local features and concerns.

Restructuring & insolvency 2017 by getting the deal through: survey findings

Investigation of the more significant legal and commercial developments and trends that have been evident in recent years and that are expected to be significant in the future, including insolvency and restructuring, can be made on the base of The Restructuring Review by Christopher Mallon [12], Restructuring & Insolvency by Leonard Bruce [9], The European, Middle Eastern and African Restructuring Review 2017 by Global Restructuring Review [11] and some other sources [5, 6]. Their intention is to help understand important conclusions about the national regulations and to give practical directions for farther improvements of national legislation.

The most structured and completed is Getting the Deal Through by Leonard Bruce. The tenth edition of Restructuring & Insolvency 2017 by Getting the Deal Through project for example provides international expert analysis using the same format, key questions are answered by leading practitioners in each of the 45 jurisdictions including European Union. The comparison methodology of Getting the Deal Through is supposed to answer on different vital questions from different categories by practitioners. Such questions are: What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent? What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with? What entities are excluded from customary insolvency proceedings and what legislation applies to them? etc.

Our analysis based on Restructuring & Insolvency 2017 shows that most jurisdictions – 22 countries, (including European Union) use cash-flow test for insolvency detection. 17 countries (including European Union) rely on the results of two tests simultaneously (cash-flow and balance-sheet tests). Only 3 countries use balance-sheet test and extra 4 jurisdictions (Canada, Dominican Republic, Japan and Croatia) use cash-flow or balance sheet test as alternatives (table 1).

Table 1

Distribution of Countries by Using Tests for Establishing the Debtor's Insolvency

	Country	Comments
Cash-Flow Test	Australia, Bahrain, Belgium, Botswana, Cayman Islands, Cyprus, European Union, France, Greece, Indonesia, Isle of Man, Italy, Luxembourg, Netherlands, Nigeria, Romania, Russia, Spain, Sweden, Turkey, United Arab Emirates, Vietnam	Incl. European Union
Cash-Flow and Balance-Sheet Tests	Austria, Bahamas, Bermuda, Bulgaria, China, England & Wales, European Union, Germany, Hong Kong, Hungary, India, Malaysia, Mexico, Norway, Peru, Singapore, United States	Incl. European Union
Balance-Sheet Test	Brazil, Switzerland, Thailand	
Cash-Flow or Balance-Sheet Test	Canada, Croatia, Dominican Republic, Japan	Alternative tests

Note: author's development according to [9].

It is important to notice that Bankruptcy Codes in most of the countries provide for special insolvency criteria and requirements for initiating insolvency proceedings in relation to particular categories of debtors (for example, financial or credit organisations, government-owned enterprise, etc.). Moreover, bankruptcy proceedings may apply (in contrast to Belarus) not only to all legal entities but also to individuals and some special tests sets out in relation to individuals. In our findings, we focused on matters of companies rather than financial institutions or natural persons.

In summarising the survey findings in Table 1, possible to notice that the total are not giving us 45 because there is no single criterion to apply to determine if a debtor is solvent in the European Union, as this is a matter for each member state to determine. In general, some member states have a cash flow-only insolvency test while others have a cash flow and balance sheet test [9, p. 167]. Thus, the most countries prefer cash-flow test when a debtor has failed to comply with a statutory demand of a debt within a certain deadline.

The most important parameters for insolvency proses are statutory demand and duration of the debt.

Statutory demand range from just over \$5 in Nigeria up to more than \$5,000 in Russia. For example in Australia statutory demand exceeding A\$2,000; in Bermuda – BM\$500; in England & Wales – £ 750; in Hong Kong – HK\$10,000; in Russia – RUB300,000; in Nigeria – NGN2,000; in India – INR500.

The duration of the debt may vary from 21 days (in Australia, Cyprus, Nigeria, Germany, Hong Kong, Isle of Man, Singapore, Sweden, England & Wales) or 30 days (in Mexico) up to 60 (in Croatia, Romania) and even 90 days like in Dominican Republic or in Russia from the time a demand was made by the creditor or from the date when the payment obligation fell due.

Moreover, in some jurisdictions specialists use extra tests based on the failure to pay two (in Dominican Republic) or three (in Croatia) consecutive salaries to employees. Very often it also possible to find as criteria for establishing a general default on payment obligations for at least two creditors (plurality of creditors). Some jurisdictions like Dominican Republic as a tax haven implements special tests for insolvency: failure to pay withheld taxes to the tax authorities for a period of more than six fiscal quotas.

