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ECONOMIC AND LEGAL REVIEW OF PRETRIAL INSOLVENCY IN FOREIGN LEGISLATION

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Abstract. In this work we have analized the essence of prejudicial prevention of insolvency of an economic entity and reveals contents of this phenomenon, research of opportunitieswas conducted about its use for prevention of existing negative consequences of judicial processes of insolvency in economy. The features of the prejudicial prevention of insolvency (bankruptcy) of economic entities performing business activity abroad are analysed in the article, also we analyze Russian and international practice of legal regulation of prejudicial prevention of bankruptcies, it is offered to settle at legislative level activities of domestic entrepreneurs in sphere of prejudicial prevention of insolvency of an economic entities.
Keywords: legal status; economic entity; legal regulation; pre-judicial prevention; insolvency (bankruptcy).

Introduction. The Constitution of Russian Federation provides freedom of economic activity and unity of economic area, that creates all conditions for marked-based economy and entrepreneurial development in Russian Federation. Market relations require creation of an effective mechanism to eliminate from economic turnover of economically irrational operating subjects. In this regard, there is a growing role of the insolvency institute because it seeks to promote resolution of problem of insolvency of individual entities.

Insolvency law is actively developing in the new Russia for more than fifteen years. Today we can talk about transformation of the approach to objectives of the institution of bankruptcy. If initially as the only goal it was seen the elimination of insolvent debtor and satisfaction of creditors' claims, it is now becoming increasingly important to pay attention on rehabilitation direction. Current bankruptcy law provides at once two rehabilitation procedures, which are possible to use against the debtor under the bankruptcy trial. The purpose of their application is the preservation of this subject, business, enterprise, and, finally, jobs. In order to meet creditors' claims it is not necessarily to sell the debtor's property. Modern economics has other tools. However, carrying out rehabilitation procedures in judicial practice is extremely rare, thus, successful conclusion in such cases are single.

Today, a significant part of economic entities is on the verge of bankruptcy, falling prices for oil and petroleum products made Russia to remember what is "budget deficit". Drop in demand for its products in key sectors of the economy (construction, automotive, etc.) implies suspension off production, reduction of workplaces. Banking system faced with loan default. This slows down the flow of funds and increases risk of insolvency. Crisis also continues to grow like a snowball, and judicial bankruptcy proceedings threatens to many business entities.

In relation of abovementioned quite urgent becomes a problem of measures on prevention of bankruptcy.

1. Subject's financial responsibility and afety measures

Results of judicial bankruptcy proceedings today evoke no optimism.

If you try to keep track on statistics of bankruptcies since adoption of the 1998 law till present time, we will get approximately following results. Thus, regarding the Insolvency Act in 1998 following was vividly illustrated: “at the beginning of 2003, there were 3960 unfinished monitoring procedures, even for the 5351 cases, this procedure was introduced in reporting year, for a total of 9311 procedures during the year. Let’s pay attention that more than half of these (4850) ended up with declaring the debtor as a bankrupt, while termination of bankruptcy proceedings mentioned only in 712 cases (54 of which are in connection with approval of a settlement agreement), which represents 7.6 %”. “In 2005 from 100,269 bankruptcy proceedings (83,188 cases are residue from previous years and 17081 are newly introduced procedures) was completed in 1533, and in 63 cases it was completed settlement agreement, and in 32 it was repayment of creditors' claims”.

In 2014 it was made 19,238 decisions on declaring debtor as bankrupt and bankruptcy proceedings were opened. 66,816 were completed with production on cases of recognition of the debtor as insolvent (bankrupt: 563 cases were due to the refusal to recognize the debtor bankrupt; for 48,457 cases it was due to the completion of bankruptcy proceedings; on 17,501 cases production was discontinued.

In 2016 the procedure to restore solvency of debtors was carried out against 785 debtors. Cases, when in regard to debtors it was introduced financial recovery procedure, are still rare. In 2016 only in relation to 13 debtors such procedure was introduced (2015 – 21). External control procedure was carried out for 752 debtors (2015 – 947). Proceedings were discontinued due to the repayment of debt and satisfaction of creditors' claims only in 44 cases as a result of these procedures.

As we can see the results of procedures of insolvency are unfavourable neither for debtors (they are liquidated in most cases), nor for creditors (as a result of a sale of competitive weight, means for satisfaction stay extremely rare for at least a part of their requirements).

There was also obvious one circumstance – all the existing rehabilitation procedures in current bankruptsy law does not bring any results.

All this allows to claim about the real need of application of alternative ways to solve problems of non-payments and gradual decrease in extent of participation of arbitration tribunal in the process of bankruptcy.

