

# A Comparative Legal Analysis of Insolvency (Bankruptcy) of Individuals Under Uzbekistan and Foreign Legislation

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**Abstract:** The article provides an in-depth examination of the laws and regulations governing the insolvency or bankruptcy process for individuals in Uzbekistan, comparing them to the corresponding laws in other jurisdictions. The author delves into the legal framework surrounding individual insolvency within Uzbekistan, highlighting the key provisions, procedures, and rights available to debtors and creditors in such cases. Additionally, the article presents a thorough comparative analysis of relevant foreign legislation from various jurisdictions, allowing readers to gain a comprehensive understanding of how insolvency proceedings differ across different legal systems.

**Keywords:** Bankruptcy, citizens, foreign citizens, comparative legal analysis, legislative experience, bankruptcy proceedings, consequences of bankruptcy, bankruptcy conditions.

## Conditions of (insolvency) bankruptcy of individuals

In the doctrine, in relation to the world legislative practice of regulating the bankruptcy of individuals, the specifics of the continental and Anglo-American models of the institution of bankruptcy of citizens are highlighted. In turn, the continental one is characterized by the fact that the legislator tries to take into account the interests of both parties as much as possible, including avoiding the lack of satisfaction of creditors' claims in full. Thus, the purpose of this institute can be considered not only to restore the debtor's position, but also to satisfy the claims of creditors whose property interests have been damaged. In turn, the Anglo-American model of the institution of bankruptcy of individuals is aimed primarily at taking into account the interests of the debtor. However, according to the fair remark made by V.G. Gvozdivich and V.G. Lentsevich, it is rather appropriate to talk about a mixed model [4, p. 155]. However, to completely exclude the influence of the typology of legal families on the bankruptcy model, as the authors suggest, also seems to be an unreasonable approach. V.S. Belykh also points to the influence of the legal family in the formation of a model for regulating the bankruptcy of individuals [5, p. 19].

So, regardless of whether the legal system tends to one or another model, elements of the continental or Anglo-American approach can be found in various states. Despite the different approaches to bankruptcy regulation, the conditions for declaring a debtor bankrupt are largely similar in most states. As a rule, the conditions for declaring a debtor bankrupt include the inability of the debtor to fulfill its obligations in full or to pay them within the stipulated time. In art. 195 Of the Law "On Insolvency" specifies, among other things, the condition of impossibility of payment of mandatory payments. It is also often indicated on the condition that it is impossible to secure the debtor's obligations. In addition, in order to recognize a person as bankrupt in various legal systems, the minimum threshold for the amount of debt that the debtor is unable to repay is legally established.

Also, in various legal systems, the criterion of the debtor's place of residence is often indicated. For example, Section 109 of the US Bankruptcy Code [8] explicitly states that the bankruptcy procedure is available only to those persons who reside or have a place of residence, a commercial enterprise or property in the USA. A similar rule is provided for, for example, Article 265 of the Insolvency (Bankruptcy) Act Great Britain from 1986 [9], which provides for the condition that the debtor must reside in England or Wales for the previous three years, or carry out his activities in this territory. However, it is fair to note that, for example, the US Bankruptcy Code provides for a separate chapter on cross-border bankruptcy issues.

The regulation of the conditions of bankruptcy of individuals under the legislation of the Republic of Uzbekistan does not provide for rules on the application of the criterion of residence, which in turn raises

questions whether foreign citizens and stateless persons can belong to this category. The legislation does not contain a direct answer to this question, but judicial practice is aimed at recognizing the criterion of residence and the possibility of declaring foreign citizens permanently residing in the territory of the Republic of Uzbekistan bankrupt.

As noted, one of the criteria is the size of the debtor's obligations. So, depending on the legal system, the size and procedure for calculating the minimum threshold of the amount of obligations that the debtor cannot fulfill varies. In most cases, which threshold is fixed. So, in the Republic of Uzbekistan it is approximately equal to \$ 5,400, in Canada – \$ 1,000 [10]. However, in some cases there is no threshold, as, for example, it is provided for by the bankruptcy legislation of France [11].

