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Masters' thesis:

**INITIATION OF THE BANKRUPTCY CASE**

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# INITIATION OF THE BANKRUPTCY CASE

## Introduction

Bankruptcy as a phenomenon is one of the most important attributes emerging with the development of market economy relations. In all economically advanced countries the formal regulation of bankruptcy also had a long development history leading to the instituting of bankruptcy as one of the indispensable parts of the legal system. In Armenia the history of bankruptcy counts a decade. Parallel with the development of the economy and legal practice in this field this institution undergoes frequent changes leading to its stabilization.

Before giving a detailed description of the state of bankruptcy we need to differentiate what aspects of the meanings of the word are subjected for further discussion for the purpose of this paper. The conventional meaning of the word is obviously vague; therefore it should be disregarded for our purposes. Meanwhile, there is no a uniform definition of the bankruptcy due to its complicated nature. According to Bryan A. Blum “Bankruptcy takes different forms and is flexible enough to provide different goals. It is therefore difficult to devise a general definition of bankruptcy that is both precise and meaningful.”<sup>1</sup> Another definition is that “Bankruptcy is a legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code)”<sup>2</sup>.

The legal definition should include all different characteristics of the term, but for easy understanding the bankruptcy can be defined as a special state of a debtor declared by the court. The framework of the very definition also includes parties involved in the

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<sup>1</sup> Brian A. Blum, “Bankruptcy and debtor/creditor” 1993, page 127

<sup>2</sup> Glossary of legal terms that are used in cases filed under the Bankruptcy Code  
<http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/glossary.html>

procedure of initiating bankruptcy, who are the debtor and the creditor and their interrelations that end up in a court. The latter declares the debtor as bankrupt based on a court hearings.

The debtor may be declared bankrupt only by the verdict of the court if the debtor is not in a position to satisfy claims of the creditor. According to the Republic of Armenia legislation the debtor is declared bankrupt if it has failed to pay its undisputed obligations which are overdue by 30 or more days and exceed the minimum monthly wage by 500 times and these characteristics are in place at the moment the verdict is delivered.

Although the debtor can be declared as bankrupt without meeting the abovementioned requirements if satisfaction of the claims of some creditors will harden the satisfaction of the debts of other creditors. This means that the state of bankruptcy of the debtor is inevitable, which amounts to actual bankruptcy.

The debtor itself can initiate a bankruptcy case (voluntary bankruptcy) for getting bankruptcy status when the satisfaction of the claims of one or number of creditors makes the complete fulfillment of monetary obligations impossible or the highest governing body of the debtor adopts a decision to file for the declaration of the debtor's bankruptcy in the court. In case if the debtor is legal entity, the liquidation commission of a debtor should file for the bankruptcy against the debtor in a court, if during the liquidation it becomes apparent that the value of assets of the legal entity undergoing liquidation is not sufficient to fully satisfy the claims of its creditors.

The creditor can and in some cases is obliged to file (involuntary bankruptcy) a petition in the court to declare the debtor bankrupt. If the state government or local self-governing bodies have monetary claims and the debtor is not in a position to pay the obligations, the officials responsible to initiate a bankruptcy case will bear individual responsibility for not filing petition for bankruptcy of the debtor.

By claiming the bankruptcy as having remedial nature we do not pretend that it must serve as a remedy for creditors' claims. The reality is a bit different. The remedial nature of the bankruptcy should be accepted as more metaphorical than real, because it is not in fact totally remedial. Usually the debtor is declared bankrupt when its economic situation is hopeless and even the best efforts will not be able to cure its "illness". It does not fully pay the claims of the creditor and in most cases the claims are paid partially or not paid at all, because the value of the assets of the debtor is much lower than the amount of the claims. And the only exemption is secured claims.

In *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) the Supreme Court defined the purpose of the bankruptcy law stating: "[I]t gives to the honest but unfortunate debtor... a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."<sup>3</sup>

Protection of creditors' and debtors' interests is implemented in two ways. First, it allows creditors to take part in the distribution of the debtor's assets and in full or in part to get satisfaction with its claims. Second way is that the debtor as a result of the bankruptcy procedure receives a relief from its unpaid obligations.