Finally, in Belgian and Brazilian laws there are no legal criteria to determine whether a debtor is insolvent. However, they have general practice that helps classify them in accordance with the two above-mentioned groups by using cash-flow or balance-sheet tests. Moreover, another concept that possible to determine is the absence of 'insolvency' definition by national Bankruptcy Code. Some other countries such as England & Wales, Cyprus, Hong Kong, Cayman Islands implement the concept of a company being 'unable to pay its debts', that means that the court is required to make an assessment of the company's assets and liabilities and to decide whether, on the balance of probabilities (making proper allowance for contingent and prospective liabilities), the company cannot reasonably be expected to meet those liabilities [9, p. 149].

Belarusian practice

In Belarus insolvency is defined as inability to satisfy the claims of creditor (creditors) as they fall due and the inability to satisfy employee claims and other directly associated obligations [15]. As we see, the liquidity test (the debtor is generally unable to pay its debts as they mature) is used for commencement of the insolvency proceedings. Like in Dominican Republic and Croatia in Belarusian Bankruptcy Law, insolvency is linked with satisfaction of employee claims but it does not specify additional requirements for them.

In contrast to international concepts together with 'insolvency' the national Law 'On Economic Insolvency (Bankruptcy)' of July 13, 2012 (Bankruptcy Law) gives the definition of 'economic insolvency (bankruptcy)' – insolvency recognized by a court, which is sustainable and systemic or becomes sustainable and systemic and related to the debtor financial rehabilitation.

Insolvency from the point of view of national legislation should also be distinguished from bankruptcy – insolvency becoming or having a sustainable and systemic nature, approved by the economic court's decision on bankruptcy with the liquidation of the debtor-legal entity or termination of the debtor-individual entrepreneur activity.

In Belarus, for the purpose of the conformation of sustainable and systemic character of insolvency during the supervision and financial restoration stage insolvency office holder (office) is appointed by the court in order to supervise the management and to limit, to some extent, the management's authority. By the end of the supervision and financial restoration stage office should present to the court the results of his or her analysis of insolvency in accordance with the Decree No 140/206 of December 27, 2011 (Decree No 140/206) [13] to confirm if a company is insolvent.

In accordance with the Decree, the analysis of insolvency based on three coefficients: Current Ratio (Current Assets/Current Liabilities) (K1), Working Capital Financed by Equity to Total Assets Ratio ((Equity + Non-Current Liabilities – Non-Current Assets)/ Current Assets) (K2) and Liabilities to Total Assets Ratio ((Current Liabilities + Long Term Liabilities)/Total of Balance) (K3).

The company recognized as insolvent when both Current Ratio (K1) and Working Capital Financed by Equity to Total Assets Ratio (K2) are below the defined limits at the end of the reporting period, as defined in the Decree of the Council of Ministers of the Republic of Belarus of 12.12.2011 No 1672 ,On the determination of criteria for assessing the solvency of business entities' (with amendments and additions) (Decree No 1672) [14].

Along with the recognition of debtor's insolvency, the national legislation determines the conditions under which insolvency becomes sustainable and systemic. Insolvency becomes sustainable and systemic if a company is insolvent over the four quarters prior to the reporting date and (or) the Liabilities to Total Assets Ratio (K3) as on the reporting date is more than 0.85 independently of the type of economic activity [4, p. 117] (table 2).

Table 2

The System of Ratios and Limits for Insolvency Evaluation

Ratio	Russian Equivalent	Limits
1. Current Ratio (K1)	Коэффициент текущей ликвидности	$\geq 1.0 \div 1.7$
2. Working Capital Financed by Equity to Total Assets Ratio (K2)	Коэффициент обеспеченности собственными оборотными средствами	$\geq 0.05 \div 0.3$
3. Financial Liabilities to Total Assets Ratio (K3)	Коэффициент обеспеченности обязательств активами	≤ 0.85

Note: author's development according to [3, 4].

In conformity with this approach, the National Committee of Statistics and Analysis starting from 2000 calculates annual solvency ratios of the Belarusian enterprises based on the official statistical reports (table 3).

Table 3

Insolvency Ratios of Companies of the Republic of Belarus

Ratio	2010	2011	2012	2013	2014	2015	2016	2017
K1	167.2	153.4	133.3	123.9	114.2	111.1	111.5	118.0
K2	-2.6	-6.1	25.0	19.3	12.4	10.0	10.3	15.2
K3	32.9	33.8	35.0	38.3	42.7	49.5	50.5	51.3

Note: according to National Statistical Committee of the Republic of Belarus [10].

So, it is fair to conclude that in Belarus both cash-flow (via K1 ratio) and balance-sheet (via K2 ratio and additional K3 ratio) tests for establishing debtor's insolvency are used. The approach as shown in table 1 appears to be broadly accepted in many countries with the proviso that most jurisdictions (including European Union) prefer cash-flow test for insolvency detection.

