

Criminal Liability for Intentional Insolvency: Legal Qualification and Detection Indicators (Experience of Uzbekistan and Comparative Perspectives)

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Abstract:

This article provides a comparative legal analysis of the legal nature, criminal qualification, and detection indicators of intentional insolvency, based on Article 181¹ of the Criminal Code of the Republic of Uzbekistan[1] and Resolution № 224 of the Cabinet of Ministers dated August 14, 2013[2]. The study compares Uzbekistan's regulatory framework with the legal approaches of Germany, the Russian Federation, and the United States, identifying key challenges encountered in evidentiary and enforcement practice. The primary objective of the article is to evaluate the adequacy of existing normative criteria for establishing indicators of intentional insolvency and to develop scientifically grounded and practice-oriented recommendations for their improvement. The research employs formal legal, doctrinal, comparative legal, and case law analysis methods. The findings demonstrate that, in Uzbekistan, the subjective elements of this offence are insufficiently systematised, mechanisms for economic and forensic examination lack clarity, and the boundaries between intentional bankruptcy and legitimate entrepreneurial risk remain inadequately defined. Drawing on foreign experience, the study substantiates the necessity of introducing additional indicators related to financial performance, artificial asset dissipation, and conflicted-interest transactions. The article concludes by proposing specific measures aimed at enhancing the application of Article 181¹ of the Criminal Code, expanding the criteria for identifying intentional insolvency, and strengthening forensic and economic expert procedures.

Keywords: Debtor, insolvency, false insolvency, concealment of insolvency, intentional insolvency, court administrator (temporary administrator, rehabilitation administrator, external administrator, liquidation administrator, financial administrator).

Introduction

In today's evolving economic landscape, the financial stability of business entities is crucial not only for the integrity of the enterprise itself but also for the entire market system. However, in some instances, financial difficulties arise not as a result of natural market factors but as a consequence of deliberate actions carried out with malicious intent. The institution of insolvency serves as a critical mechanism for economic efficiency and resource reallocation. Inefficient enterprises that lag behind modern technologies and fail to meet market demand occupy essential resources such as land, buildings, and labour. Through a properly functioning bankruptcy system, these resources are released back into the market and allocated to more productive entrepreneurs. This process of "creative destruction" stimulates economic growth by ensuring that resources are utilised where they generate the greatest value. A transparent and reliable insolvency framework is also vital for attracting investment. Foreign investors consider the ability to lawfully exit an investment as a key factor in their decision-making. When the insolvency system is fair and predictable, investors can recover their funds even if a business fails. International indicators, such as the World Bank's "Doing Business" rankings, highlight that the efficiency of insolvency resolution directly affects a country's investment attractiveness. Modern bankruptcy law also emphasises social protection and job preservation. Instead of simply liquidating companies, legal frameworks often focus on rehabilitation. Enterprises that fail due to objective circumstances, such as market fluctuations or unforeseen crises, may be granted a "second chance." This approach helps preserve thousands of jobs, maintain the tax base, and prevent potential social unrest, thus contributing to broader economic stability. A well-functioning insolvency system strengthens creditor confidence and stabilises the credit market. Without strict enforcement against deliberate bankruptcy, financial institutions face higher risks, which may lead to increased interest rates or reduced lending. Conversely, an effective insolvency framework reassures banks, reduces the risk of non-recoverable debts, and facilitates the circulation of affordable and accessible credit throughout the economy.

Finally, the institution of insolvency promotes ethical business practices. Awareness of severe penalties for deliberate bankruptcy encourages entrepreneurs to carefully analyse financial risks and avoid unethical shortcuts for personal gain. Over time, this fosters a culture of responsible entrepreneurship, accountability, and integrity within the business environment.

At this point, the concept of intentional insolvency appears as a relevant topic in the legal and economic spheres. In our country, special attention is paid to strengthening legal measures to ensure the financial stability of economic entities, preventing offences in this area, in particular, identifying cases of intentional bankruptcy. According to the legislation, if the debtor is unable to satisfy creditors' claims on monetary obligations or fulfil obligations on mandatory payments, the enterprise is declared bankrupt.

So, let's first legally clarify the issue of bankruptcy under the legislation of the Republic of Uzbekistan, and then discuss the experience of states in the international sphere.

The recognition of an enterprise as bankrupt causes serious damage to the economic, financial, and commercial rights of a number of economic entities that have entered into contractual relations with this enterprise. Therefore, the main purpose of this provision is to protect the rights and interests of creditors who have entered into relations with the declared bankrupt enterprise.

As a result of this crime, economic relations in the country, the economic interests of the state, organisations, and the interests of creditors are harmed. The crime is committed by intentionally leading to bankruptcy, that is, by intentionally creating or increasing insolvency.