## **Armenian Legal Framework and Implications**

### **Armenian Bankruptcy Law**

The main governing law regarding bankruptcy of legal entities, individual entrepreneurs and persons in Armenia is "The Law on Bankruptcy"<sup>4</sup> (hereinafter "the Law").

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<sup>3</sup> The Process, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/process.html>

<sup>4</sup> "Law on Bankruptcy", HO-51-N («Սնանկության մասին» ՀՀ օրենք, ՀՕ-51-Ն)

The Law was adopted by the National Assembly of RA<sup>5</sup> on December 25, 2006 and entered into legal force starting from the 10th of February, 2007. It consists of 13 chapters and 107 articles. The chapters regulating issues of initiation of the bankruptcy case are the first three. The first chapter is entitled “General Provisions” and includes articles stipulating the general principles of examining of bankruptcy cases, the basis of declaring a debtor bankrupt and characteristics of insolvency<sup>6</sup>, and the jurisdiction over bankruptcy cases. The articles of the second chapter are regulating issues of initiation of a bankruptcy case and acceptance of the bankruptcy petitions. The third chapter regulates the issues concerning declaration of a debtor’s bankruptcy.

### **Other Laws Concerning Bankruptcy**

Due to existence of The Law, which is the main law in respect to bankruptcy in RA, the other laws contain rules that are more general in their nature. If there is contradiction between The Law and other laws concerning bankruptcy issues, The Law prevails, according to the Article 1 of The Law.

The Civil Code<sup>7</sup> of RA contains articles related to bankruptcy. Particularly Article 28 entitled “Bankruptcy of a Citizen” stipulates, that a citizen, including an individual entrepreneur, may be declared bankrupt by decision of a court if he is not in a position to satisfy the demands of creditors. “The liquidation of a Legal Entity” is the title of the article 67, which states in the 4th part that a legal entity also may be liquidated as the result of bankruptcy. Article 71 stipulates that a legal entity, by decision of a court, may be declared bankrupt if it is not in a position to satisfy the claims of creditors.

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<sup>5</sup> Republic of Armenia

<sup>6</sup> Bankruptcy is the state of a debtor which satisfy characteristics of insolvency

<sup>7</sup> Civil Code of RA, HO-239 (Հայաստանի Հանրապետության քաղաքացիական օրենսգիրք, ՀՕ-239)

In the Civil Procedure code of RA<sup>8</sup> the word bankruptcy is mentioned only once under point 3 of Article 16, which stipulates that the Economic court considers other cases, including: cases concerning the bankruptcy of legal entities and citizens. But this does not mean that only this point of the Civil Procedure Code relates to the bankruptcy, because the whole procedural part of the bankruptcy, including the initiation, is governed by the Civil Procedure code, where The Law does not provide ruling coverage.

According to the part 2 of the Article one of The Code, issues related to the bankruptcy proceedings are regulated by the Civil Procedure Code of the Republic of Armenia, unless otherwise stated in this law. This fact is very controversial from the standpoint of the Law on Legal Acts of RA<sup>9</sup>. Part 6 of Article 9 stipulates that all the other laws of the Republic of Armenia in the field of social relationships regulated by a Code shall comply with the Codes. One can reasonably assume that if the provision of a law and a Code regulate the same issue differently, then the code should prevail. The contradiction of the Article 1 of The Law and the Civil Procedure Code will not be considered for the purpose of this paper.

### **Case Study**

For the purposes of this paper two different cases are selected and presented, because the initiation of voluntary bankruptcy is different from the initiation of involuntary bankruptcy. The first case is the voluntary bankruptcy case of individual entrepreneur Levon Margaryan<sup>10</sup>, and, the second one is the involuntary bankruptcy case of “Spitak Elevator Manufacturing Plant” CJSC<sup>11</sup>.