In modern scientific researchs, people pay sufficient attention to bankruptcy reasons. At the same time, they allocate rather large number of factors which influence deterioration in solvency of economic entities. So, A. I. Goncharov and M. V. Terentyeva detect a problem good enough, also giving us details, and they offer detailed classification of reasons on basis of division on external and internal factors of decrease in solvency and financial sufficiency of economic entity. Interrelation of these factors is shown differently in each case [4].

A. N. Kostin, G. V. Zavyalov fairly mention as the most probable causes of bankruptcies following:

- «production, being in limited demand in consequence of its moral obsolescence or overproduction;
- production of poor quality products;
- high prices for sold products and in this connection its sale are late;
- low level of use of its capacities;
- considerable debtor indebtedness for shipped goods which were not paid in time" [11].

Authors also reasonably note that other reasons are caused by external factors. For example, the fact that the state enterprises in Russia long time acted on planning basis at low wage, low transport and power tariffs, in conditions of monopolism and opportunity to randomly raise prices depending on concrete expenses. When import goods began to apper in markets, many commercial organizations of Russia became noncompetitive.

In reality, all existing reasons and factors of deterioration in solvency are caused by specifics of Russian enterprise environment. It had been formed in conditions of economy proclaimed as market economy and which replaced command economy. Economic entities (heads of the enterprises, workers, civil officers) living by rules of one system were forced to adapt to absolutely different conditions and laws. The result follows from that point. For example, from more than forty insolvency proceedings (in which the author of the article took part one or another way) about a quarter are simplified insolvency proceedings of absent debtors.

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Author of the research pays attention on the most important – in his opinion – details.

For example, the fact that the state enterprises in Russia acted on planning basis at low wage for long time, low transport and power tariffs either, in conditions of monopolism and opportunity to randomly raise prices depending on concrete expenses., many commercial organizations of Russia became noncompetitive when import of goods began to apper in Russian markets.

Actually, all the existing reasons and factors of deterioration in solvency are caused by specifics of Russian enterprise environment. It was formed in conditions of economy proclaimed market and in one stage which replaced command. Economic entities (heads of the enterprises, workers, civil officers) living by rules of one system were forced to adapt to absolutely different conditions and laws. The result follows from that point. For example, from more than forty insolvency proceedings (in which the author of the article took part one or another way) about a quarter are simplified insolvency proceedings of absent debtors.

In particular, Department of the Federal Tax Service in Tyumen region gets a lot of applications for recognition absent debtors as bankrupts. These procedures are provided by government budget. New law which provides a possibility of an exception of legal entities of unified register administratively did not lead to reduction of lawsuits. In reality, the result is opposite. The practice of Federal Arbitration Court of West Siberian Federal District testifies about problems in qualification of absent legal entities.

There are enough factors in modern economy which negatively influence on a financial condition of economic entity. Author of the research thinks that it is pertinent to pay attention on the most important – in his opinion – details.

The first bankruptcy factor (and here it is already not only about absent debtors, and about all economic entities) consists of decent training level and professionalism lack. Let's give a real practical example. From the case it is obvious that debtor as legal entity was created on basis of a property complex of organization, earlier declared bankrupt. In two years from the moment of creation, the property is on sale in created organization for the insignificant price, at the same time actually payment is not made. In a year, after opening a bankruptcy proceedings the receiver do the action for declaration about collecting debt on agreement of purchase and sale, it becomes clear that again created enterprise already has a pre-bankruptcy state and it is not able to pay on debts.

The essence of a problem is that in all three organizations the head is the same person who within four years resulted in bankruptcy already several economic entities. It is remarkable that each of created legal entities obtained budgetary credits, got fixed assets with use of leasing transactions. In this case it is probably necessary to talk about professional insolvency of the head.

There is a lot of similar situations. Of course, administrative responsibility on such CEO is provided, however its responsibility degree is too small. The solution is possible by means of carrying out monitoring and maintaining register of disqualified heads, and also establishment of obligatory subsequent check again appointed to head regarding his disqualification.

At the same time, there has to be a control from founders (owners of property) behind activity of legal entity. If actions of the head resulted in bankruptcy, then founders bear the share of responsibility in that case [19].

The second powerful factor is insufficient control of shareholders, participants of a, owner of property of unitary enterprise, members of cooperative behind activity of permanent executive body.

The reasons it should be looked for, apparently, among such categories as domestic mentality or legal nihilism, however, it does not remove a problem. In general it would be desirable to specify that the given example is only one of sides of the problem of "imbalance of interests" of the main characters in activity of economic entity.

"Representation of a functional and administrative configuration, which is traditional for the western theory of corporate management, in the form of a classical triangle: "managers are shareholders – workers" is not suitable for Russian reality. It is necessary to take into account an important role of labor collectives, tendency of boss not to consider positions and interests of subordinates, large-scale legal nihilism, a "imperial" role of the companie's executive chief [3]. This fair remark is confirmed also by law of practice, allows to speak about the second factor – insufficiency of control of activity of individual executive body from other bodies of legal entity – economic entity.

