

**ЕКОНОМІКА ТА УПРАВЛІННЯ НАЦІОНАЛЬНИМ ГОСПОДАРСТВОМ**

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**L. B. Ivanova**, Candidate of Economic Sciences, Associate Professor**Л. Б. Іванова**, к. е. н., доцент**ANALYSIS OF INTERNATIONAL AND NATIONAL EXPERIENCE IN DELIBERATE BANKRUPTCY****АНАЛІЗ МІЖНАРОДНОГО ТА ВІТЧИЗНЯНОГО ДОСВІДУ НЕРЕАЛЬНОГО БАНКРУТСТВА**

**Urgency of the research.** In the article we considered the problem of bankruptcy in Ukraine in the aspect of revealing its features and building a system to counter fictitious bankruptcy.

**Target setting.** Finding a solution of these issues requires the development of measures in several aspects: legal, social and economic. The legal aspect is closely associated with criminal liability. Unresolved issues within the law reinforce the negative social and economic consequences of the company – bankrupt's activity, its counterparties and the economy as a whole.

**Actual scientific researches and issues analysis.** The article is a logical extension of previous work which dealt with the problem in question in the scientific literature and the issue of regulatory framework of deliberate bankruptcy. Particularly, basic typical kinds of illegal bankruptcy were underlined. Also the economic classification of features is offered which is common for the illegal redistribution of property and the accumulation of debts and losses.

**Uninvestigated parts of general matters defining.** Development of methodological and methodical principles of economic analysis of illegal bankruptcy detection requires the detailing of various economic characteristics.

**The research objective.** In this article we examined specific examples of two high-profile cases to detail the economic analysis of detecting signs of deliberate bankruptcy.

**The statement of basic materials.** Emphasizing the competition nature of bankruptcy and its effects, the international experience is considered on the example of one of the most famous cases of fraud, Enron Corporation's case (USA). National bankruptcy case is represented by the holding corporation "Khlib Ukrayiny".

**Conclusions.** The first case is a hidden bankruptcy the sense of which is in the very fact of hiding the difficult financial position by leadership of a company from shareholders. Therefore, such fraudulent instruments were used: increasing cash flows by artificially inflating costs and increasing prices, manipulation of information in financial statements

Another case is associated with opportunistic actions aimed at bringing the debtor to the state of bankruptcy for the purpose of property redistribution and avoiding paying debts.

Summary of experience allows to state the cause-effect relationships between the opportunistic actions and their consequences in the enterprise's economy, to develop the next stages of analysis and to determine the diagnostic system of indicators under each of the deliberate bankruptcy.

**Актуальність теми дослідження.** В статті розглянуті проблеми інституту банкрутства в Україні в аспектах виявлення ознак та побудови системи протидії нереальному банкрутству.

**Постановка проблеми.** Вирішення цих питань потребує розробки системи заходів одночасно в декількох аспектах: правових, соціальних, економічних. Правовий аспект тісно пов'язаний з кримінальною відповідальністю, невирішеність проблем в межах права посилює негативні соціально-економічні наслідки в діяльності підприємства-банкрута, його контрагентів, в економіці в цілому.

**Аналіз останніх досліджень і публікацій.** Стаття є логічним продовженням попередньої праці, де розглядалися вивченість проблеми в науковій літературі, питання нормативного підґрунтя нереального банкрутства, в статті виділені правові ознаки видів протиправного банкрутства, та запропонована класифікація економічних ознак, притаманних незаконному перерозподілу майна та накопиченню заборгованості та збитків.

**Виділення недосліджених частин загальної проблеми.** Розробка методологічних та методичних засад економічного аналізу виявлення протиправного банкрутства потребує деталізації різноманітних економічних ознак.

**Постановка завдання.** З метою деталізації економічного аналізу щодо виявлення ознак нереального банкрутства в даній статті розглянуті конкретні приклади двох гучних справ.

**Виклад основного матеріалу.** Підкреслюючи єдину конкурсу природу банкрутства, його наслідки, розглянуті міжнародний досвід на прикладі однієї з самих відомих шахрайських справ – справи корпорації «Енрон» США (Enron Corporation) та вітчизняну справу про банкрутство державної акціонерної корпорації «Хліб України».

