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I. Gubanova,
Department Head at KhRIFE
Kharkiv, Ukraine,
E-mail: irinarybalchenko1999@gmail.com

PERFORMING FORENSIC EXAMINATIONS RELATED TO BANK BANKRUPTCY

According to experience of the banking system existence of Ukraine it is obvious that every year an increasing number of banks are negatively affected by the financial crisis, which is the result of a wave of liquidation and bankruptcy of banking institutions.

Recently, a large number of requests have been sent to forensic institutions for conducting forensic economic examinations on the issues of a comprehensive analysis of the financial and economic activities of banks as well as on establishing features of concealing bankruptcy, fictitious bankruptcy or leading to bankruptcy. This is primarily due to the need to establish the possibility or impossibility of paying off monetary obligations including on deposits in the bank; analysis of the impact of certain management policies on the financial condition of banks; search for directions for optimizing costs and income of banks etc.

While performing a forensic examination on concealing bankruptcy, fictitious bankruptcy or bringing bankruptcy within the scope of his competence, a forensic expert shall give an opinion on the presence or absence at the enterprise of economic signs of fictitious bankruptcy, leading to bankruptcy or concealment of bankruptcy on the basis of the criteria defined in Guidelines № 14. The calculation of these indicators for a bank is impossible due to the fact that there are differences in the determination of insolvency of the bank and the business entity due to the economic and legal nature of banks and the procedural steps for determining such insolvency.

Currently, there is no legislatively approved methodology for determining the economic signs of bankruptcy, fictitious bankruptcy, hidden bankruptcy specifically for banks, which makes it impossible to calculate such financial and economic indicators of the bank as bankruptcy, fictitious bankruptcy, hidden bankruptcy.

Keywords: bank, bankruptcy, insolvency, bringing the bank to insolvency, bringing to bankruptcy, hidden bankruptcy, fictitious bankruptcy.

Formulation of Research Problem. Necessary condition for the proper functioning of any country's economy is the development of the banking sector. Economy restructuring that Ukraine so needs can only be done through an efficient banking system. Developed banking sector plays an extremely important role in stabilizing the country economy. The experience of the existence of the banking system of Ukraine has shown that every year an increasing number of banks are adversely affected by the financial crisis, which is the result of a wave of liquidations and bankruptcies of banking institutions. Many banks are declared bankrupt in Ukraine every year. There are instances where bankruptcy is unlawfully used for useful purposes to prevent taxation, evasion and withdrawal of valuable assets. Such actions entail risks of violating the rights of creditors of these organizations, and in cases of both criminal bankruptcies and market bankruptcies, which occur in the manner prescribed by law. The problems of bankruptcy of commercial banks, insolvency, liquidation of banking institutions, the causes of bankruptcy and ways of prevention are studied by many domestic and foreign scientists.

State of exploring research issue. Scientific efforts of such national scientists as M. I.Savluk[1], V. M. Sutormina[2], V. I. Uspalenko[3] and others are devoted to research on these problems. O. O. Tereshchenko, V. M. Kochetkov, V. V. Vitlinsky, O. I. Kopylyuk, A. V Cherep, E. Shabalin and others[4] devoted their work to the study of the features of bankruptcy of banks and ensuring financial stability. However, the issue of conducting judicial economic expertise on bankruptcy issues by commercial banks has not received due attention so far, so research in this area is an important scientific and practical problem.

The subject of forensic economic examination is the display of information on financial and economic performance of enterprises, including banks, the formation of their statutory funds, bankruptcy and liquidation of enterprises, lease relations, targeted use of budgetary funds and funds of enterprises for business transactions in cases in the conduct of a pre-trial investigation or court.

Recently, many requests have been received from expert institutions for conducting forensic and economic expertise on complex analysis of banks' financial and economic activity. This is due, first, to the need to prove the unreasonableness of the loan; the possibility or inability of repayment of monetary obligations, including bank deposits; analysis of

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[1] *Savluk M. I.* Prychyny devalvatsii hryvni v lystopadi 2008 roku [Reasons for hryvnia devaluation in November 2008]. Materialy vseukrainskoi naukovo-praktychnoi konferentsii vid 27 zhovtnia 2010 roku [Kruhlyi stil: «Prychyny ta naslidky devalvatsii hryvni v 2008 r»]. Kyiv : AUB, 2010 [in Ukrainian].

