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SCOPE OF APPLICATION AND LEGAL LIMITATIONS OF AN AMICABLE AGREEMENT IN INSOLVENCY PROCEEDINGS

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ABSTRACT

This article examines the scope of application and legal limitations of an amicable agreement in insolvency proceedings as an important rehabilitative mechanism of bankruptcy law. The study analyzes Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency," with particular attention to the differentiated authority to conclude an amicable agreement depending on the stage of insolvency proceedings, the limitation of its application to pre-existing creditors' claims, and the transparency requirement in agreements involving interested parties. It is argued that these rules define not only the formal structure of the amicable agreement, but also its legal boundaries, the distribution of powers among the relevant subjects, and its functional purpose as a tool for restructuring existing debt obligations rather than regulating new obligations. The article further provides a comparative analysis of the legislation of France, Japan, China, and the United States, demonstrating that while these legal systems also restrict restructuring mechanisms to pre-commencement claims and subject them to judicial supervision, they grant courts a more active role in balancing creditors' interests and confirming restructuring plans. On this basis, the article concludes that the Uzbek model ensures legal certainty and procedural fairness, but requires further development in light of modern international trends, particularly through creditor classification, stronger judicial review, application of the "no worse off" principle, and a more balanced approach to the veto rights of secured creditors.

The institution of an amicable agreement in insolvency proceedings serves as an important legal mechanism for implementing the rehabilitative function of bankruptcy law. However, the effectiveness of this institution depends not only on the possibility of its conclusion, but also on the clarity of its scope of application and the legal limitations established by law. From this perspective, Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" defines the specific features of concluding an amicable agreement, thereby clarifying the boundaries of its application, the powers of the relevant subjects, and the legal framework governing it.

First of all, based on the content of Article 162, it can be observed that the authority to decide on the conclusion of an amicable agreement is differentiated depending on the type of insolvency procedure. In particular, during the observation and judicial санация (financial rehabilitation) stages, this authority belongs to the debtor's manager; if such manager is removed from performing their duties, the function is transferred to the court-appointed administrator. This arrangement, on the one hand, allows for a certain degree of preservation of the debtor's operational autonomy, and on the other hand, ensures the protection of creditors' interests through the involvement of the court administrator. At the same time, the absence of a requirement for approval by corporate governing bodies during external administration and liquidation proceedings demonstrates the predominance of state and judicial control at these stages.

Secondly, the scope of application of the amicable agreement is clearly limited by law, as it applies only to creditors' claims that arose prior to the introduction of the relevant insolvency procedure. Obligations that arise after the initiation of insolvency proceedings are excluded from its scope. This limitation clearly defines the legal nature of the institution: the amicable agreement serves as a tool for restructuring pre-existing debt obligations, rather than regulating new (current) obligations. This approach ensures fairness and the principle of priority among creditors within insolvency proceedings.

Thirdly, the requirement of transparency in amicable agreements concluded with the participation of interested parties (i.e., the obligation to disclose the nature of such interest) constitutes an important safeguard mechanism aimed at addressing issues of conflict of interest in corporate governance and civil law. Through this rule, potential hidden interests that may infringe upon the rights of creditors or other participants are prevented, thereby ensuring the transparency and integrity of the amicable agreement[1].

Thus, the provisions set out in Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" define not only the formal structure of the amicable agreement, but also its scope of application, the distribution of powers among the parties, and its legal limitations. This demonstrates that the amicable agreement is not a universal mechanism, but rather a legally regulated instrument operating within clearly defined conditions. From a scholarly perspective, this norm may be evaluated as an important institutional mechanism aimed at ensuring a balance of interests, legal certainty, and procedural fairness in the application of amicable agreements.

An analysis of this issue from the perspective of foreign legal systems shows that the scope of application and legal limitations of amicable agreements (or similar restructuring mechanisms) are based on common principles across jurisdictions, while at the same time reflecting the specific legal traditions of each country.

First of all, in French law, insolvency-related settlement mechanisms are regulated within the framework of the French Commercial Code and are implemented through procedures such as *sauvegarde* and *redressement judiciaire*. In this system, the restructuring

[1] Perumal S. A. P., Ramamurthy S. S. Transparency and confidentiality requirements in investment treaty arbitration //BRICS Law Journal. – 2018. – T. 5. – №. 4. – P. 114-138.

plan (*plan de sauvegarde*) is applied primarily at an early stage, before the debtor's financial condition deteriorates significantly. Creditors are divided into groups, and the consent of each group is taken into account separately. At the same time, the court examines the interests of creditors and approves the plan. Similar to Uzbek law, the French model imposes a limitation whereby the plan applies mainly to pre-existing debts, while new (current) obligations are treated separately. However, a key distinction lies in the more active role of the court in ensuring a fair balance among creditors.

In Japanese law, this institution is reflected in the framework of the Japanese Civil Rehabilitation Act through the procedure of *civil rehabilitation* (*minji saisei*). In this system as well, the restructuring plan applies only to obligations that arose prior to the initiation of insolvency proceedings[2], which aligns with the approach of Article 162 of Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 “On Insolvency”. At the same time, Japanese legislation allows the debtor to remain in control of its business (debtor-in-possession) and to play an active role in developing the rehabilitation plan. Creditors adopt decisions through voting, while the court reviews and confirms the legality and fairness of the plan. Therefore, the scope of application of the amicable agreement remains limited, but its effectiveness is ensured through judicial supervision and procedural safeguards.

