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BANKRUPTCY SYSTEM ASSESSMENT REPORT

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CONTENTS

INTRODUCTION

Bankruptcy system assessment report was developed in the scope of the "Bankruptcy system reform" project, funded by the UK "Good Governance Fund". The project is aimed to create a more efficient and responsive bankruptcy system, providing increased transparency and enhanced safeguards for both investors and entrepreneurs.

Regulation of the bankruptcy process is one of the most important tools of managing any economy. Together with the development of market and trade relations in the Republic of Armenia, the bankruptcy regulation system has changed and developed over many years. During the Soviet period Armenia did not have any legal ways for bankruptcy regulation, as in the totalitarian planning system the bankruptcy of enterprises was impossible. After collapse of the USSR, in 1995 the RA Law "On Bankruptcy of Enterprises and Individual Entrepreneurs" was adopted. A year later the RA Law "On Insolvency and Financial Recovery of Legal Entities, Enterprises not having the status of legal entities and Individual Entrepreneurs" was adopted. Then, for more comprehensive regulation of the issue, in 2003 the RA Law "On Insolvency" was adopted, and in 2006, a new RA Law "On Bankruptcy" was adopted, which regulated bankruptcy legal relations and legal norms[1]. Amendments and supplements to this Law were made in December 2010.

In the context of ensuring sustainable economic growth, measures for financial and economic recovery, as well as discipline, are key. For this reason, review of the legislative gaps in the bankruptcy system is necessary.

[1] ***V. Sargsyan***, *Bankruptcy; some issues on economic and legal regulation and management*, «Banber of Yerevan State University: Sociology, Economics», 2017 № 3 (24), pp. 42-43.

AIMS AND OBJECTIVES OF RESEARCH

Aims of the research and the Methodology

Collection of full and extensive quantitative and qualitative data on current needs and expectations in the bankruptcy system was carried out to find the problems, expectations and needs at different stages of the bankruptcy process.

In the framework of the research, views of business, policy developers, those who have been subject to bankruptcy and others regarding current issues of the system and their possible solutions were collected. The objectives included:

- To reveal the current sources of information in the bankruptcy process and assess their efficiency;
- To reveal the main reasons of bankruptcy proceedings;
- To reveal the change of the social and economic status of the debtor as a result of the bankruptcy process;
- To reveal the peculiarities of the bankruptcy process, differentiating between legal entities and individuals;
- To analyse gender peculiarities of the bankruptcy process;
- To reveal the opinions of debtors and other participants in the process on the work of bankruptcy administrators;
- To reveal the opinions of debtors and other participants in the process on the work of bankruptcy attorneys;
- To reveal the opinions of debtors and other participants in the process on the work of bankruptcy judges;
- To reveal the view of debtors of the bankruptcy proceedings i.e. while submitting an application for bankruptcy, restructuring a debt and presenting a financial recovery plan, as well as after the bankruptcy process;
- To reveal the procedural gaps in the bankruptcy proceedings;
- To reveal the corruption risks in the bankruptcy process;
- To reveal the procedures for selection of bankruptcy administrators and their transparency;
- To consider the process of submitting, approving and implementing financial recovery plans;
- To study the process of public auctions in the scope of bankruptcy proceedings.

Methodology

The research consists of two main stages: collection of quantitative data and qualitative (in-depth) data. Views collected include:

- Business's perceptions of the bankruptcy procedure and process
- The expectations and view of policy developers and possible approaches (solutions).

For collecting quantitative data, interviews were carried out with selected entities already recognised as bankrupt (including closed bankruptcy cases) and entities in the bankruptcy process. A closed-ended questionnaire was used.

Face-to-face semi-standardized interviews were carried out with 200 representatives of bankrupt businesses or involved in the bankruptcy process in 2016-2018 (individuals and legal entities):

- 123 out of 200 respondents were individuals, with the gender proportion of 28.5% and 71.5% for female and male participants respectively. 58.5% of the interviewees were representing Yerevan, while 41.5% were from regions.
- 77 out of 200 respondents were legal entities, with the gender proportion of 14.3% and 85.7% for female and male participants respectively. 68.8% of the entities were Yerevan-based, while 31.2% were operating in regions.

The most common types of legal entities were LLCs and IEs (58% and 27% respectively). Similarly, more than half of the interviewed legal entities had 1-5 employees, followed by entities with 6-20 employees.

At the qualitative stage, the Delphi method[2] was applied. This involved bringing together the issues collected from quantitative data with expert comment and looking for a causal link. Through this method the problem is discussed in one expert group, and then the assessments and comments of this group is presented to the next expert group. If several expert groups confirm the problem, the comments and explanations, the result is presented as an option characterising the situation. If the presented assessment is unique and neither shared nor confirmed in other expert groups, it is presented as an opinion.

By this process, the problems that exist in the bankruptcy system are identified, with reasons. Possible solutions are suggested.

In addition, a number of representative cases were reviewed. The approach included providing a general description of the case, reasons for bankruptcy proceedings, procedural problems, possible corruption risks, the presence of a recovery plan, evaluation of the actions of bankruptcy administrator and the judge, and aspects of the RA Law "On bankruptcy" that are worth attention. Comments of the experts are included.

For more details, please refer to appendix 1.

[2] a forecasting process framework based on the results of multiple rounds of questionnaires sent to a panel of experts.

KEY FINDINGS

Key findings of the research are summarised below.

Objective: to reveal the current sources of information in the bankruptcy process and assess their efficiency;

- 70.5% of the debtors have not been informed of the bankruptcy process before commencement of the bankruptcy case, and only 5% have been fully informed. The level of awareness considerably increased at the time of being surveyed, when the bankruptcy process was complete or was continuing.
- Most respondents obtained information in the bankruptcy process from personal experience, lawyer co-workers, experience of their friends, relatives, acquaintances, by reading the law on their own initiative, from books, conversations with friends, relatives, acquaintances, rumors, electronic legislative archives, informative websites and television.
- 26.4% of the respondents received information regarding bankruptcy proceedings of their personal case orally from the bankruptcy administrator, 23.6% - from the bankruptcy administrator in a hard copy, 20.8% - from a judicial authority in a hard copy. Other information sources were used rarely.
- The percentage of users of electronic sources is low: 20.5% have used datalex.am website, 8.5% - azdarar.am website, 4% - snank.am website and 3% - court.am website.
- Debtors who had gone through the bankruptcy process if they had known beforehand that they were going to face negative consequences, would have reviewed their business strategy, increased their legal awareness and knowledge of bankruptcy procedures, and suggested review of bankruptcy laws and procedures.
- 23% debtors were not aware of overdue liabilities for different reasons. The most common reason was the debtor did not control activities personally and was not aware of the process – 15%.

Objective: to reveal the main reasons for bankruptcy proceedings;

- 12% of debtors represented guarantors for one person, not aware they could be included in a bankruptcy case.
- The obligation to recognise as bankrupt arose based on the contract - 60%, credit contract- 49.5%, contract of guarantee - 6%, purchase and sale/supply contract -2.5%, service contract -1% and loan contract -1%.

Objective: to reveal the change of the social and economic status of the debtor as a result of the bankruptcy process;

- The bankruptcy process has a negative impact on the social status of the debtors. In addition the percentage of employed people decreases. This reduces the active workforce and active business entities.

Objective: to reveal the peculiarities of the bankruptcy process differentiating between legal entities and individuals;

- For individuals the contract was the basis of recognising bankruptcy more often than for legal entities. An administrative act issued by a state body (SRC) was stated as the basis of recognising a legal entity bankrupt more often.
- Individuals are recognised as bankrupt according to a personal petition more often than for a particular obligation.
- Only 4.9% of respondent individuals and 24.7% of legal entities have electronic signatures, 52% of individuals and 90.9% of legal entities have identification cards provided by EKENG.

Objective: to analyse gender peculiarities of the bankruptcy process;

- In bankruptcy proceedings, women used the service of an attorney more frequently (36.2%) than men (26.8%). Fewer women (14.9%) was not aware of the existence of overdue liabilities compared to men (30.1%). The percentage of women who anticipated bankruptcy was higher (40.4%) compared to men (25.5%).
- A relatively higher percentage of women went into bankruptcy not based on a particular liability, but on personal application (23.4%) as compared to men going bankrupt on the same basis (3.9%).

Objective: to reveal the opinions of debtors and other participants in the process on the work of bankruptcy administrators;

- Respondents are generally satisfied with the professional skills of bankruptcy administrators and their attitude towards their cases.
- Respondents who were not satisfied with professional skills of bankruptcy administrators mentioned self-interest of bankruptcy administrators, corruption, ignorance, delay, indifference towards maintenance of debtor's property.
- The majority of respondents believe bankruptcy administrators did not gain from the auction. 10.7% of the respondents stated that bankruptcy administrators definitely gained in the process of auctions, and 1.3% considered that they have gained somewhat.

Objective: to reveal the opinions of debtors and other participants of the process on the work of bankruptcy attorneys;

- Only 29% of debtors used the service of an attorney.

Objective: to reveal the opinions of debtors and other participants of the process on the work of bankruptcy judges;

- The satisfaction of debtors with professional skills of judges is considerably lower than with the professional skills of bankruptcy administrators.
- The majority of respondents who negatively assessed professional skills of judges referred to corruption.

Objective: to reveal the view of the debtor of the bankruptcy proceedings: while submitting an application for bankruptcy, restructuring the debt and presenting financial recovery plan, as well as after the bankruptcy process;

- At the stage of examination of the issue of bankruptcy or in bankruptcy proceedings, 35% tried to come to an agreement with the creditor in a judicial or out-of-court procedure (friendly settlement, withdrawal of a bankruptcy petition by the creditor, etc.). 64% did not try, 1% had difficulty answering.
- The efforts of debtors to come to an agreement with the creditor in judicial or out-of-court procedure failed.
- 8.5% of debtors stated that they would have worked in any mechanism under control of the creditor to avoid bankruptcy proceedings, 28% would be ready to work in a reasonable mechanism, 8% had difficulties in answering, 55.5% would not.

Objective: to reveal the procedural gaps of the bankruptcy proceedings;

- The research results show lack / absence of transparency of bankruptcy proceedings as well as inefficiency. Many debtors are not informed how their assets are being appraised.
- The claims of the creditors are not satisfied (either).

Objective: to reveal the corruption risks in the bankruptcy process;

- Corruption was associated with the:
    - court
    - bankruptcy administrator
    - creditors, including banks, lenders, SRC, individuals
    - officials who have interests in particular bankruptcy cases

Objective: to reveal the procedures for selection of bankruptcy administrators and their transparency;

- In 72% of the cases the bankruptcy administrator was appointed by the court at its discretion, in 3.5% on a motion of the Creditor, in 2.5% a random selection, in 0.5% on the motion of the debtor.

Objective: to consider submitting, approving and implementing financial recovery plans;

- 10% of debtors intended to submit a financial recovery plan in the bankruptcy proceedings and did submit, 18% intended to, but did not submit, 72% did not intend to submit a FRP.
- 43.8% of the respondents who did not intend to submit an FRP were not aware of such a right
- 35% of recovery plans were approved. The main reason for rejection of FRPs was their consideration by the court as unrealistic.

- 40.5% of the respondents tried "to reconstruct" the debt e.g. applied for refinancing the loan (25%), negotiated for review of amortisation schedule for cash liabilities (11%), negotiated for review (of the amount) of contractual liabilities (4.5%).

Objective: to study the process of public auctions carried out in the scope of bankruptcy proceedings;

- A public auction was held in 37.5% of studied cases.

Objective: certain financial aspects;

- Value of assets vs liabilities. The value of 56.3% of the assets of debtors was less than the value of liabilities in the judgment on bankruptcy. The value of 5.9% of assets was equal to the liabilities in the judgment on bankruptcy. The value of 33.3% of the assets exceeded the liabilities in the judgment on bankruptcy.
- 32.5% of debtors did not have any assets providing income when adjudged bankrupt. 67.5% of respondents had assets providing income, 56% used them, but they were not enough, 10% did not use them.
- The liabilities with respect to all creditors at the beginning of bankruptcy proceedings ranged from AMD 150 k to AMD 5,88 b. 68.5% were in the range AMD 1, 2m to 50m.
- 30% of the assets of the respondents had no value.
- A liability in the range AMD 5m to AMD 10m was the median (value is the middle one in a set of values arranged in order of size) distribution shown in the bankruptcy judgment. The liability ranges were AMD 1m – 3m (26.5%); AMD 20m and more (28.5%).

Objective: other matters.

- A majority (69.5%) of debtors see a need to improve bankruptcy legislation.
- 4.5% of debtors did not receive the decision initiating proceedings on petition in bankruptcy.
- For 65.5% of debtors bankruptcy was totally unexpected, for 29% it was expected, and 5.5% saw the possibility.
- Majority (15) of 17 respondents, who were recognised as bankrupt based on a personal petition, think in hindsight it was the right solution.
- The overdue period before the creditor filed the bankruptcy petition was more than 181 days in 44% of cases, 91-180 days in 18% of cases. In one case the period was 60 days (0.5%), and for fewer days in 2.5% of cases.

RESEARCH RESULTS

LEVEL OF AWARENESS OF THE BANKRUPTCY SYSTEM AND ASSESSMENT OF INFORMATION SOURCES, CREATION OF WWW.E-BANKRUPTCY.AM

ACCORDING TO THE DEBTORS

70.5% of the debtors, before the commencement of bankruptcy case were unaware of the bankruptcy process, and only 5% were fully informed. The level of awareness increased considerably at the time of being surveyed, when the bankruptcy process was finished or was in the process. Thus, as of the time of being surveyed 37% of the respondents assessed their level of awareness as follows: *"I am fully informed"*, another 41% - "I am rather informed". At the time of being surveyed only 3.5% of the debtors stated that they were unaware of the bankruptcy process (See **Chart 1.**).

Chart 1. Degree of awareness of the debtors in the bankruptcy process before the commencement of bankruptcy case and today

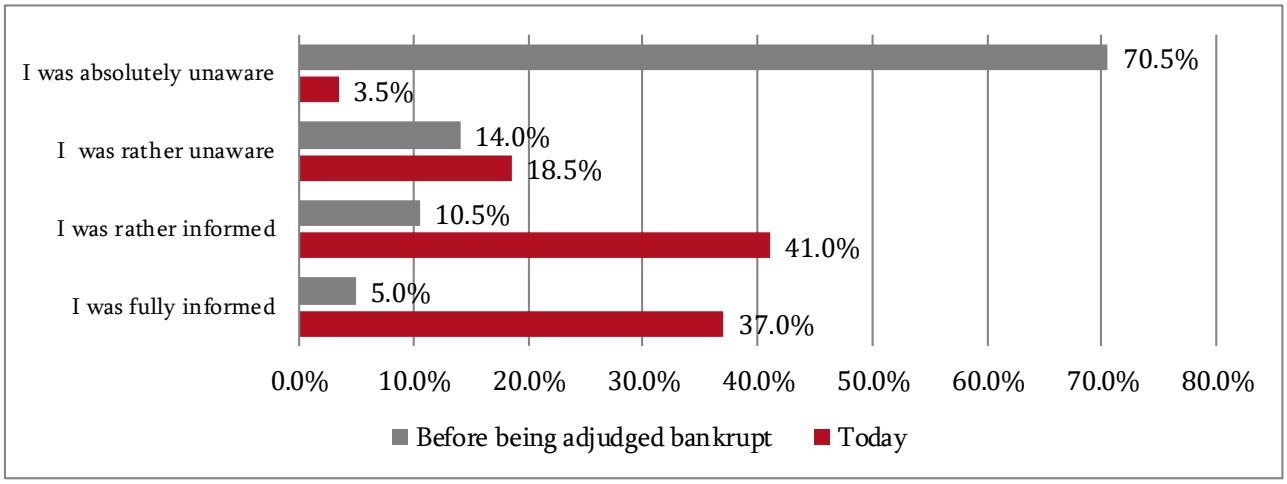
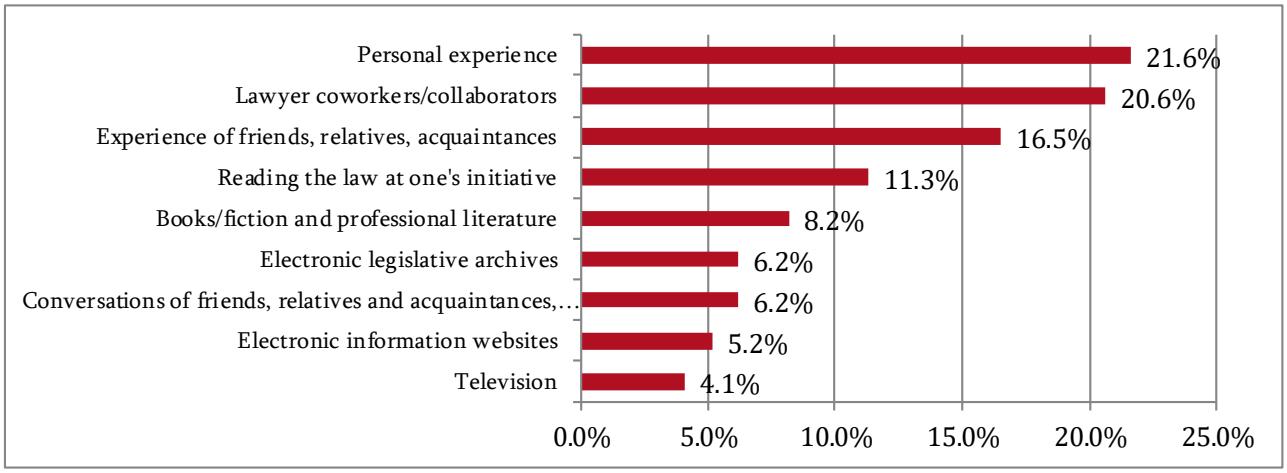
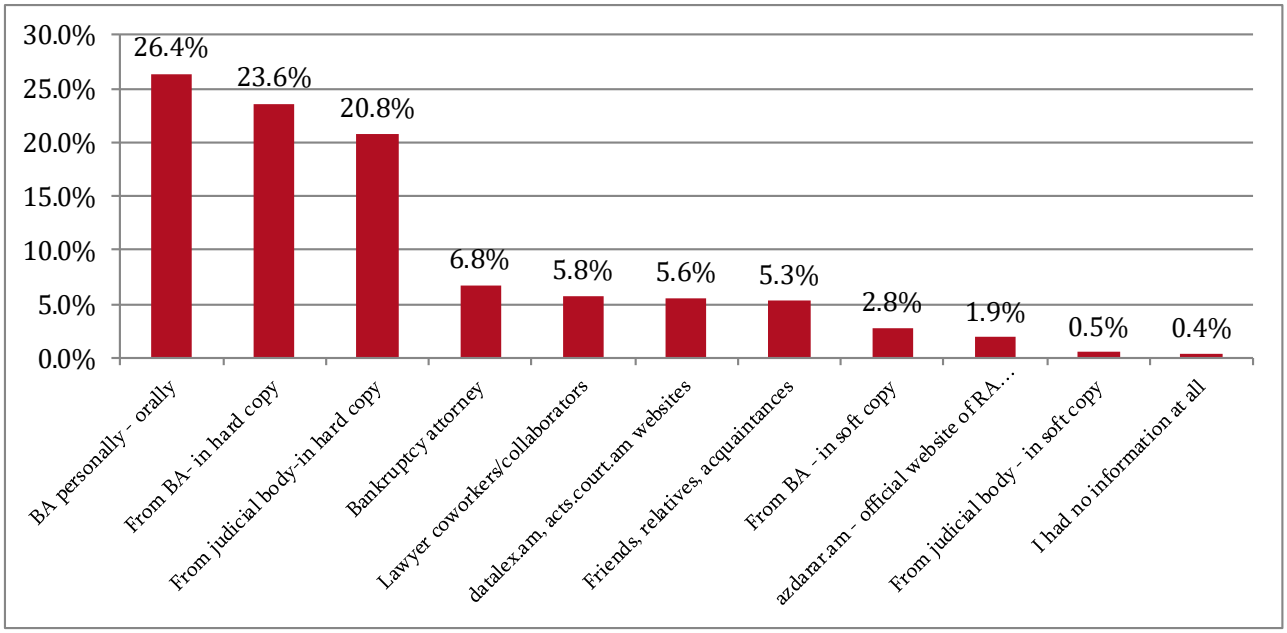


Chart 2. Main sources of information of debtors in the bankruptcy process before the commencement of bankruptcy proceedings



The majority of the respondents before the commencement of bankruptcy proceedings were unaware of the bankruptcy process, and those who were somehow informed (28%), acquired the information mainly due to their own experience, from their lawyer co-workers, from the experience of their friends, relatives and acquaintances, from reading the law on their own initiative, from books, conversations of friends, relatives and acquaintances, rumors, electronic legislative archives, electronic information websites and television. (See **Chart 2.**).

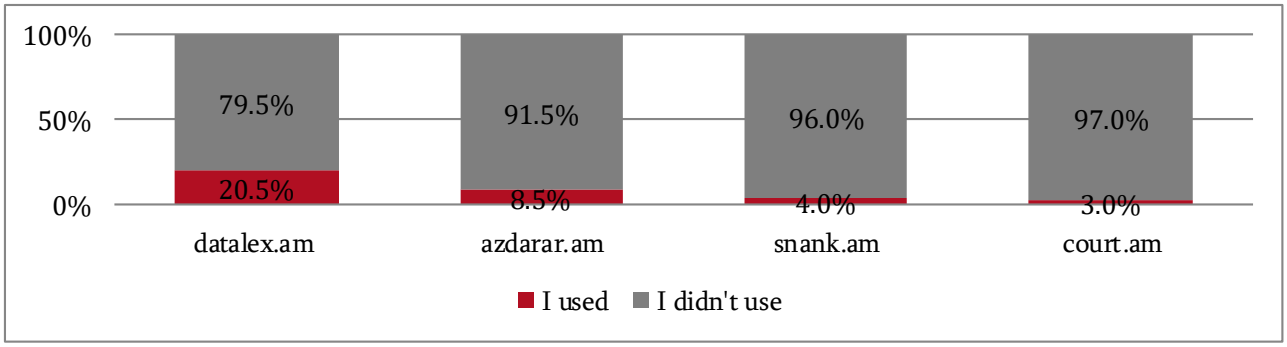
Chart 3. Sources of information on bankruptcy proceedings of the debtors by importance



And as to the information on bankruptcy proceedings concerning their own cases, 26.4% of the debtors received it personally from bankruptcy administrators orally, 23.6% - from bankruptcy administrators in hard copy, 20.8% - from judicial authority in hard copy. Other sources of information were used considerably rarer. (See **Chart3.**).

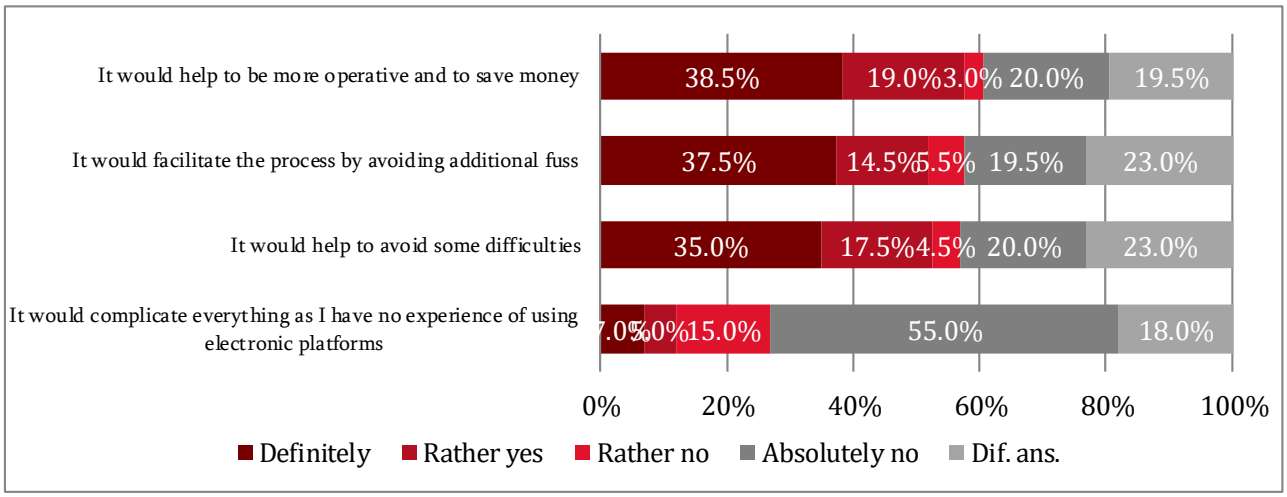
The percentage of electronic resource users is low: 20.5% of respondents used datalex.am website, 8.5% - azdarar.am website, 4% - snank.am website and only 3% - court.am website (See **Chart 4.**).