[2] *Sutormina V. M.* Derzhava, podatky. biznes: iz svitovoho dosvidu fiskalnoho rehuliuvannia rynkovoi ekonomiky [State, taxes. business: from the global experience of fiscal regulation of a market economy]. Kyiv : Lybid, 1992. 328 s. [in Ukrainian].

[3] *Uspalenko V.I., Zotov I. V., Tokhtamysh T. O.* Otsinka skhylnosti banku do bankrutstva [Assess bank's bankruptcy tendency]: monohrafiia. Kharkiv : KhDTUBA, 2008. 130 s. [in Ukrainian].

[4] *Tereshchenko O. O.* Finansova sanatsiia ta bankrutstvo pidpryiemstv [Financial rehabilitation and bankruptcy of enterprises] : navch. posib. Kyiv : KNEU, 2000. 412s [in Ukrainian]. Finansova sanatsiia ta bankrutstvo pidpryiemstv : navch. posib. Kyiv : KNEU, 2000. 412 c.

the impact of certain management policies on the financial position of banks; finding directions to optimize your bank costs and revenue, and more. The issue of insolvency, bankruptcy, fraudulent bankruptcy, or bankruptcy are relevant. The **Article Purpose** is to compare the insolvency of the bank and the business entities, as well as to determine the possibility of settlement in the bank of such economic features as insolvency, actions for bankruptcy, fraudulent bankruptcy or bankruptcy.

Main content presentation. Currently, according to the current legislation, the following actions are prosecuted: 1 (bringing the bank to insolvency) and Art. 219 (bankruptcy) of the Criminal Code of Ukraine[1].

Pursuant to Article 218[1] of the Criminal Code of Ukraine, bringing a bank to insolvency, that is intentional, for selfish reasons, other personal interest or in the interests of third parties to commit a related party with the bank of any actions that led to the classification of the bank in the category of insolvent caused extensive material damage to the state or the creditor.

The Law of Ukraine dated on 14.05.1992 № 2343-XII *On Recovery of the Debtor's Solvency or Declaring Bankruptcy* (hereinafter referred to as Law of Ukraine № 2343-XII) provides the following definitions of terms:

– insolvency is failure of the debtor to fulfill the obligations to creditors after maturity is due to the restoration of its solvency;

bankruptcy is the recognition by an economic court of the debtor's inability to recover its solvency through the procedures of resolution and amicable settlement and to repay the monetary claims of creditors, established in the manner stipulated by this Law, not by means of liquidation procedure.

Bank insolvency is defined by the Law of Ukraine: *On Banks and Banking* dated 07.12.2000 № 2121-III[2] as the bank inability to timely and fully fulfill the legal requirements of creditors due to lack of funds or reduction of the bank's capital to an amount of less than one third of the minimum Bank regulatory capital.

Bankruptcy of a bank is the result of negative processes (crisis phenomena) that occur in it for a long time.

Crisis detection as early as possible, on the one hand, may allow the National Bank of Ukraine and the bank's management to remedy the

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[1] Kryminalnyi kodeks Ukrainy [Criminal code of Ukraine] vid 05.04.2001 № 2341–iii. Vidomosti Verkhovnoi Rady Ukrainy. 2001. № 25–26. St. 131. URL: https://zakon.rada.gov.ua/laws/show/2341–14 (data zvernennia 14.05.2019) [in Ukrainian].

[2] Pro banky i bankivsku diialnist [On Banks and Banking]: Zakon Ukrainy vid 07.12.2000 № 2121–iii. URL : https://zakon.rada.gov.ua/laws/ show/2121–14 (data zvernennia 14.05.2019) [in Ukrainian].

situation by making appropriate decisions and, on the other, to reduce risks for other entities and avoid chain reactions[1].

The methodology for determining the insolvency of business entities involves the analysis and evaluation of its financial status on the basis of criteria defined by law.

However, there are differences in the definition of insolvency concepts of the bank and the insolvency of the business entity, which are based on the characteristics and insolvency criteria defined by law for each of them.