The US experience in setting thresholds for the amount of the debtor's obligations is of interest, since it represents a differentiated approach. So, the amount of debt can be differentiated depending on the income of an individual. In turn, in the case of forced bankruptcy, if the creditors' claims are collectively \$15,775 more than the value of the collateral on the debtor's property securing such claims made by the holders of such claims (Section 303 of the US Bankruptcy Code). At the same time, temporary non-payment within a short period of up to eight weeks will not be considered grounds for filing a bankruptcy application.

Among other things, in accordance with section 101 of the US Bankruptcy Code, as a condition for the consideration of cases under the bankruptcy procedure of individuals, a threshold limit is also established for various categories of citizens engaged in economic activities, including, for example, family farmers or family fishermen, whose debt obligations are mainly directed to consumer purposes (the threshold limit is adjusted every 3 years).

However, it should be noted that under the general conditions, bankruptcy is carried out in respect of individual entrepreneurs whose bankruptcy procedure is not related to their entrepreneurial activity. If the bankruptcy of an individual entrepreneur or a citizen engaged in entrepreneurial activity is related to the implementation of such activities, then special conditions and the procedure for recognizing them as bankrupt are also provided.

### **Procedure and consequences of insolvency (bankruptcy) of individuals**

According to the legislation of the Republic of Uzbekistan, the following procedures for bankruptcy of individuals are provided for: debt restructuring, bankruptcy recognition and sale of property (Article 30 of the Law "On Insolvency"). In general, this approach to the settlement of the bankruptcy procedure of individuals is common, but there is also an approach to include wellness procedures. Moreover, unlike the bankruptcy procedures of legal entities, health procedures in relation to debtors-individuals in many states of the continental model in most cases occur after their recognition as bankrupt. However, there are exceptions. So, the exception in this case is, for example, the legislative approach of Germany, where the process of financial recovery takes place during the bankruptcy process. The entire process of bankruptcy of an individual in Germany takes up to six years (in some cases – up to three years) [12]. After determining the bankruptcy estate, the court annually engages an expert in order to monitor and independently assess the debtor's property, which can be foreclosed on, and only if the debtor's financial situation does not improve during the entire period of bankruptcy proceedings, he is declared bankrupt, and financial obligations cease. In Germany, the bankruptcy estate does not include personal household items, a personal car necessary for the realization of work. In turn, the legislation of the Republic of Uzbekistan provides for a fairly wide list of property that is not subject to sale, including the only housing, state awards, personal household items. However, the debtor's vehicles are not subject to recovery only if they are necessary for him due to disability.

In turn, under US law, bankruptcy procedures for individuals are differentiated depending on whether a person has a regular income or not. If a person has a permanent income, then after the restructuring procedure and the sale of part of the property, wellness procedures are prescribed, and a debt repayment plan is drawn up. If the debtor does not have a permanent income, then wellness procedures are not prescribed. However, in any of the periods of consideration of the bankruptcy case, in the event of a change in the situation, an individual has the right to apply for consideration of the case in the same manner as for persons with a permanent income. At the same time, it seems necessary to note that the procedure for initiating bankruptcy proceedings in the United States is aimed at maximizing the possibility of a favorable outcome for the debtor. In particular, in the USA, the practice of improving the financial literacy of debtors who are at the stage of bankruptcy is used, which is expressed, for example, in the debtor's obligation to undergo financial advice

before filing for bankruptcy. This approach is used to convey to the debtor the consequences that occur during the bankruptcy procedure. Also, before making a decision on debt cancellation, another financial consultation is held with the debtor.

The consequences of the bankruptcy of individuals in many Western countries mainly differ from the Uzbek regulation. Thus, since the implementation of the bankruptcy procedure of individuals in relation to the continental model is aimed at maximizing the interests of the creditor, the consequences of bankruptcy in the form of a complete write-off of the debtor's debts as a result of his recognition as bankrupt is rather an exception to the rules. So, for example, Mzhelskaya I.V. [8, C. 209] indicates that Spain does not provide for a full debt write-off at all, but a reduction to half of the total amount of the debtor's obligations is allowed, or the debtor is granted a deferral of debt payment for up to five years. However, full debt cancellation is also allowed in the countries of the continental model. As noted, an example of this is the legislative approach of the Federal Republic of Germany in regulating the bankruptcy procedure.