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<sup>8</sup> The Civil Procedure code of RA (Հայաստանի Հանրապետության քաղաքացիական դատավարության օրենսգիրք, ՀՕ-247)

<sup>9</sup> Law on Legal Acts of RA HO-320 («Իրավական ակտերի մասին» Հայաստանի Հանրապետության օրենք, ՀՕ-320)

<sup>10</sup> This case is ongoing case N SU-659-2007 of the Economic court of RA

<sup>11</sup> This case is ongoing case N SU-785-2007 of the Economic court of RA

The first case: On 13.02.2007 individual entrepreneur, Levon Margaryan filed a petition for voluntary bankruptcy with the Economic Court of the RA. In the petition he stated that according to the verdict S-2410 of the Economic Court of the RA he owes to the State Tax Service a sum of 3.476.070 AMD which he can not manage to pay. The debtor attached to his petition and presented to the Economic Court the following documents:

1. the proof of payment of the state fee,
2. the S-2410 verdict of the Court,
3. the certificate of the individual entrepreneur issued by the State Registry,
4. information from the RA State Cadastre on real estate.

On the same day examining the petition and attached documents, the Court made a decision to accept the petition. After 3 days without appointing of a court session, the Court rendered a verdict declaring the debtor's bankruptcy.

The second case: On 13.04.2007 the Minister of Finance and Economy of the RA filed a petition for involuntary bankruptcy against "Spitak Elevator Manufacturing Plant" CJSC with the Economic Court of RA. The petition stated, that the company owes to the RA a sum of money equal to 808.701,67 US dollars, which the company did not pay. Attached to the petition the creditor presented the following documents to the Court:

1. the proof of payment of the state fee,
2. the copy of the petition,
3. the calculation of the sum of the debt,
4. the contract on privatization of the company,
5. the decision of the Prime Minister of the RA on prolongation of the debts' payments,
6. copies of correspondence,

7. information from the State Registry of Legal Entities on state of the company.

On the same day examining the petition and the attached documents, the Court made a decision to accept the petition and notified the debtor and other state institutions as required by the Law. Within seven days after receiving the decision, the debtor disputed the petition and provided objections to the Court in writing. The judge appointed a court session within 10 days after receiving the objections. Due to complicated character of the case, it took more than one session, and on 18.05.2007 the court rendered a verdict declaring the debtor's bankruptcy.

#### **Step-By-Step Analysis of Bankruptcy Initiation.**

Step 1 is to analyze the situation and figure out whether there are sufficient grounds for filing a petition. If the debtor can not afford to pay its obligations, the sum of which is equal to or exceeds 500 times the minimal wage in RA (500.000 AMD)<sup>12</sup>, and they are due for more than 30 days, it means that there are sufficient grounds to file a petition of voluntary bankruptcy by debtors, and to file a petition for an involuntary bankruptcy against a debtor(s) by creditor(s). All procedures must be followed as it is prescribed by law.

Step 2 is the petition which must be in written form. The petition should be submitted to the court according to the requirements on the form and content stipulated by the Law and the Civil Procedure Code of the RA. The following should be stated in the petition: the name of the court to which the petition is addressed, the name, last name and patronymic of the petitioner, passport and social security numbers, address, the tax code and state registry and

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<sup>12</sup> Armenian dram is the monetary unit of RA, According to the law "On Minimal Wage" of RA the minimal wage for the purpose of calculations is 1000 Armenian drams.



certificate number if it is an individual entrepreneur or legal entity, the detailed description of the circumstances of the case and what is requested from the court.

Step 3 concerns the documents to be attached to the petition in case of involuntary bankruptcy. The Law stipulates the list of documents that must be submitted attached to the petition. These are the copy of the petition, the calculation of the sum of the debt, documents proving the request, the information from the State Registry of Legal Entities not older than 30 days, proof on payment of the state fee.

In case of petitioning for the declaration of the debtor's own bankruptcy the following documents should be submitted by the debtor.