In addition, prior to deciding on the bank's liquidation, information about its financial position, including its insolvency, is protected by the Institute of Banking Secrecy.

During their work, in determining the economic features of bankruptcy, fictitious bankruptcy or bankruptcy actions, forensic experts use methodical recommendations for identifying insolvency signs of the enterprise and signs of bankruptcy, fictitious bankruptcy or filing for bankruptcy. Ukraine dated on January 19, 2006 № 14 (hereinafter referred to as Methodical Recommendations № 14)[2].

The objects of forensic economic examination are documents which, in their totality, contain information that forms the subject of the research[3]. The objects of research of judicial economic expertise, in the course of which the analysis of the financial and economic state of the enterprise is carried out, for the presence of which he has signs of insolvency, in particular, the financial statements of the enterprise.

The financial statements are a system of generalized indicators that characterize the results of financial and economic activities of the enterprise.

In turn, the analysis of the financial condition allows us to identify the availability of financial resources; expediency and efficiency of their placement and use; solvency of the enterprise; its financial relations with partners that is an important point in conducting forensic studies on

[1] *Kryklii O. A., Masliuk N. T.* Upravlinnia kredytnym ryzykom banku [Management of bank credit risk]: monohrafiia. Sumy : DVNZ «UABS NBU», 2008. 86 s. [in Ukrainian].

[2] Metodychni rekomendatsii shchodo vyiavlennia oznak neplatospromozhnosti pidpryiemstva ta oznak dii z prykhovuvannia bankrutstva, fiktyvnoho bankrutstva chy dovedennia do bankrutstva [Guidelines for identifying signs of insolvency of the enterprise and signs of bankruptcy, fictitious bankruptcy, or bankruptcy] : nakaz Ministerstva ekonomiky Ukrainy vid 19 sichnia 2006 r. № 14. URL:http://search.ligazakon.ua/l_doc2.nsf/link1/ME06025.html (data zvernennia 14.05.2019) [in Ukrainian].

[3] *Khomutenko O. V., Kudriashova S. V.* Pro predmet i obiekt sudovoi ekonomichnoi ekspertyzy [About the subject and object of judicial economic expertise]. Zb. nauk.prats. Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky. Kharkiv : Pravo, 2010. Vyp. 10. S. 553–561 [in Ukrainian].

bankruptcy, bringing to bankruptcy, determining the real monetary valuation of the assets of enterprises.

Assessment of these indicators is necessary for effective management of the enterprise and shows a real financial picture that has developed at the enterprise under the influence of various factors.

Financial reporting and the assessment of financial position are a necessary tool in identifying various types of unlawful activities in the economic sphere and in analyzing the trends of further events. Banks submit their financial and statistical reports to the National Bank of Ukraine.

It reflects indicators of their work, operations, liquidity, solvency, profitability, as well as information of bank affiliates to assess the financial condition of the bank. The forms of statistical reporting are defined by the «Rules of Organization of Statistical Reporting to be submitted to the National Bank of Ukraine«, approved by the Resolution of the Board of the National Bank of Ukraine dated March 19, 2003 №. 124. [1].

These Rules define the list, sample forms of statistical reporting and the procedure for their completion, the periodicity of their preparation, the terms and methods of submission of data to the National Bank of Ukraine, as well as the persons entitled to sign the corresponding forms of reporting.

Another document *Instruction on the procedure for preparation and disclosure of financial statements of Ukrainian banks* approved by the Resolution of the Board of the National Bank of Ukraine on October 24, 2011 № 373 provides:

«1. 1. This Instruction has been prepared according to the Laws of Ukraine: *On Accounting and Financial Reporting in Ukraine*, *On the National Bank of Ukraine* and is based on the requirements of International Financial Reporting Standards (hereinafter referred to as IFRS) for disclosure of information in financial statements.

1. 3. This Instruction defines the order, frequency of preparation, submission and disclosure of financial statements, sample forms included in the financial statements, sets the minimum requirements for disclosure.

Financial statements are prepared in accordance with IFRS only if they comply with all the requirements of current IFRS that are required to be completed at the date of preparation of the financial statements.