The third important, in our opinion, is the factor which is negatively affectes is a condition of solvency of economic entity – wear of fixed assets. Mostly cases of insolvency, within bankruptcy proceedings, competitive weight is formed of property which not only completely developed the resource but also for a long time became morally old. The most typical example: all real estate objects included in the main property complex were put into operation in the fifties of the 20th century, and even earlier. Other property: motor transport, machines, equipment is not younger than the beginning of the 80th years. It is no wonder that economic entity is declared bankrupt as it is simple to assume that it is forced to spend a sufficient part of profit constantly for repair, restoration of fixed assets. At the same time, their efficiency does not increase at all, on the contrary, simple repair reduces it.

The given examples do not exhaust all list of the possible reasons of having the investigation lawsuit about bankruptcy concerning economic entity at all. It is much wider. Besides factors'correlation will always be different and will depend on managing branch's specific, region, etc. However, considering limitation of a dissertation research, we will pay attention to considered cases, as on the most widespread and inherent in domestic economic activity, reflecting its specifics and main problems.

It is necessary to recognize that the number of CEO who is trying to reestablish affordability is extremely small. They do not believe in efficiency of judicial processes, but also do not try to avoid them. As a result, after long lawsuits, bankrupts are also those people whom the property was removed to.

Authors revealed internal differentiation of the pre-judicial prevention of insolvency of economic entity, pre-judicial prevention of approach of insolvency and pre-judicial restoration of solvency of economic entity. Criterion is existence of deficiency of current assets in current activity.

However, lack of financial problems doesn't guarantee that economic entity will not break in a bankruptcy in the nearest future. Therefore concern in ensuring own steady solvency looks norm today. For this purpose economic entity is daily obliged to monitor changes of current economic activity and to react immediately to the slightest violations of a normal rhythm

Today, weakness of a legal control occupies one of the main places among reasons of bankruptcies in Russia.

Not just non-payments are created by the imperfection of business unit's leagal regulations. It is catalyst of unfair and unfriendly actions concerning economic

entity from third parties. Inefficiency of law rules, their unsuccessful construction which allow ambiguous interpretation, today is base for raiding – activity for hold of others business for generation of profit. This phenomenon, certainly, one of the main problems of modern business which draws increasing attention.

Another more tangled and real situation is – General shareholder meeting (one of the weakest points from the point of view of implementation of corporate capture) makes the decision about placement of additional stocks by open joint stock company by mean of an open subscription. Actions are paid, issue is registered but state registration according to the statement of interested people is recognized as invalid. Result is multimillion accounts payable, claim, the statement for bankruptcy [9].

Complexity of a situation is that from the legal point of view in similar cases everything is “clear”, lawful (hereinafter is available in in view of "white" raiding). There is no violation of someone's rights and legitimate interests. This circumstance also allows to speak about poor quality of a domestic legal regime, this current legislation allows to carry out in fact criminal capture according to real law.

“At first, the aggressor gets the small pack of companie’s stock and then, according to his prefab plan, begins to fight against the company for the purpose of obtaining stocks to purchase at higher price. He uses any misstep of the enterprise. For example, copies of documents of the company which are not provided at the scheduled time are basis to complain in FCSM with further sanctions (fine). Or demand to hold daily extraordinary meetings of shareholders and to elect to them new governing bodies of a company. Claims are submitted according to the Federal law "About Joint Stock Companies" (Art. 71), for this purpose it is enough to own 1 % of stocks".

There are no doubts about the existence of omissions and gaps in legal regulation of economic activity, that results in insufficient security of subjective rights. Questions of security and protection of the rights were one of the most significant in the legal theory at all times. It is nesessary to mention pertinently little concept of legal safety developed by some scientists. “Legal safety as a special kind of social safety represents a condition of legal security of vital interests of subjects of law in connection with their entry into the sphere of legal relations; ability to resist by legal means to external and internal threats of objective or subjective character” [7]. This category affects all subjects of law: natural and legal entities which are carrying out an entrepreneurial activity and who are not engaged in such activity.

Rather economic entities "it is necessary to understand a condition of security of those interests of economic entities which consist in systematic receiving profit in the conditions of the maximum decrease in risks of commercial activity at all stages of its implementation, from the external and internal threats having negative economic, organizational, legal and other consequences" as safety of an economic and entrepreneurial activity [15]. Obviously, today economic entities cannot feel “legal security” as raiders, provoking bankruptcy, act only within the law. They as much as possible exploit provisions of acts while the company victim often has even no more or less qualified legal consultation.

The solution of this problem will demand considerable efforts from rule-making bodies and, apparently, considerable time outgivings. At least to reduce number of provoked bankruptcies changes will be required not only – we will name it insolvency act – but also legislation of other branches and institutes, for example, of the joint-stock right. Besides, there are also other aspects of manifestation of negative factor of a weak legal mode, for example, O. D. Grivkov and A. V. Shichanin note that “Civil Code provided by the article 94 and also the article 26 of Law “On limited liability companies” a free exit of participant with receiving part of companie’s property at any time violates interests of other creditors and create a "very limited" company [16].