Chart 4. Frequency of usage of e-resources by debtors in bankruptcy proceedings



Regarding the idea of creating a special electronic platform on bankruptcy cases, the respondents reacted with reservation. They mostly agreed with the expected advantages, such as opportunities to save money, to facilitate the process and to avoid certain difficulties; however, 12% of the respondents thought that such a website would complicate matters because they had no experience of using electronic platforms. For personal data protection purposes, the debtors stated that such a website where all documentation and decisions on bankruptcy would be available should be accessible only through the individual login name and password. (See **Chart 5.**).

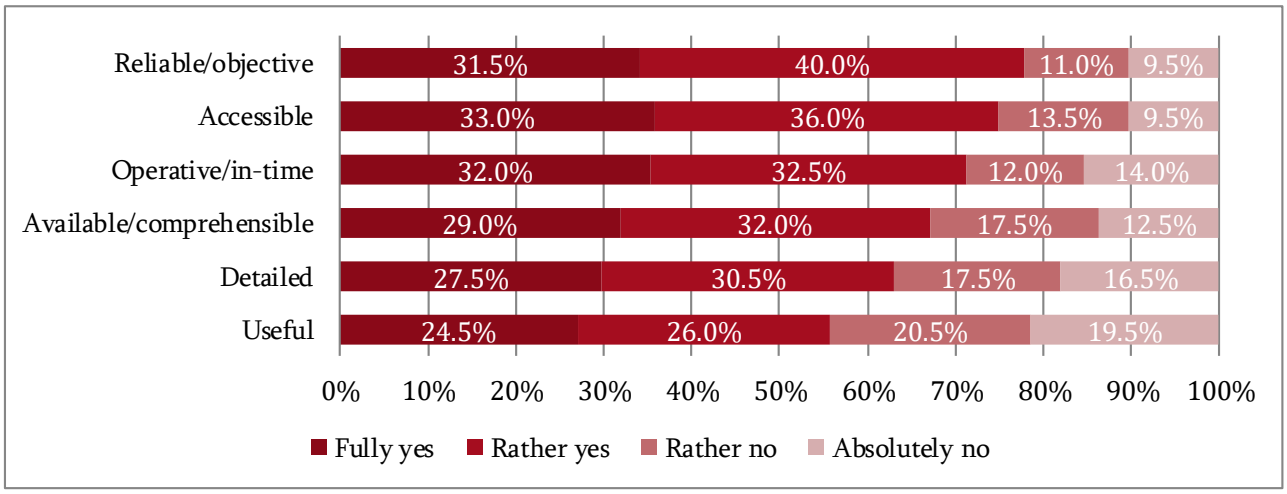
Chart 5. View of debtors on a special electronic platform (e.g. e-bankruptcy.am), where all documentation and decisions on bankruptcy would be available



There is also a large number of respondents who do not use electronic sources of information in principle: 9.5% definitely do not use it and 5.5% generally do not use it.

While assessing the quality of information on bankruptcy proceedings, the debtors mainly assessed it highly, classifying the quality criteria of information in the following order: reliability, accessibility, operability, availability, thoroughness and usefulness (See **Chart 6.**).

Chart 6. The quality of information on bankruptcy proceedings



As to the quality of information acquired from each source when used, the information acquired from all the sources was assessed highly. Classifying information sources according to the quality of acquired information (according to the above-mentioned criteria: reliability, accessibility, operability, availability, thoroughness and usefulness), starting with the highest quality:

1. Bankruptcy administrators,
2. Bankruptcy attorney,
3. www.azdarar.am site,
4. Official sites of RA judicial authority (datalex.am, acts.court.am),
5. Bankruptcy judge/staff (See **Chart 7.**).

Chart 7. The quality of information provided by different sources of information according to 5-point scale (where 5 is highest)

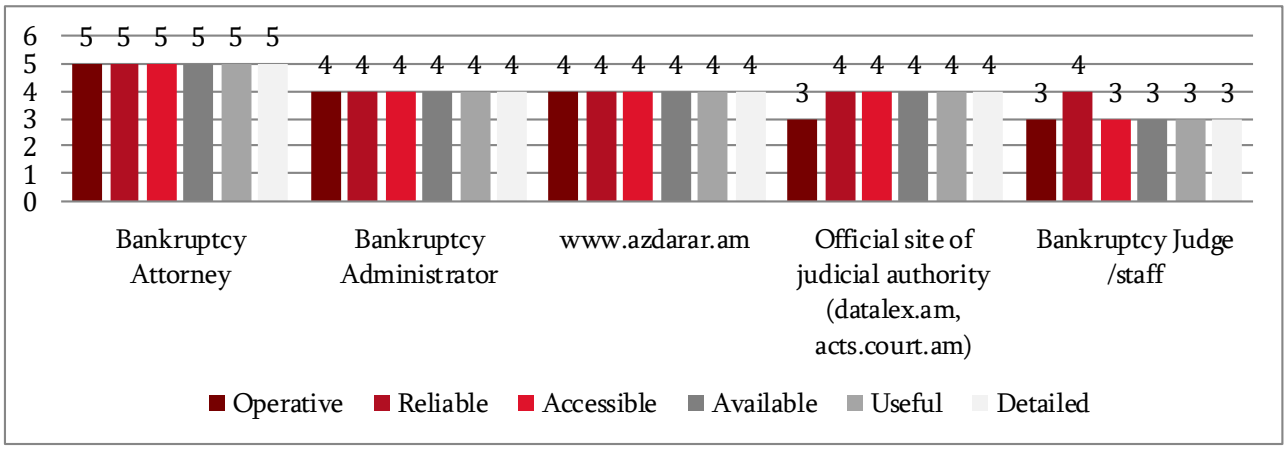
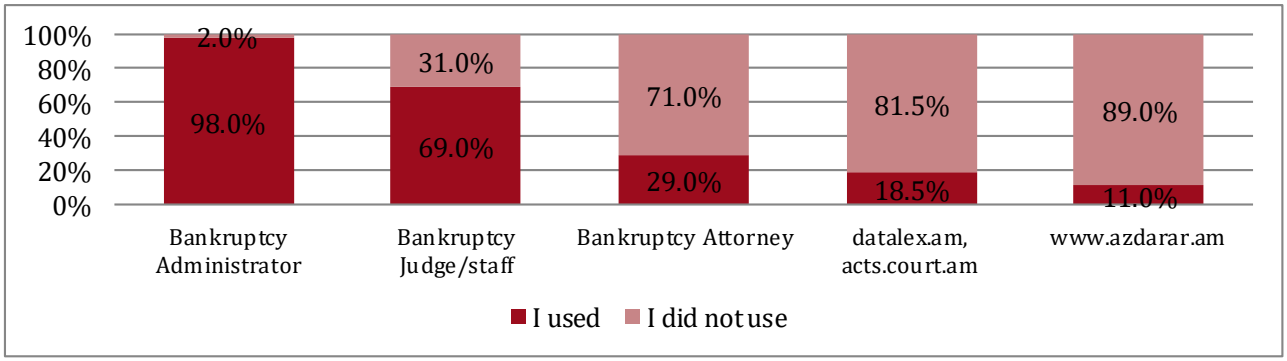


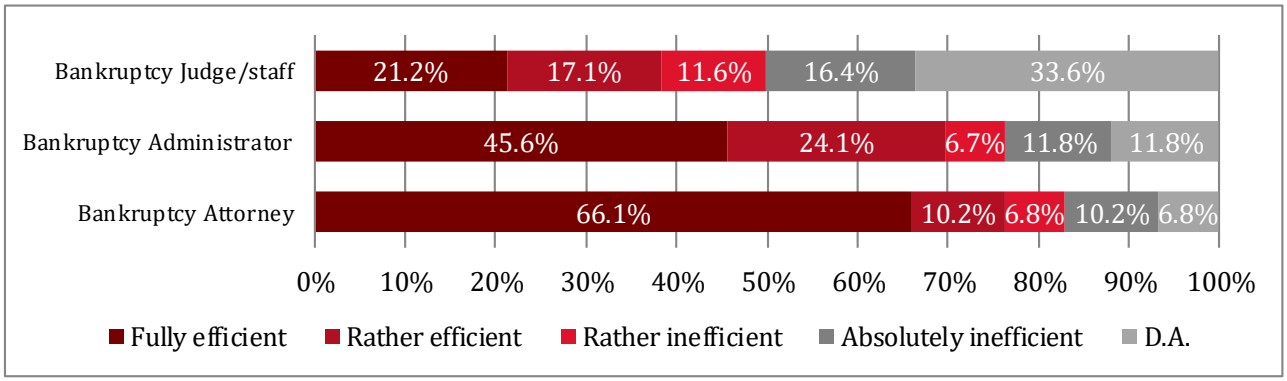
Chart 8. The frequency of usage of different sources of information by debtors in the bankruptcy proceedings



However, the percentage of users of the various sources varies greatly. Where the bankruptcy administrators were considered the source of information for 98% of respondents, the bankruptcy judges were considered the source of information for 69%. Only 29% of respondents had bankruptcy attorneys. The percentage of website users is considerably lower: 18.5% of respondents used datalex.am and acts.courts.am websites, and only 11% - azdarar.am website (See **Chart 8.**).

Only 29% percent of debtors made use of attorneys, but cooperation with the attorney was assessed relatively higher in terms of ensuring access to documents, than cooperation with bankruptcy administrators and judges. (See **Chart 9.**).

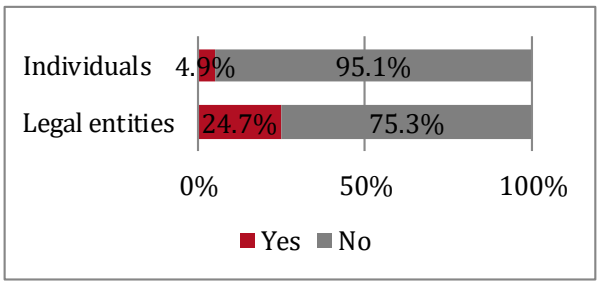
Chart 9. The efficiency of cooperation of different circles in terms of ensuring access to documents



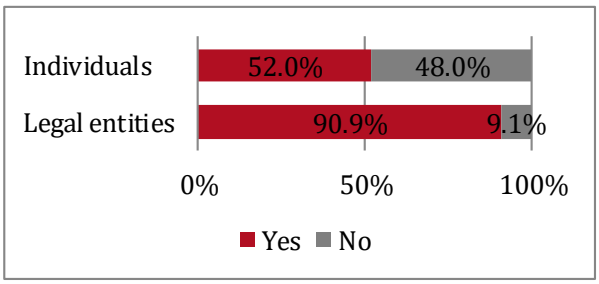
Only 4.9% of respondent individuals and 24.7% of legal entities had an electronic signature; 52% of respondent individuals and 90.9% of legal entities had identification card provided by EKENG Organization[3] (See **Chart 10.**).

Chart 10. Individuals and legal entities have active:

Electronic signature



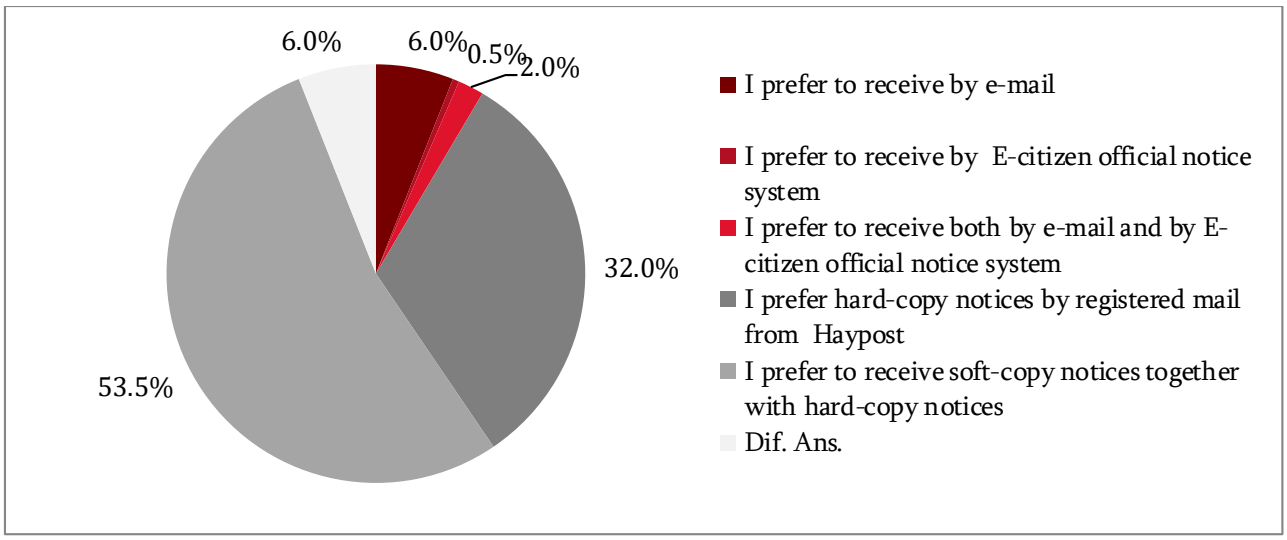
EKENG identification card



The preferences of respondents concerning the ways to be informed about the case process are as follows: most respondents prefer to receive hard-copy notices. 53.5% of respondents prefer to receive soft-copy notices together with hard-copy notices, 32% prefer hard-copy notices by registered mail from Haypost. Only 6% of respondents prefer to receive notices by e-mail, 2% - both by e-mail and by E-citizen official notice system, and 0.5% - by E-citizen official notice system (See **Chart 11.**).

[3] **EKENG CJSC** is the coordinator of e-government projects in the Republic of Armenia. EKENG is the only company in the Republic of Armenia authorized to issue electronic digital signatures to individuals in their ID cards, and to maintain the ID card system.

Chart 11. Preferences of debtors to receive notices by e-mail or by E-citizen official notice system



ACCORDING TO THE EXPERTS IN THE AREA

The quantitative surveys showed that both legal persons and individuals practicing entrepreneurial activities have a low level of awareness in the bankruptcy process i.e.when launching a business they generally fail to make a risk assessment, particularly a risk assessment of bankruptcy.

This information was confirmed among all the expert groups. Businessmen tends to solve problems after facing them rather than preventing them.

> *«... the grounds, reasons and consequences... principally, even the economic entities lack this understanding, people develop entrepreneurial activities for ages but they do not even know that one day they might face a situation when they come across this problem and from that moment on they start dealing with it, while before that they did not even put any effort to arrange their business in a more efficient way to prevent such problems.»*

Some expert groups also expressed their concern that there are many citizens in the bankruptcy process who have no wish to receive information or become aware. Being aware might raise their satisfaction with the process, because they would realise which kind of actions are taken and for what purpose. Being aware might make the process more effective.

The expert groups have also discussed the kind of awareness which matters when the debtors insist that as a general rule, there is a lack of information. The answers were mainly standard pointing i.e. the debtors are mainly unaware of the procedures and the bankruptcy process.

> *When someone gets involved in the process, they automatically become informed by the judicial acts, hence the lack of information mostly refers to their perceptions of the bankruptcy proceedings and the legislative acts regulating the system.*

There are also view that some expert groups are poorly informed of this procedure.

> *This institution is a little bit unknown even to the attorneys, though the last decade has been active with regard to taking efforts for raising awareness among the public. So far, we still lack works — dissertations, lectures, tutorials written in this system.*

> *In this sense, the attorneys need to be "strengthened". It would be desirable that when the debtors address the attorneys, they clarify to the debtors that there is a risk institute, urging to cooperate in certain directions.*

It was mentioned that the establishment of an expert court would be a reasonable solution, which would automatically raise the level of awareness on bankruptcy, its role and perceptions including among the attorneys.

Some expert groups expressed the view that when the respondents say they lack information, it mainly refers to the actions of the bankruptcy administrator, particularly what actions are taken, the stages etc, as well as the way the expenses arise. The process is not transparent and it remains unclear to a person how the amount of expenses is generated and why they exactly make that much.

The expert groups generally assess the functioning of website www.datalex.am sufficient, though stating:

- there is not enough information on the bankruptcy cases on this site,
- it is not updated effectively or on time
- the website is largely of professional nature and the ordinary citizens usually do not make use of the information.

In summary the experts reiterated the lack of information on the:

- functioning of the bankruptcy system
- the activities of the bankruptcy administrators in particular.

RECOMMENDATIONS BY EXPERTS

- Raise the legal consciousness among citizens. Each person should be aware of the level of his/her rights and obligations. For instance, short video clips can be produced and broadcasted on the public television channel explaining the bankruptcy proceedings.

- Banks may inform customers about the payment delays / the bankruptcy proceedings.
- Introduce, within the legislative framework, mechanisms that will make the costs incurred by the bankruptcy administrator transparent.

CREATION OF A NEW ELECTRONIC PLATFORM

As part of the above discussions, attention was paid to the idea of creating a new electronic platform.

The idea of creating a new electronic platform has been discussed among all the expert groups and received a positive response. The experts consider creation of that website as a tool which makes the performance of professional duties more efficient.

It should also be a tool for us…

The experts also stated that the use of paper copies in the electronic era not only slows the overall process, but also makes it difficult to store the documents, ensure their integrity and security.

There are times when the court receives a case in 50 volumes, with 200 pages each. Each judge examines 700 cases on average and more within his/her proceedings.

Nearly all the groups stated that the platform should be focused on efficiency and transparency of the bankruptcy process.

Some concern was raised that the website may not be more effective as many people do not use the internet and get to know the things by reading the paper copies.

Three viewpoints regarding a platform emerged:

1. The platform should comprise the whole bankruptcy process;
2. The platform should combine all the existing similar platforms within one;
3. The platform should be a complete resource base of information.

The representatives of the ***first*** group see the platform as an online environment comprising all the stages and functions of bankruptcy, which will help to file petitions, motions, send notifications, arrange online meetings and auctions, manage the document flow, make surveys, post inquiries etc. Supporters believe this will make it possible to improve the transparency of the process, reduce the duration of proceedings, and prevent extra expenses related to enquiries and some other organisational tasks.

The representatives of the ***second*** group think that it will be better if the complete or partial information concerning the bankruptcy proceedings being posted at websites www.datalex.am,

www.snank.am, www.azdarar.am and www.arlis.am is combined under one. When searching for information related to one proceeding, people do not have to visit several websites.

The ***third*** group experts believe all available documents concerning the bankruptcy process need to be posted at that electronic platform, with the opportunity of uploading and downloading. Not only the decisions rendered by the court, but also any decision rendered by the bankruptcy administrators, motions, expert opinions, inquiries of information and the responses thereto, appeals etc. should be posted on the platform. Lists of legal persons and individuals declared bankrupt in recent years should also be posted at this platform. This will prevent the loss of documents or inaccessibility, and contribute to acceleration of the process, since the document flow will become a matter of one "click", which will result in raising the level of awareness among citizens.

> *If there is one single platform where the court acts, the protocols made based on the actions of the bankruptcy administrator filed in folders will be posted, all the parties will be able to get to know them where necessary, and with the opportunity to download, it will be much better.*

Regarding responsibility for the platform update, the view was that each party should bear a legislative obligation to post on the platform any document having served as basis for or being the outcome of the actions performed. This ensures visibility and availability.

> *As regards the functioning of the platform, I may say that there should be a responsible body, and the obligations should be imposed on all the parties — the court, the bankruptcy administrator, so that they periodically provide detailed information on their activities to be posted in that system. This will also enable that people having joined the proceedings at different stages thereof become aware on the whole process.*

Discussion was held regarding which data should be placed on the platform and to what extent it should be for public access / restricted. The general view is that only certain groups should have access to a certain type of information, while the broad public should have access to general data only.

> *We may have a shared website where the administrators may manage the paperwork, and the creditor, the debtor, the Court, the Ministry of Justice may have access to that paperwork at certain steps, by using their logins, passwords.*

The suggestion was that any person involved in the bankruptcy proceedings in any status may address the SRO or the Court, receive a login and the password for the access to the case concerned and thus be granted access to the case materials.

One of the groups discussed the US practice concerning the matter of accessibility of materials, which has been considered acceptable and efficient, in particular:

> *In the USA ... the bankruptcy case is handed to the office in a paper copy, the office scans everything, opens the electronic bankruptcy case, which is immediately transferred to the judge. The stage is arranged in a way so that the software isolates the list of the documents relating to the public, which everyone may see. This mechanism of receipt of the bankruptcy proceedings is available as a mandatory condition to indicate the addresses of everyone's e-mails. Inserting the e-mail address enables to grant access when entering the system. In other words, the participants to the bankruptcy proceedings may see online at which stage the bankruptcy proceedings are.*

All the expert groups specifically underlined and highlighted the gaps in cooperation between various state bodies and the bankruptcy administrators, which lead to delaying the bankruptcy proceedings and inefficiency. In particular the bankruptcy administrators make the payment of the state duty when sending inquiries to the Civil Status Acts Registration Agency, the Traffic Police, the Passport and Visa Department of the Police, the Agency for State Register of Legal Entities of the Ministry of Justice, and yet the inquiries are received quite late. Many expert groups indicated provision of opportunity to make inquiries for information and receive the information concerning the online and offline payment as a priority problem.

> *... Sometimes it may happen that the case is dragged out for 2 months due to the document to be received from the Civil Status Acts Registration Agency, because we make one inquiry to the central body and receive a response saying they have sent it to the A department, then the A department sends the response saying they cannot provide information to us because they are not entitled to, then we appeal to the court with a petition, receive the court decision, we send it again to the Civil Status Acts Registration Agency, and then we finally receive the response we were expecting for.*

Another issue of importance is the problem of what kind of materials of public access should be placed at the indicated platform. Views included, some template documents, statistics, articles, laws, case-law decisions, any kind of information that may contribute to the bankruptcy proceedings.

Regarding templates, several groups reaffirmed the idea that it would be very useful within these proceedings if certain blanks, e.g. for the Financial recovery plan etc., were drawn up, which anyone will have access to via the mentioned platform and which will contribute to procedural facilitation.

Finally, the expert groups have also discussed the protection of personal data and highlighted that such a platform must find software solutions to create an opportunity to ensure the full protection of personal data.

Summing up the public and expert discussions on the necessity to create a new electronic platform, the conclusion is that the public position matches the expert approaches. All the parties support the view that the platform to be created:

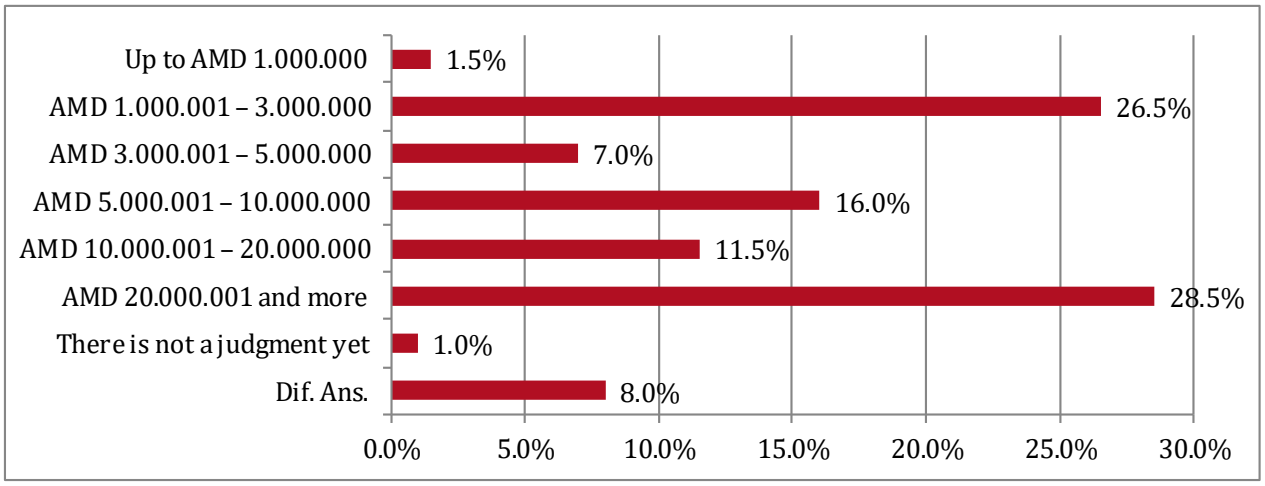
- Should comprise the whole information base concerning the bankruptcy proceedings,
- Should be a tool to communicate with the state bodies,
- Ensure the level of the public access to that information should be classified to some extent and be subject to restrictions for the representatives of certain groups.