- A list of debtor's assets, according to the results of the latest inventory count, including capital and financial investments, fixed and current assets as well as intangible assets and other assets, not mentioned above;
- A list of debtor's creditors and debtors, their names, residence, legal addresses and state registration information about general partners;
- Debtor's declaration about the intention to reorganize;
- Information on other rights and assets.

*If the debtor intends to reorganize, a Reorganization plan, developed in compliance with the requirements of the Law, may be enclosed to the petition.* When it is impossible to submit all or any of the documents stated in the Article 12, the debtor should provide a reasonable substantiation to the court.

*Step 4 is the fee to be paid for filing the petition. A state fee for filing for bankruptcy is paid in accordance with the procedure and amount defined by the law.* According to the law

for submission of a bankruptcy case against a legal entity, the fee equals to 500.000 AMD, and, for submission of the bankruptcy case against a physical person the fee equals to 100.000 AMD. Privileges in line of state fees may be applied in cases and procedure defined by the Civil Procedure Code of the RA and The Law on State Fees<sup>13</sup> of the RA.

### **Submission and the Acceptance of the Bankruptcy Petition.**

According to the Civil Procedure Code of the RA the only court that has jurisdiction over bankruptcy cases in the RA is the Economic Court of the RA.

The judge accepts a petition for further proceedings the same day of its receipt, if the petition is in compliance with the requirements established by the Law. At the time of acceptance of the petition, the judge simultaneously appoints a temporary Bankruptcy Administrator. The judge should immediately send the decision of acceptance to the:

- State Registration Authority for the debtor,
- State authorities responsible for the registration of real estate and other assets, requiring state registration,
- Tax authorities dealing with the debtor,
- State custom authorities,
- Central Bank of the RA,
- Court's acts Enforcement Service.

Temporary Administrator is an individual licensed as Bankruptcy Administrator by the authorized body of the Government of the RA, which is the Ministry of Justice. The appointment and firing of the Temporary Administrator is governed by the procedure described in the Law. The Temporary Administrator may file a motion before the court for suspension of activities and transactions of the debtor if implementation of activities and

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<sup>13</sup> Law on State Fees of RA, HO-186 («Պետական տուրքի մասին» Հայաստանի Հանրապետության օրենք, ՋՕ- 186)

transactions by, or in relation to the debtor can materially decrease the value of its assets or increase its liabilities. The temporary Bankruptcy Administrator has rights to organize an inventory count of the property, to take measures for ensuring the protection of debtor's property, to analyze the debtors' financial situation, the reasons of bankruptcy as well as the debtors financial, business and investment activities and its market position.

From the moment of receiving the decision of the judge to accept the bankruptcy petition, the Enforcement Service of Judicial Acts should suspend confiscation of debtor's assets.

### **Debtor Objections to the Petition and Court Hearings.**

If the debtor does not dispute its bankruptcy in writing within 7 days after receiving the decision, the judge renders a verdict declaring debtor's bankruptcy. If within seven days after receiving the decision, the debtor disputes its bankruptcy and provides objections to the court in writing, the judge appoints a court session within 10 days after receiving the objections.

### **The Bankruptcy test**

The debtor may be declared bankrupt only by the verdict of the court based on the declaration of the personal bankruptcy (voluntary bankruptcy) of the debtor, or on the bases of the bankruptcy petition submitted by the creditor (involuntary bankruptcy) on the bases of involuntary petition if the debtor is insolvent and not in a position to satisfy claims of the creditor. The debtor is declared bankrupt if it has failed to pay its undisputable obligations

1. which are overdue by 30 or more days and
2. exceed the minimum monthly wage by 500 times and
3. if the above mentioned characteristics exist at the moment the verdict is delivered.

If the petition to declare debtor's bankruptcy meets all 3 main elements of the test of bankruptcy, then the judge renders a verdict declaring the debtor's bankruptcy. If the petitioner fails to prove the case, then the judge makes a decision to reject the petition. From the moment the verdict declaring the debtor bankrupt becomes effective, the authorities of the Temporary Administrator are ceased.

