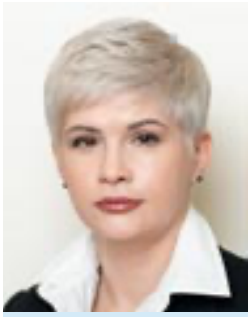
Sanctions and Bankruptcy: Legal Conflicts, Case Law, and Challenges for Business

Olena Volianska analyses key conflicts between sanctions legislation and Ukraine's Bankruptcy Code



OLENA VOLIANSKA
Partner, Head of Bankruptcy and Restructuring, LCF Group Law; Board Member, Ukrainian National Insolvency Trustees Association (UNITA)



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Since February 2022, the full-scale Russian invasion of Ukraine has led to the unprecedented expansion of sanctions instruments in Ukraine, with sanctions emerging as a key tool in efforts to protect national security. The application of sanctions has created a range of legal challenges and potential conflicts in areas that have traditionally had their own regulatory logic.

The challenges are particularly prominent in the sphere of insolvency, which seeks to balance the interests of creditors with the transparency of asset management and their effective use. In a number of instances, sanctions measures have come into conflict with the specifics of bankruptcy procedures, effectively paralyzing individual cases and preventing any meaningful economic resolution.

This article seeks to analyse key conflicts between sanctions legislation and Ukraine's Code of Bankruptcy Procedures (Bankruptcy Code), while exploring the consequences for market participants and offering insights into potential further developments.

Key issues identified

Among the issues identified are:

(i) the impossibility of completing bankruptcy procedures for debtors whose owners are under sanctions and the impossibility of repaying debts to creditors;
(ii) legislative restrictions on the repayment of debts to creditors subject to sanctions;
(iii) unscrupulous use of bankruptcy procedures to impede the implementation of sanctions; and
(iv) the criminalization of sanctions circumvention without resolving legal conflicts between regulatory acts, thereby creating increased risks for insolvency practitioners.

Sanctions are applied in Ukraine in accordance with the Law on Sanctions and may be imposed against a foreign state or legal entity, or a legal entity under the control of a foreign legal entity or individual, foreigners, stateless persons, or entities engaged in terrorist activities.

Sanctions categories affecting insolvency procedures

The sanctions categories that most significantly affect insolvency procedures are asset freezing and asset recovery by the state.

In modern judicial practice, the principle of "lifting the corporate veil" is applied when resolving sanctions disputes. In line with this approach, the complexity of any given corporate structure does not prevent efforts to demonstrate effective control by the sanctioned person and the extension of sanctions to the relevant assets. Assets can therefore be blocked if the effective influence of the sanctioned person can be proven.

After the start of a full-scale war, Ukraine introduced an exceptional sanction allowing for the seizure of assets by the state. This sanction is applied exclusively by the Supreme Anti-Corruption Court. This court demonstrates a consistent approach to determining control of assets: the court analyses both direct and indirect mechanisms of influence, and sometimes even the behaviour and economic logic of the group in order to determine the true nature of ownership and control. This approach is important for both businesses and potential investors, because assets can be seized even when formal ties do not connect the company with the sanctioned person.

Sanctions vs. Bankruptcy

What issues do Ukrainian lawyers and insolvency practitioners face in bankruptcy procedures of enterprises in relation to sanctions?

Debtor under sanctions in insolvency proceedings

Creditors of a bankrupt debtor can receive repayment via two routes: (1) the rehabilitation procedure through the gradual restoration of the enterprise's work using its assets or the sale of part of its property; or (2) after the sale of the enterprise's property at auction during liquidation.

However, if the state has imposed sanctions on the bankrupt company or its owner in the form of a block or seizure of assets, then the use and disposal of assets is prohibited. Accordingly, the path to opening a rehabilitation procedure or starting a liquidation procedure is closed. As a result, creditor claims against bankrupts cannot be repaid, including a large number of banks that in the past provided loans to such debtors and accepted assets as collateral.

At present, the Ukrainian courts clearly recognize the priority of sanctions legislation and issue court decisions acknowledging the impossibility of continuing bankruptcy procedures. For example, when considering the complaint of a secured creditor in case No. 922/1734/24, the court established the absence of violations by the liquidator, who did not sell the debtor's property to repay the creditors' claims, since the sale of property subject to sanctions is impossible. The Supreme Court of Ukraine has refused to review this decision. Similar decisions have been made by Ukrainian courts in other cases.

Legal and economic justifications

Sanctions are not a form of punishment or liability. According to the opinion of the Grand Chamber of the Supreme Court, which is set out in its Resolution of 6 July 2023 in case No. 9901/376/21, sanctions are restrictive economic measures against persons who pose a threat to the national interests of Ukraine.