At this point, we need to understand some concepts within the framework of this topic. In particular, intentional bankruptcy is understood as the commission by an individual entrepreneur or a legal entity's management body, a person who is a member of the supervisory board, a founder, or the owner of a legal entity, in their personal interests or the interests of other persons, of intentional causing or increasing insolvency, leading to the economic insolvency of this individual entrepreneur or legal entity.

Deliberate creation or increase of insolvency means intentionally refusing to pay creditors despite having sufficient funds, or deliberately failing to meet mandatory payment obligations. It also includes the debtor's intentional failure to perform required obligations within three months from the date they arise, or within six months for city-forming enterprises and equivalent organisations. Determination of signs of intentional bankruptcy is carried out after the court recognises the debtor as bankrupt and initiates liquidation proceedings, if there are grounds to believe that bankruptcy will be caused based on unlawful actions of persons who have the right to give instructions binding on the debtor or have the opportunity to otherwise attribute their actions. The bankruptcy of a legal entity is considered to be intentional bankruptcy by the founder or owner of this legal entity, who has the right to give instructions binding on the legal entity, only if he used this right for the purpose of committing actions caused by the legal entity, knowing in advance that the bankruptcy of the legal entity would entail this.

Signs of intentional bankruptcy of a debtor are expressed in the following actions, knowing in advance that this will lead to bankruptcy of the debtor:

- 1) criminal use of funds and other property, intentionally causing damage or harm to the debtor;
- 2) violation of payment discipline and failure to fulfil contractual obligations;
- 3) sale of property at a price below the book value or its free transfer;
- 4) failure to take measures to collect overdue receivables within the established deadlines;
- 5) transfer to other persons more than 50 per cent of the debtor's assets involved in the main activity (production, performance of work and provision of services);
- 6) conclusion by the executive body and/or supervisory board of major transactions that are not within their respective powers.

According to paragraph 28 of the Rules for Identifying Signs of False Bankruptcy, Concealment of Bankruptcy, and Intentional Bankruptcy, approved by Resolution № 224 of the Cabinet of Ministers of the Republic of Uzbekistan dated August 14, 2013[3], an analysis is conducted to identify signs of intentional bankruptcy of the debtor, which is divided into two stages.

At the first stage, the debtor's solvency is analysed according to the indicators specified in paragraphs 13 and 17 of these Rules, and indicators characterising the change in the security of the debtor's obligations to its creditors that occurred during the period under review are calculated. In the second stage, if a significant deterioration in the indicators of the security of obligations is revealed, the second stage analyses the conditions for the conclusion of transactions that led to a significant change in the indicators of the security of the debtor's obligations to its creditors during the same period. A significant deterioration of indicators is understood as a decrease when the rate

of their decrease in any quarterly period exceeds the average rate of decrease of the values of these indicators in the studied period.

During the analysis of the debtor's transactions, the compliance of the transactions and the actions (inaction) of the debtor's management bodies with the legislation, as well as transactions concluded or executed on conditions that do not comply with market conditions, which caused the emergence or increase of the debtor's insolvency and caused him actual damage, are established. Transactions concluded on terms that do not correspond to market conditions include:

- a) transactions on the transfer of property, not considered purchase and sale transactions of the debtor, aimed at replacing the debtor's assets with less liquid assets;
- b) purchase and sale transactions carried out with the debtor's property, concluded on terms that are intentionally unprofitable for the debtor or that cause the debtor's economic activity to cease;
- c) transactions associated with the emergence of obligations of the debtor not secured by property, as well as those that cause the acquisition of illiquid property;
- g) transactions on the replacement of some obligations with other obligations on terms that are intentionally unprofitable.

The following may be included in transactions on terms that are known in advance and are not profitable for the debtor:

- a) a reduction or increase in prices for goods (works, services) to be supplied (purchased) in relation to the prevailing market conditions;
- b) terms and (or) methods of payment that are inconvenient for the debtor;
- c) any forms of transfer of the debtor's property or imposition of obligations on the property, if they are not accompanied by a corresponding reduction in the debt.

The act provided for in Article 181¹ of the Criminal Code is a material offence, which means that the conduct is recognised as a crime only when it results in criminal consequences.

If, as a result of the act, the bankruptcy of an individual entrepreneur or a legal entity occurs and substantial damage is caused to creditors, this constitutes grounds for qualification under Article 181¹ of the Criminal Code.

The persistent economic insolvency (bankruptcy) of an individual entrepreneur or a legal entity means a situation recognised by the economic court in which the individual entrepreneur or legal entity is unable to fully satisfy creditors' claims arising from monetary obligations and/or to fully fulfil mandatory payment obligations.

In accordance with the Law of the Republic of Uzbekistan "On Bankruptcy," creditors are legal or natural persons to whom the debtor is liable for monetary obligations and mandatory payments (excluding citizens whose life or health has been harmed by the debtor, as well as founders (participants) of the debtor legal entity with respect to obligations arising from their participation). Causing substantial damage to creditors means damage in the amount ranging from three hundred to five hundred times the base calculation amount as a result of the committed act.