THE REASONS FOR BANKRUPTCY AND CURRENT PROBLEMS IN THE BANKRUPTCY SYSTEM

ACCORDING TO THE DEBTORS

The chart below shows the liability amount reflected in bankruptcy judgments (**Chart 12.**).

Chart 12. Liability amount put in the basis of bankruptcy judgment



Generally, the overdue period before filing bankruptcy petition by the creditor is more than 181 days (44%) and 91-180 days (18%). Only in one case the duration of the process was 60 days (0.5%), and for 2.5% of the cases the process took fewer days. 25% of respondents had difficulties in answering the question regarding overdue period. (See **Table 1.**).

Table 1. Overdue liabilities prior to submitting bankruptcy application by the creditor

	Percentage
Not a single day	**2.0%**
5 days	**0.5%**
60 days	**0.5%**
61-90 days	**10.0%**
91-180 days	**18.0%**
More than 181 days	**44.0%**
Other	**25.0%**
Total	**100.0%**

The majority of the respondents (73.5%) were aware of overdue liabilities. However, a concern is that 23% of debtors were unaware of overdue liabilities (See **Chart 13.**).

23% of the respondents were not aware of overdue liabilities for different reasons. The most frequent reason was that the debtor had not controlled activities personally, not being aware of the process (15%). Other reasons varied and each of them is important. Some of them are to deal with the lack of awareness, knowledge and experience, and the rest – with fraud (See **Table 2.**).

Table 2. Unawareness reasons of existence of overdue liabilities

Unawareness reasons	Percentage
Personally I did not control activities and I was not informed about their process	**15.0%**
My knowledge and experience were not enough to understand	**2.5%**
The decision making body kept it from me	**2.0%**
Real situation was not reflected in the documents of organization	**1.0%**
I was unaware because the car was not renamed in Traffic Police , thus I had to pay the property tax	**0.5%**
Submission of request by SRC was unexpected	**0.5%**
SRC released my IE obligations owed to it	**0.5%**
In 2011 activity of organization was suspended	**0.5%**
The debtor received the credit in my name from «a bank» through false signature	**0.5%**
Other	**3.5%**

Chart 13. Awareness of debtors of the existence of overdue liabilities

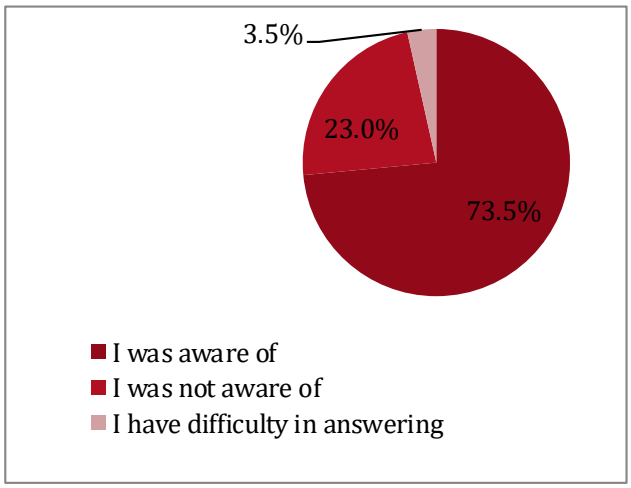
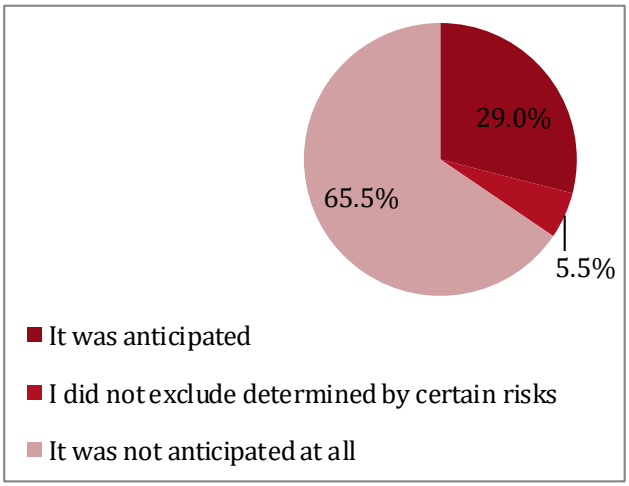


Chart 14. Anticipation of bankruptcy for debtors



For 65.5% of the debtors bankruptcy was not anticipated at all, for 29% it was anticipated and 5.5% saw the possibility based on certain risks (See **Chart 14.**).

In cases when bankruptcy was anticipated, the majority of respondents explained it as a lack of income and presence of overdue liabilities (18%). In 6.5% of cases, the debtors filed a petition of bankruptcy themselves. Other explanations were considerably not common. 1.5% of the

respondents argued that there was a crisis in the country, 1% stated that they were aware of the law and knew they were going to face it, 1% stated that they suggested the creditor to go to the court and 0.5% stated that the former government was conducting policy against them.

Some respondents that saw the possibility of bankruptcy gave explanations mainly related to changes in business conditions determined by the crisis (2%), to the inclination of banks towards bankruptcy (1%), to breach of the agreements with creditors (0.5%).

In the cases when bankruptcy was not anticipated by the debtor, respondents gave explanations as follows: 14% of respondents thought that they could redeem liabilities, but they failed to do so for different reasons. For example, the following answers were provided (some of which are not plausible):

- I did not think that I would not be able to pay, because I had a job – 10.5%
- My business in the Russian Federation was recognised bankrupt; my business in the Russian Federation failed - 0.5%
- I did not expect that they were not going to pay back my debt and I would go bankrupt – 0.5%
- My business was prospering, then the cars I was using in business were burnt – 0.5%
- I had health problems, I could not work and make payments – 0.5%
- I thought they would sell the pledged house and the sum would be redeemed – 0.5%
- They recognizsed bankrupt based on false and groundless complaint of importing organization - 0.5%
- The state owed me money, we had a contract with village municipality and we were going to lay asphalt -

12% of debtors represented guarantors for one person, having no notion that they could be enrolled in bankruptcy.

Another 7% did not know that at the result of penalty imposed by tax authorities they would be enrolled in the bankruptcy process.

6% were not aware that because of delayed payments in the banks they would be enrolled in the bankruptcy process.

5% did not expect that the creditor would file a bankruptcy petition.

4.5% stated that he/she was not aware, he/she suddenly received a paper, without any warning he/she was recognised bankrupt.

4.5% stated that it was planned beforehand, they were enrolled in the bankruptcy process illegally, and they were recognised bankrupt because of an omission of the creditor – bank or insurance company.

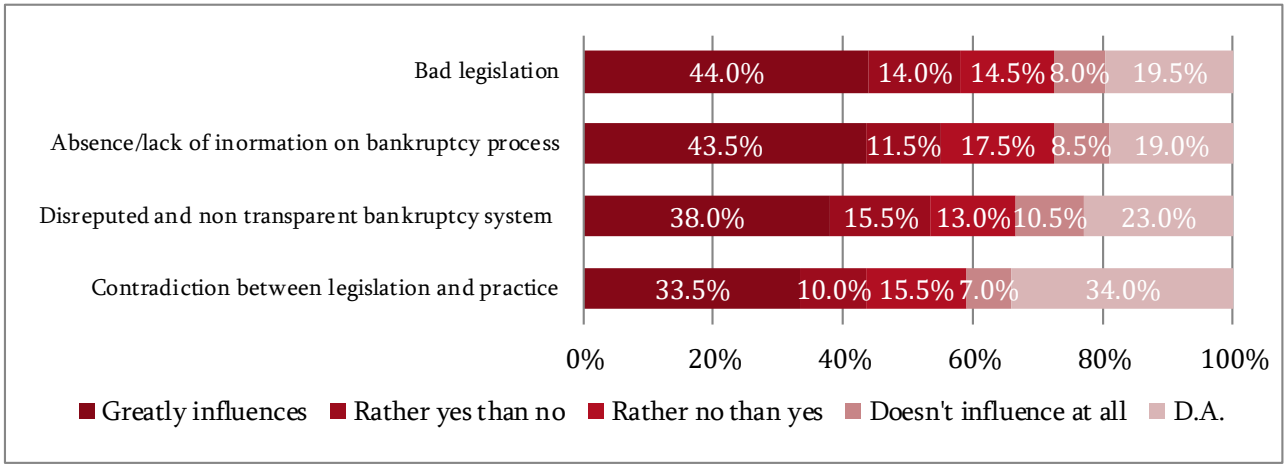
0.5% did not know they could apply to prevent the fines and penalties from increasing.

0.5% stated that the size of the debt was argued in the court in the scope of another case.

0.5% stated that they did not receive any money as debt but they have signed the contract.

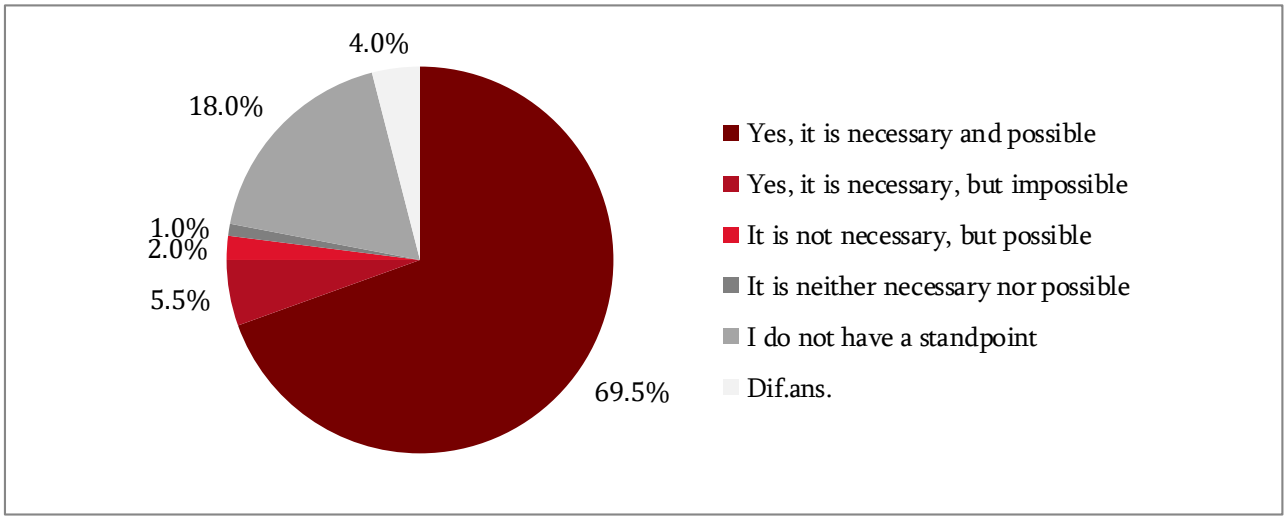
The influence of problems in bankruptcy system based on the evaluations of respondents was classified as follows: bad legislation was stated most frequently, then lack/absence of information, then disreputable and non-transparent bankruptcy system, and lastly contradiction between the law and practice (See **Chart 15.**).

Chart 15. Influence of problems in bankruptcy system



Most of the respondents see the necessity of improving legislation in the bankruptcy system (69.5%) (necessary and possible). 5.5% of the respondents consider that improvement of legislation is necessary, but is not possible (See **Chart 16.**).

Chart 16. The opinions of the debtors on necessity of improvement of bankruptcy legislation



ACCORDING TO THE EXPERTS IN THE AREA

A considerable number of respondents claimed that the legislation regulating bankruptcy should be amended. This position was confirmed in many expert panels, but during the discussions importance was also attached to the experts' approach as to what the debtors meant when expressing an opinion that the law needs to be improved. The experts linked the claims of debtors regarding the incompleteness of the law and the need to amend the latter to their low legal consciousness or insufficient level of awareness.

> *People do not understand the legal regime of bankruptcy very well. For instance, they can come to the court and file a motion, which the court has no right to [consider] and which is not permitted even by the legislation, since it does not serve the objective of bankruptcy. And apparently the court does not consider or denies it, and then they say that the legislation is bad…People think that during bankruptcy they can do whatever they want, but we tell them they are within the scope of bankruptcy and we cannot impose anything proportional to them. And because their demands are not satisfied—on that ground—they say our legislation is not good.*

However, many expert panels shared the opinion that both the legislation and the practice need to be amended and changed.

As a result of the discussion on the reasons of bankruptcy, many expert panels confirmed that during recent years the number of entities going bankrupt has increased, a common reason being both the failure to fulfill contractual obligations and the acts adopted by state bodies, as well as voluntary bankruptcy applications. According to the expert panels, the voluntary applications are often used to get exempted from certain financial obligations, while involuntary bankruptcy has been an effective tool for putting pressure on large businesses for many years.

> *Recently the process of submission of voluntary applications by individuals has become more active. But if we consider those applications, they are mainly aimed not at recovery, but at removing the freeze put on their wage. They think so because there used to be a levy of execution fee, and the case was transferred to the Judicial Acts Compulsory Enforcement Service (JACES). The latter put at least a 50 per cent freeze on wage, that is, a person could work and repay the debts on his own for years.*

> *… There was also another trend in the past: declaring a person bankrupt had turned into a punishment policy. In 2015-2016, the State Revenue Committee (SRC) tended to relieve the business environment, but in many cases, they would refer the cases to courts as a punishment mechanism to declare them bankrupt, and a very small*

percentage of debtors would come and repay the debts in order not to be declared bankrupt.

One of the panels identified a very important issue related to the grounds for starting bankruptcy proceedings prescribed by law, in particular mentioning the following: *"…as to the assets, if it is a large organisation, which for a certain reason does not have cash or funds on its bank account to repay the debt, but has property whose value exceeds its funds for several times, nobody takes this into account. That organisation is told that if it has not paid, it can be declared bankrupt, since the Law on Bankruptcy does not question whether you have money on your account or not. It says the organisation has a 60-day default, and thus can or is obliged to go bankrupt. In this case the person or organisation concerned no longer considers the availability of funds or creditworthiness, and is immediately entitled to get involved in the bankruptcy process. The organisation may have certain circulating funds, which will enable it to repay the debt— not at that moment, but, for instance, a month later—however, in this case issues already arise in connection with this provision of the law. Especially with respect to authorized state bodies, obligation is imposed on them to involve [the organisation] in bankruptcy proceedings in case of a 60-day default and if the debt exceeds 1 mln. In this case it is the organisation that faces the problem."*

Expert panels pointed out a difference between qualifying the actions as premeditated bankruptcy or bankruptcy fraud when it comes to individuals and legal entities. An individual is not considered a subject in terms of criminal law.

This is also an issue, since in certain cases it is at least theoretically possibil that an individual can borrow money from a bank or individual, simply go bankrupt, be declared bankrupt as prescribed by law and get relieved of that obligation, creating elements of premeditated insolvency or bankruptcy fraud. The above mentioned cases are not our concern. Such case may be considered as a fraud, or a civil case but not a criminal one.

System-related issues

Recently one of the economists said that the latest law was written by lawyers, and that is why it is bad. Overall, we have certain issues starting with reasons for declaring bankrupt, since bankruptcy has important economic implications related exclusively to insolvency elements.

The experts emphasised improving the overall bankruptcy system including:

- adopting a new law or code,

- specify the objectives of the Law on Bankruptcy,
- develop the institute of managers,
- raise the legal consciousness of citizens, which will result in the reduction of the number of the bankruptcy processes,
- rule out arbitrary approaches in the system and
- make the bankruptcy process more predictable and transparent and shorter.

It is of important to mention the uncertain objective of the Law on Bankruptcy Expert surveys revealed that it is unclear whose interests are the priority—those of the debtor or creditor—or the recovery of the business environment.

With regard to the business environment the concern is - when a company is going bankrupt, instead of recovery, it moves towards liquidation and closes its enterprise.

This problem is crucial for legal certainty and raising public confidence. Courts must be predictable and not make unlawful judicial acts. This requires deleting/amending number of unclear and ambiguous regulations in the law (and regulate where there is a vacuum). No judge should be able to show a unique approach when dealing with cases.

There must be consistency/alignment between the bankruptcy legislation and other laws. For example, the fact that the compulsory body does not put the property on auction without notification, while in case of bankruptcy it is put on auction without notification.

Another key issue is that in the liquidation proceedings it is impossible to separate and sell the healthy "part" of the organisation. This is very beneficial since the business may have a healthy "part", whose sale is more beneficial and will bring more income than the sale of assets in parts. That is possible only in a recovery proceeding, which requires the vote of all creditors and therefore a plan. Creditors hinder the inventorisation, not allowing the bankruptcy administrator to enter the relevant area for conducting inventory. For instance, the appraiser goes to a house, but the residents of the given area do not open the door. This delays the process.

Once the court renders a decision, it sends it to all the state bodies, which must be informed about the bankruptcy of the person. But there is no mechanism regarding the obligations of the given state body within the framework of the bankruptcy case after it is notified about the decision. If the case is closed and the person is declared bankrupt or liquidated, what control should the cadaster body or banks exercise for 2-3 years to notify state bodies, e.g. if the law envisages that the person cannot carry out activities for 2-3 years.

Another issue is the minimisation of bankruptcy expenses. There are cases when property is sold and 20-30% of the amount is used for covering the expenses of the bankruptcy administrator.

Uncertainty of the role of each subject of the bankruptcy system in the bankruptcy proceedings.

Currently the capacities, skills and position of courts and judges in bankruptcy proceedings are crucial during the entire proceeding. Many bankruptcy administrators are guided by the slogan

"What the judge says is law". The bankruptcy administrators cannot carry out their activities effectively without the decisions of the court. The legislation has been drafted so that the actions of the bankruptcy administrator must be confirmed by the court or may be appealed. As such the availability of information processed and maintained in state bodies and its operative provisions is a challenge for bankruptcy administrators.

Capacity building

The need for developing the professional skills of bankruptcy administrators, judges and attorneys dealing with bankruptcy cases is crucial.

The issue of the professional capacities and skills of bankruptcy administrators is crucial, as according to the experts their lack of skills affects the bankruptcy system. This happens because the bankruptcy administrators, who pursue a specific interest due to the nature of their entrepreneurial activity, and lack broad knowledge, may refrain from carrying out activities, which affects the future of the business.

Legislative issues

There are gaps, inconsistencies and uncertainty in legislation. For instance, according to the Law on Bankruptcy in force, after the application on starting a bankruptcy proceeding has been accepted, the debtor is banned from fulfilling his obligations without the decision of the court. But according to the Tax Code, when accepting the application for proceedings, penalties are not yet applied. If a taxpayer has accumulated a debt of AMD 1 mln, the state bodies have an obligation to submit a bankruptcy application within a certain period. Immediately after receiving the decision from the court, the person expresses a wish to make the payment by bank, but the law requires a court decision.

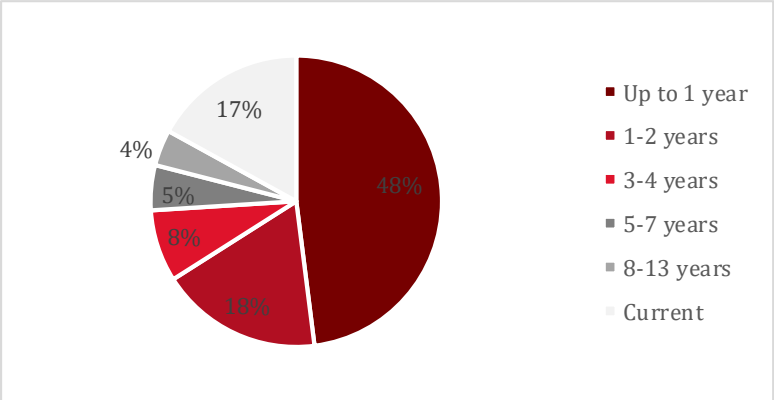
In practice, once the bankruptcy administrators discover such payment has been made, they demand that the relevant state body transfer the amount back to the special bankruptcy account. The state body, seeing that the person has paid not only the debt but also the penalties, withdraws the application for starting a bankruptcy proceeding. From the legal point of view, this cannot be interpreted unequivocally. Currently law prohibits any payment obligation, except for a recovery plan. The recovery plan lasts for 45 days, following which the first meeting is held and only then, it is approved. During this period if the debtor wants to make payments from ongoing receipts, he cannot.

THE BANKRUPTCY PROCEDURE

ACCORDING TO THE DEBTORS

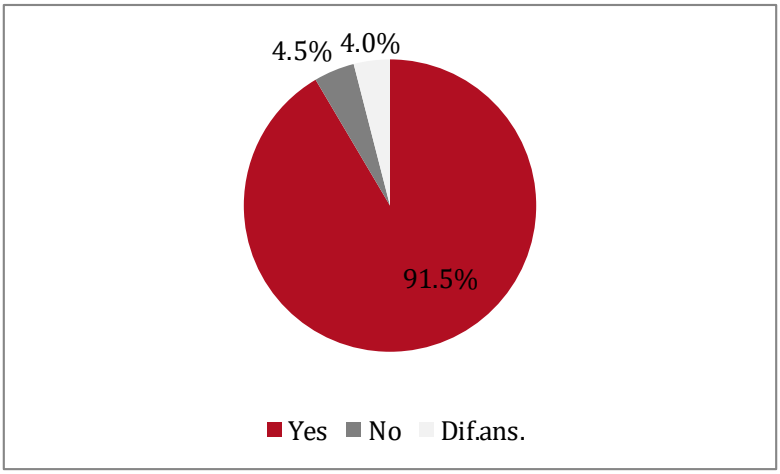
According to the results of the research, 17% of the bankruptcy cases were ongoing during the survey, 48% lasted for up to one year, 17.5% —1-2 years, 8%—3-4 years, 5.5%—5-7 years, and 4%—8-13 years (this group includes 8 debtors, who are individuals (not legal entities).

Chart 17. Duration of bankruptcy procedures



91.5% of the respondents received a decision on initiating proceedings upon petition in bankruptcy, 4.5% did not receive and 4% had difficulty in answering (See **Chart 18.**).

Chart 18. Debtor who received decision on initiating proceedings upon petition in bankruptcy



The answers of individuals and legal entities regarding the obligation shown as the basis of recognising bankruptcy differ. For individuals the contract was put in the basis of recognising bankrupt more often. The administrative acts issued by the state authority (SRC) were put in the basis of recognising a legal entity bankrupt more often. Individuals are recognised bankrupt according to a personal petition more often than based on a particular obligation. Less often mentioned were judicial acts, administrative acts issued by a state authority (property tax, motor vehicle state duty, penalty, waste duty debt, PSRC act) as an obligation (See **Table 3.**).

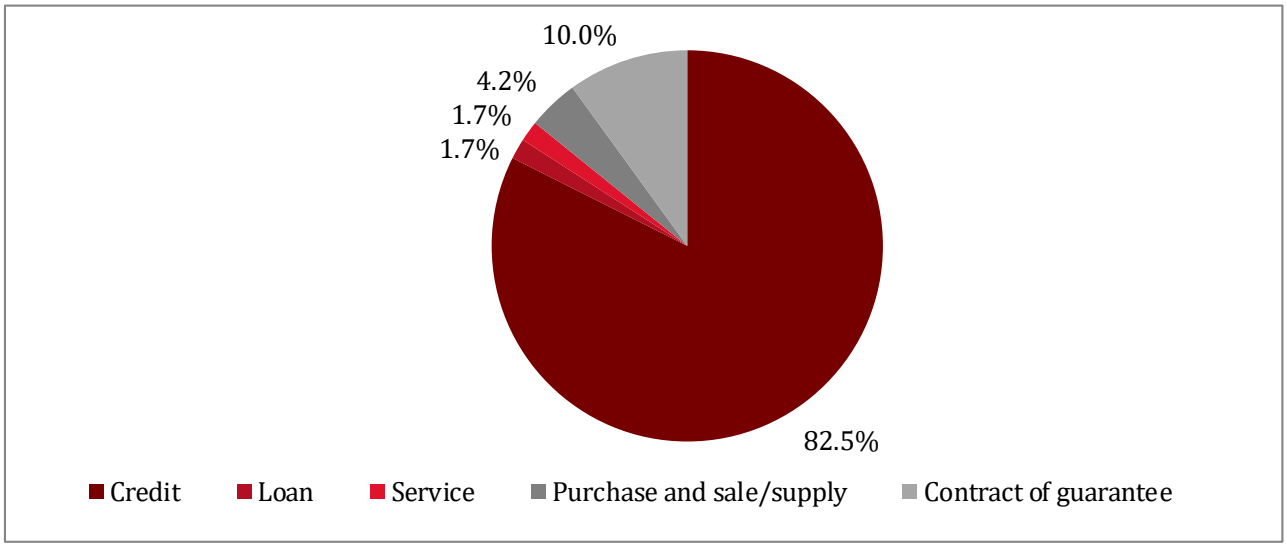
Table 3. Basis of obligation to recognise as bankrupt: distribution by individuals and legal entities

Answer	Individuals	Legal entity	Total
Contract	74.0%	37.7%	**60.0%**
Administrative act issued by state authority –tax	7.3%	46.8%	**22.5%**
I was recognized bankrupt not on the basis of particular obligation, but on the basis of personal petition	11.4%	3.9%	**8.5%**
Judicial act in force	4.1%	6.5%	**5.0%**
Administrative act issued by state authority: property tax, motor vehicle state duty	3.2%	5.2%	**4.0%**
Total	**100.0%**	**100.0%**	**100.0%**

Generally the obligation to be recognised as bankrupt arose on the basis of contract - 60%:

- 49.5% credit contract,
- 6% contract of guarantee,
- 2.5% purchase and sale/supply contract,
- 1% service contract and
- 1% loan contract (See **Chart 19.**).