Let's say the Ltd company leaves participant with a share in 70 percent of authorized capital. Under the law it should pay 70 percent of all property of society that can paralyze economic activity of Ltd company, result in its insolvency.

Similar standards of legislation are capable to strike civil circulation substantially. Their reforming is necessary, therefore, ensuring legal safety of economic entities, first of all is a task of public rule-making authorities.

However, this question has also other plane. The current legislation contains enough norms, while carrying out which economic entity risks to turn into the bankrupt, at the same time, also precepts of law are distributed directly or indirectly on providing steady solvency of economic entities. For example, part 1 of article 73 Federal Law "On Joint Stock Companies" establishes ban on acquisition by society of common stocks placed by it in case at the moment of their acquisition society answers signs of insolvency (bankruptcy) according to legal acts of Russian Federation about insolvency (bankruptcy) of enterprises or specified signs will appear as a result of acquisition of these actions.

The listed norms establish special conditions of commission transactions by economic entities which execution can entail destabilization of their financial state. These norms are designed to guarantee protection of the rights of creditors, and it is possible only in condition of ensuring steady solvency. Considering existing regulatory base in this case, list of similar examples can be continued.

Thus, civil legislation initially pursues aims of prevention of crisis situations in activity of economic entities, therefore, and the pre-trial prevention of their insolvency. At the same time, existing norms are not directly connected by the legislator with prevention of bankruptcies, they only indirectly touch this problem and force the subject to carry out an established order independently of its financial condition, existence or absence of threat of crisis.

In this regard it is possible to claim that the mode of legal safety is present at Russian Legislation, however it is at the low level of development and requires considerable attention, first of all, from scientists-jurists.

2. Forms of pretrial prevent of insolvency of an economic entity

Economic agents do not have time factor to expect the decisions by public authorities, they operate under the existing business environment and legal status.

Of course, in practice, such active work is not an exception. Highlighted aspect of the pre warning insolvency of an economic entity was manifested by the author previously to ensure a stable solvency.

With this respect, legislation lags is behind in development, because in a situation where there is a threat of insolvency or reason to fear a hostile takeover attempt, an entity does not find the rule of law, according to which he could have taken adequate measures. Business entities during the “fight for survival” today actually take various measures aimed at combating crisis. They do this and will do this regardless of the extent to which their activities are regulated by such provisions of the law, especially if they do not contradict.

The role of the legal regulation is to consolidate regulatory behavior of participants, organizers of activity of economic entity in anticipation of a crisis.

This problem has long existence and actively discussed in scientific environment, Mz. Shitkina rightly drew attention to the fact that “protection of a property and other vested interests of the company should be equally important for lawmakers as well as guarantees for shareholders, staff or others stock relations. Only taking into acount interests of all subjects of shareholder relations, including corporation itself, in terms of ensuring stability control, asset base, investment attractiveness and so forth can ensure progressive development of the company and satisfaction of the rights and legitimate interests of its members and associated people” [17]. Problems of

inequitable conduct of directors of legal entity also analyzes by Mr. K. Sklovsky [18]. In science of civil law in general issue of bringing to a common denominator is quite crucial among all participants of the legal entity.

For this article – solution of this question will allow to eliminate one of the most significant factors which are traditionally promoting approach of insolvency of economic entity. One of the main prerequisites to the solution of this task – the thesis that the specified subjects have to have uniform interest and an opportunity through joint efforts to resist to external threat. However, practically, such situation is very hard-hitting as legal entity (economic entity) as organization have internal structure. "In the legal entity existence of interests is possible for following subjects: the most legal entity, participants of legal entity, governing bodies of legal entity, employees of legal entity.

Interests of these entities can objectively not coincide which becomes the reason of their collision". Such collisions is one of the most dangerous phenomena for steady solvency of economic entity, especially, when divergence's interests differ from interests of legal entity. Example of this situation and its urgency are emphasized by M. G. Iontsev: "practice knows many cases when uncontrolled executive authority begins to subordinate activity of a company to private interests sooner or later. All this, finally, leads to full ignoring of legitimate rights and interests of shareholders, to deterioration in a financial position of the company. Author had to come up against situations in which heads of joint stock companies concluded bargains obviously unprofitable for a company. Heads of companies very often weren't going to receive money for "selling" the production. A company in this case had a hopeless debtor. It is simple to assume that released production quickly was on sale, money was cashed and some of their part "settled" in a pocket at the CEO. In certain cases "conscientious" leader even appealed to court and received a executive writ on collecting debt, however, there was nobody to collect it" [8]. As we can see, the problem is urgent and draws increasing attention.