In reality although the Temporary Administrator has rights mentioned in chapter "Submission of the Petition and the Acceptance of the Bankruptcy Petition," but the debtor has no obligation to provide the Temporary Administrator with all documents and information for organizing an inventory count of the property and financial analyses of debtors' activities. This gap of the Law makes problematic the job of Temporary Administrators especially in case of involuntary bankruptcy, because the lack of any obligation stipulated by law to provide the Temporary Administrator with required papers makes the activities of the latter useless. The status and need of Temporary Administrator is a controversial issue. There are reform suggestions connected to this issue discussed in the last part of this paper.

## **International Best Practice**

### **Bankruptcy law in the United States of America**

Bankruptcy law in the USA is federal<sup>14</sup>. The statute regulating bankruptcy is the Bankruptcy Reform Act (the "Bankruptcy Code"), which was passed by Congress in 1978. This acting statute was amended in 1984, 1986 and 1994. Meanwhile there are Federal Rules of Bankruptcy Procedure (called The "Bankruptcy Rules") which govern the procedure of the bankruptcy process. The Bankruptcy Rules contain a set of official forms for use in

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<sup>14</sup>David G. Epstein, "Bankruptcy and other Debtor-Creditor Laws in a Nutshell", fifth edition, 1995

bankruptcy cases<sup>15</sup>. The Bankruptcy Code and Bankruptcy Rules (and local rules) set forth the formal legal procedures for dealing with the debt problems of individuals and businesses.

### **Initiation of Voluntary Bankruptcy**

The initiation of a bankruptcy case is governed by §§301 to 303 of the Bankruptcy Code. When filing for **voluntary** bankruptcy, the petition and supporting documents should be prepared and filed in official forms<sup>16</sup>. The filing of a petition itself serves automatically as an order for relief. Attached documents may be submitted with the petition at the same time or within 15 days.

Required documents are<sup>17</sup>:

- List of creditors, which is a very simple document, and must include the list of names and addresses of creditors;
- Schedule of assets and liabilities, which is a more complicated document and should include the list of real and personal property and record of secured, priority and unsecured claims;
- Claim of exemptions, which is a list of the property claimed as exempt;
- Schedule of current income and expenditures, including records of marital status, employment, income and expenses of the individual debtor;
- Schedule of executive contracts, which is a list of contracts that will be subject to disposition;

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<sup>15</sup> The Process, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/process.html>

<sup>16</sup> Official Form 1, Voluntary petition  
[http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Official/Form\\_1\\_0407.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Official/Form_1_0407.pdf)

<sup>17</sup> Official Form B200, [http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Dir/Form\\_200\\_1006.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Dir/Form_200_1006.pdf)

- Statement of financial affairs, which is the analysis of debtors financial history and present financial situation;
- Individual debtor’s statement of intent, which is a document revealing debtor’s intent regarding encumbered property: whether the debtor is going to surrender it or is planning to retain it.

This list is not exhaustive, because the Official Form B200 mentions many other required documents and schedules, but for the purpose of this paper this is the list of documents compatible with documents required for Armenia bankruptcy cases.

### **Initiation of Involuntary Bankruptcy**

In the “Bankruptcy and debtor/creditor”<sup>18</sup> Brian A. Blum describes the initiation of involuntary bankruptcy in the USA as follows. To obtain an involuntary order for relief, petitioners must satisfy two distinct sets of requirements. First the qualifications for filing prescribed by §303 (a), (b) and (c) must be met. Thereafter at the hearing of the involuntary case, the petitioners must establish grounds for relief under §303.

An involuntary petition is permitted only if the following qualifications are satisfied:

1. The debtor must be subject to involuntary bankruptcy. Most debtors can be subjected to an involuntary petition, but §303 forbids the filing of involuntary case against a farmer or a non commercial corporation.
2. Section §303(a) confines involuntary petitions to cases under Chapters 7 and 11.
3. Section §303(b) requires that the petitioner or petitioners hold non contingent, undisputed unsecured claims aggregating at least 10.000 US dollars. A claim is only to be treated as disputed if it is subject to *bona fide* dispute.