Chart 19. Type of contract put in the basis of obligation to recognise bankruptcy



In 22.5% of the cases administrative acts issued by the state authority (SRC) formed the basis for recognising as bankruptcy.

The majority (14) of 17 respondents who were adjudged bankrupt according to their personal petition tried to be released from obligations. 2 respondents (1%) initiated the bankruptcy process to suspend illegal execution (take an action against fraud, fight against a judicial act

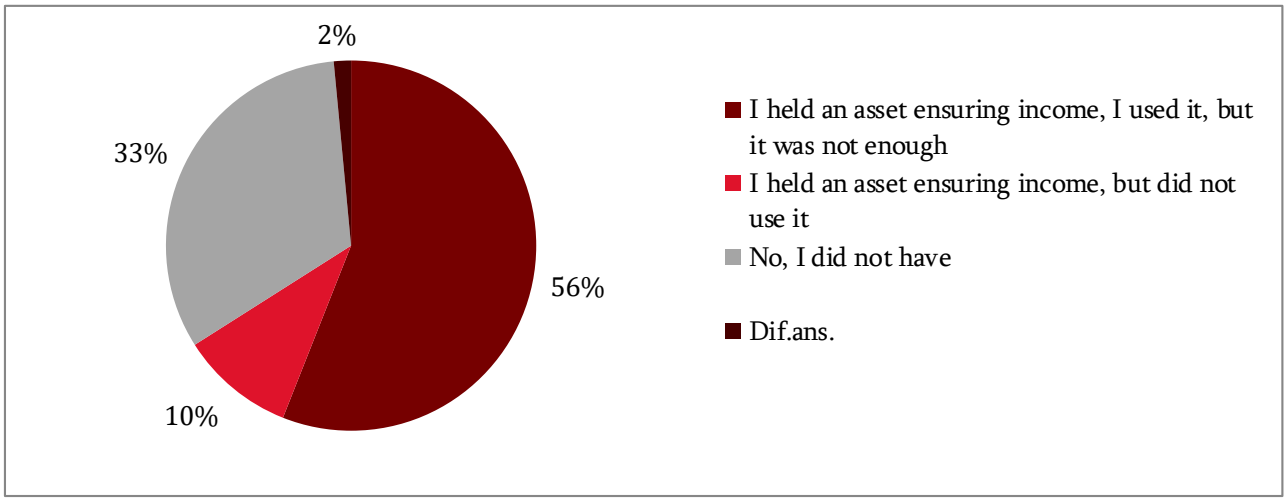
adopted by illegal means, suspension of illegal sale of a house), one respondent applied to develop and submit a financial recovery plan.

The majority (15) of 17 respondents, who were judged bankrupt according to their personal petition in hindsight thought that it was the right solution. One respondent (0.5%) stated that it was a forced decision for fighting against a judicial act adopted by illegal means. One respondent (0.5%) had a difficulty in answering.

32.5% of debtors did not hold any assets ensuring income at the moment of being adjudged bankrupt.

The rest of the respondents had asset ensuring income, 56% of them used it, but it was not enough, 10% did not use them. (Chart **20.**).

Chart 20. Use of assets held when being judged bankrupt



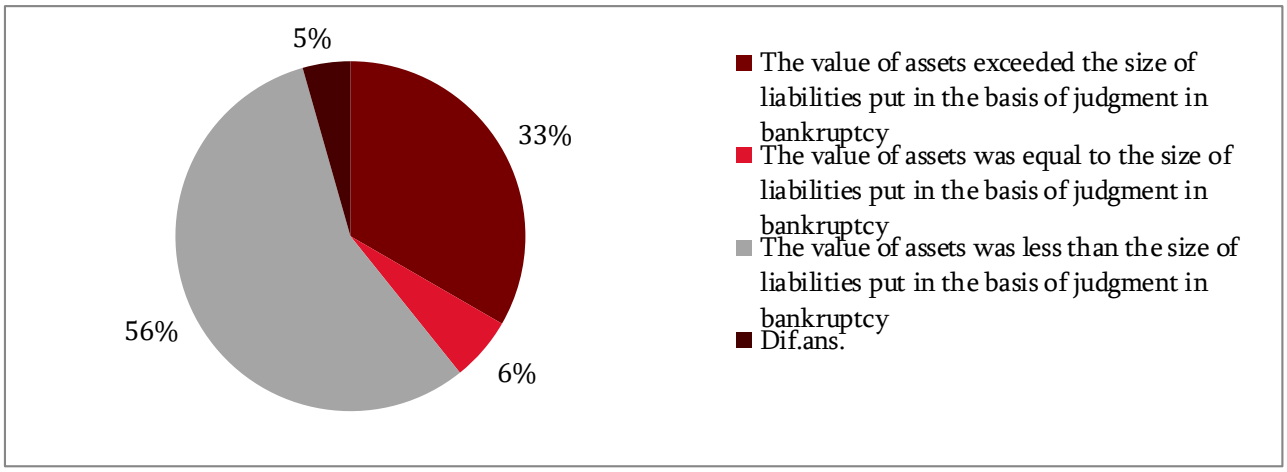
10 % of those respondents who did not use their assets ensuring income comprised 20 respondents. They stated the reasons for not using assets as follows:

- The property was pledged – 5 respondents (2.5%)
- Property was not sold yet – 5 respondents (2.5%)
- There was attachment of asset – 3 respondents (1.5%)
- I did not find it reasonable – 2 respondents (1%)
- I had an agreement that I was supposed to return the house to my father in a year – 1 respondent (0.5%)
- It was not my debt; the sum was not for me – 1 respondent (0.5%)
- There was no appropriate decision – 1 respondent (0.5%)

Two more respondents (1%) had difficulty in stating the reason.

The value of 56.3% of assets of debtors when judging bankrupt was less than the liabilities put in the basis of judgment in bankruptcy. The value of 5.9% of assets was equal to liabilities; the value of 33.3% of assets exceeded the liabilities (See **Chart 21.**).

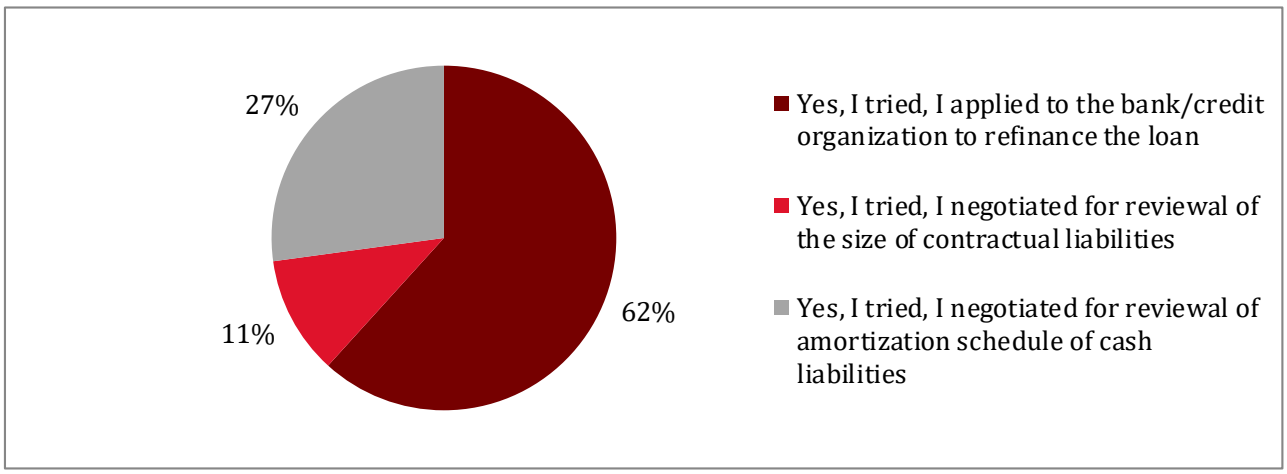
Chart 21. The correlation of the value of assets and the amount of liabilities when being judged bankrupt



59% of the respondents did not try "to reconstruct" the debt, 40.5% of the respondents tried "to reconstruct" the debt:

- applied for refinancing the loan (25%),
- negotiated for review of amortization schedule in case of cash liabilities (11%),
- negotiated for review of the amount of contractual liabilities (4.5%) (See **Chart 22.**).

Chart 22. Attempts to "reconstruct" the debt



Only 3.5% of the respondents (all legal entities) managed to maintain and/or continue current agreements on provision of goods and services necessary for the viability of the company in the bankruptcy process. 16.5% did not manage For 79.5% of the respondents (all individuals) this situation was not relevant (See **Table 4.**).

Table 4. Opportunity of maintenance/continuation of current agreements on provision of goods and services necessary for viability of company in the bankruptcy process

Answer	Individuals	Legal entity	Total
Yes	-	9.1%	**3.5%**
No	-	42.9%	**16.5%**
Is not relevant	100.0%	46.8%	**79.5%**
Other	-	1.3%	**0.5%**
Total	**100.0%**	**100.0%**	**100.0%**

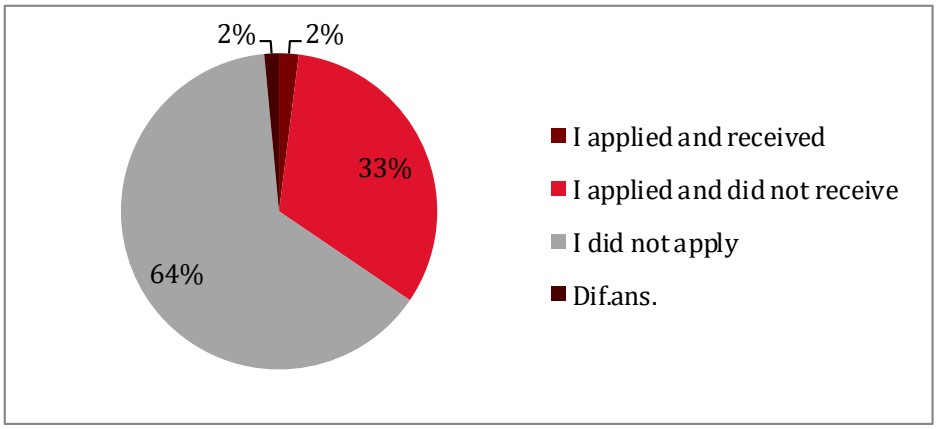
Only 0.5% of the respondents in the bankruptcy process had the opportunity to halt the current transaction, the execution of which demanded a greater expense than the profit received when the parties did not fully fulfill their obligations. 10.5% of the respondents did not have such opportunity and for the rest 87.5% this situation was not relevant (including all individuals) (See **Table 5.**).

Table 5. Opportunity to stop current transactions in the bankruptcy process

Answer	Individual	Legal entity	Total
Yes	-	1.3%	**0.5%**
No	-	27.3%	**10.5%**
Is not referable	100.0%	67.5%	**87.5%**
Other	-	3.9%	**1.5%**
Total	**100.0%**	**100.0%**	**100.0%**

34.5% of the respondents applied for a new credit not being part of financial recovery plan to satisfy current needs of business in the bankruptcy process, 2% of them received credit, 32.5% of them did not receive. 64% did not apply and another 1.5% had difficulty in answering (See **Chart 23.**).

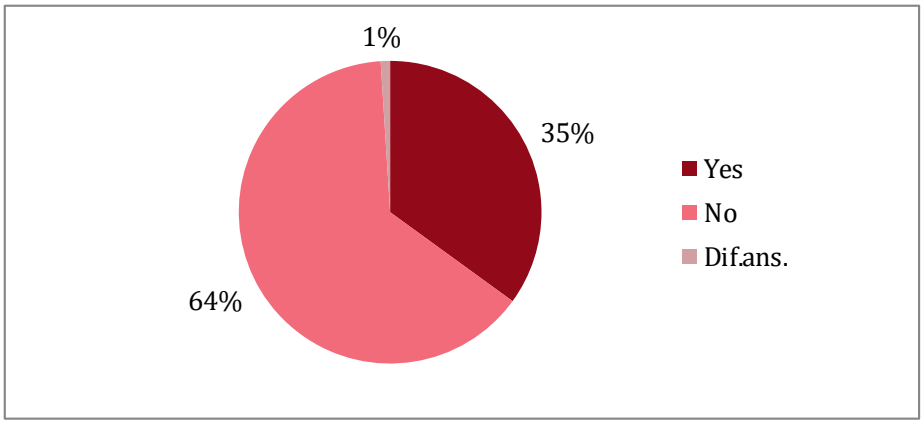
Chart 23. Opportunities for receiving a new credit not forming a part of financial recovery plan



At the stage of examination of the issue of bankruptcy or in the bankruptcy proceedings 35% tried to come to an agreement with the creditor in judicial or out-of-court procedure (friendly settlement, withdrawal of bankruptcy petition by the creditor, etc.). 64% did not try, 1% had difficulty in answering.

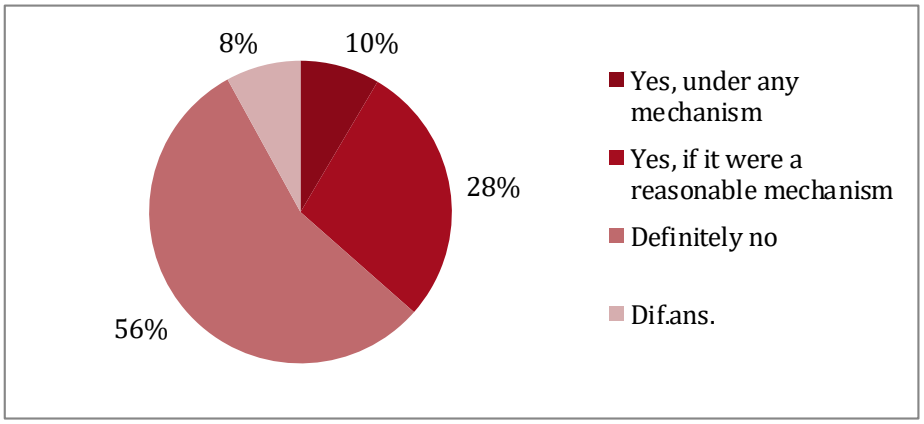
Generally, the efforts of debtors to come to an agreement with the creditor in judicial or out-of-court procedure failed. 17% applied during court hearing, but were rejected, 15% applied to the creditor before the beginning of bankruptcy proceedings, but the creditor rejected, 1,5% came to an agreement with the creditor, but it was breached later. Two respondents (1%) applied to the creditor prior to the commencement of bankruptcy proceedings, the creditor accepted and the case was suspended (See **Chart 24.**).

Chart 24. Attempts to come to an agreement with the creditor during the court hearing to recognise bankruptcy or in judicial or out-of-court procedure in bankruptcy proceedings



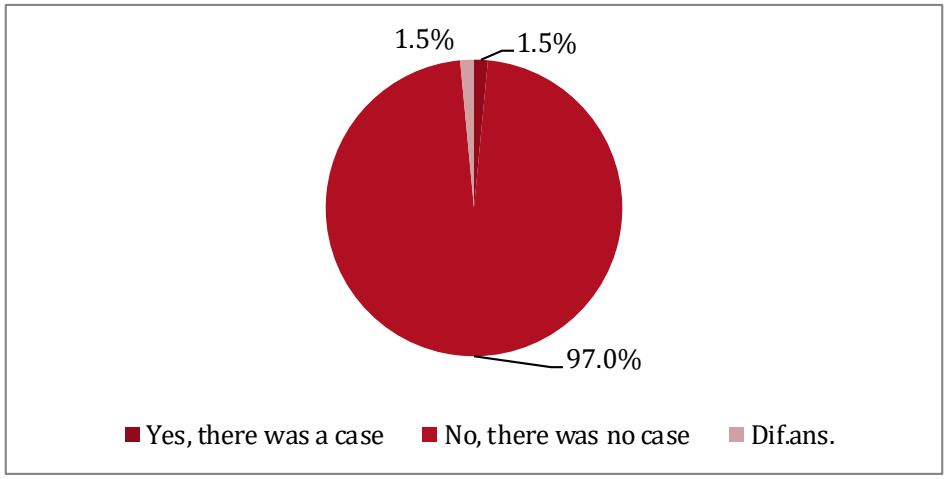
8.5% of the debtors stated that they would have worked in any mechanism under control of the creditor to avoid bankruptcy proceedings before fulfillment of liabilities and for satisfying the claim of the creditor, 28% would be ready to work in a reasonable mechanism, 8% had difficulty in answering and 55.5% would not (See **Chart 25.**).

Chart 25. Readiness of debtors to work in any mechanism under control of the creditor before fulfillment of liabilities for the purpose of avoiding bankruptcy proceedings and satisfying the claim of the debtor



4.5% of the respondents stated that the debtor demanded an illegal payment or make an illegal agreement with regard to bankruptcy proceedings. This sum ranged from AMD 1 mln to AMD 100 mln (average AMD 23 mln). 2 respondents were proposed to make an illegal agreement with an individual (the person giving money based on the loan contract), 3 with an employee of the tax authorities, 4 with the bank.

Chart 26. Cases of getting in contact with the debtors from any other institution (besides the court and the bankruptcy administrator)



1.5% of the respondents stated that they have been contacted from another institution during the bankruptcy process (not court and bankruptcy administrator) and asked about the bankruptcy process. 37% mentioned that it never happened and 1.5% had difficulty in answering.

Two respondents stated that they had been contacted from the Central Bank, one by the mass media, and two by security agencies (See **Chart 26.**).

8% (16 people) of the debtors applied to the court to suspend bankruptcy proceedings on the following grounds (See **Table 5.**).

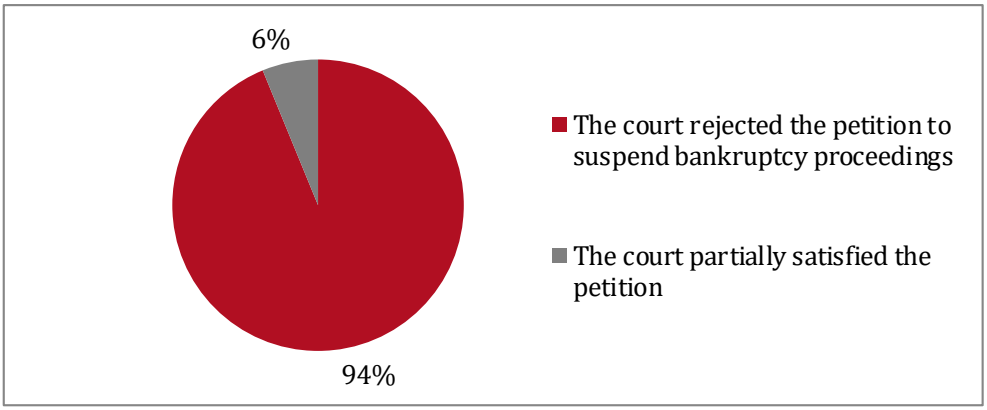
Table 5. The Ground for applying to the court to suspend bankruptcy proceedings

Ground	Total	
	Number	percentage
I was not working for three years and did not have any income, I was insolvent	3	1.5%
Adjudged bankrupt upon groundless charge	3	1.5%
Upon illegal actions of tax authorities	2	1.0%
In order to be given time to sell the house	2	1.0%
Application for a new loan to continue the activity	1	0.5%
I have requested for loan repayment holiday	1	0.5%
I wanted to prepare an amortization schedule	1	0.5%

We have come to an agreement with the creditor during bankruptcy proceedings	1	0.5%
For housekeeping for financial recovery	1	0.5%
I have not received money, but I have signed	1	0.5%
Total	**16**	**8.0%**

The court rejected the petition to suspend bankruptcy proceedings in 15 out of 16 cases – 93.8% of petitions were rejected. (See **Chart 27.**). Only in one (6.2%) case the court has partially satisfied the petition and bankruptcy proceedings were suspended partially. The legal entity has applied for suspension of bankruptcy proceedings on the ground of illegal actions of tax authorities.

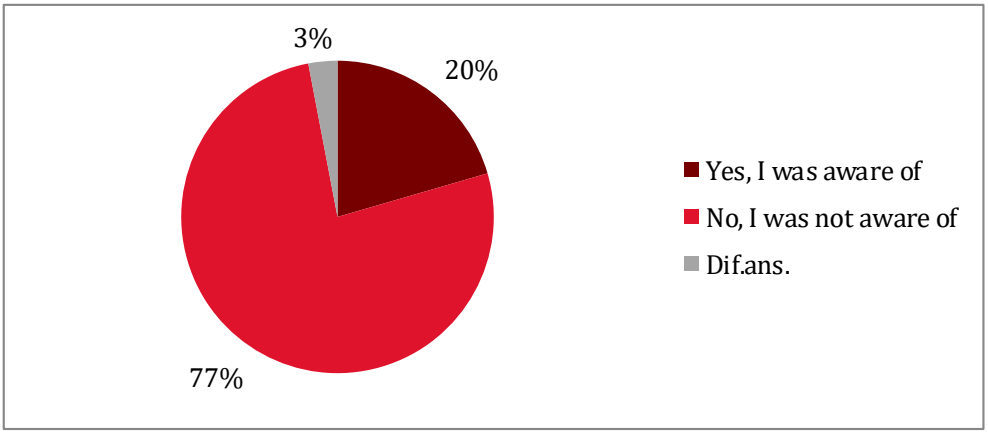
Chart 27. Decision of the court on suspension of bankruptcy proceedings



76.4% of the respondents did not know about any other bodies that they could turn to for assistance or submit complaints for bankruptcy cases, 3% had difficulty answering the question (See **Chart 28.**). The rest (20.5%) were aware of such bodies:

- 11.5% did not turn to such bodies
- 6.5% turned to but received no assistance
- 2.5% turned to and received assistance

Chart 28. Other state bodies that the debtor could turn to in bankruptcy case for assistance or submission of complaints



Among the state bodies that debtors could turn to get assistance or submit complaints for their cases, the following were stated (See **Table 6.**).

Table 6. State bodies stated by respondents where they thought they could turn to for assistance in bankruptcy case or submit complaints

State body	Total	
	Number	Percentage
RA Prime Minister	20	10%
Human Rights Defender NGOs	14	7%
Human Rights Defender (ombudsman)	13	6.5%
RA Prosecutor General/prosecutor	8	4%
RA President	7	3.5%
RA NA deputies	6	3%
Ministry of Justice	5	2.5%
Office of Financial System Mediator	5	2.5%
Self-Regulatory Organization	4	2%
Court of Appeal	3	1.5%
NSS	2	1%
The police	2	1%
SRC/tax authorities	1	0.5%
Court of Cassation	1	0.5%
Chamber of Advocates	1	0.5%
Total	**92**	**46%**

The RA Prime Minister, Human Rights Defender NGOs and Human Right Defender were stated most frequently.

ACCORDING TO THE EXPERTS IN THE AREA

DURATION OF THE BANKRUPTCY PROCEEDINGS

…The so-called reasonable time period may not be relevant in case of bankruptcy proceedings, as it is viewed from the perspective of business mentality during the proceedings — whether it increases or reduces the burden of expenses within the rights of the creditors. Where it increases the burden of expenses, it must be quickly liquidated, in which case the state will have less interference with the rights of persons.

The specialists considered its duration as they are concerned that it lasts too long. According to the experts, the duration has both objective and subjective causes.

Objective causes include:

- workload of courts,
- time limits for making various inquiries, for sending and receiving responses thereto, for sending (in particular, to Civil Acts Registration Body, Traffic Police etc.) and receiving notifications,
- for carrying out expert examinations, as well as examination of other judicial cases related to the bankruptcy process (allotment of shares from property for the purpose of which expert examinations should be carried out),
- holding of an auction (sometimes it is necessary to hold several auctions in order to sell the property)

Selfish motives of a party to prolong the case are considered subjective. The debtor frequently attempts to prolong the process in order to solve his or her problems or tries to postpone as much as possible, for instance, the alienation of the property. The bankruptcy administrator delays the process, creating opportunities for corruption. The courts are also relevant, and the reason for this is that the legislation does not prescribe specific time limits for certain actions or the prescribed time limits are not complied with.

