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Inheritance Issues In Bankruptcy Of Individual Entrepreneur

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ABSTRACT

This scientific article discusses the legal issues of inheritance in the bankruptcy of an individual entrepreneur, the norms of foreign legislation, as well as the development of proposals for improving the national legislation on bankruptcy.

KEYWORDS

Bankruptcy, Liquidation Proceedings, Inheritance, Individual Entrepreneur, Citizen, Judicial Administrator, Debtor, Creditors.

INTRODUCTION

The bankruptcy of an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur is regulated by Article 26 of the Civil Code of Uzbekistan (hereinafter - the Civil Code) [1] and Chapter X of the Law of Uzbekistan "On Bankruptcy" (April 24, 2003, № 474-II), (hereinafter - the Law) [2]. Individual entrepreneurs who are unable to satisfy the claims of creditors related to their entrepreneurial activities may be declared bankrupt in accordance with Article 26 of the Civil Code.A physical person who has lost the status of an individual entrepreneur and is unable to satisfy creditors' claims (if the corresponding claims arise from his previous entrepreneurial activity) may be declared bankrupt in accordance with the prescribed procedure.When carrying out the procedure for declaring a person bankrupt described in parts one and two of this article, creditors (for obligations unrelated to his entrepreneurial activities) have the right to present their

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claims. The claims of the aforementioned creditors that were not declared in this manner remain in force after the bankruptcy procedure is completed.

Pursuant to the provisions of the Law, at the time the economic court makes a decision to declare a debtor (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) bankrupt, a decision is also made to open liquidation proceedings. The liquidation estate consists of all of the debtor's property that is available at the time of the opening of liquidation proceedings and that is revealed (discovered) during the course of the liquidation proceedings. It should be noted that, according to the Law (Part 1 of Article 177), the debtor's property (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) is not included in the liquidation estate, which cannot be foreclosed under the Law.

When a debtor (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) is declared insolvent (bankrupt) the Law takes priority over all other legal acts in regulating their property relations. Therefore, the execution of the rights of heirs is suspended until the rights of creditors are satisfied.

Article 179 (Part 3) of the Law states that if there is information about the opening of an inheritance in relation to a citizen (an individual entrepreneur), the bankruptcy case of the individual entrepreneur may be suspended by the economic court until the issue of the fate of the inheritance is resolved in the manner prescribed by law. At the same time, the period for resolving the issue of the fate of the inheritance in the manner prescribed by law determines the time of suspension. Hereditary relations (grounds of inheritance, opening of inheritance, acquisition of inheritance, etc.) are regulated by the Civil Code and the Civil Procedure Code of Uzbekistan [3].

The right to inherit is guaranteed by the Constitution of Uzbekistan (Article 35) [4], and its content lies in the ability of the heir-citizen to choose between accepting or rejecting the inheritance. Acceptance of inheritance is a special type of inalienable right of the heir under the rules of inheritance law.

The heir must accept an inheritance in order to receive it. One method of accepting an inheritance is for the heir to submit an application for acceptance of the inheritance or an application for the issuance of a certificate of the right to inheritance to a notary at the place of inheritance opening.

Acceptance of inheritance is, by legal definition, a unilateral transaction aimed at establishing civil rights and obligations. Acceptance of the inheritance, in particular, is intended to acquire the testator's property.

Based on this, we can discuss on the one hand the right to inheritance, which arises from the heir from the moment of its acceptance through legal and actual actions (Article 1145 of the Civil Code), and on the other hand, the right to call to inheritance, which arises from the moment of its opening, if the potential heir is indicated in the will (Article 1120 of the Civil Code) or is included in the circle of heirs by law (Article 1134 of the Civil Code).

The nature of the right to call to inheritance has not been developed in legal science, so it is impossible to provide an unambiguous answer

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as to whether it can be attributed to the property rights included in the liquidation estate or not. One thing is undeniable: when a citizen realizes the right to call to inheritance, he or she also acquires the right to inheritance (inheritance property), which is a property right that should be included in the liquidation estate of the debtor heir against whom the bankruptcy case has been initiated.

Thus, the path to acquiring inherited property is through the realization of the right to call for inheritance, which necessitates a potential heir taking legal actions that mediate the process of declaring his desire to accept such an inheritance.