At the same time the appropriateness of having two regimes of insolvency and economic insolvency (bankruptcy) in national Law ,On Economic Insolvency (Bankruptcy)' is questionable and makes the

implementation of those tests a complicated process with a number of contemporary issues. In particular, the initiating the pre-bankruptcy proceedings over the debtor is complicated by proving sustainable and systemic character of insolvency by a court [4, p. 140]. Thus, according to Article 12 of the Belarusian Bankruptcy Law one of the reason to bring a bankruptcy petition against a debtor is existence of reliable and documented evidences of the insolvency of the debtor becoming or having a sustainable and systemic nature. In fact, the creditor is obliged to assess, with the help of the two tests mentioned above, the solvency of the debtor within four quarters preceding the compilation of the last balance sheet. Moreover, this condition is not the only one: it is necessary to take into consideration the results of compulsory execution and the minimum amount of statutory demand established by law.

Efficiency evaluation of debt enforcement

While the grounds for insolvency are to be found in the national bankruptcy legislation, efficiency evaluation of restructuring and insolvency procedures can be given using the Doing Business methodology by the World Bank.

The implementation an easier and more effective approach to restructuring of insolvent debtors is extremely vital, as in its Doing Business Review 2018 (Doing Business or DB), the World Bank ranked Belarus as only 68th in the world in terms of the Resolving Insolvency Index. In the Table 4 below top 5 of the economies with the highest level of resolving insolvency prepared by DB including Belarus and the last position is presented (table 4).

Table 4

Doing Business Review 2018: Economy Rankings by Resolving Insolvency

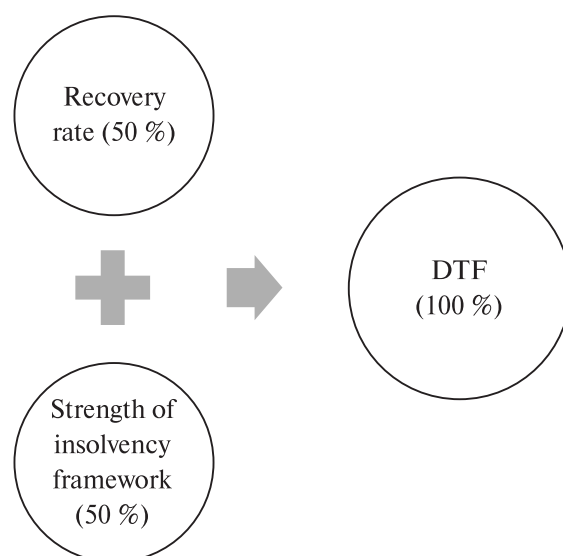
Economy	DB 2018 Rank
Japan	1
Finland	2
United States	3
Germany	4
Korea, Rep.	5
...	...
Belarus	68
...	...
West Bank and Gaza	168

Note: author's development according to Doing Business [7].

As it is shown in Figure below, two indicators determine the ranking of economies on the ease of resolving insolvency: recovery rate and strength of insolvency framework, which are the base for calculation of distance to frontier (DTF) scores.

Recovery rate is a function of the time, cost and outcome of insolvency proceedings against a local company. The time for creditors to recover loans is recorded in calendar years from the company's default until the payment of some or all of the money owed to the bank. The cost of proceedings is recorded as a percentage of the value of the debtor's estate and includes court fees and government levies; fees of insolvency administrators, auctioneers, assessors and lawyers; and all other fees and costs. The outcome for creditors depends on whether the distressed company emerges from the proceedings as a going concern or its assets are sold piecemeal. The rate is recorded as cents on the dollar recouped by secured creditors through reorganization, liquidation or debt collection (foreclosure or receivership) proceedings.

Based on the time, cost and outcome of insolvency proceedings the recovery rate is calculated in each economy. The recovery rate is recorded as cents on the dollar recovered by secured creditors through



Distance to frontier (DTF) score determination

(source: author's development according to The World Bank Group [8])

judicial reorganization, liquidation or debt enforcement (foreclosure or receivership) proceedings. The calculation takes into account the outcome: whether the business emerges from the proceedings as a going concern or the assets are sold piecemeal. Then the costs of the proceedings are deducted (1 cent for each percentage point of the value of the debtor's estate). Finally, the value lost as a result of the time the money remains tied up in insolvency proceedings is taken into account, including the loss of value due to depreciation (table 5).

Table 5

Belarus Recovery Rate of Resolving Insolvency Benchmarked Against Regional and OECD Averages

Indicator	Belarus	Europe & Central Asia	OECD
Recovery rate (cents on the dollar)	37.2	38.0	71.2
Time (years)	1.5	2.3	1.7
Cost (% of estate)	17.0	13.1	9.1
Outcome (0 as piecemeal sale and 1 as going concern)	0	X	X

Note: author's development according to Doing Business [1].

