

Belarus

White Collar Crime in Belarus: Bankruptcy



In economic crises entrepreneurs often choose to protect their interests by initiating the bankruptcy of debtor companies as well as the bankruptcy of their own. However, the bankruptcy tool should be treated carefully, because, when implemented improperly, it may lead to criminal prosecution.

The Criminal Code of the Republic of Belarus has four types of crimes related to bankruptcy: (1) false bankruptcy; (2) concealing a bankruptcy; (3) deliberate bankruptcy; and (4) obstruction of debt recovery by creditor(s).

Although the number of persons prosecuted for these crimes in the last twenty years does not exceed 50, the number is gradually increasing.

The small number of persons prosecuted for these crimes, in our opinion, does not mean that there are few crimes in this area but rather reflects a lack of attention to the question by law enforcement authorities, caused by the difficulty of establishing guilt and a scarcity of officials in charge of investigating such crimes. However, as the number of bankruptcy cases increases, the number of investigations and prosecutions for bankruptcy-related crimes is growing.

So, what can be considered a bankruptcy-related crime?

1. False Bankruptcy

“False bankruptcy” refers to the filing of a debtor’s statement of economic insolvency (bankruptcy) by an individual entrepreneur or a representative of the legal entity in the economic court, as well as other documents, containing deliberately false information about the debtor’s financial status in order to support the recognition of the debtor as insolvent (i.e., bankrupt).

The key reason some may falsely claim insolvency is that while the company is in bankruptcy it enjoys the following benefits: (1) execution of its obligations to creditors (with a few exceptions) is suspended; (2) forced debt recovery through an indisputable write-off from company’s account in the favor of the creditors is prohibited; and (3) levying execution against debtor’s property cannot be implemented.

In addition, the debtor may be granted an exemption from the penalty for failing to fulfill the terms of obligations, and the property can be sold by sufficiently rigorous procedures. In practice banks also suspend the accrual of interest on credit resources from the date proceedings were initiated. All these benefits may tempt some to wait the crisis out in bankruptcy proceedings.

2. Concealing a Bankruptcy



“Concealing a bankruptcy” means concealing the fact of insolvency of an individual entrepreneur or a legal entity, committed by an individual entrepreneur or company officials by providing deliberately false information, falsifying documents, or misstating accounting records, causing large-scale damage to creditors.

Thus, concealing a bankruptcy stands in opposition to a false bankruptcy. Concealing a bankruptcy may be aimed at concluding a transaction with a counter-party, obtaining property from him for which the company is obviously not able to pay, hiding data to protect individuals from responsibility for failing to file a bankruptcy petition when such filing is mandatory, and discouraging transaction invalidations where required by legislation. However, for the purposes of assessing the criminality of acts the goals and motives of the potential bankruptcy are not significant.

3.Deliberate Bankruptcy

“Deliberate bankruptcy” refers to the deliberate creation of or increase in the grounds for an insolvency of an individual entrepreneur or legal entity that is committed by the individual entrepreneur or an official of the company for personal benefit or benefit of a third party and causing large-scale damage.

Usually these situations occur when an entity has assets and has no intention to fulfill its obligations (especially financial ones) to its counter-parties. To solve this issue the authorized persons withdraw assets on unfavorable terms for the company, and later, once all property has been disposed of, simply bring the company to bankruptcy. This crime also includes situations where some of the financial benefits from the conclusion of a deal are accumulated not by the company but by the guilty person on the side, for example by receiving a kickback.

4. Obstruction of Debt Recovery by Creditor(s)

“Obstruction of debt recovery by creditor(s)” involves concealing, alienating, damaging, or destroying the property of an individual entrepreneur or a legal entity in order to prevent or reduce damages to creditor(s), committed by the individual entrepreneur or officials of the company and causing large-scale damage to the creditor(s). Finally, it is worth noting that the presence or absence of grounds for a bankruptcy is determined following a procedure stipulated by legislation. It should also be noted that the analysis of solvency and expertise is based on the enterprise’s accounting data, which complicates the objectivity of the study (because the offender can deliberately distort the data or deliberately keep it incomplete) and contributes to the latency of such crimes.

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