At the same time, among the countries of the post-Soviet space, one can also observe a similar approach, characteristic of the continental model of regulating the bankruptcy of individuals, and aimed at taking into account the interests of creditors in terms of the need for the debtor to fulfill obligations.

In particular, the Law on Insolvency of Latvia [13] provides for the need to develop a plan for the repayment of the remaining amount of unsatisfied creditors' obligations after the implementation of the bankruptcy procedure. At the same time, the greater the possibility of satisfying the bankrupt's claims with the available means of his income, the shorter the repayment period of the remaining amount of obligations. If the income of a person declared bankrupt does not allow him to repay the debt within the time limits stipulated by law, the court obliges the individual to make monthly payments in the amount of one third of his income.

In the Republic of Uzbekistan, in accordance with Article 222 of the Law "On Insolvency", full exemption from the claims presented to him by creditors is provided without subsequent full or partial repayment of the debt, and without developing a plan for financial recovery. In this case, the approach provided for in the countries of the continental model, taking into account the interests of creditors in similar situations, seems to be the most consistent with the principle of maintaining a balance of interests of the parties, good faith and fulfillment of obligations. Despite the fact that these consequences under the bankruptcy law do not apply in cases of fictitious bankruptcy and other offenses of the debtor related to the bankruptcy procedure, as well as in case of repeated bankruptcy, a full description of debt obligations without a subsequent prospect of their return remains an attractive means of avoiding debts for debtors.

According to the legislation of the Republic of Uzbekistan, it is envisaged to restrict the activities of a bankrupt person. Within five years from the date of completion of the procedure for the sale of property or termination of insolvency proceedings against an individual, this person is not entitled to assume obligations under credit agreements and (or) loan agreements without notifying the fact that an insolvency case has been initiated against him.

Within the same period, this person is not entitled to file for bankruptcy again. Similar consequences in the form of restrictions on civil rights are provided for by most modern legal systems. Some of the states, for example, Great Britain or France, impose additional restrictions in terms of crossing the state border by bankrupt citizens. Also, in many countries, for example, in the USA or France, a system of "black list" of debtors for credit institutions, which includes persons with bankruptcy status, is developed.

## Conclusion

A comparative analysis of the main provisions on bankruptcy of individuals in the Republic of Uzbekistan and in foreign countries has shown that, in general, the conditions, procedure and consequences of bankruptcy of individuals are largely similar. However, there are different models of bankruptcy regulation, namely the continental and Anglo-American models. By its very nature, the institution of bankruptcy of individuals in Uzbekistan tends to a greater extent to the Anglo-American model, since the institution is mainly aimed at protecting the interests of the debtor, rather than ensuring a balance between the interests of the debtor and the creditor.

The absence of mechanisms that allow the debtor to restore its financial situation after bankruptcy, and as a result restore the ability to pay creditors the amounts of debt owed to them infringes on the interests

of creditors, and contributes to an increase in the possibility of abuse of the right. In this case, the application of positive experience of foreign regulation can contribute to solving this problem. In particular, it is interesting to apply the legislative experience of the countries of the continental model, where financial recovery procedures are used, including after the moment of recognition of a citizen as bankrupt, and the debtor's financial obligations do not stop completely. Thus, the application of a long deferral for all obligations after the sale of property could contribute to the goals of financial recovery, after which an independent assessment of the debtor's financial condition would make it possible to understand how much the debtor has restored its position. If the debtor's financial situation has stabilized, then the experience of the Baltic countries can be used, where after the debtor is declared bankrupt, a plan is drawn up to repay the remaining amount of debt, depending on the person's real financial capacity. At the same time, it seems that debt repayment should be carried out taking into account the restructuring and only in part of the principal debt. If the debtor, after a long delay, has not received a permanent source of income and has not stabilized his condition, then only in this case should full release from financial obligations be allowed. This approach seems to take into account the interests of both sides of the obligation.

In addition, it can be concluded that the law of the Republic of Uzbekistan does not provide for a mechanism for cross-border settlement of bankruptcy of individuals. Also, the legislator does not give a clear answer to the question of the possibility of applying the provisions of the Bankruptcy Law to foreign citizens and stateless persons. It seems that this gap should be eliminated by including the criterion of residence as the basis for filing a bankruptcy application, as it is used in the legislative practice of foreign states

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