According to Article 59 of the Bankruptcy Code, from the moment of issuing a resolution to declare the debtor bankrupt, the powers of the bankrupt's management bodies are terminated, the members of the executive body are dismissed, and the powers of the owner are terminated. The corresponding functions are assigned to the bankrupt's liquidator, who is appointed by the court and performs his functions independently.

From the moment of liquidation, therefore, the *de jure* connection between the sanctioned owner and the enterprise is severed. Accordingly, further sanctions-related restrictions on the debtor's property to achieve the legitimate goal of the sanctions would appear to be unjustified. The right of bona fide creditors to recover their debt is violated and the economic purpose of bankruptcy is not achieved.

Sanctioned creditors

Another problem in bankruptcy cases with sanctioned participants is the issue of legislative uncertainty regarding the repayment of claims in favour of creditors who are under sanctions or who are associated with the Russian Federation.

Any amounts owed to such creditors by the debtor are blocked, while the same restrictions apply to them as discussed above. In addition, according to the position of the Supreme Court of 17 June 2025 in case No. 909/130/24, the right of such creditors to initiate bankruptcy proceedings is limited, since in the opinion of the court, the purpose of bankruptcy in such cases is to withdraw assets and not to protect legitimate interests.

It should also be mentioned that the Resolution of the Cabinet of Ministers "On ensuring the protection of national interests in future claims of the state of Ukraine in connection with the military aggression of the Russian Federation" No. 187 dated 3 March 2022 introduced a moratorium on the fulfilment of obligations to creditors connected to the Russian Federation. When applying this resolution, the Supreme Court in its resolution dated 30 May 2023 in case No. 925/1248/21 concluded that it was impossible to fulfil obligations to such creditors, although the right itself does not cease.

Bankruptcy legislation (Article 48) limited the participation of such creditors in creditor meetings and committees, limiting their



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rights to vote and determine key decisions regarding the bankrupt. This seems logical and ensures the protection of national interests. However, the law does not establish a procedure for the insolvency practitioner to dispose of the received funds belonging to the sanctioned creditor, their storage, and accounting. This creates additional risks for the insolvency practitioner due to the potential for complaints and accusations of abuse due to a lack of clear regulations.

Even those insolvency practitioners who have taken all the necessary actions in the bankruptcy procedure do not have the opportunity to complete the procedure, distribute funds, and terminate the bankrupt's legal entity.

Criminalization of violation and circumvention of sanctions

The President of Ukraine has submitted to the Parliament of Ukraine Bill No. 12406, which provides for increased criminal liability for violation and circumvention of sanctions. Although this bill is timely and the increased liability it features may enhance the effectiveness of the application of sanctions, in the absence of a clear dividing line between proper performance of procedural duties and "facilitating the circumvention of sanctions," there is potential for pressure and abuse. Therefore, experts note its imperfection and the need to balance state security and business interests.

Conclusions

Conflicts between sanctions and other areas of regulation, in particular the bankruptcy procedure, create additional prerequisites for disputes between sanctioned persons, their creditors, and the state of Ukraine.

This is of particular concern after the adoption of a decision on 16 October 2025 in the case of *TOV M.S.L. v. Ukraine*, in which the European Court recognized that the introduction of sanctions constituted interference with the applicant's property rights and did not meet the requirements of legality in line with Article 1 of Protocol 1 of the European Convention on Human Rights. Given the conclusions of the ECHR, the practice of applying sanctions in Ukraine should be reviewed.

Risks exist not only for Ukraine and Ukrainian market participants. These risks also affect foreign investors, international companies, financial institutions, and transnational groups. In the absence of clear regulation, sanctions may affect the ability to sell assets, satisfy creditor claims, and impact the legitimacy of transactions involving the transfer of assets or claims. This creates additional operational and legal risks in the context of working with counterparties whose beneficiaries may be subject to sanctions or be associated with sanctioning jurisdictions.

Recommendations

Harmonization of legislation

To resolve existing issues, comprehensive harmonization of national sanctions legislation in accordance with European standards should be a top priority. Even in wartime conditions, the state must ensure legality, transparency, and control over its actions. Any changes adopted should ensure a balance between national security and economic interests.

Systemic changes should also take into account the requirements of bankruptcy legislation and the enforcement of court decisions to establish clear rules for working with blocked assets. They must also foresee the possibility of using a mechanism of special licenses to protect the rights of bona fide creditors and allow for the harmonization of judicial practice. At the same time, the highest standards for determining the good faith of creditors and the absence of any potential connections with sanctioned persons should be introduced for both creditors and persons who may be buyers of the debtor's assets.

Risk management

Sanctions regimes affect business no less than tax regimes or corporate structuring. They require new approaches to compliance, risk management, deal planning, and investment structuring in order to avoid serious losses. ■

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