Some groups also mentioned the fact that sometimes the court sittings are postponed since the bankruptcy administrators lack the necessary legal or economic skills or are often dependent on the judges and do not act independently, by co-coordinating each action or step with the court.

Poor procedure is a reason for the long duration of examination of bankruptcy cases; in particular the situation was discussed when many (30) creditors are involved in a single bankruptcy proceeding and one of them files an objection to the list of claims which relates to his or her claim. The creditor, and the BA are the only interested persons and this does not in any way relate to the interests of other creditors. The court is obliged to notify all the 30 persons, invite them to the sitting, where they may express their position on the issue etc. As a result, the workload of the court and the duration of the sitting increases.

The experts paid attention to the duration of the process related to taking inventory Difficulties relate to the procedures (when it is impossible to receive accurate information on the availability of property, its location etc. from certain state bodies) and sometimes by lack of professional skills of the bankruptcy administrators.

RECOMMENDATIONS OF EXPERT GROUPS:

- Develop a legal procedure for declaring the organization bankrupt through extrajudicial procedure when there are no obvious signs of false bankruptcy and the person deems it inappropriate to apply for a recovery plan;

- To promote the increase in independence and in the level of professional skills of bankruptcy administrators, which will result in ensuring their independent activities and excluding the influence of the courts;
- To create legislation for examination of any claim relevant to the bankruptcy process within the scope of the same bankruptcy case;
- Introduce a more efficient, preferably electronic system for sending and receiving enquiries, as well as for sending notifications;
- To increase the number of judges and their staff at bankruptcy courts, which will result in acceleration of the process of examination of cases, as well as of handling paperwork;
- To introduce mechanisms for evaluating, holding accountable and encouraging bankruptcy administrators; the evaluation standards may include quality of the actions undertaken, and time limits (in what time limits the given actions were undertaken and whether they are reasonable and comply with the requirements of the law).

ACCESSIBILITY OF THE BANKRUPTCY PROCESS

> …unlike other countries where the bankruptcy proceedings are initiated for the purpose of recovery – even through credit-granting mechanism or subsidization by the state, in our case bankruptcy procedure is initiated in order to get rid of debts.

The experts emphasized that the bankruptcy procedure is accessible and the necessary guarantees are not stipulated at the legislative level: as a result, bankruptcy is very often used as a tool to be released from undesirable financial liabilities.

According to experts (point 1 of part 2 of Article 3 of the Law of the Republic of Armenia "On bankruptcy"), "The debtor may be declared bankrupt by court judgment on the basis of an application for compulsory bankruptcy where the debtor has delayed, for 60 or more days, the fulfillment of indisputable payment liabilities, which exceed 1000-times the minimum salary as defined by law…". It is not discussed whether the given person or the organization has the means or possibility to pay. Rather the opportunity to immediately initiate the bankruptcy process without an additional precondition is granted to any interested party.

The bankruptcy process serves as an effective mechanism, for instance, for banks in order to make the process of money recovery more efficient and faster. Thus, according to several expert groups, banks have recently begun to more frequently apply for the bankruptcy processes. This reflects difficulties during other proceedings and the stage of compulsory enforcement. It is another issue whether the judgment will be in favour or against the bank. The judicial procedure in civil cases was such a lengthy process that at some point bankruptcy became an alternative to that.

The experts stated there was another circumstance accounting for the practice of bankruptcy initiated by banks. If the case was already under examination in the form of a civil action, then it reached the stage of compulsory enforcement. At the stage of satisfaction, where collateral was available, the property was not sold and the argument that either the debtor or one of the persons acting as a debtor had not been notified. Where no notification had been made, the judgment remained unsatisfied. The issue could be solved with the help of bankruptcy.

RECOMMENDATIONS OF EXPERT GROUPS:

- Establish additional statutory requirements, which are a prerequisite for starting a bankruptcy process that will exclude situations where bankruptcy has become a means of avoiding the obligations that have been incurred by default;
- The law must prescribe two types of bankruptcy processes. The first for cases when a legal person or individual does not want recovery and his/her only wish is termination of through being declared bankrupt. The second when a person applies for the initiation of the process of bankruptcy in order to have a recovery plan.

ATTEMPTS AIMED AT DEBT "RESTRUCTURING" OR RECEIPT OF A NEW LOAN

Recently debt restructuring has been easily accessible, but this does not refer to large loans or business loans, because the possibilities for business recovery must be tangible.

This issue has been discussed with a group of experts who are directly engaged in it. According to them, it is not surprising that very few people apply for debt restructuring or receipt of a new loan, and that the percentage of satisfaction is very low. The reason is that these businesses and individuals pursue only one aim i.e. to be exempted from the liabilities assumed once they are in the bankruptcy process. Banks assess the opportunities of the entity (in case of a legal entity) in the market, analyse the opportunities of their partners, their chances to participate in tenders and win them, previous history, the probability of finding a new investor. Therefore, the main criterion is the solvency assessment.

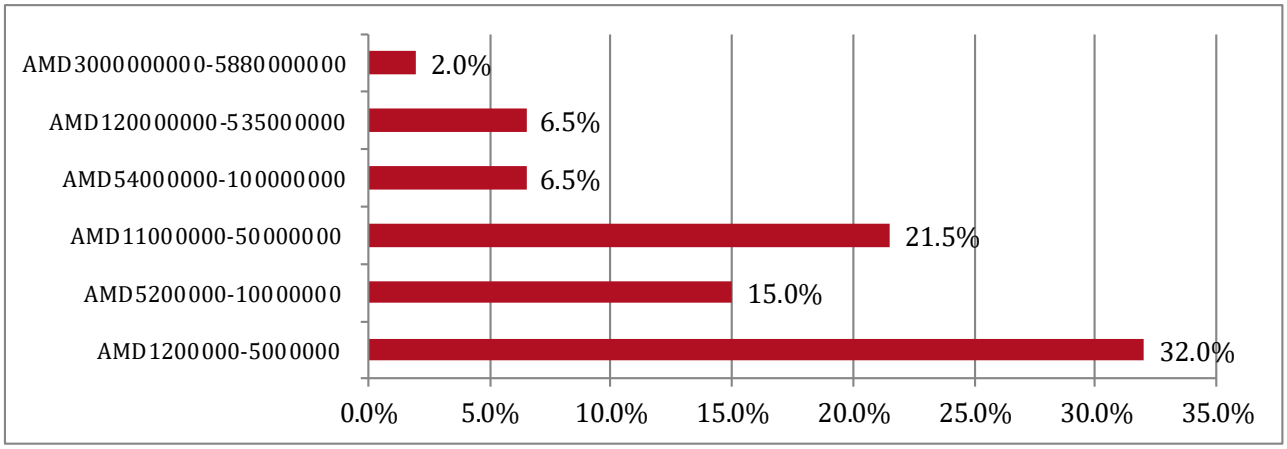
According to the experts, opportunities for debt restructuring have become easier recently with the exception of large loans (where recovery is less likely). According to an expert opinion, any opportunity may be taken into consideration in case of small loans, i.e. in case of several million AMD. Banks are the main entities financing the agricultural sector, thus persons engaged in agriculture are treated differently, i.e. the bank tries to support, encourage the customer as much as possible. If he/she has a household, land which can be used for agricultural purposes and generate income, the opportunity for debt restructuring increases and the customer may be exempted from fines. However, most important is the willingness of people for debt restructuring and receipt of new loans.

FINANCIAL LIABILITIES AND ASSETS OF DEBTORS

ACCORDING TO THE DEBTORS

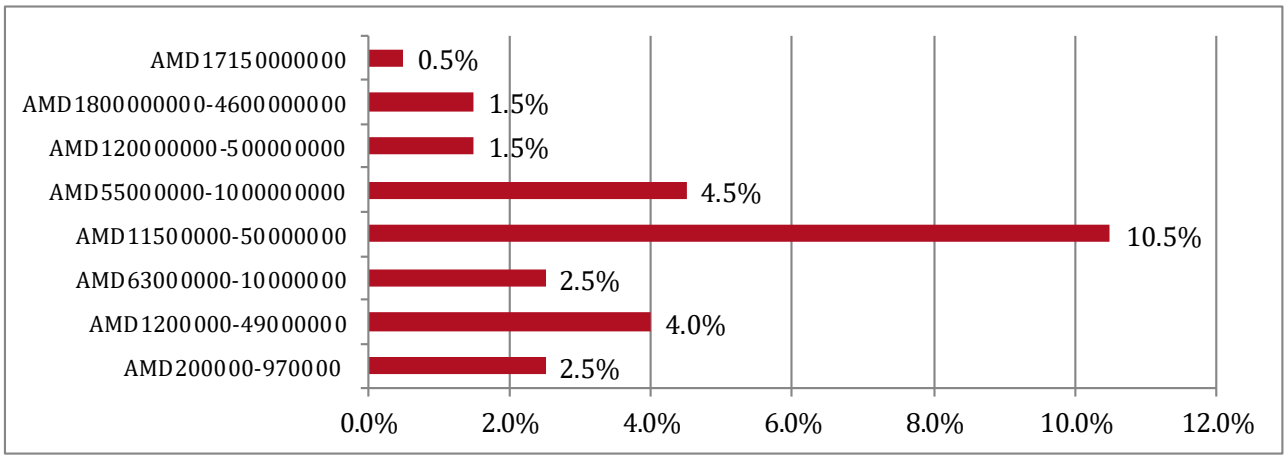
13% of the respondents had difficulty in answering and 1% of respondents refused to answer the question about the total amount of liabilities owed to creditors at the beginning of the bankruptcy process. According to the survey results, the amount of liabilities owed to all creditors at the beginning of the process varied from AMD 150kto AMD 5.880bln. The largest range is liabilities from AMD 1.200mln up to 50mln - 68.5%, as it is shown in the chart below (See **Chart 29.**).

Chart 29. Total liabilities of the debtor owed to all creditors at the beginning of the bankruptcy process (AMD)



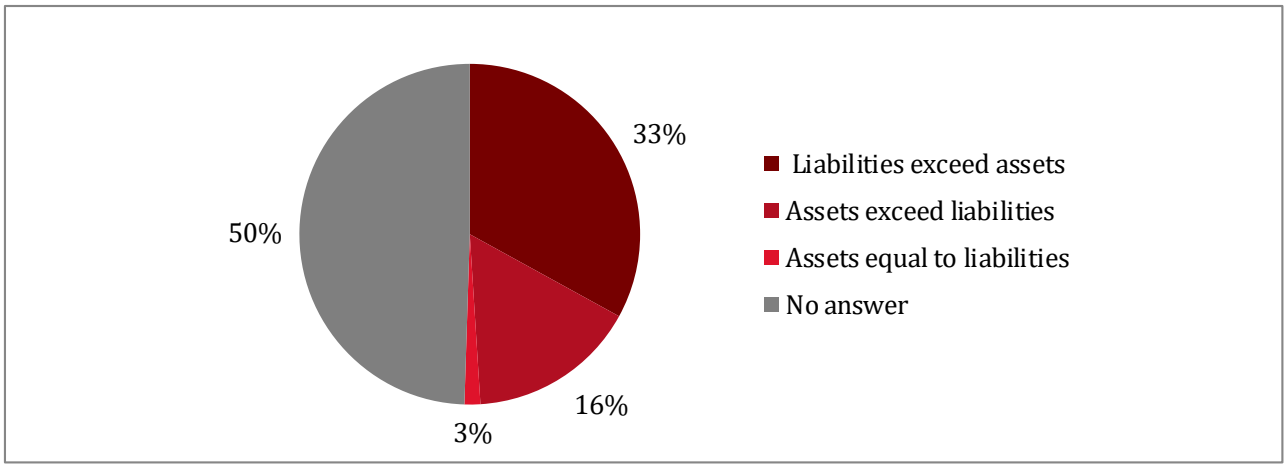
As for the assets, 42 % of the respondents had difficulty in answering the question about the value of their assets, another 0.5% refused to answer. 30% of the respondents stated that their assets were appraised for AMD 0. According to the survey results, the appraised assets ranged from AMD 200kto AMD 17.150 bln (See **Chart 30.**).

Chart 30. Assets of the debtor (AMD)



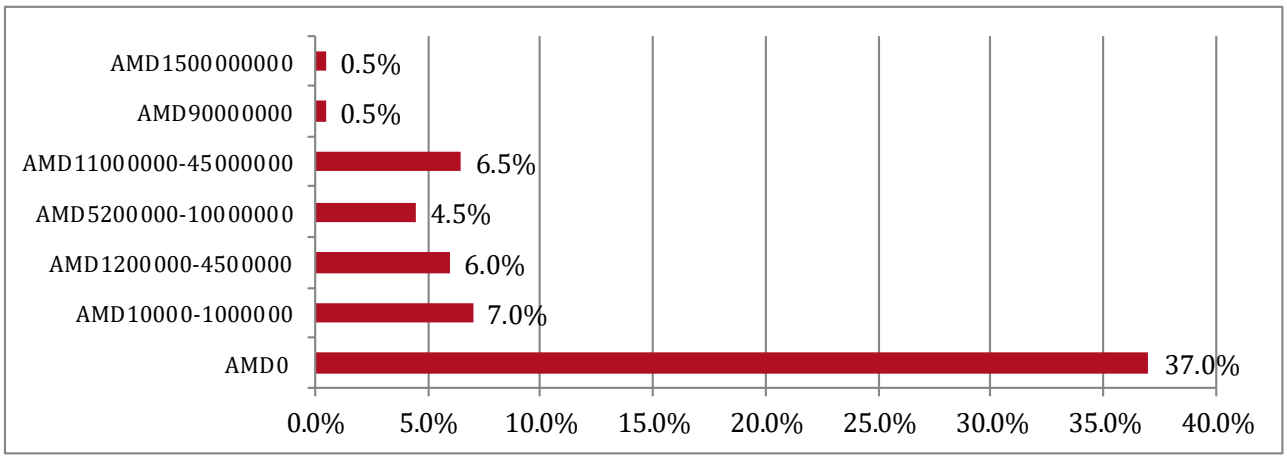
The comparison of liabilities and assets of each debtor shows that 33% of assets of debtors were valued less than liabilities, 16% of assets exceeded liabilities, in 1.5% of the cases the value of assets was equal to the amount of liabilities, the rest of respondents (49.5%) did not give an answer (See **Chart 31.**).

Chart 31. The comparison of liabilities and assets of debtors



37.5% of the respondents had difficulty in answering the question on satisfaction of liabilities, 0.5% refused to answer. 37% of the respondents stated that AMD 0 was directed to the satisfaction of general liabilities. The sum directed to the satisfaction of general liabilities ranged from AMD 10k to AMD 1.5bln (See **Chart 32.**).

Chart 32. Sum directed to the satisfaction of general liabilities in the bankruptcy process (AMD)



At the end of the bankruptcy proceedings only one respondent (0.5%) had money left to be distributed among the shareholders (approximately AMD 1.5 bln). 38.5% of the respondents had no money left. 60.5% of the respondents had difficulty in answering and 0.5% refused to answer. These results show the non-transparency and inefficiency of the bankruptcy proceedings. Many debtors are not informed how their assets are being appraised and used. The claims of the creditors are not satisfied.

ACCORDING TO THE EXPERTS IN THE AREA

The bank assesses the property at AMD 250 mln
when accepting it as a collateral; however in three years'
time when it is time to sell the property
the same bank assesses it at AMD 115 mln.
I am sorry, but can anyone explain to me what
happened in Armenia that result in such price reduction?

According to the experts, the financial liabilities are predetermined by the person having applied for compulsory bankruptcy. Thus, generally, before submitting an application for compulsory bankruptcy, Yerevan Municipality waits for a long time so that the penalties and fines reach the maximum amount, and only after that submits the application. The experts are concerned that organizations initiating bankruptcy are completely drained of resources and deprived of any opportunity of further recovery or debt restructuring.

The experts are concerned that persons who had sufficient assets for the settlement of liabilities even during the process of bankruptcy did not use them. This shows that the bankruptcy process is used primarily for liquidation and not business recovery or reorganization.

Several expert groups are concerned with the property assessment done by banks. When the bank puts a lien on the property, it assesses the property at a certain value, but in several years' time, the same immovable property is assessed at a lower price even though no changes in the market for immovable property have occurred in the country.

There was a long discussion whether or not a higher threshold for founding capital should be stipulated in legislation e.g. AMD 1mln, which will later reduce the number of bankruptcy processes. The majority of the experts rejected this claiming it will hinder business development.

The expert groups were not surprised that at the end of the bankruptcy process only one participant in the survey had the money to be distributed among shareholders. The amount generated from the alienation of the property covers the expenses of the bankruptcy administrator, then the debt owed to the bank, and the remaining creditors receive no compensation.

RECOMMENDATIONS OF EXPERT GROUPS:

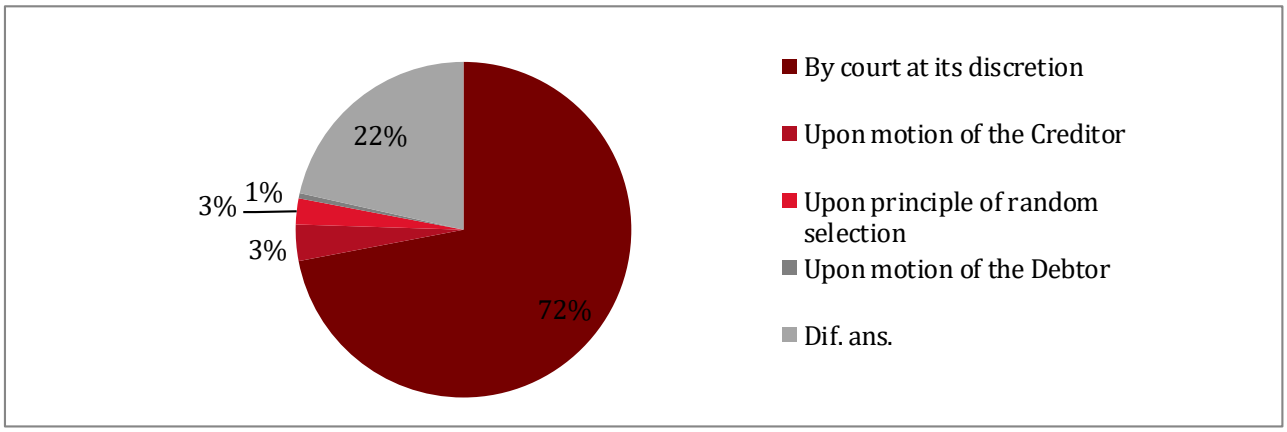
- Restrict, through a maximum time limit, when it is possible to apply for initiation of compulsory bankruptcy (also preventing some authorities trying to artificially overstate debts);
- Envisage a uniform scale for property assessment (legal act), which will reflect the current market value and prevent arbitrary approaches by appraisers;
- Introduce legal mechanisms which will ensure satisfaction of at least some level for all creditors.

ACTIVITIES OF THE BANKRUPTCY ADMINISTRATORS

ACCORDING TO THE DEBTORS

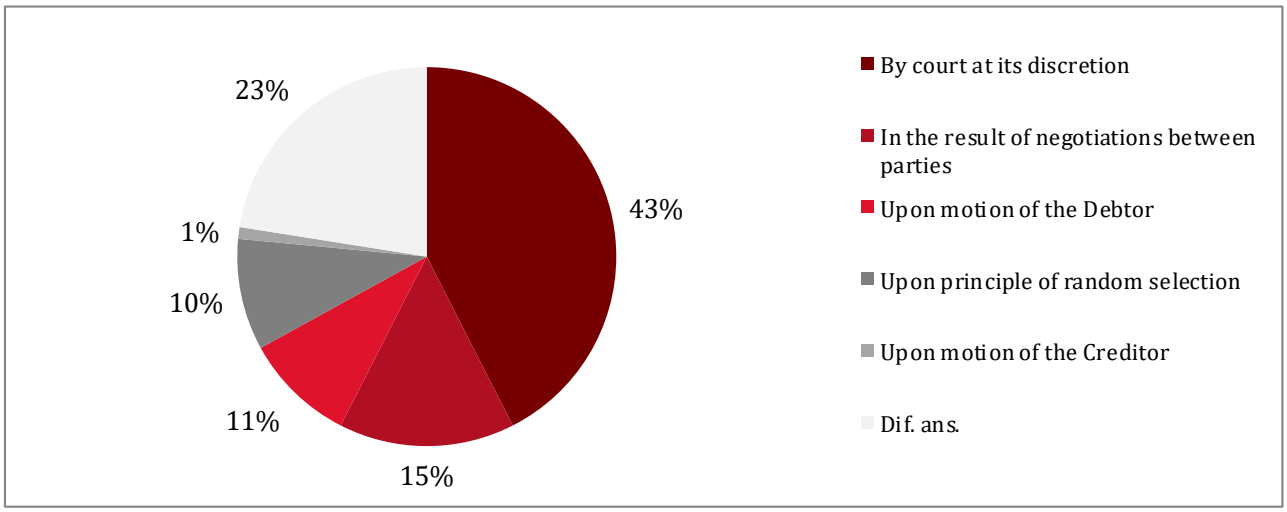
In 72% of the studied cases the bankruptcy administrator was appointed by the court, in 3.5% of cases upon mediation of the Creditor, in 2.5% random selection, in 0.5% on mediation of the Debtor. 21.5% of respondents had difficulty in answering this question. Options *"as the result of negotiations between the parties"* and *"by SRO at its discretion"* were not stated (See **Chart 33.**).

Chart 33. Procedure of appointment of the bankruptcy administrator



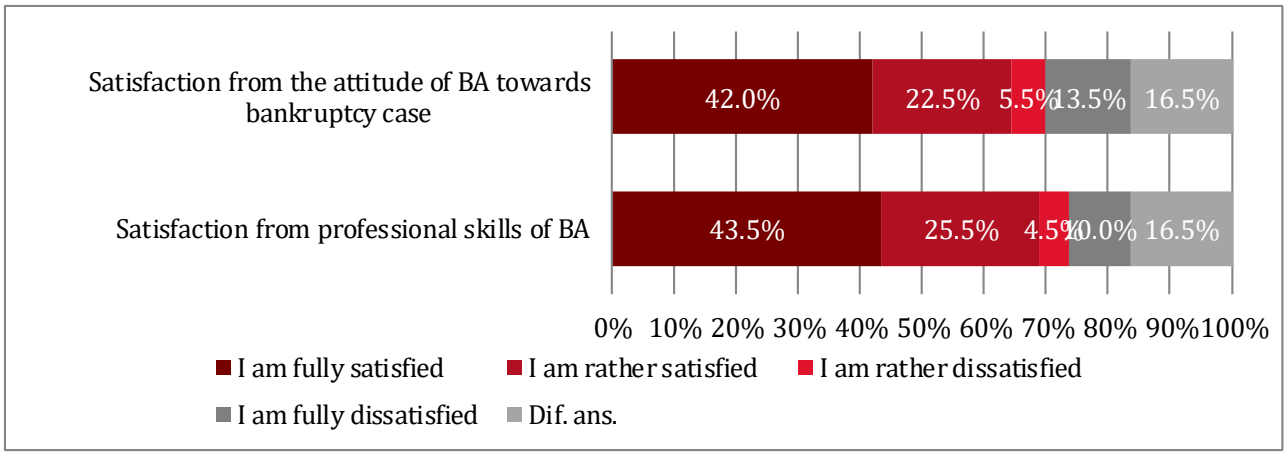
The view of 42% of the respondents is the most reasonable procedure of appointment of the bankruptcy administrator (from the perspective of increasing the independence of the bankruptcy administrator and efficiency), is the procedure of appointment of a bankruptcy administrator by court at its discretion. 15% would prefer the bankruptcy administrator to be chosen through negotiations, 9.5% on of random selection, 9.5% on mediation of the debtor and 1% -on mediation of the creditor. 22.5% of the respondents had difficulty in answering this question (See **Chart 34.**).

Chart 34. The most reasonable procedure of appointment of the bankruptcy administrator from the perspective of increasing the independence of the bankruptcy administrator and the efficiency of activity



Respondents were generally satisfied with both the professional skills of the bankruptcy administrators and their attitude towards their bankruptcy cases. 16.5% had difficulty in answering this question (See **Chart 35.**).

Chart 35. Satisfaction from professional skills of the bankruptcy administrator and attitude towards the case of the debtor



43,5% were fully satisfied with professional skills of the bankruptcy administrator: 25,5% were rather satisfied and had the following views of the bankruptcy administrator:

- Is a good specialist, educated and skilled specialist, literate, a good man, diligent, responsible, kind – 46%,
- Has performed the work in due manner, worked in compliance with the law – 19.5%,
- Gives accurate and complete answers to the questions – 9.5%,
- Works for financial recovery of the company – 5%,
- Has provided all necessary documents, has sent notifications – 3%,
- Has considerably decreased the size of liabilities – 0.5%.