Similar cases aren't rare in modern domestic enterprise environment and their consequences pour out in insolvency of economic entity which is struck with a divergence of interests. The key to solution is covered in definition of predominating interest from the list stated above, that is criterion on basis of which collisions of interests have to be resolved.

Mr. K. Pronichev proposes such solution: "We think that all interests arising when functioning of legal entity have to correspond to interests of its participants and do not break them. Domination of interests of participants over interests of other subjects is caused by the fact that participants define a possibility of creation and existence of legal entity untill its termination. Thus, the main criterion of resolution of conflicts of interests should be considered as its permission according to interests of participants" [14]. Despite the persuasiveness of the argument of this point of view, it is not possible to agree with it as even the author does the reservation that if realization of interest of participant causes damage to the organization in general, legislator as a rule rises in defense of its interests.

Recognizing existence of independent interest of legal entity unlike interest of its participants, it is expedient to proclaim also a priority of this interest over all others. This interest is also a criterion for resolution of conflicts. Its observance means a possibility of preservation of steady solvency of economic entity for the real research.

For a further research of possible ways of elimination of an imbalance of listed interests, removal and smoothing of contradictions, we will address possible forms of interaction of participants of intraeconomic relations. Legislator here uses various tools, for example, at structure of governing bodies of a joint stock company there is such body as board of directors (supervisory counsil) urged to control

executive bodies and to some extent to protect interests of shareholders.

Functioning of the auditor (commission of audit) is provided in structure of economic societies. These divisions are urged to carry out monitoring of activity of economic entity (besides other tasks) it is possible to say that one of their purposes is additional control of solvency of economic entity, maintenance of its stability.

Unfortunately, there is no opportunity to claim that this task is reached everywhere. The number of bankruptcies (including "provoked" bankruptcies) clearly demonstrates inability of many economic entities to provide its own solvency.

It is necessary to support the way of solving the problem which is offered by A. A. Fomin: “the most preferred solution for perspective firms is creation of its own legal service for upholding legitimate interests within “legal boundaries”. The legal service of the enterprise prepares necessary offers about reorganization of system of relationship of organization with public authorities and institutions, develops internal regulatory base, organizes and holds all necessary events for ensuring legal safety of the enterprise which correspond modern legislation and changing of economic realities" [7].

It is about special structure, division, service, body of legal entity which problem is development of offers on taking measures to the pre-trial prevention of insolvency, by means of including creations of local regulations. On the basis of developed recommendations and norms, further intraeconomic and other relations of economic entity are under construction.

Main objectives of anti-recessionary headquarters shortly look so: "The first is carrying out special corporate audit – diagnostics of reliability of protection of the company against unfriendly absorption and corporate blackmail. The second task is formation of an anti-crisis plan. The third task is methodical implementation of this plan. As well as any other document of its kind it contains headings “terms” and “performers”. The fourth task is preparation and practical working out of maim scenarios of defensive actions in relation to the main formats of aggressive corporate actions. The fifth task is definition of sources and real formats of financing of corporate defense (ideally it is formation of reserve anti-crisis fund). The sixth task is conducting of “staff exercises” as working out coordination of members of headquarters and structures which they represent”.

There is no secret that these statements do not bear special novelty. They only illustrate existence of quite effective and practical way of prevention of the crisis phenomena in activity of economic entity and ensuring steady solvency consisting in creation of special collegial body aiming at creation of corporate defense against external unfriendly influences. Such body develops and realizes step by step the plan of measures, which allow to minimize corresponding risks.

There are tools to protect the subject himself. The problem is that anti-recessionary headquarters is shadow body of legal entity and legislation does not comprise a possibility of its creation on a legal basis. The position when the role of the legislation consists in providing of economic entity by free realization of the right to create in structure bodies service which is engaged in corporate defense by means of norms is represented to authors as more correct. Besides, in the foreign legislation there are such examples (committee of enterprise provided by the legislation of France).

Let's consider more details than characteristics of “anti-recessionary headquarters”, compare them to characteristics of existing bodies and structural divisions of legal entity from the point of view of science of civil law.

According to professor Mogilev S.D. “analysis of various definitions of body of legal entity allows to formulate following main signs of body of a joint stock company as body of legal entity: body of legal entity is certain organizationally issued part of legal entity presented by one, or several natural

persons; body of legal entity is formed according to the order determined by law and constituent documents; body of legal entity has certain power which realization is enabled within its own competence; will of legal entity is made out by means of adoption of special acts of bodies of legal entity which types are defined by the legislation" [12].