A citizen in the process of bankruptcy, in respect of whom the inheritance has been opened and who, thereby, received the right to be called to inheritance, realizes that the inherited property can replenish the liquidation estate if he takes actions to accept the inheritance. In this regard, many debtor heirs attempt to conceal information about the opening of the inheritance and specifically skip the deadline for its acceptance, so that other relatives in the following queues are called to inherit. Such inaction by a citizen-debtor cannot be considered an illegal action in bankruptcy, because there is no prohibitive norm in the legislation prohibiting such debtor behavior that actually harms his creditors.

The heir has the right not only to accept but also to refuse the inheritance at any time after the inheritance is opened (Article 1147 of the Civil Code). At the same time, the rejection of the inheritance is also a unilateral transaction that entails certain legal consequences, namely, the refusal to acquire the property of the testator. Frequently, heirs attempt to give up their inheritance in favor of other relatives, mistakenly believing that by doing so, they will be able to keep the property for their family.

The law establishes a rule that, from the date the debtor is declared bankrupt at the stage of the liquidation proceedings, all rights in relation to the property constituting the liquidation estate, including disposal, are exercised solely by the liquidator on behalf of the debtor. The liquidator is required to take steps to identify and safeguard the debtor's property (Article 128 of the Law).

Subject to the provisions of the Law prohibiting a bankrupt debtor from independently exercising rights in relation to property that can be included in the liquidation estate, a debtor citizen shall not be entitled to renounce inheritance.

According to Article 178 of the Law, transactions of a debtor (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) related to the alienation or transfer of his property to interested parties in another way, after filing an application for recognition of the debtor (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) bankrupt in the economic court are void.

The economic court, at the request of the creditor, applies the consequences of a void transaction in the form of the return of the debtor's (an individual entrepreneur or a physical person who has lost the status of an individual entrepreneur) property that was the subject of the transaction. This transaction includes the composition of an individual entrepreneur's property or the property of a

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physical person who has lost the status of an individual entrepreneur, as well as foreclosure on the corresponding property held by interested parties.

Because one of the consequences of challenging the debtor's transactions is the inclusion of the returned invalid transaction in the liquidation estate, there are no obstacles for the inheritance property, which the debtor-heir has refused to accept, was realized in the debtor's bankruptcy procedure. In such cases, the judicial administrator's (liquidation manager) action algorithm can be considered already worked out.

But what should the liquidator do if an inheritance has been opened in relation to the debtor and the debtor does not refuse it and intentionally misses the deadline for joining it?

It should be emphasized that the current legal framework does not include the institution of forcing the heir to accept the inheritance. Furthermore, the judicial administrator (liquidation manager) currently lacks mechanisms for compelling the debtor-heir to accept the open inheritance, as well as the ability to accept the inheritance on behalf of the citizen-debtor.

It is recognized that the gap in the legislation in terms of the possibility of including in the liquidation estate of the inheritance (which the debtor citizen will not accept and will not give up) cannot be overcome by analogy of law or by analogy of law. In this regard, it shall be prudent to supplement the Law with norms expanding the powers of the judicial administrator (liquidation manager) and the debtor's informational duties, with the condition of not relieving him of obligations, after the completion of the procedure for the sale of the property of the debtor-citizen. In particular:

Firstly, it is proposed that the judicial administrator (liquidation manager) be granted the right to receive information about the inheritance that has been opened in relation to the debtor citizen, as well as the obligation of the latter to provide such information. It is necessary to note that among the duties of the judicial administrator listed in Part 3 of Article 128 of the Law is the obligation to take measures to identify not only the debtor's property and ensure the safety of this property, but also the inheritance opened in relation to the debtor citizen.

As a result, the liquidator will have a direct obligation to obtain information about the debtor's opened inheritance.

Furthermore, the right of the liquidator to receive information about the opened inheritance from the debtor and notary bodies should be directly enshrined in part 2 of article 128 of the Law.

This right in relation to the debtor should correspond to the latter's obligation to provide the liquidator with information about the fact of opening the inheritance and the composition of the inheritance property known to the debtor, for which appropriate amendments to the Law are required. According to this amendment, the debtor citizen's failure to fulfill his or her obligation to provide information about the inheritance must result in certain legal consequences.

The need for legal support of the relationship between the judicial administrator (liquidation manager) and the notary is the most important

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factor associated with obtaining information about the inheritance opened in relation to the debtor citizen.