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<sup>18</sup> Brian A. Blum, “Bankruptcy and debtor/creditor”<sup>18</sup>1993 Chapter 15.5

4. The number of petitioners required for involuntary petition depends on the size of the creditor body. If the debtor has 11 or fewer creditors. Only one petitioner is needed. If the debtor has 12 or more creditors, then at least 3 must join in the petition.

### **The Filing and Service of the Petition.**

In US there is a bankruptcy court for each judicial district in the country. Each state has one or more districts. There are 90 bankruptcy districts across the country. The bankruptcy courts generally have their own clerk's offices. The court official with decision-making power over federal bankruptcy cases is the United States bankruptcy judge, a judicial officer of the United States district court. The bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge of debts<sup>19</sup>.

An involuntary petition must comply with official Form 5<sup>20</sup>. It identifies the petitioners, alleges compliance with the requirements of §303(b), states facts supporting *venue* and asserts that the debtor is the person against whom relief may be sought. A petition must also allege one of the two grounds for involuntary relief set out in 303(h). After the petition is filed, the clerk of the court issues a summons and the summons and the are served on the debtor.

A debtor who wishes to controvert the case must file an answer within 20 days of service. In the answer the debtor may raise any applicable defense. If the debtor does not controvert the petition, the court is required by §303 to grant the order for relief. If the debtor does answer the petition, there must be a trial on the issues raised by the pleadings, and the

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<sup>19</sup> The Process <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/process.html>

<sup>20</sup> Official Form 5, Involuntary petition, [http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Official/Form\\_5\\_rev\\_1006.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Official/Form_5_rev_1006.pdf)

petitioners must establish one or two grounds for involuntary bankruptcy set out in §303(h).

If the petitioners are establishing one of two alternative grounds for relief then the court renders a judgment placing the debtor in bankruptcy, which is the order for relief.

### **Armenian Practice vs. US Practice**

Bankruptcy law has been practiced in the US since the early 19th century and the first Bankruptcy Act was passed in 1800. During the past centuries Bankruptcy Law has evolved and undergone many changes. During Soviet period bankruptcy did not exist in RA due to specificities of soviet economy. The first law regulating the issues of bankruptcy in RA was passed in 1995. When comparing bankruptcy laws and their implications in the US and Armenia, these historical differences should always be considered.

The Armenian Bankruptcy Law in general terms is similar to the American Bankruptcy Law: there is a special court that has jurisdiction over bankruptcy cases and there are special statutes regulating bankruptcy issues. The stages of procedures are also similar, though there are also differences. For example, American law states that when the debtor opposes the petition of the creditor of bankruptcy, the later should prove the presence of one of the alternative bases for relief, which are:

1. The debtor is generally not paying debts as they come due.
2. Within 120 days before the petition was filed, a general receiver, assignee or custodian took possession of substantially all of the debtor's property.

In such cases the Armenian law states that the debtor will be declared bankrupt if it has failed to pay its obligations,

1. Which are overdue by 30 or more days and,



3. exceed the minimum monthly wage by 500 times and,

If the above mentioned characteristics exist at the moment the verdict is delivered.

From the comparison of the above mentioned Armenian and American legal bases for declaring debtors' bankruptcy, it's obvious that Armenian Bankruptcy Law requirements are stricter and they do not consider whether the debtor is generally not paying the debts or missed only one payment. The sum of the debt and an overdue payment of 30 days is enough to declare a debtor bankrupt. In contrast, under the American Law, if the debtor is not insolvent and non payments of obligations is rare, then it will not make a debtor insolvent, but according to the Armenian Law a debtor can be declared bankrupt even if the debtor is not insolvent.

Although the Armenian laws in this respect seems to be more stringent. American bankruptcy law is very sophisticated and regulates almost every possible detail unlike the Armenian one that is very general and provides with principles of dealing with the case only.