**Висновки.** Перша справа є прихованим банкрутством, сенс якого полягає саме в укриванні важкого фінансового стану суб'єкта господарювання його керівництвом від зацікавлених осіб - в даному випадку від акціонерів. Для цього були використані такі шахрайські інструменти як збільшення грошових потоків за рахунок штучного збільшення собівартості і зростання цін, маніпулювання інформацією у фінансовій звітності. Інша справа пов'язана з опортуністичними діями, що спрямовані на доведення боржника до стану банкрута з метою перерозподілу майна та уникнення сплати боргових зобов'язань.

Узагальнення досвіду надає змогу визначити причино-наслідкові зв'язки між опортуністичними діями та їх наслідками в економіці підприємства, розробити подальші етапи аналізу, визначити систему показни-

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**Keywords:** debtor; hidden bankruptcy; bankruptcy; redistribution of property debt.

ків діагностики відповідно до кожного з видів нереального банкрутства.

**Ключові слова:** боржник; приховане банкрутство; доведення до банкрутства; перерозподіл майна; боргові зобов'язання.

**Urgency of the research.** Problems of bankruptcy institution in Ukraine belong to one of the most relevant and have a multiplicative character. Their solution requires the development of measures simultaneously in several aspects: legal, social and economic. The legal aspect is closely connected with the criminal responsibility that is enshrined in the Criminal Code of Ukraine: the fictitious bankruptcy (false, deceptive, fraudulent action to create a picture of the financial failure); leading to bankruptcy (the creation of conditions for stable financial insolvency); concealment of bankruptcy (insolvency disguise); illegal actions in the case of bankruptcy (forbidden behavior in the case of financial insolvency).

**Target setting.** However, according to Cherniavsky S., it could be difficult to call to account, for the following reasons: "At first, even after the detection of crime law enforcement officers must wait for completion of the tender procedures (the latter, as known, can last for several years); secondly, such a gap in time leads to loss of necessary evidences; thirdly, there is a high degree of latency of these acts due to the fact that most lenders do not ask for protection of the police because they do not want to disclose the content of financial and economic activity and the real sources and size of their incomes". [1].

From socio-economic aspect the pendency of these problems makes difficult the implementation of bankruptcy proceedings, reinforces the negative effects of opportunistic actions due to the creation of deliberate bankruptcy. Social and economic problems in bankruptcy as a result of fraud are as follows: the loss of state property, reducing revenues to the budget and the loss of jobs. Topical tasks of fraud prevention lie in the creation of tools that will identify unscrupulous actions. They include principles of economic analysis.

**Actual scientific researches and issues analysis.** In a previous article we addressed to the issues of deliberate and unscrupulous bankruptcy, countermeasures to which are in the plane of the legislative aspects. We characterized the level of investigation of this problem in the scientific literature and came to the conclusion that for clarifying the impact of illegal actions on the structure of assets and capital we need their classification. Herewith, their economic characteristics and performance require amendments and specifications for each type of a deliberate bankruptcy [2].

**Uninvestigated parts of general matters defining. The research objective.**

The purpose of this article is more detailed examination of specific schemes of unconscientious opportunistic behavior during bankruptcy or in crisis management before the bankruptcy proceedings to determine the appropriate tools of economic analysis, which we should use to diagnose fraudulent intentions.

**The statement of basic materials.** In scientific and practical works on the study of dubious and deliberate bankruptcy, their causes and features, massive character of such bankruptcies is stressed. This is confirmed by the information provided by the State Tax Service of Ukraine [3]. It raises the issue of criminal schemes of tax evasion using fraudulent bankruptcy procedures that have been organized by a group of persons whose activities have an international character. The enterprises of Ukraine, UK and Russia were involved in criminal activity in the form of extensive dealer network. More than 600 companies whose gross income was more than 10 bln. UAH were involved in such fraud schemes.

Illegal bankruptcy is the phenomenon present not only of the post-Soviet countries. The common thing among problems of bankruptcy, which gives opportunities for participants to misconduct, is explained with some objective reasons, namely, the competitive nature of bankruptcy proceedings, when due to the insolvency the debtor cannot repay debts to creditors fully or partially.