[1] Pravyla orhanizatsii statystychnoi zvitnosti, shcho podaietsia do Natsionalnoho banku Ukrainy [Rules of Organization of Statistical Reporting to be submitted to the National Bank of Ukraine] : postanova Pravlinnia Natsionalnoho banku Ukrainy vid 19 bereznia 2003 r. № 124 (zi zminamy ta dopovnenniamy). URL : https://zakon.rada.gov.ua/laws/show/z0353–03 (data zvernennia 14.05.2019) [in Ukrainian].

1.7. … Bank draws up and submits financial statements to the National Bank of Ukraine (hereinafter referred to as the National Bank) in the currency of Ukraine – in thousands of UHA. «

All types of balances are compiled according to the full nomenclature of accounts according to *Account Plan of Accounts of the National Bank of Ukraine* dated on September 11, 2017 №. 89[1].

The plan of bank accounts and the forms of statistical reporting differ from the forms of statistical reporting on the basis of which, in accordance with Methodical Recommendations № 14, the calculation of signs of bankruptcy, fictitious bankruptcy and hidden bankruptcy is carried out.

It should also be noted that, in accordance with Section III of Methodological Recommendations № 14, the report on the analysis of financial and economic activity of an insolvent enterprise is prepared in accordance with Law of Ukraine № 2343-XII, Accounting Regulation (Standard) № 1: *General Requirements for Financial Reporting* dated on 31.03. .99 № 87[2] and other legal acts.

At the same time, part 8 of Article 36 of the Law of Ukraine: *On the Deposit Guarantee Scheme* dated on February 23, 2012 № 4452–VI (hereinafter – Law of Ukraine № 4452–VI) establishes that the Law of Ukraine: *On Restoring a Debtor's Solvency or Recognizing It Bankrupt* does not apply to banks.

According to paragraph 3 of Art. 2 of section I of the Law of Ukraine № 2343–XII the legislation on the resumption of the debtor's solvency or bankruptcy in the court's consideration of the bankruptcy bankruptcy bank application is applied taking into account the rules of the law on banks and banking activities.

In addition, Methodological Recommendation № 14 provides that the main, in the a of the presence (absence) of signs of actions for concealment or bankruptcy or fictitious bankruptcy of the enterprise and determining the signs of loss or restoration of solvency, is the stay of the enterprise in one of the stages of bankruptcy and the presence of official statements by the owner or officer of the debtor to the economic court about the bankruptcy proceedings.

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[1] Plan rakhunkiv bukhhalterskoho obliku Natsionalnoho banku Ukrainy [National Bank of Ukraine Accounting Accounts Plan]: postanova Pravlinnia Natsionalnoho banku Ukrainy 11.09.2017 № 89 zi zminamy. URL : https://zakon.rada.gov.ua/laws/show/v0089500–17 (data zvernennia 14.05.2019) [in Ukrainian].

[2] Polozhennia (standartu) bukhhalterskoho obliku 1 «Zahalni vymohy do finansovoi zvitnosti» [Accounting Standard 1 (General Requirements to the Financial Reporting)]: nakaz Ministerstva finansiv vid 31.03.99 № 87 (zi zminamy ta dopovnenniamy). URL : https://zakon.rada.gov.ua/laws/show/z0391–99 (data zvernennia 14.05.2019) [in Ukrainian].

In accordance with the Law of Ukraine № 4452–VI and the «Regulation on the withdrawal of an insolvent bank from the market», approved by the decision of the Deposit Guarantee Fund of 05.07.2012 № 2, the bank is considered insolvent in the case of:

1) Failure to bring its activity in conformity with the requirements of the legislation, including normative-legal acts of the National Bank of Ukraine, after being classified as problematic, but not later than 180 days from the day of its recognition as such;

2) Reducing the amount of regulatory capital or bank capital ratios to one-third of the minimum level established by law and / or regulations of the National Bank of Ukraine;

3) Bank default on 10 or more percent of its obligations to depositors and other creditors within 10 working days.