Leaning on this position, "we will try on" these signs to anti-recessionary headquarters. Only the first sign can fully concern to him. Statement that anti-recessionary headquarters are organizationally issued part of legal entity presented by several natural persons is true. The anti-recessionary headquarters don't possess the second sign and it is obvious that the legislation defined the list of bodies for all legal forms of legal entities, moreover, also circle of powers of all these bodies is defined. The legal entity, participating in economic circulation, is capable to carry out by means of its bodies any activity within the legal framework, therefore, existing bodies and their powers (in total) are enough for effective functioning of economic entity. All decisions of anti-recessionary headquarters will be included anyway into competence of any existing subject and only decision of this body within its competence can become will of the legal entity. Thus, second, third and partially fourth signs are not inherent in anti-recessionary headquarters.

The question arises only concerning will of the legal entity. This process is difficult and it appears that anti-recessionary headquarters can participate in it and, obviously, participate in case of creation.

It is possible to claim reasonably that the anti-recessionary headquarters cannot be body of legal entity as it is not intended for realization of legal personality for the last [21].

According to authors, anti-recessionary headquarters can be considered as a certain balancing tool of interests of persons who participate in activity of the legal entity. It is organizational structure (council, center, branch, department) which is engaged in regularly and due to time reveals contradictions of interests of persons who are interested in activity of economic entity monitoring trends of its change, analyzes bargains concluded by the organization, carries out monitoring of local regulations, eliminates their contradictions, informs bodies of legal entity, etc. Generally, carries out those tasks which will be set for it internal act of legal entity regulating its creation and functioning. Let's add that such headquarters can be attracted experts who are not employees of the organization but can be employed on a contractual basis.

It is important from these positions to guarantee participation in work of headquarters of participants (shareholders, owners) of legal entity. Perhaps even investment with their "veto" at adoption of recommendations about questions carried for consideration of headquarters. It will allow to avoid a situation when anti-recessionary headquarters become "puppet" in management hands and not conductor of interests directly of the legal entity.

According to authors, creation of special unit of the legal entity which is carrying out monitoring of financial activity, development of offers for optimization of administrative activity, improvement of local regulations is capable to influence ensuring steady solvency favorably. Questions of bases and order of creation, can be regulated by regulations. Legislator's task is to bring structure out of a shadow, if economic entity creates such education according to the law, it is opened and it is public, involves experts, famous in the field of crisis management, in its work, one this fact is capable to reduce considerably risk of unfriendly actions from outside. To absorb one business defenseless, another is to absorb one who really shows ability and readiness for defense. Besides, anti-recessionary headquarters are capable to prove also in fight against other negative factors as a problem of non-payments, wearness and obsolescence of fixed assets, etc.

The following aspect deserving attention is monitoring of the current financial activity, the majority of crises threatening to the enterprise can be quite predictable as it's gradually become ripe. Trouble will happen

if management does not have enough knowledge or experience or a simple intuition to make out threat and to take appropriate measures for suppression of its development in due time. At the same time there will always be a capable expert who can see such threat and it is necessary to address his services in time.

For forecasting and planning of further activity of economic entity, managers have to have an opportunity to really estimate the cost of the enterprise, its potential, resistance to crisis situation. Also they should see similar estimates in competence of professional auditors, appraisers. Their conclusions and offers become a strong basis of construction and implementation of anti-recessionary program.

It is quite natural that average head or the owner of business will hardly want to reveal trade secrets to the auditor if does not see still real threat of solvency. Basis of specifics of voluntary audit and assessment is in it. Nevertheless, it is extremely difficult to resist crisis or unfriendly actions from outside without them.

It is possible to claim that audit and assessment of business are basis of implementation by manager economic entity of continuous financial monitoring of activity of organization. These are significant tools in a question of ensuring steady solvency of economic entity.

The economic entity will be able to keep steady solvency, only due time obtaining information on weak points of business. This statement finds confirmation and in other scientific research even more often [5].

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Auditor activity today is one of the most interesting and dynamically developing branches. From the point of view of the pre-judicial prevention of insolvency of economic entity, provisions of this law concerning purposes of audit and establishment of cases of carrying out obligatory audit are of special interest.

The legislation fixes the list of cases of obligatory audit of separate organizations. It is thought that this norm has a number of hidden purposes up to monitoring offenses in the enterprise environment. At the same time, undoubtedly, such monitoring in many ways will facilitate also ensuring of steady solvency of economically or socially important subjects.

Correlation of this list with those types of service which appear when carrying out audit allows to claim that legislation in this case contains effective mechanism of the pre-judicial prevention of insolvency of especially significant economic entities consisting in tracking and forecasting of emergence of crisis phenomena in financial sphere, consultation and development of offers on their suppression.