This is quite justified measure that exists in the laws of many countries for a real difficult situation of the enterprise-debtor. It simultaneously serves under certain conditions (imperfect legal framework,

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level of corruption, the degree of the shadow economy, the weakness of state control) as the basis for deliberate bankruptcy. The ability to "escape" from the payment of debts creates diversity, variability schemes of illegal bankruptcy.

Typical cases are examples which exist in many countries with different levels of economic development. **First example.** One of the most famous cases of fraud of business corporation "Enron", US (Enron Corporation) is assigned to deliberate bankruptcy. Corporation was established in 1985 and was the first company that had a huge network of gas pipelines. Soon it became the largest trader in the market of electricity. At the time of the crash in 2001 the company employed 22 thousand employees in 40 countries [4].

The prerequisite that provided opportunities for illegal actions was the release of the US energy industry from excessive state control in 90th. Being a corporation of a national scale it had wide connections in political circles. The millions of contributions were made through the company for needs of political leaders of Republicans and Democrats which allowed to receive "an unprecedented share of the public electricity supply, and large tax benefits" and to significantly weaken the government control [4]; each individual transaction was legal or almost legal due to the fact that for the realization of scams the company involved experienced lawyers and accountants.

Such fraudulent scheme consisted in concealment of real economic indicators from shareholders and potential investors due to the distortion of accounting information. For this purpose thousands of offshore companies were created in accordance with the US law. Useful agreement for the supply of electricity allowed the increase of costs and therefore the selling price of electricity. It also made possible to write off the debts of the parent company to subsidiaries offshore in order to hide the real state. The growth of debt was caused by the rapid expansion of the market that occurred for a long time. It gave the possibility to persuade shareholders to increase stakes and invest in pension funds which were subordinated to the company or were on reinsurance. Wherein, the information provided to the tax authorities was more realistic. Company with losses did not pay income tax.

The large amount of debt led to the collapse of the company and the bankruptcy case was opened in 2001.

**The conclusions on this case are following.** According to the classification of bankruptcy types in the Ukraine it would be useful to attribute scheme, through which the company fell into bankruptcy, particularly to the hidden bankruptcy. For a long time its leadership concealed the real financial position from shareholders manipulating information in the financial statements. The main features of a template of a hidden bankruptcy are shown in Table 1.

The bankruptcy of "Enron" revealed serious problems within the US system of financial reporting of public companies (Generally accepted accounting principles, GAAP) and its European counterpart IAS (International Accounting Standards), according to which all public corporations of the world account for reporting including companies of Ukraine. The requirements for the reliability of information from investors, lenders and partners cause increase in attention on disclosure standards, particularly in off-balance sheet operations and transactions management.

**Second example.** Another typical example may be the case of bankruptcy of the state Joined-Stock Company "Khib Ukrayiny" which has been a powerful grain market operator for two decades and included about 80 companies for the production of bread and also Odessa and Nikolayev port elevators. "In 1999 the Supervisory Board of "Khib Ukrayiny" decided to reorganize five entire property complexes such as Odessa`s, Novopoltavsk`s, Yevpatoria`s, Ivano-Frankivsk and plant bakeries in Talne" [5].

Thus, under the procedure of reorganization based on Talne`s Combine of Bread two entities were created, State Enterprise "Talne" and State Enterprise "Talnovsky Combine of Bread Products" ("Talnovsky CBP") The division to the two businesses was the reason of their financial difficulties (and further bankruptcy) due to the fact that the technical and technological production shops were linked and could not work independently. The bankruptcy of State Enterprise "Talne" was initiated in November 2004. Sanation plan suggested the transfer of part of complete property complex of the enterprise to newly established private company "CBP Talne" (Limited Liability Company) for a nominal amount of

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6.1 million which should have been used to repay accounts payable of State Enterprise "Talne". State Enterprise "Talne" was declared bankrupt in 2009.