Those totally dissatisfied with professional skills of the bankruptcy administrators formed 10%, with 4,5% more or less dissatisfied explaining their answers as follows:

- The bankruptcy administrator pursues his/her own interests – 5%,
- The bankruptcy administrator is corrupt/ "sold" - 2.5%,
- The bankruptcy administrator is ignorant, is not in control of the case -2.5%,
- Asks his/her percentage for remuneration from me– 1.5%,
- They are protected by the state and can bring groundless arguments - 1.5%,
- Has put the house on sale twice through public auction without informing the debtor, has given almost no information - 1.5%,
- Was not contacting tax authorities, was not exchanging information with different agencies – 0.5%,
- Has determined a low value for the property – 0.5%.

Those fully satisfied with the attitude of bankruptcy administrators formed 43.5%; those rather satisfied were 25.5% explaining their answers as follows:

- Provided comprehensive explanation, informed about the process of the case – 17%,
- Has performed his work normally, consistently and has done his work justly, impartially and lawfully – 32.5%,
- Was impartial, caring, discreet and patient - 17%

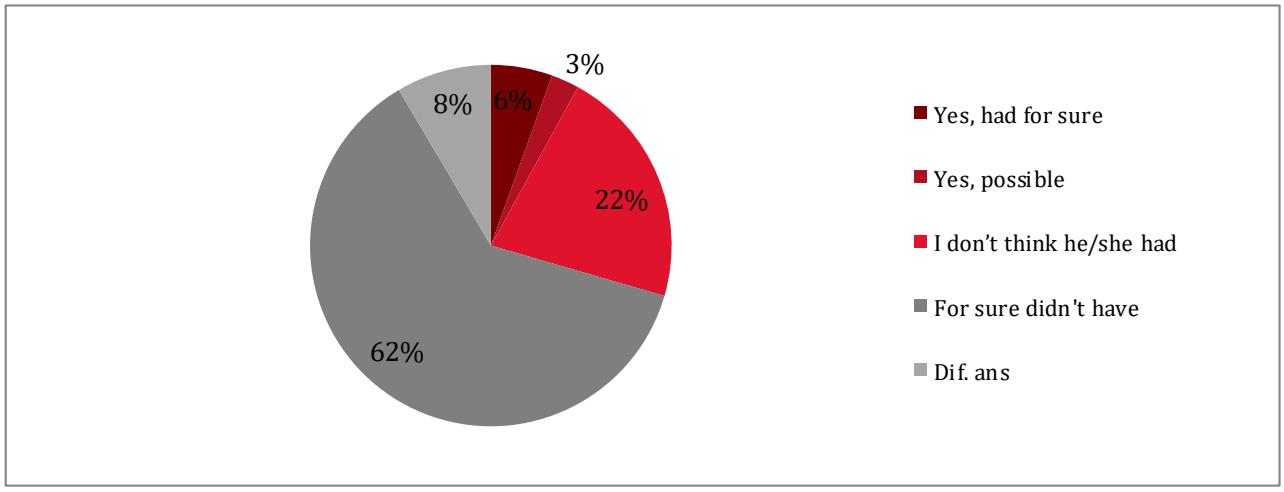
Those fully dissatisfied with the work of the bankruptcy administrator formed 13.5% and the ones rather dissatisfied forming 5.5% explained their answers as follows:

- Was not interested in maintenance of property – 7.5%,
- Caused delays – 4.5%,
- *"Is the most corrupted, sold, deceptive bankruptcy administrator"* – 4%
- Is the most ignorant bankruptcy administrator, does not know the legislation – 3%
- Did not inform about the public auction, has sold the property without the knowledge of the debtor – 2.5%,
- Five years have passed, but the accounts of the debtor are still frozen and he/she cannot make transactions – 1%
- Has placed a lien on pension – 1%
- Was indifferent before the enrollment of the attorney in the case – 0.5%

Only one debtor claimed early termination of the powers of the bankruptcy administrator (to change the bankruptcy administrator). However, the court did not satisfy the claim of the debtor. 99.5% did not make such a claim.

The majority of the respondents (62.8%) were confident that the bankruptcy administrators did not have any direct or indirect profit from the bankruptcy process except for determined remuneration. 21.5% think that they did have, 2.5% considered such a possibility and 5.5% are sure that the bankruptcy administrator did have direct or indirect profit (See **Chart 36.**).

Chart 36. Probability of direct or indirect profit of the bankruptcy administrator during the bankruptcy process except for determined remuneration according to debtors



Discussing cases of direct or indirect profit of the bankruptcy administrators from the bankruptcy process, the respondents gave the following examples:

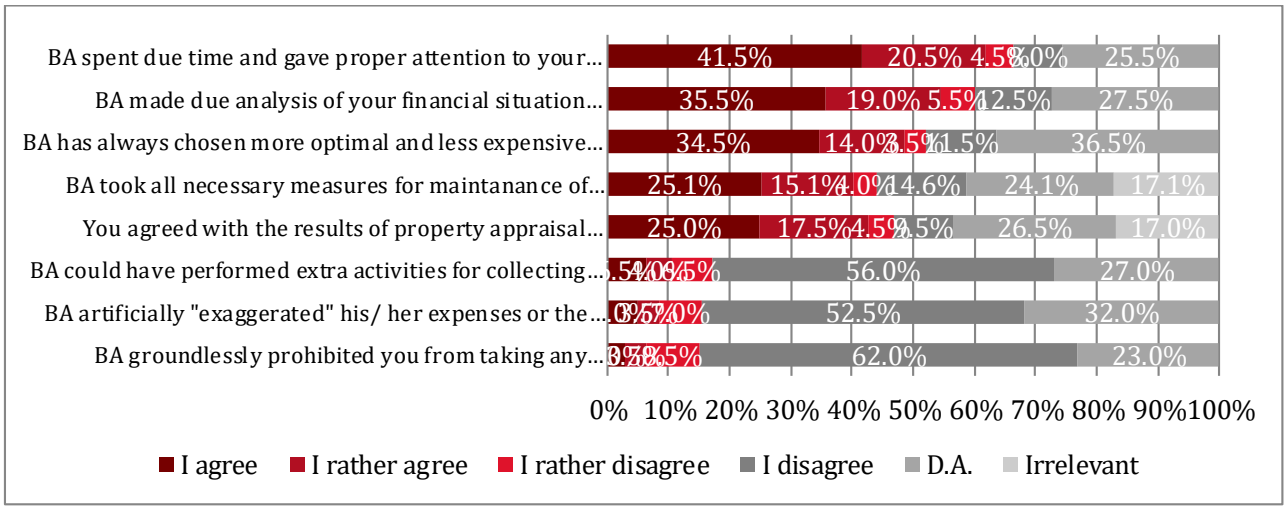
- The bankruptcy administrator received extra amount from property sale – 6 answers (3%)
- The bankruptcy administrator was in a corrupt deal with the creditor – 3 answers (1.5%)
- *"Judicature and tax authorities are from the same "clan" and are secretly cooperating with each other through the bankruptcy administrator"* - 3 answers (1.5%)
- The bank manager and the bankruptcy administrator made a deal and sold the house of the debtor without public auction – 2 answers (1%)
- The bankruptcy administrator took money/interest from the debtor – 2 answers (1%)
- Has written groundless fines and penalties – 1 answer (0.5%)
- The property of the debtor was bought by the bankruptcy administrator through public auction – 1 answer (0.5%)

More debtors agreed with positive assessments on professional functions of bankruptcy administrators than with negative. As an example, 41.5% of the respondents agreed and 20.5% rather agreed with the assessment *"the bankruptcy administrator spent due time and gave appropriate attention to the case".* 35.5% of respondents agreed and 19% rather agreed with the assessment *"the bankruptcy administrator made due analysis of financial situation without demonstrating formal approach"*. 34.5% of respondents agreed and 14% rather agreed with the assessment *"the bankruptcy administrator has always chosen more optimal and less expensive solutions facilitating recovery of solvency, despite the fact that he was remunerated less than he could have been".*

The level of agreement of the assessments of respondents on positive activity of bankruptcy administrators related to the sale of property. This reflects the percentage of respondents who had difficulty in answering or the question was not referable to their case. 21.1% of the respondents agreed and 15.1% rather agreed with the assessment that *"The bankruptcy administrator took all necessary measures to maintain the property"*. 25% of the respondents agreed and 17.5 % rather agreed with the assessment "You agreed with the results of property appraisal performed by the bankruptcy administrator". Such results show the limited transparency of activity of the bankruptcy administrator.

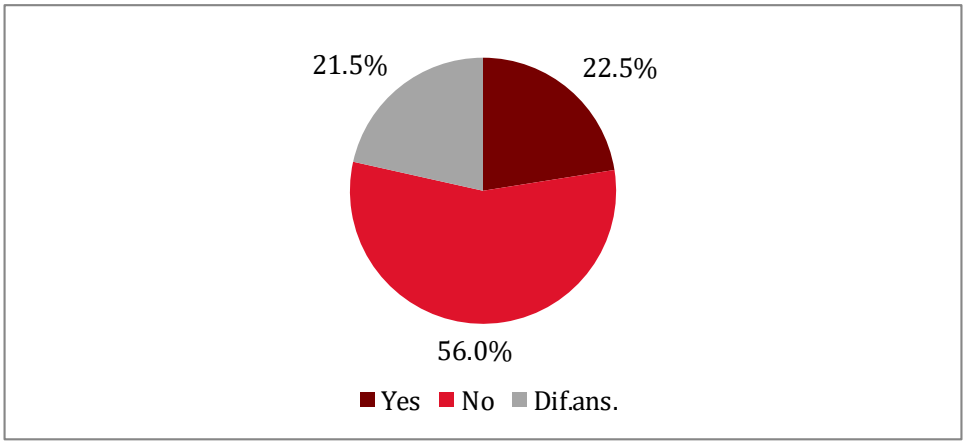
Lower percentage of respondents agreed with the assessments describing negative activity of bankruptcy administrators. 6.5% of the respondents agreed and 4% rather agreed that *"the bankruptcy administrator could have performed extra activities for collecting assets but he did not".* 5% of the respondents agreed and 3.5% rather agreed with the assessment *"the bankruptcy administrator artificially "exaggerated" his/her expenses or the remuneration of the employees.* And finally 3% of respondents agreed and 3.5% rather agreed with the assessment *"the bankruptcy administrator prohibited groundlessly taking any action that could have a positive influence on satisfaction of claims and recovery of solvency of the debtor"* (See **Chart 37.**).

Chart 37. Agreement of respondents on assessments with regard to the actions of the bankruptcy administrator



22.5% of the respondents stated that the bankruptcy administrator required extra documents during bankruptcy proceedings (See **Chart 38.**).

Chart 38. Did the bankruptcy administrator require extra documents during the bankruptcy proceedings?



ACCORDING TO THE EXPERTS IN THE AREA

APPOINTMENT OF BANKRUPTCY ADMINISTRATORS

And if we reach the level that professional qualifications of BAs are rather high, the selection of BAs can be done upon the principle of random selection, which will allow avoidance of corruption risks, imbalance of interests, etc. However, as people of various specializations can act as BAs in the market today, including philologists, the current mechanism is more efficient than making the selection upon the principle of random selection would have been

Research results, showing how bankruptcy administrators were appointed according to respondents and how they would like them to be appointed, were presented to expert groups. The response in many expert groups was that entities responded that way because they had low level of awareness of general system.

The issue of appointment of bankruptcy administrators was discussed from various angles:

- as a guarantee for the independence of bankruptcy administrators,
- as a person representing the interests of debtor and creditor equally and impartially.

It is important that a concern was heard in all groups without any exclusion on the appointment of bankruptcy administrators, except for prosecutors and investigators, as well as SRC experts, who stated that in those cases, when they are a party to the case they do not suggest a candidate for BA and leave the solution of the issue to court's discretion, and the court applies to Self-Regulatory Organisation, where random selection is made through appropriate computer program.

A concern was that the system of computerized random selection does not make a random selection. Interference is common, thus forming a group of "desirables" who receive "the lion's share".

Another concern is that certain bankruptcy administrators cooperate with particular organizations/bodies which present the name of that particular administrator when going to the court then serves particular interests when appointed.

> *There is a BA today, who is referred to "as the manager of that bank".*

According to specialists, this circumstance is not problematic from the perspective of law, but in relation to the application of law (from the perspective of equal representation of parties). Reference to another side of this issue was made: in case of voluntary bankruptcy the debtor suggests its bankruptcy administrator, who mainly aims at delay.

> *In case of voluntary bankruptcy, the debtor may make his/her selection. It is problematic, in my opinion, because the debtors, as a rule, can suggest their candidates, from who they had expectations from the beginning, i.e. I appoint a bankruptcy administrator, but you shall delay my case or take it slow. The same cannot be said in case of creditors because they are an interested party for fast process.*

Attention must be paid to the fact that BAs can be selected on random selection (excluding corruption risks). But as long as the high professional level of BAs is not ensured the creditor tends to select a professional, reliable BA, and the debtor tries to impede the process by every means (to weaken the positions of the BA and direct the case in desired direction).

Another expert group considered the absence of the institute of withdrawal of candidacy by bankruptcy administrators particularly when the appointed administrator sees that the administration of that particular case is impossible.

The principle of random selection cannot ensure efficient administration of the case because not every bankruptcy administrator can undertake the administration of a complicated case.

> *We are so much attracted by the passion of anticorruption, that we ignore the important thing. We take a BA who may be the weakest in his experience and knowledge in a lottery. For example, let us take Nairit factory, the public demand is the factory to operate…, but by a random selection we appoint an administrator and we are not sure if the person will have the tools to administer the case to the end.*

RECOMMENDATIONS OF EXPERT GROUPS

- It is advisable to perform licensing of bankruptcy administrators with the participation of financial institutions through a commission.
- The system of random selection should prevent subjective selection. But the bankruptcy administrators should be classified according to the complexity of cases, skills and other criteria and the selection of cases shall be made from appropriate groups.
- An objective grade system should be applied for qualification of bankruptcy administrators. The selection of BA should not be done considering the circumstances of a particular case, i.e. a criteria, so that a group of administrators is separated and selection should then be random.

PROFESSIONAL SKILLS OF BANKRUPTCY ADMINISTRATORS

There is a necessity to improve the professional qualities of BAs, because there are large cases, business cases in case of banks, the organization of which needs high-level management skills. So, there are situations when the sale process of property shall be organized immediately, but there are cases when a business still needs management, at least at a certain stage. In such cases, it is necessary that the BAs have management skills so they can at least perform management duties during that period without affecting the company.

The facts that the debtors appreciate the professional skills of bankruptcy administrators is important. But that is not enough. Review of their professional abilities and skills shows that the institute does not function well.

Discussions in expert groups on professional skills of bankruptcy administrators revealed several major issues:

- many experts shared the same opinion that bankruptcy administrators of older generation are passive
- those administrators who do not have legal or economic knowledge act less effectively;
- lack of knowledge of bankruptcy administrators leads to dependency on the judge;
- lack of skills of bankruptcy administrators in certain areas results in wrong actions.

Two expert groups identified bankruptcy administrators demonstrate practical efficiency in cases where attorneys are involved, because competition leads to quality improvement.

Knowledge and skills of bankruptcy administrators in identifying the assets of debtors are mainly acceptable. Problems related to collection of assets e.g. if the real estate is encumbered, professional skills are necessary related to presentation of petitions, claims and similar issues. Experts emphasised the necessity of legal knowledge of bankruptcy administrators, which sometimes serves as a justification for their actions or inactions.

> *... there are cases where BA shall file a petition with the court, thus it is important that the process is well organized and carried out. Sometimes you apply for filing a petition against the guarantor, but the BA refuses reasoning that he is not a lawyer, cannot prepare a petition and if such action is required then BA hires a lawyer and the expenses are covered by the parties because the BA does not include it in administrative expenses not being sure that money will be received from the guarantor and the expenses will be covered. If BA has a legal degree he can formulate the petition and it will not become a big problem.*

Some experts insisted that not only do bankruptcy administrators have lack of knowledge but there is an absence of legislation and legal procedures and particularly in areas directly related to effective accomplishment of their functions.

> *If there is the information of the cadastre or police, then the asset is easily found, because there is nothing to find out, they send the inquiry, receive the answer, etc. If they should do more, e.g. transactions related to acquisition of shares by the shareholder or alienation, which in reality was alienated in the name of his wife, but the real beneficiary is the debtor. The person fulfills his/her economic activity and continues to do so, which is obvious to all, but the BAs are unable to find it out, thus the person continues to possess huge amounts of money after being declared bankrupt. These are very important mechanisms and BAs should be able to skillfully navigate to the transactions of that person and to declare invalid transactions based on past transactions and declaration of revenue resulting from transactions.*

Lack of professional skills of bankruptcy administrators according to several experts is also demonstrated in the area of business management, particularly when the business is big. Appropriate management should not only allow to continue the activity of that company, but enable recovery of the assets.

RECOMMENDATIONS OF EXPERT GROUPS

- It is necessary that bankruptcy administrators have economic knowledge particularly for developing a financial recovery plan. Legal and management skills are of no less importance.
- Training is necessary to deepen the skills of BAs in the weak areas, e.g. developing a financial recovery plan, drawing up the inventory.
- If the bankruptcy administrator entirely regulates all the economic and legal issues in bankruptcy proceedings, the latter needs wide skills, which is practically possible only if companies have management with devised sections providing audit, legal and other services.
- It is necessary to have a typology of qualified specialists according to complexity of cases.
- There should be a qualification index for Bas. E.g. if BA does not have the ability to make a deep financial analysis, how he can carry out certain processes leading to recovery. Hence, with companies holding certain significant assets, after drawing up of the inventory the issue of the change of BA must be considered.

REMUNERATION OF BANKRUPTCY ADMINISTRATORS

Can be equalized to those of the institutions, e.g. in case of compulsory enforcement the expense amounts to 5 percent, but in case of bankruptcy processes it starts from 10 percent, although it tends to decrease. If there is an institute of compulsory enforcement that works with 5 percent, it is incomprehensible why the scale starts from 10 percent in case of bankruptcy.

The discussion of this issue within expert groups concluded that the remuneration of BAs and expenses are high and need optimization. Moreover, their nontransparent bases is a key issue.

Experts believe that Bas should have salaries and submit a list of administrative expenses, which may be reduced and limited to some in some way if the fee is large.
The current mechanism is motivational. There is nothing extraordinary in this. This is the case when there is a property and there is remuneration.

Some experts asserted that the current remuneration system is divorced from the real needs and the amount is not even enough for correspondence, notifications, making enquiries, as well as, in case of necessity, for getting legal consultation or for turning to an expert to formulate a petition.

RECOMMENDATIONS OF EXPERT GROUPS

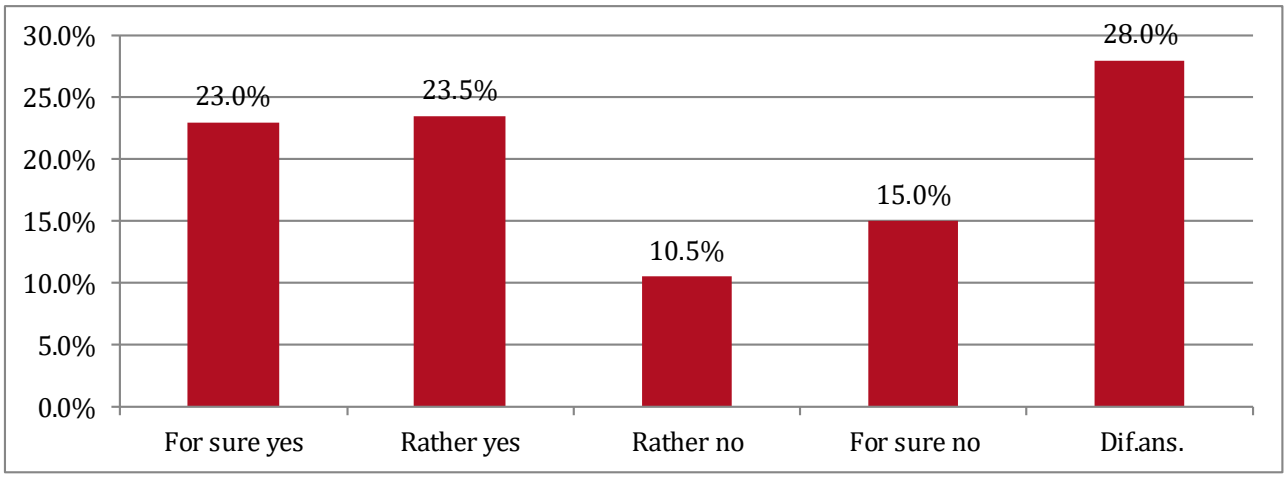
- The issue of establishing a justified amount of remuneration can be regulated by decreasing the remuneration legally and implementation of other mechanisms, for example, getting low percent of income from particular pledged properties. In respect of properties they discover and will be able to sell, other remuneration can be established.
- The percentage of fee shall be decreased and a threshold for administrative expenses shall be set. It is appropriate that BAs make expenses for their actions, but they shall be limited and regulated to exclude arbitrariness.
- A BA shall be remunerated, firstly, if he managed to recover the business of the company, secondly, if he revealed an asset that the debtor was not aware of, thirdly, if he managed to organize alienation and sale of the assets in an appropriate manner, so that both the debtor and the creditor are satisfied.

ACTIVITIES OF BANKRUPTCY COURTS AND JUDGES

ACCORDING TO THE DEBTORS

The answers of the respondents with regard to the application of reasonable, just and appropriate procedures by a court were differed: 23% fully agreed with the assessment that the court ensured application of reasonable, just and appropriate procedures, 23.5% rather agreed, 23.5% rather disagreed, 15% totally disagreed and 28% had difficulty in giving an answer. The level of satisfaction of respondents with regard to professional skills of judges is low. The answer *"I have difficulty in answering"* predominates - 52%. 17.5% of the respondents are fully satisfied with professional skills of judges, 14.5% are rather satisfied, 5.5% are rather dissatisfied and 10.5 % are fully dissatisfied (See **Chart 39.**).

Chart 39. Evaluation of reasonable, just and appropriate application of procedures by court in the bankruptcy process



Respondents who highly evaluate professional skills of judges explained their answers as follows: *"there have been no impediments or violations", "the trial was impartial and lawful"* (50 answers - 25%). 3 (1.5%) more debtors stated that judges met their requests and satisfied their claims.

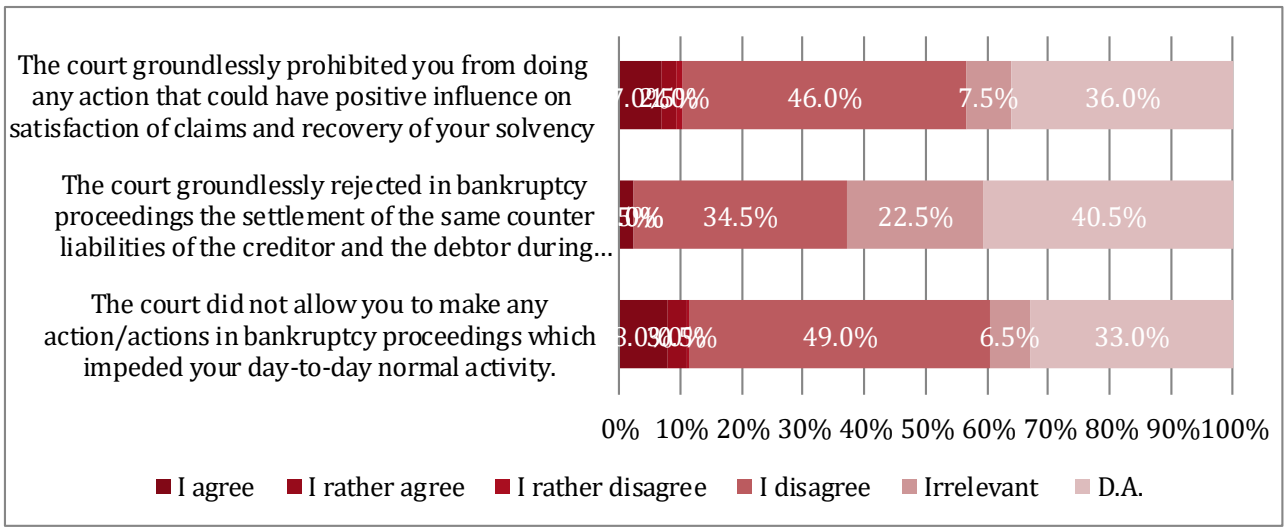
Those respondents who evaluated professional skills of judges negatively explained their answers as follows:

- Judges work unjustly, pursue personal interests, are corrupt - 18 answers (9%)
- Judges cooperate with banks and protect their interests - 8 answers (4%)
- Do not review the peculiarities of each case -5 answers (2.5%)
- Present incomplete package of documents to the judge – 3 answers (1.5%)
- Does not take into account lawfulness of presented claim - 2 answers (1%)
- Reasonable terms were not preserved, have delays - 2 answers (1%)
- Nonexempt property was registered as pledged property, the property of the guarantor was put at public auction but the property of the credit user was not - 2 answers (1%)
- Guarantor organization was not held responsible - 1 answer (0.5%)

- Decision of first instance court was appealed - 1 answer (0.5%)
- Has threatened the debtor: "Do what I told you or it will be worse for you" - 1 answer (0.5%)

Generally, answers that judges are corrupted prevail.