The purpose of audit is formulated by the law as follows: “expression of opinion on reliability of financial (accounting) statements of the audited faces and compliance of an order of conducting accounting to legislation of Russian Federation”. This declaration is submitted not quite suitable, law contains a list of accompanying services which looks as follows: statement, restoration and conducting accounting, drawing up financial (accounting) statements, accounting consultation; tax consultation; analysis of financial and economic activity of the organizations and individual entrepreneurs, economic and financial consultation; the administrative consultation including connected with restructuring of organization; legal consultation, and also representation in trial and taxing authorities on tax and customs questions; automation of accounting and introduction of information technologies; estimation of cost of property, assessment of enterprises as property complexes, and also enterprise risks; development and analysis of investment projects, drawing up business plans; carrying out market researches; carrying out research and experimental works

in the area connected with auditor activity and distribution of their results, including on paper and electronic media; training in order of experts established by legislation of Russian Federation in areas connected with auditor activity; rendering other services connected with auditor activity.

This list, considering besides its openness, makes an impression that the real purposes of audit are more versatile and concrete. Obviously, their specification is a task of direct treaty parties. At the same time, process of conclusion in itself and fixing of these or those terms of contract is also quite in detail regulated. Government of Russian Federation approved special rules (standards) of auditor's activity. These rules (standards)are in detail regulate all process of carrying out audit of organization from conclusion of contract for rendering auditor services before application of certain procedures. Standards are obligatory for auditor and audited face, except for those provisions which indicate advisory nature.

Existence of such rules in system of legislation is represented in general by positive moment, however, the provisions which are contained in them in practice often cause difficulties. For example, Andreyev V. K. reasonably raises a question that sounds "who has to sign the contract on carrying out audit from the audited face" [2].

Join-stock companies act carries statement of auditor of society (subitem 10 of item 1 of Art. 48) to competence of general shareholder meeting, and subitem 10 of item 1 of Art. 65 provides that determination of amount of fee of auditor is carried out by the board of directors of a joint stock company. It is difficult to present how it is possible to pick up qualified auditor if recommendations of amount of payment of auditor are solved by the board of directors of society. Mentioned nonagreement of these provisions of the law "Join-stock companies act" turns out that in practice it leads to obvious infringement of the rights of supreme body of management of a joint stock company. Noted discrepancy between appointment of auditor and payment of his services reaches almost unsoluble contradiction if extraordinary general shareholder meeting is convened according to Art. 55 of the Join-stock companies act. The law does not resolve on audit, this issue though within its legal framework has to be resolved".

This problem is really urgent. In this situation provisions of the law provoke a situation in which factor of an imbalance of interests of persons interested in activity of economic entity, which is earlier allocated with us as one of the main, leading to bankruptcy artificially becomes aggravated [9]. If to assume existence of divergences of interests, board of directors and general meeting, carrying out audit that can be blocked which will end up in impossibility of timely monitoring, as a result, in time not revealed problem can expand and cause essential damage to a financial condition of economic entity.

Moreover, participation of executive bodies of the legal entity in the conclusion in contract on audit, in general leads to the fact that irrespective of real financial performance of economic entity vast majority of audit reports are positive. According to authors, provision of the Law concerning appointment of auditor's general meeting, is expedient to develop and delegate all powers on commission and execution of transaction about carrying out audit to a general meeting. Such decision will allow to avoid abuses of management.

Enough attention is paid in scientific research to a problem of statement of tasks at the conclusion of contract for rendering auditor services. Audited face always has to realize what audit is for, what its purposes are. What is required to be found out, established by its results. All these questions have to be in details stipulated by the parties at conclusion of the contract. Statement of tasks are a fundamental principle of anti-recessionary audit. In practice, solution of this problem can be quite difficult. Not always audited face is capable to formulate the questions foro the auditor in process of signing the contract.

It is necessary to agree with fair opinion of O. Osipenko that "option when the model of specification is born following results of so-called predesign analysis is ideal. It can be expressed in a research of corporate or other urgent documents, key for this project, on which the customer (an obvious gap in defense), or holding developed interviews with devoted heads in corporate details or, at last, a combination of a blitz interview with previously written "questionnaire". In that case by preparation of TZ the situation clears up" [13].

From the point of view of the legal equipment the solution is possible by means of fixing in contract on rendering auditor services of a condition on predesign analysis. Unfortunately, today the standard No. 12 (coordination of conditions of carrying out audit) does not provide a possibility of inclusion of this condition in the contract, indicating need of fixing for the contract purposes of audit that as we can see is not always possible at this stage.

In these conditions, according to the author, the parties have the right to confine to general phrases about audit purposes which will find a specification later, in developed technical tasks. If it is necessary results can be issued as additional agreement to the contract.

As for conditions of predesign analysis, it is expedient to enshrine them in the contract, the list of the Rule No. 12 in fact does not limit sides in the choice of conditions.

Considering everything stated, reasonable conclusion is that current legislation contains real legal means and mechanisms for ensuring continuous monitoring of economic activity practically for any organization. Perhaps, there are some defects and inaccuracies but in general it is obvious that businessman interested in preservation of the business, "thinking", without special difficulties and is able to provide timely diagnostics and identification of various factors arising in functioning of organization, promoting destabilization of its financial state.