Table 1

**Characteristic of a hidden bankruptcy of "Enron" based on the regulatory framework of insolvency in Ukraine**

The type of deliberate bankruptcy	Definition of deliberate bankruptcy under the regulatory framework of insolvency Ukraine [6]	Fraud actions of «Enron»
Hidden	<i>Providing potential lenders with false information about the financial position and property status of the enterprise (in financial statements or other documents) that creates a false impression of a normal financial situation.</i>	<i>The company's management convinced the shareholders to increase stakes and invest in pension funds which were subordinated to the company or were on reinsurance.</i>
	<i>The possibility of establishing a causal link between the information provided and the losses suffered by a third person.</i>	<i>As a result of the bankruptcy, ordinary employees of "Enron" lost pension savings worth around \$ 1 billion that pension fund, controlled by the corporation, invested in shares of the corporation. Along with the fund of the corporation, about 500 mln. USD of other private US pension funds were invested.</i>
	Reporting obfuscation, destruction of documents or information concealment of realistic assessment of the debtor's property; artificial increase of accounting profit	<i>Fraud of the company was in its accounting operations. Company management and auditing company has developed and implemented a complex scheme of information concealment from the public, shareholders and investors. This was done with a purpose to distortion of the true financial position of the corporation</i>
	Goals: "Enlarging" of costs and price with the purpose of increasing stock prices; appropriated property	Big bonus to management, herewith, the Company received the tax refund amounting to about 400 mln. USD.
	Result: the cumulative loss	The accumulation of losses that led to bankruptcy
	The main conclusion	Changing the approach to financial reporting

For privatization of another State Enterprise "Talnovsky CBP" another private company was created with almost the same name of Limited Liability Company (LLC) "CBP Tallne"(with "ll"), (in Russian from "КХП Тальне" the letter "ь" is subtracted and got "КХП Талне). The company LLC "CBP Tallne" performed repairs to the elevator of State Enterprise "Talnovsky CBP" and gave it a number of other services and the latter did not pay. As a result, by the decision of the Commercial Court State Enterprise "Talnovsky CBP" was obliged to pay the fine of 5,7 mln. UAH to LLC "CBP Tallne".

According to another entity's ("Dionis") request from December 25, 2014 the court recognized the state enterprise "Talnovsky CBP " as a bankrupt and opened the liquidation procedure. Limited Liability Company "CBP Tallne" through the following courts' decision increased debt requirements for government enterprise and got 9 million UAH. The Executive Committee of the City Council illegally recognized the property of state enterprise "Talnovsky CBP" as private property. That allowed taking the next step of "CBP Tallne" (LLC). It bought assets of state enterprises by 17.5 million UAH. The identification of such fraudulent intentional leading to bankruptcy is shown in Table 2, Figure 1.

In July 2015 the Court recognized these decisions as illegal. However, state assets have not been returned yet. As a result, the opportunity to make a decision on the privatization of shares owned by the state in the authorized capital is lost. They can be sold neither at an auction nor by tender nor on the stock exchange. In fact, there was illegal alienation with the carrying value of the part of integral property complex and the state suffered from losses of hundreds of millions. Overall, despite the legal prohibition to alienate the property of state property, Myrivskyy and Buzivskyy elevators, Balivskyy, Prilutsky, Talnivsky, Kharkivsky №1 and Chernyakhovsky Combines of Bread Product, bread base №84, Kyiv Institute of bread products and other property has been completely appropriated. The result is an illegal appropriation of at least 11 integral property complexes and part of the property of almost fifty companies of "Khib Ukrayiny" [5].