Then goes the strength of insolvency framework index, which is also a complex index and measures the quality of insolvency laws that govern relations between debtors, creditors and the court. It is equal to the sum of the scores on the commencement of proceedings index, management of debtor's assets index, reorganization proceedings index and creditor participation index. The index ranges from 0 to 16, with higher values indicating insolvency legislation that is better designed for rehabilitating viable firms and liquidating nonviable ones.

Strength of insolvency framework index for Belarus

The result of calculation of strength of insolvency framework index for Belarus by DB is presented in table 6.

All the above presented indexes are also complex and then commencement of proceedings index, which ranges from 0 to 3, is also not an exception. The higher values of the strength of insolvency framework index indicates greater access to insolvency proceedings. In Belarus, for example, debtors can initiate liquidation (a score of 0.5) as well as creditors (a score of 0.5). The standard for commencing

Table 6

**Belarus Strength of Insolvency Framework Index of Resolving
Insolvency Benchmarked Against Regional and OECD Averages**

Indicator	Belarus	Europe & Central Asia	OECD
Strength of insolvency framework index (0-16)	10.0	10.8	12.1
Commencement of proceedings index (0-3)	2.0	2.6	2.8
Management of debtor's assets index (0-6)	5.5	4.4	5.4
Reorganization proceedings index (0-3)	0.5	1.8	1.9
Creditor participation index (0-4)	2.0	2.1	2.3

Note: author's development according to Doing Business [1].

insolvency proceedings is that the debtor cannot pay its debts as they mature (a score of 1). Adding these numbers gives Belarus a score of 2 out of 3 on the commencement of proceedings index (table 7).

Table 7

Commencement of Proceedings Index for Belarus

Indicator	Answer	Score
Commencement of proceedings index (0-3)		2.0
What procedures are available to a DEBTOR when commencing insolvency proceedings?	(b) Debtor may file for liquidation only	0.5
Does the insolvency framework allow a CREDITOR to file for insolvency of the debtor?	(b) Yes, but a creditor may file for liquidation only	0.5
What basis for commencement of the insolvency proceedings is allowed under the insolvency framework?	(a) Debtor is generally unable to pay its debts as they mature	1.0

Note: author's development according to Doing Business [1].

Referring to the case of what standard is used for commencement of the insolvency proceedings are:
1 is assigned if a liquidity test (the debtor is generally unable to pay its debts as they mature) is used;
0.5 if the balance sheet test (the liabilities of the debtor exceed its assets) is used;

1 if both the liquidity and balance sheet tests are available but only one is required to initiate insolvency proceedings;

0.5 if both tests are required, and

0 if a different test is used.

According to the criterion of commencement of insolvency proceedings a maximum score of 1.0 is assigned for our country, i.e., according to the methodology described above, the liquidity test is used in Belarus. Therefore, as we can see, considerable attention by Doing Business is being given not only to the definition and to evaluating of insolvency but to basis for commencement of the insolvency proceedings under the insolvency framework. Maximum is granted to the economies, like Belarus, using liquidity test or both the liquidity and balance sheet tests but if only one is required to initiate insolvency proceedings.

Thus, it is possible to conclude that the national insolvency legislation was insufficiently prepared for the situation that was to unravel in the coming years, hence, the Bankruptcy Law had to be amended several times from 1991 (when the modern system of bankruptcy institutions in Belarus was established by acceptance of the Law 'On Economic Insolvency and Bankruptcy' of May 30, 1991) to adapt to the new reality of the Belarusian economy.

Conclusions

A ratios toolkit implemented into our Belarusian practice for predicting insolvency is quite easy to use, despite the fact that other countries do not use it. The system of above-mentioned ratios (K1, K2 and K3) is a useful instrument for users of financial statement that simplifies the analysis of financial statements,

highlights important information in simple form quickly and helps a user judge a company by just looking at few numbers instead of reading the whole financial statements.

At the same time Belarus, Russia, Ukraine, Latin America and the like are generating a significant number of ongoing restructurings. Thus, it is necessary to bring about a shift to a more creditor-friendly regime in Belarus in the hope of boosting financial markets and making insolvency simpler and much quicker. We need to concentrate on the quality of insolvency laws that govern relations between debtors, creditors and the court in order to increase recovery rate, which is almost twice is lower as in OECD (37.2 against 71.2) and strength of insolvency framework by changing reorganization procedures. Successful implementation of this idea will provide greater compliance with internationally accepted practices and partially depend on the development of the right culture and judicial infrastructure to support economic reforms in the country. Addressing this problem requires the complementary efforts of policymakers, regulators, lawyers, insolvency experts, corporate restructuring specialists, and financiers.

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Статья поступила 20.10.2018