In this regard, introducing the obligation of a notary to provide the judicial administrator (liquidation manager) with the necessary information about the possible opening of an inheritance in relation to a debtor citizen into the legislation on notaries is not particularly difficult. However, only by amending regulations will the aforementioned technical difficulties be quickly overcome. As a result, the primary source of information for the judicial administrator (liquidation manager) regarding the opening of an inheritance against the debtor citizen is the debtor himself, against whom the bankruptcy case has been initiated.

Secondly, it is necessary to directly establish in the Law the norm under which, if the debtor citizen does not accept the inheritance during the bankruptcy proceedings initiated against him, such a right and obligation arises for the liquidator. To accomplish this, appropriate amendments should be made to Article 128 of the Law.

In addition, it shall be necessary to separately indicate in the Law the obligatory presence of the hereditary estate (if any) in the liquidation estate of the debtor-citizen, as well as in the Civil Code - to establish the possibility of a judicial administrator (liquidation manager), in the event of bankruptcy, submitting to a notary an application for accepting the inheritance on behalf of the debtor-citizen.

Thirdly, the hereditary estate may be encumbered by the debts of the testator. And according to article 1156 of the Civil Code, his heir is responsible for this in the amount of the accepted inheritance. In this regard, meeting the claims of the testator's creditors from the inheritance should be established in law as a priority. And only then - the creditors of the heir, in respect of whom the bankruptcy case was initiated, can be claimed.

Such a situation will take place when the inheritance property is encumbered by the testator's debts and has multiple heirs. In this regard, the liquidator must resolve the testator's debt repayment issues solely in terms of the share of the estate inherited by the bankrupt heir, for which, the testator's creditors need to submit their claims to the liquidator.

It should be noted that current legislation does not provide for creditor priority in the satisfaction of the testator's debts. Meanwhile, it is obvious that such a priority must be established, because it is entirely possible that there will be insufficient funds to pay all of the testator's debts.

Fourthly, it is necessary to financially stimulate the judicial administrator's (liquidation manager) actions in order to search for a potential inheritance opened in relation to the debtor-citizen. Furthermore, by providing additional compensation to the judicial administrator, the liquidator should be encouraged to file the liquidation estate with this property (in the form of a certain percentage of the value of the estate that added to the liquidation property).

It should also be noted that there is no provision in current legislation that allows the liquidator to accept the inheritance for the citizen-debtor, in order to include the estate in

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the liquidation estate to satisfy the claims of creditors. Furthermore, the current legislation lacks provisions that establish negative consequences for a citizen-debtor who has concealed information about the discovery of an inheritance in relation to himself.

As you are aware, the heirs are personally liable for the testator's debts. In the event that the inheritance is actually accepted, the heirs are liable up to the value of all inherited property. However, in the absence or insufficiency of inherited property, creditors' claims for the testator's obligations are not satisfied at the expense of the heirs' property. And the obligations of the testator's debts are terminated due to the impossibility of fulfilling them.

In practice, many questions arise regarding the determination of the testator's debt, by which the heirs are held liable. This includes the amount of adverse consequences imposed on them, as well as the order and priority of satisfaction of the claims of the testator's creditors by the legal successors. Unfortunately, despite the detailed regulation of hereditary relations in the Civil Code, these issues have not been fully resolved.

A number of issues (including questions about the debtor citizen's property, belonging to him on the basis of the right of common ownership with his/her spouse, property received by him in the order of inheritance, etc.) within the framework of the individual entrepreneur's bankruptcy procedure, relate to the civil court's jurisdiction.

After an individual entrepreneur's status is lost due to his recognition as a bankrupt citizen, the legislation allows for the filing of property-related claims arising from his entrepreneurial activities (part 3 of article 26 of the Civil Code). At the same time, a whole complex of issues arises that requires a decision by the legislator, since the law does not provide answers to them. For instance:

- What property the debtor will be responsible for;
- How these debts will be collected; whether the creditor will need to apply to a civil court with a claim for debt collection for this;
- Can the execution be levied on property that is in the common joint property of the spouses;
- How to consider the issue of the debtor's liability if the property that he concealed (which he concealed) during liquidation proceedings is established after the debtor is declared bankrupt;
- The length of time the debtor's liability will be extended;
- How the fact of opening the inheritance will affect, but if the debtor has not received a certificate of the right to inheritance and can evade its acceptance in order to register it for other people (relatives) in order to avoid liability.