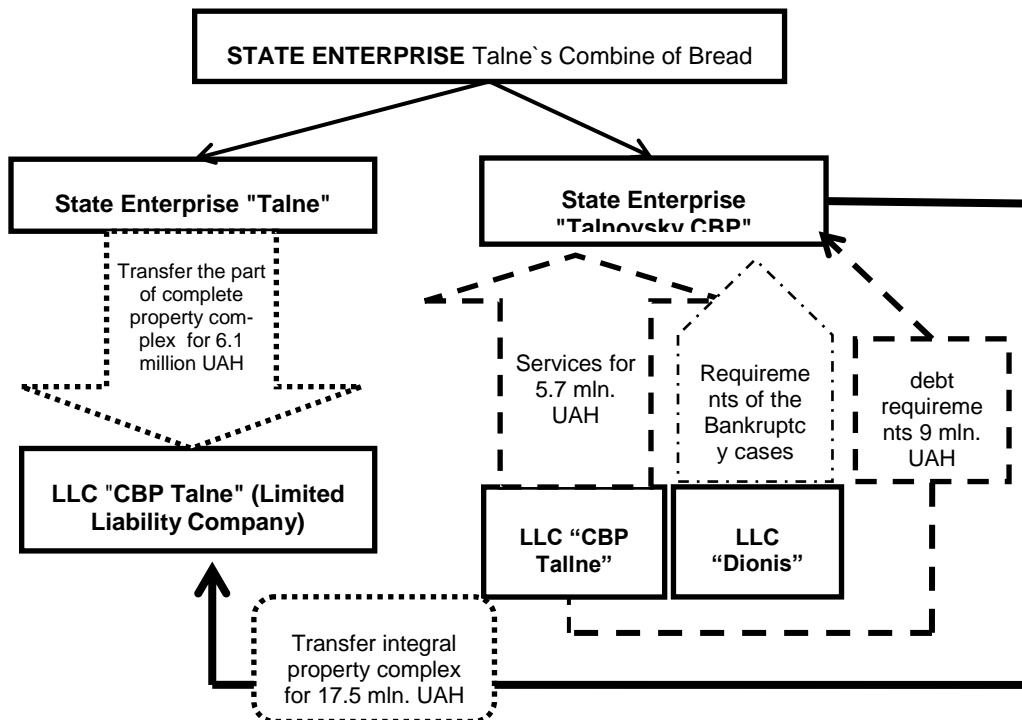
Table 2

**Characteristic of intentional leading to bankruptcy concerning**

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**Talne`s Combine of Bread Products**

The type of deliberate bankruptcy	Definition of deliberate bankruptcy under the regulatory framework of insolvency Ukraine [6]	Illegal actions of private and government enterprises
Intentional leading to bankruptcy	Premeditated or intentional leading to bankruptcy is recognized if there is evidence of misconduct that leads to sustained financial insolvency Signing deliberately disadvantageous agreements; unreasonable transfer of a property and funds to any third party; artificial increase of payables and receivables	<i>Doing of dubious investment transactions, bringing businesses into bankruptcy, artificial debt, unlawful decisions of local councils, courts and other government agencies</i>



**Fig. 1. Transferring state assets to private companies**

**The findings of the case.** Thus, there was an intentional leading to bankruptcy which led to a redistribution of property and cancellation of debt. Typical case relates to the usage the businesses which have been created to make premeditate bankruptcy and to the case where the debtor company makes a transfer of assets to newly established enterprises, thus, left insolvent for covering the debt.

This means that company`s debt to external creditors (counterparties, financial institutions, tax authorities) has been created artificially with simultaneous exclusion of facilities and equipment for the newly created subsidiaries. Subsequently interested party initiated bankruptcy of the debtor.

Usually, this scheme includes sharing a single property complex with several companies in the form of contributions to authorized funds of newly established companies; illegal activity on the distribution of parent company debts between affiliated companies; concealment or falsification of accounting documents; alienation of property at reduced prices to the benefit of other persons or entities; cancellation of funds and property of companies to purchase securities that do not have real market value, etc. [1].

**General conclusions.** The bankruptcies of these two companies serve as an example and underline the need for an integrated approach to solve the issues on countering deliberate bankruptcy. Even

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the most thorough economic analysis of the enterprise's activity, its information base and accounting cannot be efficient without adherence to legal regulations.

Taking into the account characteristics of typical patterns of illegal bankruptcy, further research of deliberate bankruptcy is related to the consideration of the stage of economic analysis separately for each type of bankruptcy.

The results of complex analysis of the debtor and its contractors will determine the direction of research to find a deliberate bankruptcy features. Identification of cause-effect connections with the help of the analysis of agreements with contractors and their impact on the financial and economic indicators may be the evidence of the presence (or absence) of the dubious bankruptcy features. We should pay attention to economic analysis of the availability, state and flow of fixed assets and also inventory analysis.

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