The Law of Ukraine «On Banks and Banking« dated 07.12.2000 № 2121 – III stipulates that the National Bank of Ukraine shall decide on revocation of a bank license and liquidation of a bank at the proposal of the Deposit Guarantee Fund within five days from the date of receipt such proposal of the Fund. The procedure for revocation of a bank license at a bank, which is liquidated at the initiative of the owners, is determined by the normative legal acts of the National Bank of Ukraine. № 4452 – VI

The provisions of Law of Ukraine № 4452–VI provide for a special procedure for removing an insolvent bank from the market, different from the procedure for liquidation of bankruptcy, which is carried out through the application of bankruptcy proceedings in accordance with Law of Ukraine № 2343-XII, namely: withdrawal of an insolvent bank from the market resolution of the Board of the National Bank of Ukraine under the rules of the Law of Ukraine *On the system of guaranteeing deposits of natural persons* that does not provide for the initiation of bankruptcy proceedings in an economic court.

Forensic economist while performing an examination of bankruptcy concealment, fictitious bankruptcy or bringing to bankruptcy within its competence, concludes that the enterprise has or does not have economic signs of fictitious bankruptcy, bringing to bankruptcy or concealing bankruptcy on the basis of Methodological Recommendation № . 14. It is determined that the calculation of these indicators in the bank is not possible since there are differences in the definition of insolvent banks and business entity, which are due to the economic and legal nature of banks and the procedural actions of recognition of such insolvency.

At present, there is no legally approved method of determining the economic features of bankruptcy, fictitious bankruptcy, hidden bankruptcy for banks, which makes it impossible to calculate such financial and economic indicators of the bank as bringing to bankruptcy, fictitious bankruptcy, hidden bankruptcy.

Conclusions.

Thus, at the current stage of economic development in Ukraine, there is a need to develop methodological recommendations for identifying signs of bankruptcy, fictitious bankruptcy or bankruptcy in the banking institutions, which will later be used in the forensic economic examinations.

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*Instrukciya pro poryadok skladannya ta opry`lyudnennya finansovoyi zvitnosti bankiv Ukrayiny*`: Postanova Pravlinnya Nacional`nogo banku Ukrayiny` 24.10.2011 № 373 (zi zminamy` ta dopovnennyamy`). URL: https://zakon.rada.gov.ua/laws/show/z1288–11 [in Ukrainian].

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*Pravy`la organizaciyi staty`sty`chnoyi zvitnosti, shho podayet`sya do Nacional`nogo banku Ukrayiny*`: Postanova Pravlinnya Nacional`nogo banku Ukrayiny` vid 19 bereznya 2003 r. № 124 (zi zminamy` ta dopovnennyamy`). URL: https://zakon.rada.gov.ua/laws/show/z0353–03 [in Ukrainian].

*Pro banky` i bankivs`ku diyal`nis*t`: Zakon Ukrayiny` vid 07.12.2000 № 2121–III (zi zminamy` ta dopovnennyamy`). URL: https://zakon.rada.gov.ua/laws/show/2121–14 [in Ukrainian].

*Pro sy`stemu garantuvannya vkladiv fizy`chny`h osib*: Zakon Ukrayiny` vid 23.02.2012 № 4452–VI (zi zminamy` ta dopovnennyamy`). URL: https://zakon.rada.gov.ua/laws/show/4452–17 [in Ukrainian].

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І. В. Губанова

ПРОВЕДЕННЯ ФІНАНСОВО-ЕКОНОМІЧНИХ ЕКСПЕРТИЗ, ПОВ'ЯЗАНИХ З БАНКРУТСТВОМ БАНКІВ

Розглянуто особливості проведення та основні напрями дослідження судових економічних експертиз з питання визначення економічних показників дій з приховування банкрутства, фіктивного банкрутства чи доведення до банкрутства банків. Проаналізовано основні ознаки й критерії відмінності визначення неплатоспроможності банків від неплатоспроможності суб'єктів підприємницької діяльності, а також дій з приховування банкрутства, фіктивного банкрутства чи доведення до банкрутства підприємств. Визначено, що розрахунок цих показників у банку неможливий у зв'язку з тим, що існують відмінності у визначенні неплатоспроможними банку і суб'єкта підприємницької діяльності, які зумовлені економіко-правовою сутністю банків і процесуальними діями визнання такої неплатоспроможності.

Ключові слова: банк, банкрутство, неплатоспроможність, доведення банку до неплатоспроможності, доведення до банкрутства, приховуване банкрутство, фіктивне банкрутство.

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