Due to the lack of legislative decisions on these issues, unscrupulous civil law participants can avoid responsibility.

Unlike the legislation on bankruptcy of the Republic of Uzbekistan, the Federal Law of the Russian Federation (dated June 29, 2015 No. 154-FZ) "On insolvency (bankruptcy)" [5] contains a paragraph that addresses the specifics of considering a citizen's bankruptcy case in the event of his death (rules which are applied to relations related to the bankruptcy

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of individual entrepreneurs). An important point to note is that, under this Law, a citizen can be declared bankrupt even after his death (at the request of creditors, authorized bodies, or heirs): in this case, the debt can be paid from his inheritance.

The law also provides that in the event of the death of the bankrupt testator, the bankruptcy proceeding continues and his debts are paid out of the estate. The notary must check for the existence of the bankruptcy procedure and notify the liquidator when opening an inheritance case. If the procedure for instituting bankruptcy had not yet been completed at the time of death, the liquidator notifies the notary within the same time frame that the inheritance will be burdened by creditors' claims.

The bankruptcy of a deceased citizen is, by legal definition, the bankruptcy of the hereditary estate. The property of the deceased shall be separated from the personal property of the heirs. Creditors of the testator receive proportionate satisfaction from the estate on which they had a claim during the testator's lifetime. The termination of obligations is canceled by the coincidence of the debtor and the creditor; there is the possibility of challenging transactions made by the testator during his lifetime on bankruptcy grounds.

The inheritance is opened due to the death of a citizen or his declaration as deceased by the court, according to part 1 of article 1116 of the Civil Code.

As a result, filing for bankruptcy will be possible even after a person's death or recognition as deceased. In this case, the applicants may be a creditor, an authorized body (for taxes and other mandatory payments), or the heirs of a citizen who accepted the inheritance.

If the status of creditors and authorized bodies is clear, the status of heirs in a bankruptcy case should be considered in greater detail.

First and foremost, we need to understand that even if the deceased is declared bankrupt, the heirs do not become bankrupt, i.e., they are not debtors under the law. They take part in the bankruptcy case as interested parties in estate-related matters, with the rights belonging to the person taking part in the bankruptcy case.

Simultaneously, heirs can only participate in the process if they have accepted the inheritance and the deadline for filing such an application has passed. The notary must provide a copy of the inheritance file to the court in order for the heirs to be recognized as persons participating in the case. It is necessary to include information about a citizen's death or recognition as deceased in the application for declaring him bankrupt.

In the event of the bankruptcy of a deceased citizen, only the procedure for the sale of the property of the deceased is possible, because the deceased, unlike the living, cannot reach an amicable agreement or earn money to pay off the debt according to the restructuring plan.

The notary's role in this matter is critical, because the notary is a person involved in the process of a citizen's bankruptcy until the inheritance is accepted and the term for filing such an application expires.

At the request of the heirs, a notary may file an application for declaring a deceased citizen

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bankrupt, applying special bankruptcy rules, and proceeding with the sale of property. In addition, he informs the court and the administrator of the citizen's property on the day of death.

With a few exceptions, the liquidation estate will include property that is a citizen's inheritance in the case under consideration.

If the heir has the right to a compulsory share in the real estate and has taken over the real estate (which became his only housing), the property is not included in the liquidation estate.

At the same time, it should be noted that the heirs' property, which belong(ed) to them prior to accepting the inheritance, cannot be included in the liquidation estate.

If the debtor citizen dies after the bankruptcy procedure is initiated, the bankruptcy procedure is not terminated. However, the judicial administrator is required to notify the court and the notary of a citizen's death, file a petition for the application of the rules provided for a deceased person's bankruptcy, and transition to the sale of property.

In the event of the bankruptcy of a deceased citizen, first of all, the requirements for current payments associated with the costs of burying the deceased, the costs of protecting the inheritance, the performance of notarial actions by a notary are satisfied.

We believe that all of the issues raised in this article are related to the absence of a legislative framework, regulating the possibility of declaring a citizen bankrupt, including after his death. In this regard, we believe it expedient to make some amendments. All of these issues can only be resolved by introducing appropriate changes and amendments to the legislation on bankruptcy.

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