Another essential element of the objective side of this crime is the causal link between the socially dangerous act committed and the criminal consequences that arise as a result. That is, the criminal consequences must occur precisely as a result of the said socially dangerous act. Otherwise, the act cannot be qualified under Article 181¹ of the Criminal Code.

The crime provided for in Article 181¹ of the Criminal Code shall be deemed completed from the moment it results in the persistent economic insolvency (bankruptcy) of an individual entrepreneur or a legal entity, or causes substantial damage to creditors.

From the subjective perspective, the crime under Article 181¹ of the Criminal Code is committed intentionally, with direct intent. That is, the person commits the act while being aware of its criminal nature and knowing that it may lead to the persistent economic insolvency (bankruptcy) of an individual entrepreneur or legal entity or cause damage to creditors, and wishing such consequences to occur.

In addition, another essential element of the subjective side of this crime is motive. Specifically, the crime is committed by an individual entrepreneur or by an official, founder (participant), or property owner of a legal entity for personal gain or in the interests of other persons.

The subject of this crime is a special subject. That is, in addition to the general requirements that the offender be a natural person, sane, and at least sixteen years of age, the person committing the crime must be an individual entrepreneur, an official of a legal entity, its founder (participant), or the owner of its property.

An individual entrepreneur is a natural person registered as an individual entrepreneur who carries out entrepreneurial activity without forming a legal entity.

Pursuant to Article 42 of the Civil Code of the Republic of Uzbekistan[4], owners, holders of the right of economic management or operational control, or persons authorized by them are considered founders of legal entities. The owner of property is a person who has the right to dispose of the relevant property.

The law also provides incentive provisions for this crime: where a person who deliberately caused bankruptcy compensates for the material damage caused, penalties in the form of restriction of liberty or deprivation of liberty shall not be applied. If a person commits deliberate bankruptcy for the first time and compensates for the material damage within thirty days from the date the crime is detected, such person shall be exempt from liability in accordance with Part 3 of Article 181¹ of the Criminal Code.

Deliberate actions leading to insolvency or fraudulent bankruptcy are closely monitored and criminally prosecuted in developed countries. For example, in the United States, such offences are regulated under 18 U.S.C. § 157 (Bankruptcy Fraud). This statute covers actions such as concealing assets, submitting false financial statements, providing false testimony during judicial proceedings, and deceiving creditors. Similarly, in the United Kingdom, Germany, Finland, France, Italy, and other European countries, legal concepts such as “insolvency offences[5]”, “debtor dishonesty[6]”, or “Bancarotta fraudolenta[7]” exist. These provisions treat fraudulent conduct that causes bankruptcy, asset concealment, and falsification of financial documents as criminal offences, with penalties including fines, imprisonment, or disqualification from managing property and business activities, depending on the severity and consequences of the offence.

In developed countries, the detection of such crimes goes beyond legal definitions and heavily relies on monitoring and identification systems. Financial statements, balance sheets, and debt structures are carefully analysed before insolvency procedures are initiated. Specialised agencies, such as the Insolvency Service, Criminal Investigations Team and the National Fraud Intelligence Bureau in the United Kingdom, are responsible for investigating and prosecuting financial crimes.

Digital monitoring systems and statistical models are also widely used to detect potential fraud in advance.

Liability for these offences is typically classified into two main categories: criminal and civil. Criminal liability includes concealing assets, falsifying financial documents, and deceiving creditors, with severe cases resulting in long-term imprisonment or fines. Civil and financial liability generally involves repayment obligations, restitution of misappropriated assets, and potential disqualification from managing companies in the future. Additionally, company directors and other responsible individuals may bear personal liability for financial fraud.

Preventive measures receive significant attention in developed countries. These measures include legal mechanisms to prevent fraudulent behaviour, enhanced financial control and auditing, as well as ethical codes and training programs for business leaders and organisations. Transparency in bankruptcy registries and judicial decisions protects creditors and reduces the risk of fraud.

In Uzbekistan, legislation regulating bankruptcy and insolvency has been significantly improved in recent years. The criminal offence of deliberate bankruptcy is specifically addressed in Article 181¹ of the Criminal Code of the Republic of Uzbekistan. This offence occurs when an individual causes significant financial damage to creditors or leads a sole proprietor or legal entity to a state of persistent economic insolvency. The perpetrator must be a special subject, such as a sole proprietor, a corporate officer, a founder (participant) of a legal entity, or an owner of property. The law also provides incentive provisions: if the perpetrator compensates the full amount of the material damage caused, imprisonment or restriction of liberty is not applied.

Adapting international experience in Uzbekistan can further improve systems for detecting and preventing such crimes. For example, establishing specialised monitoring agencies, expanding financial forensic expertise, maintaining transparent bankruptcy registries, and implementing ethical codes and training programs for executives can enhance legislative effectiveness. These measures not only ensure criminal accountability but also protect the interests of creditors and society as a whole.

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