In the People's Republic of China, bankruptcy relations are governed by the Enterprise Bankruptcy Law of the PRC. Under this law, a reorganization plan is approved by the meeting of creditors and confirmed by the court. In Chinese law as well, the mechanism of settlement (or reorganization) applies mainly to claims existing prior to the commencement of the case, while new obligations are subject to a separate legal regime[3]. At the same time, the law provides for the classification of creditors into groups, and the interests of each group are protected separately. If certain groups object, the court may still confirm the plan on the basis of economic expediency and fairness, which is an important mechanism not currently found in Uzbek legislation.

In U.S. law, this institution has reached its most developed form within the framework of the United States Bankruptcy Code. In particular, a Chapter 11 plan applies only to claims arising before the commencement of the case, with a clear distinction being drawn between pre-petition claims and post-petition claims[4], which is substantively close to Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 “On Insolvency.” However, under the U.S. model, through the cramdown mechanism, the court may ensure a fair balance among classes of creditors and bind dissenting creditors to the plan. This expands the practical scope of application of the amicable agreement and increases its effectiveness.

Comparative analysis shows that in the legislation of France, Japan, China, and the United States, there are two common principal limitations on settlement (or restructuring) mechanisms:

first, such mechanisms apply only to obligations that arose before the opening of insolvency proceedings;

[2] Steele S. Evaluating the new Japanese civil rehabilitation law //Austl. J. Asian L. – 2000. – T. 2. – P. 53.
[3] Zheng H. R. Bankruptcy Law of the People's Republic of China: Principle, procedure & practice //Vand. J. Transnat'l L. – 1986. – T. 19. – P. 683.
[4] Tabb C. J. The history of the bankruptcy laws in the United States //Am. Bankr. Inst. L. Rev. – 1995. – T. 3. – P. 5.

second, their implementation is ensured through judicial supervision and a balance of creditors' interests.

At the same time, the distinguishing feature is that in foreign legal systems the role of the court is considerably more active: it acts not merely as a formal approving authority, but as a body ensuring economic justice and efficiency. From this perspective, although the rules set out in Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" correspond to international trends, it would be advisable to improve them further by introducing such mechanisms as the classification of creditors into groups, strengthening the active role of the court, and assessing the interests of dissenting creditors on the basis of the "no worse off" principle.

Based on the foregoing analysis, it may be concluded that the institution of the scope of application and legal limitations of an amicable agreement in insolvency proceedings has taken shape in modern bankruptcy law as a rehabilitative and regulatory mechanism.

First, Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" establishes clear legal boundaries for concluding an amicable agreement, thereby presenting it not as a universal device, but as a strictly regulated institution. In particular, the fact that it applies only to claims arising before the introduction of the relevant insolvency procedure, while excluding new obligations, clearly defines its functional purpose, namely the restructuring of pre-existing debt obligations.

Second, the differentiation of powers between the debtor's manager and the court administrator is aimed at ensuring a balance between the debtor's autonomy and the protection of creditors' interests. At the same time, the absence of a requirement for corporate approval during external administration and liquidation stages demonstrates the predominance of state and judicial control.

Third, the introduction of a transparency requirement for agreements involving interested parties constitutes an important safeguard ensuring the principles of transparency and fairness in the conclusion of an amicable agreement. In this way, conflicts of interest are prevented and creditors' rights are protected.

Fourth, comparative analysis with the legislation of France, Japan, China, and the United States demonstrates that in those jurisdictions as well, restructuring or settlement mechanisms are subject to two basic limitations:

they apply only to claims arising before the opening of insolvency proceedings;

their implementation is secured through judicial supervision and a balancing of creditors' interests[5].

Fifth, a particularly important conclusion is that in foreign legal systems this institution is far more developed and functions not merely as a set of restrictive norms, but as an active restructuring tool. In particular:

creditors are divided into groups;

the interests of dissenting creditors are assessed by the court;

standards such as "no worse off" and "fair and equitable" are applied;

the court acts not merely as a formal approving authority, but as a body ensuring economic justice.

[5] Eidenmuller H. What is an insolvency proceeding //Am. Bankr. LJ. – 2018. – T. 92. – P. 53.

Sixth, in Uzbek legislation, however, the predominance of the will of the meeting of creditors and the strict requirement of consent from secured creditors may in some cases impede the restructuring process. This reduces the possibility of implementing arrangements that are economically justified but fail to meet formal approval requirements.

From this perspective, it may be stated as a scientifically grounded general conclusion that the existing legal mechanisms in Article 162 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" are effective from the standpoint of ensuring legal certainty and stability, but they should be adapted to contemporary international trends. In particular, the institution of the amicable agreement could be transformed into a more effective rehabilitative instrument by introducing:

creditor classification;

a stronger active role for the court;

judicial assessment of dissenting creditors' interests on the basis of the "no worse off" principle;

a more balanced approach to the veto power of secured creditors.

As a final conclusion, it should be emphasized that the true effectiveness of an amicable agreement is reflected not in the strictness of its scope and limitations as such, but in its ability to ensure a balance of interests, effective judicial supervision, and economic recovery. For this reason, foreign experience demonstrates the need to deepen this institution in the Uzbek legal system and align it with the requirements of modern restructuring law.

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