Let's continue to model mechanism in the way of prevention of the crisis phenomena for ensuring steady solvency of economic entity. In general, something is quite often mentioned in literature similar to an anti-crisis plan (stabilization program, anti-recessionary program, plan of financial improvement), at least essence is always one. Z. Ayvazyan, V. Kirichenko consider that "instrument of crisis management is stabilization program. Stabilization program, in our opinion, has to include a complex of actions directed to restoration of solvency of the enterprise" [1]. But anti-recessionary program treats crisis strategically – it is aimed not only at its overcoming but also at prevention and also at competent post-crisis reaction.

The given points of view, allow to claim that planning is integral tool of pre-trial prevention of insolvency of economic entity. At the same time, in each concrete situation it will have features, so in case of lack of real crisis, it can be just stabilization program providing insignificant preventive actions and in the presence of insolvency signs, it is already in details worked plan of large-scale actions for reforming the enterprise.

Also there is an interesting fact that attention to such programs was paid not only by experts but also by rule-making bodies, so the Order of FUDN for No. 98-P "About statement of a standard form of the plan of financial improvement (business plan), an order of its coordination and methodical recommendations about development of plans of financial improvement" is published 12/05/1994 (it wasn't officially published).

This act rather in detail regulated contents of the plan of financial improvement and contained detailed recommendations about its development. The main source of necessary money for implementation of such program, according to item 2.5 of section 2 of the standard plan is public financing os remedial actions. Obviously, absence in principle did not allow this act "to earn" the ideas of extraction of funds for realization of planned actions from alternative sources

(formally it worked about ten years and terminated only in 2003).

Implications: Thus, the legal regulation of the development and performance of any stabilization or anti-crisis programs (plans) is absent today. However, this applies only to the relations connected to pretrial warning to insolvency, if we talk about the trial, in the course of rehabilitation procedures (external management and financial health), similar documents are provided.

We believe that achievement of purposes of pre-trial warning insolvency of an economic entity is unlikely to be possible without pre-planning of activities as it considered necessary in a specific case, therefore, normative regulation of relevant programs will obviously be in demand.

However, considering previously proposed gradation of pretrial warning failure to ensure solvency and stable pretrial restoration of solvency under the first planning is less significant as there can be no question of holding any large-scale changes (sale of the property complex, reorganization, etc.). Also fix some "minor flaws" in current economic activity, identified, for example, according to the results of the audit, is possible even without preparation. If there are a lot of "flaws", it becomes appropriate to develop programs and to define terms and performers but the question is that an entity may have to do it independently. Legal regulation of such activity, we believe, is redundant, so under this section further research in this area doesn't seem necessary.

Conclusion. Thus, as to legal regulation of pretrial prevent of insolvency of a business entity (ensuring steady solvency) author can make following conclusions:

The review of domestic civil legislation during the modern period, devoted to organization of activity of a business entity allows us to establish that ensuring steady solvency of business entity represents one of the main problems of the current legislation, even if these problems are currently hidden. Legal regulations which are devoted to this problem, presented in many regulatory legal acts on the level of federal legislation. It is possible to claim about existence of a system of standards establishing certain restrictions of actions of juridical person or strictly regulating fixed sequence of such actions in some situations. These standards help to achieve the reduction of an unjustified risks in situations where solvency of business entity sharply reduces.

Distribution of mentioned standards can be considered as a process of becoming "control of juridical security" economic entity in Russian legislation. The last is essence of a set of conditions under which activities of an economic entity, through legal norms, protected from the negative factors affecting the solvency.

From the point of view of sustainable solvency of a single economic entity two points become crucial. The first. The entity must have an efficient and effective structure of managerial bodies. All actions and decisions of each individual authority should be subordinated exclusively to interests of a legal entity as economic entity, and not for any other person representing a particular organ. Management on the entity should be based on a clear and explicit division of powers between the bodies of a legal entity. Decisions of various bodies should not contradict to each other and be accepted on the same question as it can block decision-making in general. The structure of bodies has to provide adoption of timely and effective decisions. The second. Monitoring of its current economic activity is necessary for ensuring steady solvency.

Most brightly the orientation of legislation on providing of steady solvency of managing subject shows up in the legal adjusting of audit of organizations (including obligatory). The last is an instrument of periodic monitoring of current activity, allowing in good time to diagnose and prevent the possible difficulties, related to motion of financial streams or restriction of interests of managing subject from the side of persons participating in organization of his activity.

In order to timely and effective actions to prevent the impact of some negative factors

on the activity of economic entity, the latter should be used to create special units of time, whose activity is entirely devoted to prevent crisis. Normative regulation of activities of such units is carried out mainly by local rule-making. In terms of legislation, it is rational for only a general declaration of the possibility of creating such structures.

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