## **Reform**

### **Abuse of right to initiate a bankruptcy case.**

The fact that the Armenian Bankruptcy Law provides with opportunity to declare a debtor as bankrupt even if the debtor is not insolvent, i.e. has the resources and assets to pay the debt, but for some reason refuses to pay makes him vulnerable for the creditor who can choose not to file a petition to the court with request to oblige the creditor to pay his debts, but to file a bankruptcy petition, which can have heavy consequences and serve as a punishment.  
because:

1. From the moment when the bankruptcy petition is accepted by the court until the hearing (if the petition is disputed) a debtor is limited to pay any debt due and sometimes his regular activities may be terminated,

2. *A debtor has a burden to prove before the court that has sufficient grounds to dispute the claim.*

3. Business reputation of a debtor may be ruined.

A creditor, who possesses all the knowledge regarding the issue, may choose to file a bankruptcy petition and destroy the debtor by an evil. This can lead to abuse of the right to initiate a bankruptcy case.

It is recommended to amend the Law in this respect by removing from the part 2 Article 3 of the Law the wording stating that “even if the debtor is not insolvent.” But the removal of this expression is only the first step, because a new Article is necessary to supplement the Law requiring exhaustion of other judicial remedies before filing a bankruptcy petition. In this case the petition will be undisputable due to existence of a judicial act that entered into force and by doing so the debtor may satisfy his claim without the bankruptcy petition. This may be considered as the second recommendation.

Debtors do not have legally binding obligation to provide all documents and information requested by the Temporary Administrator, although the latter has enough workload. In such circumstances Temporary Administrator becomes *powerless and not necessary*. In this respect there are 2 recommendations.

To supplement the Law with an Article obliging debtors to cooperate with the Temporary Bankruptcy Administrator and provide all documents and information required, or to eliminate the institute of Temporary Bankruptcy Administration from the Law.

### **The Need for Amending the Law**

The initiation of bankruptcy is governed by the Law, which means that the only way to reform the initiation of bankruptcy is through amendments. According to the Article 70 of “The Law on Legal Acts” of Armenia, amendments or supplements to the legal acts shall be made in event that it is necessary to amend the features of regulation of separate legal relationships. *The amendments are made:*

- *through the replacement of words or numbers by other words or numbers,*
- *through the removal of words, numbers or sentences,*
- *through the new wording of sections, chapters, Articles, parts, points, paragraphs or sentences,*
- *through the termination of effectiveness of the sections, chapters, Articles, parts, points, paragraphs or sentences.*

Part 5 of the same Article stipulates that amendments or supplements in other legal acts (includes laws) shall be made only by the body having adopted the legal act or its legal successor. *A law creating body can make amendments or supplements in a legal act only by the same type of legal act.* It means that in order to implement recommendations provided by this paper, it is needed to take following steps described in Chapter 3 of the RA Law “On Legal Acts”.

*First step: the draft of the legal act shall be developed and included in the plan of law creating activities, which are approved by the National Assembly of the RA and the Government of the RA.*

Second step: national or local self-governing body, state or community institution or legal person that drafts the legal act may establish a committee for the development of the

draft and involve all interested organizations in the activities for the development of the draft.

The next step: The draft should be submitted to the legislator for discussion with all relevant information attached.

Final step: The draft law submitted for discussion to the National Assembly of the RA may be promulgated through the press and other mass media for public acquaintance and hearings.

After all above mentioned steps are fulfilled, the draft legal act is sent for expertise and state registration of the drafts of legal acts.

The final step is the adoption of a ne law on bankruptcy by the National Assembly of the RA.

Only following all the abovementioned steps gives hope, that the legislation on bankruptcy will be reformed.

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The Process, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/process.html>

Official Form 1, Voluntary petition  
[http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Official/Form\\_1\\_0407.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Official/Form_1_0407.pdf)

Official Form B200,  
[http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Dir/Form\\_200\\_1006.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Dir/Form_200_1006.pdf)

Official Form 5, Involuntary petition,  
[http://www.uscourts.gov/rules/BK\\_Forms\\_06\\_Official/Form\\_5\\_rev\\_1006.pdf](http://www.uscourts.gov/rules/BK_Forms_06_Official/Form_5_rev_1006.pdf)