Chart 40. Agreement of debtors with assessments with regard to actions of the court



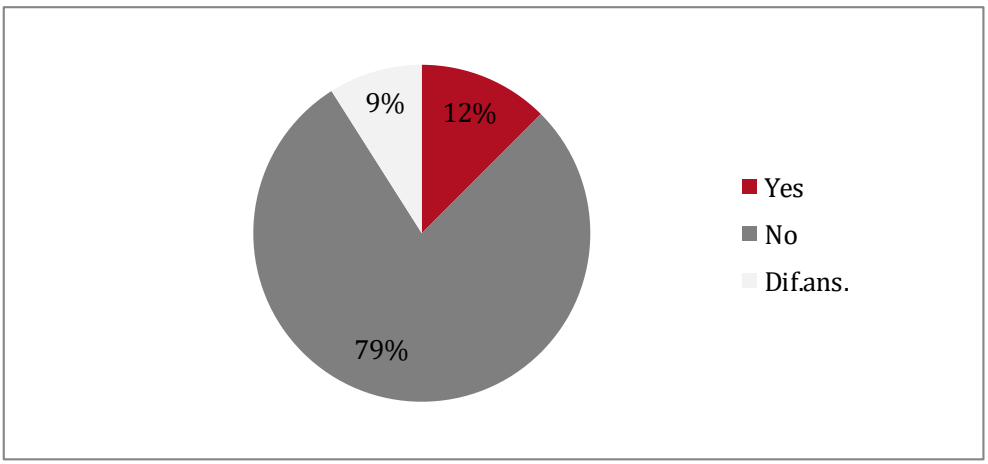
12% of the respondents stated that the court did not allow them to make any action/actions in bankruptcy proceedings, thus impeding day-to-day activity of the debtor.

2.5% of the respondents stated that the court groundlessly rejected the settlement of counter liabilities of the creditor and the debtor during the moratorium in bankruptcy proceedings.

9.5% of the respondents stated that the court groundlessly prohibited the debtor from doing any action that could have a positive influence on satisfaction of claims and recovery of solvency of the debtor (See **Chart 40.**).

12.5% of the respondents stated that the court suspended their rights to manage their property until the decision on liquidation was adopted (See **Chart 41.**).

Chart 41. Suspension of the rights of the debtor to dispose and manage the property until the moment the decision on liquidation was adopted



ACCORDING TO THE EXPERTS IN THE AREA

90% of creditors and debtors are discontent in bankruptcy proceedings. In this case, they must seek first the court, then the bankruptcy administrator as a scapegoat.

The expert groups believe the public have a low level of legal consciousness (insufficient legal knowledge and no idea about bankruptcy proceedings). They file motions, the granting of which by the court is impossible, resulting in a negative assessment.

Certain groups believe creation of a specialised court will greatly improve the situation in this sector. The formation of unified practice and creation of more predictable court practice will not only raise the level of public confidence in the court, but will also improve the general attitude towards the court. According to the experts, clerical services will be more available in specialised courts and it is easier to work with them.

However, there were also many concerns that the courts, referring to their workload, often delay cases and violate certain time limits for different reasons. However, they emphasized that this problem is not relevant in case of all judges.

> *The main problem with the work of judges is slowness, that is, there are judges who work very slowly and willfully, but there are, of course, judges whose work deserves admiration.*

The expert groups pointed out other problems with judges, of the bankruptcy court. The first problem was the delay of delivery of judicial acts. There are cases when decisions are delivered retroactively to dates (with a delay of several months, one year). Thus, time limits are legally complied with, but in fact, the addressee receive decisions later.

Certain judges of the bankruptcy court lack work experience in the given sector, thus resulting in difficulties for parties in judicial cases, related to procedures. This issue is more problematic before the Court of Appeal, where there are no specialised judges and cases are examined by judges involved in civil cases, as a result of which they often misinterpret or misapply the provisions of the Bankruptcy Act.

> *A bankruptcy case is examined at first instance and appealed against before the Court of Appeal. There are many cases when a judicial act is quashed by the Court of Appeal for the reason that judges are unaware of the Law and bankruptcy processes, which results in rather negative consequences.*

In large-scale and complicated cases, experts believe that some bankruptcy administrators consult with judges and perform their actions according to that logic, ignoring that they are an independent institute.

RECOMMENDATIONS OF EXPERT GROUPS

- For solving the problems related to the practice of delaying delivery of judicial acts and sending them retroactively to dates, more clarifications are required to be made and liability mechanisms to be developed.
- When bankruptcy cases are also examined before the Court of Appeal, it requires judges who are specialised in bankruptcy. Bankruptcy cases must always be referred to those judges.
- The number of bankruptcy judges must be increased, the staff must be highly skilled, and they must participate in periodic trainings.
- For reducing bureaucracy, it will be appropriate to carry out circulation of documents electronically.
- It is necessary to clearly prescribe, by legislation, time limits for the specific actions of the Court.

ACTIVITIES OF A BANKRUPTCY ATTORNEY

ACCORDING TO THE DEBTORS

Only 29% of the debtors used the service of an attorney. They mainly evaluated the activities of attorneys as positive. However, 5.2% of them think that the attorney did not have enough professional knowledge to present their interests within bankruptcy proceedings and 3.4% stated that he/she rather did not have. 1.7% stated that the attorney did not spend appropriate time and pay appropriate attention to the case, another 5.2% stated that he/she rather did not spend and pay.

The percentage of debtors who think that the attorney did not cooperate with bankruptcy administrator in an appropriate manner in recovery of their solvency, is relatively high: 12.1% share the same point of view, and 5.2% - rather yes than no.

25.9% stated that the attorney did not appeal against actions or inactions of the bankruptcy administrator and/or the court in cases of disagreement, 8.6% chose the answer *"rather did not"* (See **Chart 42.**).

29.3% of the respondents stated that the attorney did not participate in the Meeting of Creditors, in 46.6% cases the attorney participated, 24.1% of the respondents had difficulty in giving an answer (See **Chart 43.**).

Chart 42. Activities of attorney in bankruptcy proceedings

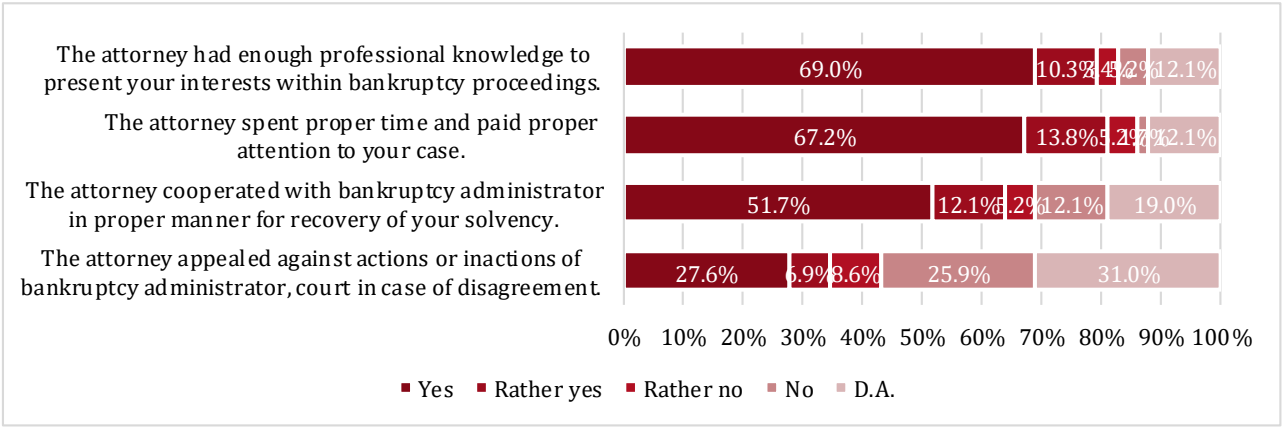
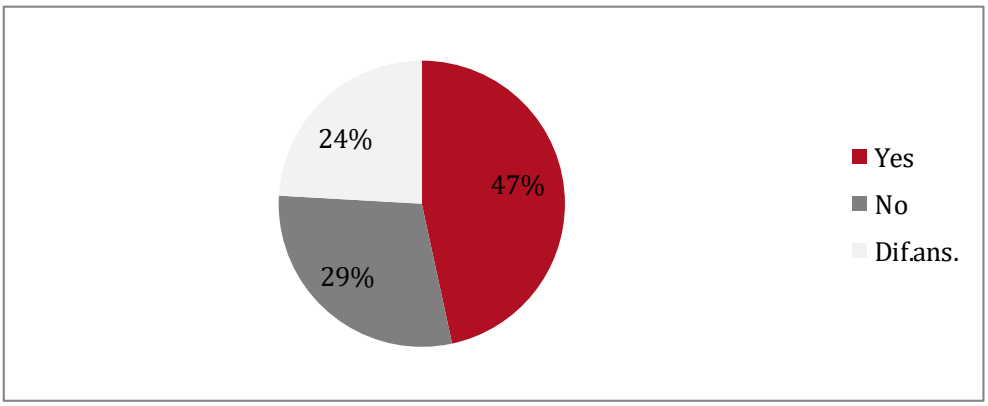


Chart 43. Participation of attorney in Meetings of Creditors



ACCORDING TO THE EXPERTS IN THE AREA

As a result of discussions within the expert groups, the topic of participation of bankruptcy attorneys was mainly considered from two views:

- the experts expressed regret that persons in bankruptcy cases seldom apply to attorneys for receiving legal support, Participation of an attorney in proceedings has a great influence both on the quality improvement of the process and specifically on the protection of interests of the person;
- some experts maintained that attorneys in bankruptcy cases generally have nothing to do and become involved in cases only for the purpose of prolonging proceedings and delaying alienation of property.

Many attorneys involved in bankruptcy proceedings, have insufficient knowledge. Addressing the lack of that knowledge must be started with teaching of course subjects at the higher education levels and development of training courses at postgraduate establishments.

CORRUPTION RISKS IN THE BANKRUPTCY PROCESS

ACCORDING TO THE DEBTORS

95.5% of the respondents stated that they were not encouraged to address any issue in the bankruptcy process in an "informal" manner; 1% refrained from answering to the question. 1.5% stated that they were encouraged to give a bribe to the creditor (bank manager); 1.5% were encouraged to give a bribe to a state official; 0.5% to the bankruptcy administrator. None of respondents stated that he/she was encouraged to give a bribe to the judge (See **Chart 44.**).

5.5% of the respondents were aware of ties between the court and an entity or organization related to the bankruptcy case, another 2.5% were not aware of it, but had suspicions. 92% of the respondents stated that they were not aware of any ties. 16 respondents who informed about being aware of such a tie between the judge and an entity or organization related to the bankruptcy case brought the following examples:

- In 5 cases specific names of judges were given, who *are involved in acts similar to those mentioned above* – 2.5%,
- Ties between the court and different officials having certain interests in the bankruptcy case were stated by 5 respondents – 2.5%,
- Some connection between judges and banks/credit organizations was stated by 4 respondents - 2.5%,
- Ties among court-creditor-bankruptcy administrator were described in 4 cases – 2% (See **Chart 45.**).

Chart 44. Informal ways suggested to a debtor to regulate the issue in the bankruptcy proceedings

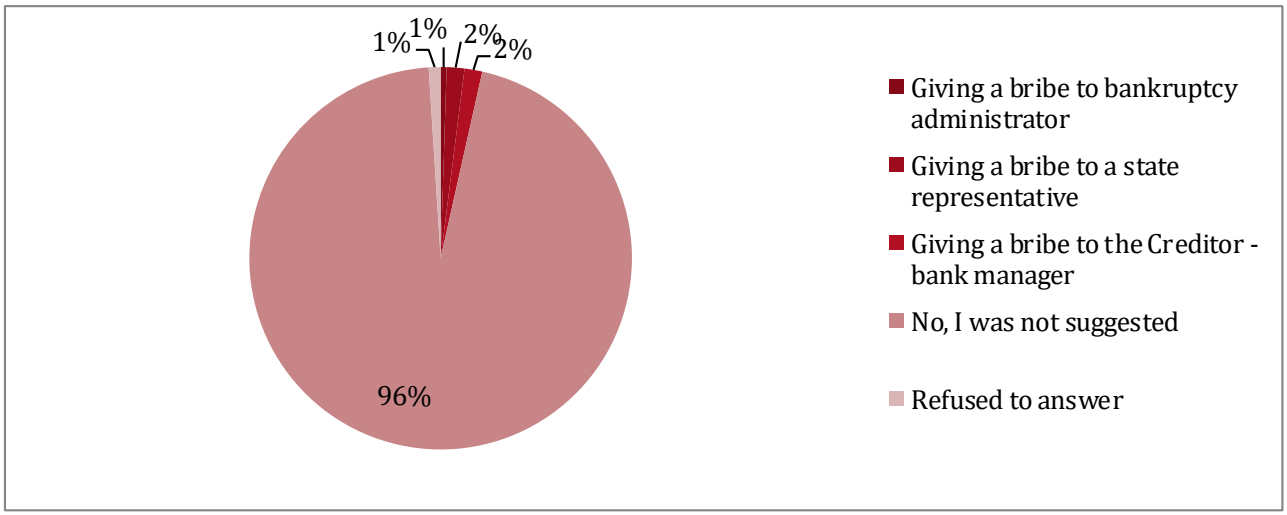
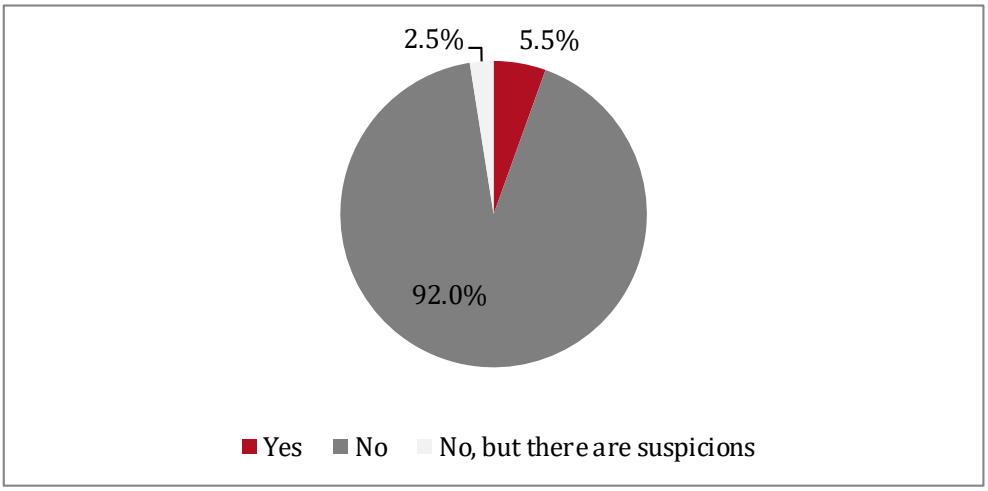


Chart 45. Awareness of a debtor about ties between the court and an entity or organization related to the bankruptcy case



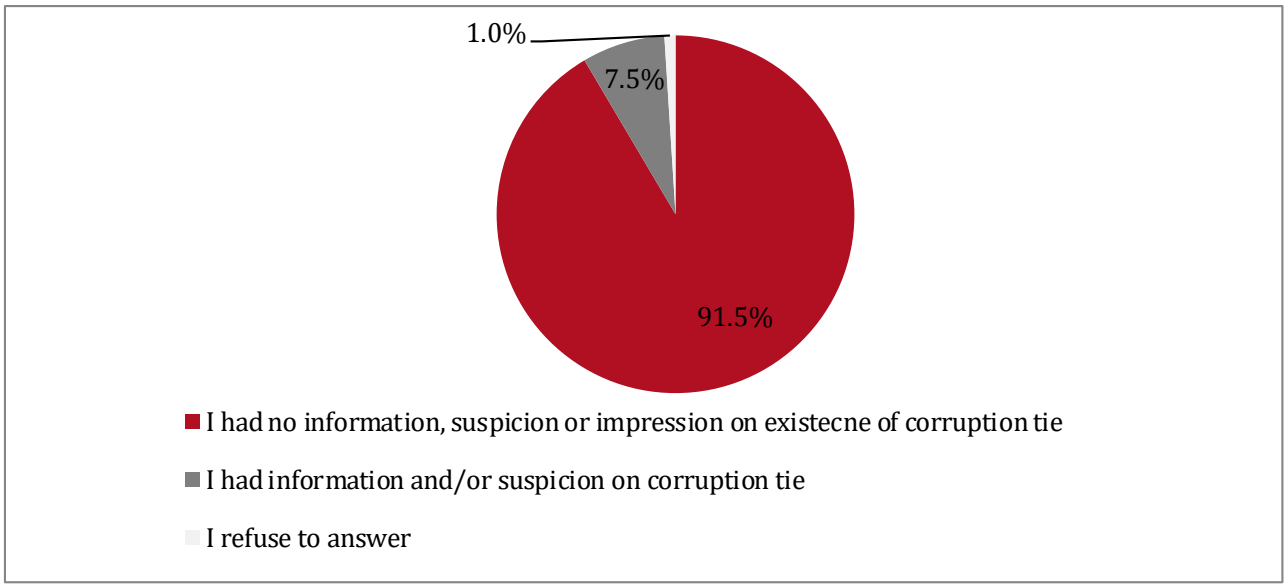
91.5% of the respondents to the question related to corruption ties answered that they had no information, suspicion or impression of any corruption tie, 1% refused to answer. The rest (7.5%) brought the following examples on corruption ties (See **Chart 46.**).

- 5 respondents (2.5%) stated about corruption tie between the court and the creditor (tax authorities, bank, an individual - party to a loan contract)
- *"I had information that that particular bankruptcy administrator always "works" with that creditor"* – 3 cases (1.5%)
- *"I had information on informal tie between the bankruptcy administrator and representative of an official body"* – 3 cases (1.5%)
- *"I had information that that particular judge mainly "works" with that bankruptcy administrator"* – 1 case (0.5%)
- 2 more persons did not have any information but had impression that the actions of the bankruptcy administrator were biased (1%)
- Court-creditor-bankruptcy administrator tie was described only by one respondent (0.5%)

Although different respondents had information on corruption ties between different groups, four main areas of corruption risks can be separated:

1. Court
2. Bankruptcy administration
3. Creditor, including bank, loan organization, SRC, individuals
4. Officials having certain interests in particular bankruptcy case

Chart 46. Information, suspicions or impressions of debtors with regard to the existence of corruption ties



ACCORDING TO THE EXPERTS IN THE AREA

The results of the public survey, presented to the expert groups were not surprising. Experts consider the briber and the bribe taker equally guilty at fault, neither confesses guilt. However, this is not the only reason that only a few respondents spoke about corruption risks; a large number of them is not informed about corruption in a broader sense.

Experts believe corruption is more prevalent than the responses indicate.

Attention was paid to a corruption triangle consisting of the judge, bankruptcy administrator and bank. Perceptions/impressions exist as the bank recommends a candidate for the bankruptcy administrator (but which is a procedure envisaged by law) and the court approves it.

The experts believe that corruption risks exist in any administrative action; most important is how those corruption risks are controlled and reduced.

One group of experts believed strongly (without any details or examples of manifestation) in a corruption tie between the court and bankruptcy administrators.

Banks, rejecting that they could be part of a corruption triangle, claimed that it was the result of perception of debtors in the bankruptcy process, as the goal of the bank was to have a good client who would bring income and not to sell the collateral. Banks are sometimes obliged to obtain property, as prices become very low. There is a regulatory restriction here. In case of acquisition of property, the bank must, after a period of six months, debit it from its capital, that is, in this case, the bank has no interest. Moreover, in case of purchase by the bank, the first purchaser is the former owner, and where purchase is carried out within six months, the legislation enables the owner to obtain the property at the cost previously paid by the bank. According to the

representatives of banks, there are also cases when property is sold at a higher price than the one paid for acquisition. Purchase of property at a low price is objective, but it is more cost-effective to sell it at a high price at auction so that the loan could be repaid. The bank is obliged to buy it and has to seek another purchaser.

The experts mentioned as further evidence of corruption that there were cases when auction property was obtained by a relative of the bankruptcy administrator or a person having been guided thereby.

RECOMMENDATIONS OF EXPERT GROUPS

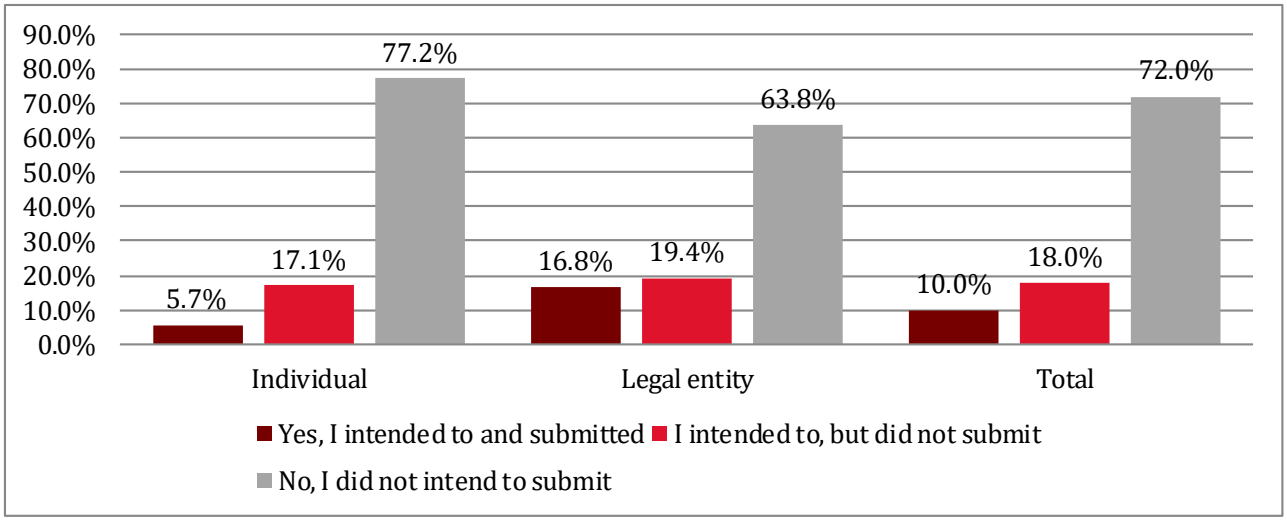
- Make the supervisory procedure stricter.
- It is necessary to develop a clear model and introduce relevant regulations addressing corruption mechanisms, mechanisms for conflict of interests. Also to develop professional qualities and skills of bankruptcy administrators and judges through relevant educational programmes.
- To analyse and understand better the conceptual issues related to bankruptcy in Armenia, and then to develop the Armenian model of the bankruptcy process, based on the practice of Europe, America and former Soviet countries.
- To develop and include effective mechanisms in the anti-corruption strategy, which will be applied in the relevant sector to make it more transparent.

FINANCIAL RECOVERY PLAN

ACCORDING TO THE DEBTORS

10% of debtors intended to submit a financial recovery plan in bankruptcy proceedings ("FRP") and have submitted, 18% intended to, but did not submit, 72% did not intend to submit a FRP[4]. The picture considerably differs depending on the status of respondents: a higher percentage of individuals did not intend to submit FRP - 77.2%, as compared to legal entities - 63.6%. A higher percentage of legal entities has submitted FRP - 16.8%, as compared to individuals - 5.7% (See **Chart 47.**).

Chart 47. Individuals and legal entities intending to submit FRP in bankruptcy proceedings



Those respondents who did not intend to submit an FRP have explained their decision differently. Most of them were not aware of such a right - 43.8%, 27.8% did not consider financial recovery realistic, 18.2% did not consider financial recovery viable, 9% principally did not submit FRP, 0.7% stated that the judge did not make a decision, the creditor should give its agreement, 0.7% stated that it is illegal in case of execution. The answers were again different depending on the respondent: individuals who were not aware of their right to submit FRP was 52.6%, as compared to legal entities (26.5%). In the group of legal entities the percentage of those respondents who did not consider financial recovery realistic was high (40.8%), as compared to individuals (21.1%).

The respondents explained the reasons of not submitting FRP mainly as lack of time: 11 of them (5.5%) could not meet the deadline for financial recovery plan, 8 respondents (4%) did not manage because the law prescribed tight deadline for submission of FRP. 6 respondents (3%) explained lack of professional knowledge and no assistance. 7 respondents (3.5%) explained not

[4] Pearson Chi-Square coefficient of correlation between the variables was 0.037.

submitting an FRP in bankruptcy proceedings to the work of bankruptcy administrator, 4 (2%) of them stated that the bankruptcy administrator failed to register assets and analyse financial state in an appropriate manner, 3 respondents (1.5%) stated that necessary tasks have not been completed by the bankruptcy administrator by the deadline. 3 respondents (1.5%) stated that the creditor was against, 2 respondents (1%) stated that the creditor and the bankruptcy administrator were against. At the time of being surveyed 2 more respondents (1%) stated that they were going to submit FRP in a few days (See **Table 7.**).

Table 7. Reasons for not submitting FRP

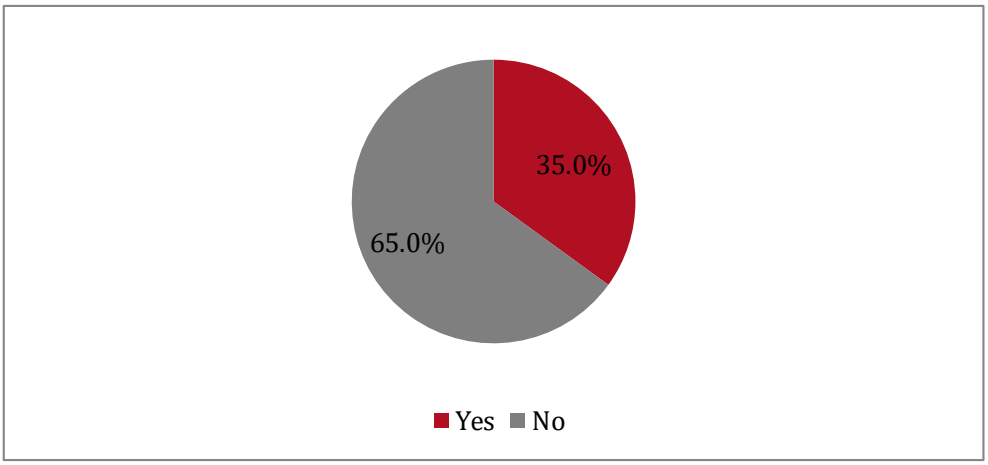
Reason for not submitting FRP	Number	Percentage (from number of respondents who did not submit FRP)
Because financial recovery plan has a maximum period of time, I could not meet the terms	11	30.6%
I did not understand that the law prescribes tight deadline for the submission of financial recovery plan	8	22.2%
I did not have enough professional knowledge to develop a financial recovery plan and I did not receive any assistance in the issue	6	16.7%
The bankruptcy administrator failed to perform the registration of assets and analysis of my financial state in an appropriate manner	4	11.1%
The bankruptcy administrator did not finish the registration of my assets and analysis of my financial state by the deadline prescribed by law	3	8.3%
The creditor –the bank was against	3	8.3%
The creditor and the bankruptcy administrator did not allow me to submit	2	5.6%
I am going to submit in a few days	2	5.6%

No respondent state that any of the participants convinced them not to submit financial recovery plan. Rather, the majority of respondents stated that bankruptcy administrators, attorneys and even the creditors were in favor of financial recovery of the debtor. The situation differs in case of secured creditors: 6 debtors stated that secured creditors directly or indirectly impeded submission of FRP, 2 more debtors stated that the secured creditors behaved in a way that it became senseless to work towards recovery.

The role of the courts was not assessed differently by participants, though 8 stated that the courts were in favor of financial recovery, 4 respondents stated that the court directly and indirectly impeded submission of FRP and 2 stated that the court demonstrated behavior such that - it was senseless to work towards recovery. No answers were received about negative influence of attorneys on submission of FRP.

As a result only 7 (35%) out of 20 submitted recovery plans were approved (See **Chart 48.**).

Chart 48. Approvals of submitted FRPs



The main reason for disapproval of 13 (65%) FRPs was them being considered unrealistic by the court – 7 cases. In 3 cases the secured creditor did not approve, and in one more case both the court and the bankruptcy administrator did not approve, as they did not consider it realistic. In one more case the first instance court left it unexamined and higher courts sustained it. (See **Table 8.**).

Table 8. Reasons for disapproving submitted FRPs

	Total	
	Number	Percentage
Was considered unrealistic by the court	7	53.8%
Was disapproved by the secured creditor, as the use of pledged property against its secured claim was necessary for implementation of a recovery plan	3	23.1%
Was not considered realistic by BA, court and creditor	1	7.7%
Was left unexamined by first instance court, was sustained by higher courts	1	7.7%
Had a difficulty in answering	1	7.7%
Total	13	100.0%

One out of 7 submitted FRPs was terminated early as the debtor could not make payments and did not negotiate with the interested person to be given "a second chance", as it did not have funds.

Where necessary to attract new investments for submission of an FRP and ensuring day-to-day activity efforts were made mainly by debtors, 3 out of 7 found an investor, 1 did its best, but could not find an investor, 2 did not do anything, 1 even impeded the process.

One of the attorneys found an investor as well, but the rest 3 did nothing in this regard.

5 out of 7 bankruptcy administrators did nothing, one performed some activities but they were not enough to find an investor.

Creditors, including those with secured claim, did nothing in this regard.

Only in 5 cases out of 7 submitted FRPs – 71.4% - an interested investor was found and investments were made in all 5 cases.

ACCORDING TO THE EXPERTS IN THE AREA

«…the recovery rate is very low due to the weak economy, regardless of the size of the respective organisation. Armenia's economy is weak, so is the market, thus making it difficult to operate in the market again. On the other hand, recovery is not attempted".

Members of the expert group shared the same opinion and were not surprised by the results obtained. Their concern was the few financial recovery plans and that effective implementation is nearly impossible.

An opinion was expressed in one expert group that activities of bankruptcy administrators should be aimed not at leading an individual or a company to liquidation, but rather their function is to collect assets and recommend solutions for appropriate management thereof. The bankruptcy administrator should not be a seller, but a recoverer. However, in practice it is easier for bankruptcy administrators to sell the property and to receive their fee than to create a financial recovery plan.

According to experts scarcity of FRPs has a number of reasons:

- the general economic situation in the country,
- low economic activity,
- low level of investment attractiveness,
- investment dynamics,
- deficient legal regulations: in particular time limits, but also lack of professional skills of bankruptcy administrators and their mentality. According to a number of experts, the majority of bankruptcy administrators target selling the property rather than financially recovering the person/entity which is in the bankruptcy process.
- **The law does not provide a possibility to use the property of the claimant secured by pledge** in the course of recovery, and this lowers the FRP rate.

It is commonly held that approval of financial recovery plans is not wanted by a creditor. The latter wants to get his debt repaid as soon as possible, and not to wait for years, and he does everything possible so that the FRP is not approved. The state needs to intervene to provide the business environment.

> *We have an issue regarding financial recovery plans. People come and say – we want to recover, whereas the bank says: "We are not interested in your recovery, we taking that property". First of all the state should do the work,…*

It is important that, according to experts, organisations in bankruptcy, are already entirely depleted financially, technically and in terms of resources, being deprived of an opportunity to be recovered or restructured in the future.

> *The main reason of the low rate is that debtors have undergone financial collapse and no signs of recovery are visible. It is not the case that the debtor has vast property and is not able to correctly perform financial management, and that it would be possible to obtain results if his assets were managed correctly. That is the means and possibilities of the debtor are fully depleted.*

According to some experts, no recovery takes place, as the recovery plan submitted by a company in recovery is of low quality, unrealistic and lacks a solid analytical basis. Sometimes a letter with an optimistic vision is submitted for recovery of companies that have been recognised bankrupt, whereas it is necessary to submit information on new investment possibilities. Where there is no person, who is ready to invest funds for recovery of that business, the opportunity for the company's recovery is very small.

Strong analytical skills and specialised knowledge are needed in order to draw up a realistic and effective FRP. Most bankruptcy administrators do not possess them and active involvement of industry experts is necessary. Otherwise the submission of unrealistic and formally prepared recovery plans only play for time.

A legislative contradiction between articles 60 and 62 of the Law "On bankruptcy", as a result of which drawing up and implementation of a financial recovery plan becomes unrealistic, was raised.

> *…… Article 62 says that in the case of an unsecured creditor the financial recovery plan is discussed during a meeting. Even ideal financial recovery plans are voted against. The court considering the bankruptcy case is obliged to decline the financial recovery plan. … a secured creditor, in essence, does not have a voting right, but the pledged property must be used for a financial recovery plan, for which he should be asked. That is, on one hand, the law says he does not have a voting right, but the debtor must take*

> *this property to recover or alienate a part thereof according to Article 61, keep a part thereof and so on, one should ask for a permission. It is a contradiction, nonsense.*

Another contradiction is related to time limits. The law says that a recovery plan must be submitted before the first meeting of creditors. Where the final list of creditors is not approved, according to the law the first meeting of creditors is scheduled by decision of a court. In these circumstances, the time limit should be extended as the first meeting has not been held. However, there was a case when an approved financial recovery plan was submitted, which the Court of Appeals reversed taking as a ground the circumstance that the financial recovery plan should have been submitted before holding the first meeting of creditors approved by the court.

RECOMMENDATIONS OF THE EXPERT GROUPS

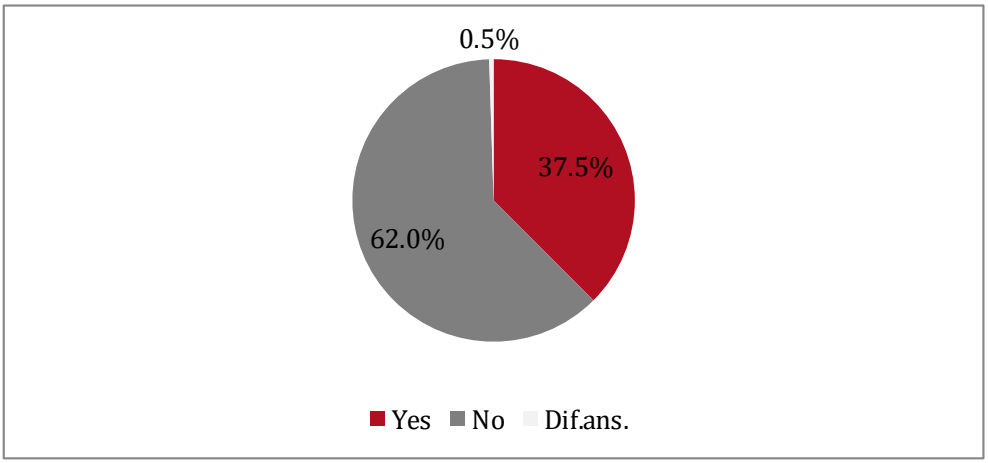
- It is necessary to introduce mechanisms so that in cases where a pledge or a secured right exist and where the bank wants to levy execution by extrajudicial procedure, then the other creditors, the debtors or the bankruptcy administrator may issue attachment on the property – arguing that the property will be needed in the FRP. Some additional step is required, e.g. paying a certain amount for the property, as a result of which operation of the property will continue, thus giving an opportunity for the given organization to recover.
- Improvement of economic, legal, financial knowledge and management skills of bankruptcy administrators.
- At a legislative level establish a minimal threshold for assets above which no consumption or use may take place, if there is a threat of bankruptcy of a legal entity or an individual.
- The debtors in the bankruptcy proceedings must have an opportunity to take a loan.
- The institute of bankruptcy administrators must be consolidated in terms of business knowledge.
- The policy of banks must be changed. Bank must not assume that where a person/entity has reached bankruptcy, recovery is impossible. Room for an FRP must exist and the state should take this burden.
- Risk insurance should be introduced. If a bank insures its risks the banks will provide loans and they will not be concerned that repayment of loan is not secured. This will contribute to increase in number of recoveries.

AUCTION RELATED ISSUES

ACCORDING TO THE DEBTORS

An auction was held in 75 out of 200 studied cases - 37.5% (See **Chart 49.**).

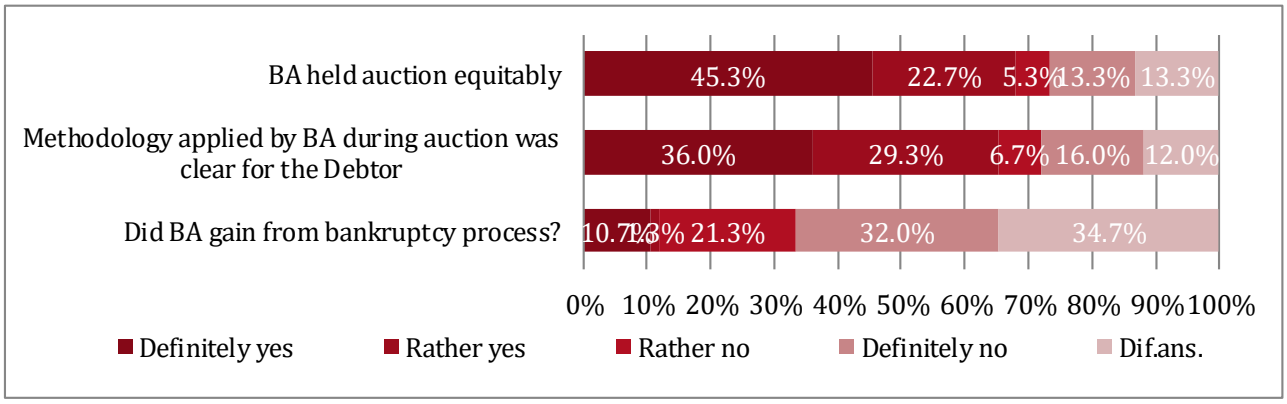
Chart 49. The frequency of holding auctions



Generally, respondents considered that bankruptcy administrators held auctions equitably. 13.3% of respondents considered that public auction was unjust, another 5.3% considered it rather unjust.

The majority of debtors stated that the methodology undertaken by the bankruptcy administrator while holding the auction was clear. However, for 16% it was incomprehensible and for 6.7% - somewhat incomprehensible (See **Chart 50.**)

Chart 50. Assessment of actions of bankruptcy administrator during auction



The majority of respondents considered that bankruptcy administrators gained nothing from the auction. Only 10.7% of respondents stated that bankruptcy administrators definitely gained in the process of auctions, and 1.3% considered that they somewhat gained.

All respondents who considered that the bankruptcy administrator gained from the auction process stated that the gain was in the form of money. No respondent mentioned the answer *"in the form of property"* and *"he did it for someone's sake"*.

ACCORDING TO THE EXPERTS IN THE AREA

The respondents considered it normal that there are the following issues existing in the process of organization and holding auctions:

- hindering activities of the valuator aimed at valuation of the property,
- putting the only dwelling at an auction,
- public availability of the information on organisation of auctions,
- lowering the price of the property put on auction because it has not been sold.

As an example of hindering activities of a valuator aimed at valuation of the property is that the owner does not provide an opportunity to access an apartment for valuation thereof. The Judicial Acts Compulsory Enforcement Service intervenes in such situations, but in such cases, the procedure becomes more complex.

The issue of the only dwelling is the most frequently discussed. Experts had different views whether or not legislation provides an opportunity to sell the only dwelling and what kind of valuation criteria are used.

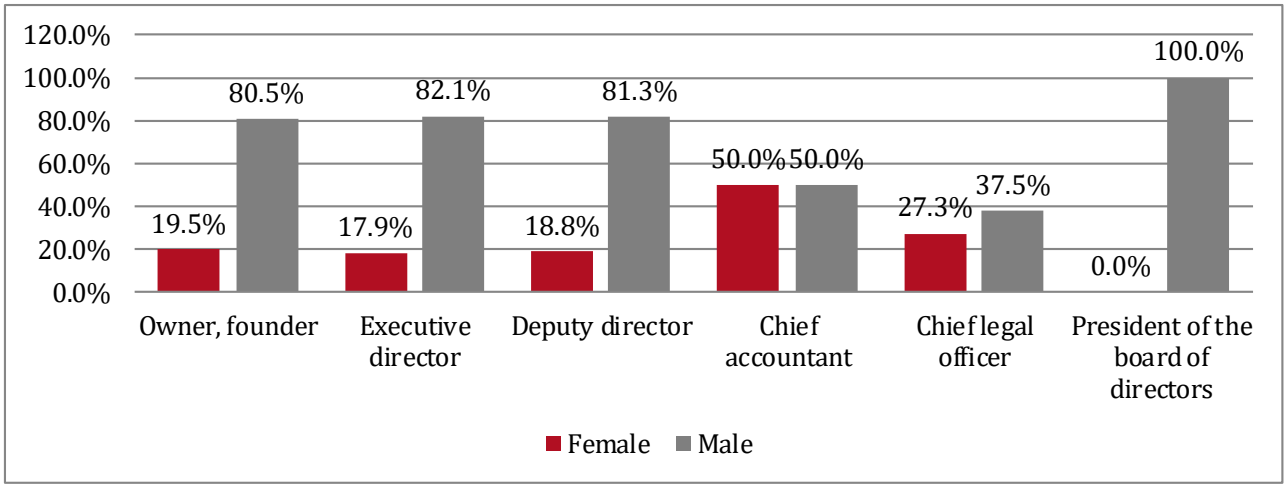
Whether bankruptcy administrators organize auctions via a sufficiently transparent and publicly visible mechanism is controversial among the experts.

Another issue is reduction of the price of the property if no buyers appear. The experts are concerned that no minimum threshold below which prices cannot be set at an auction for the sell of the property.

GENDER PECULIARITIES OF THE BANKRUPTCY PROCESS

There was no woman in a leading position in 70.1% of studied organisations, there was 1 woman in 20.8%, two women in 6.5% and three women in 1.3%. The representation of men is much higher in all leading positions. The number of women and men is equal only in the position of chief accountant (See **Chart 51.**).

Chart 51. Representation of women and men in different positions of studied organizations



In bankruptcy proceedings women used the service of an attorney more frequently (36.2%) than men (26.8%). (See **Chart 52.**). A lower percentage of women (14.9%) was unaware of the existence of overdue liabilities as compared to men (30.1%) (See **Chart 53.**)[5]. The percentage of women who anticipated bankruptcy was higher (40.4%) compared to men (25.5%) (See **Chart 54.**).

Chart 52. Frequency of use of service of an attorney by women and men

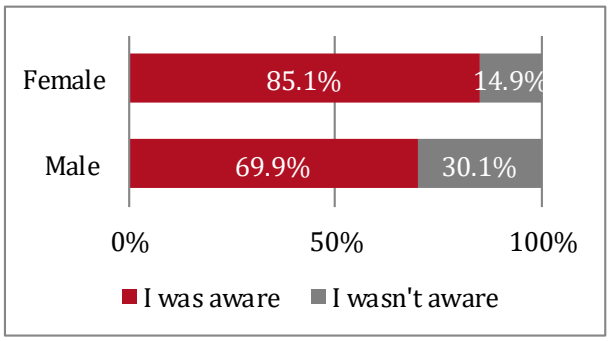
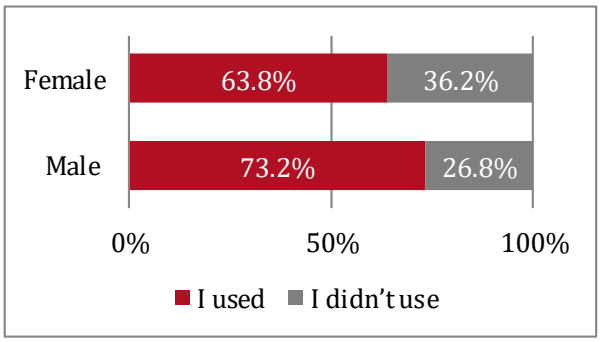
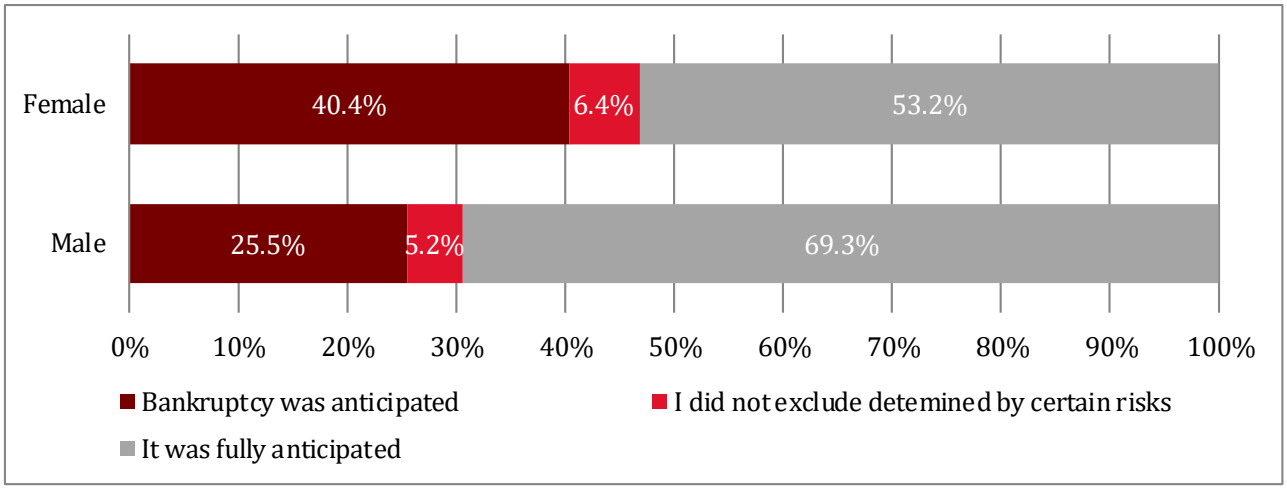


Chart 53. Awareness of women and men of the existence of overdue liabilities



[5] Pearson Chi-Square coefficient of correlation between the variables was 0.821.

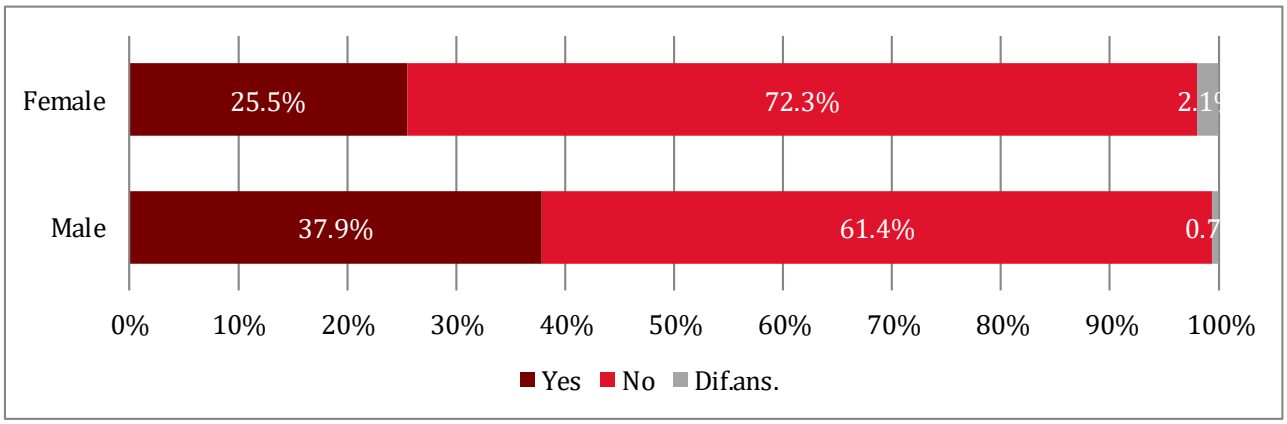
Chart 54. Anticipation of bankruptcy for women and men



A high percentage of women went into bankruptcy based not on a particular liability, but based on personal application (23.4%), compared to men (3.9%[6]).

Women less frequently have tried to come to an agreement with the creditor in the process of approaching bankruptcy or in bankruptcy proceedings or out-of-court procedure (friendly settlement, withdrawal of bankruptcy petition by the creditor, etc.) i.e. women (25.5%) as compared to men (37.9%) (See **Chart 55.**).

Chart 55. Efforts to come to an agreement with the creditor in the bankruptcy process or bankruptcy proceedings or by out-of-court procedure (distribution of answers by the gender of respondents)



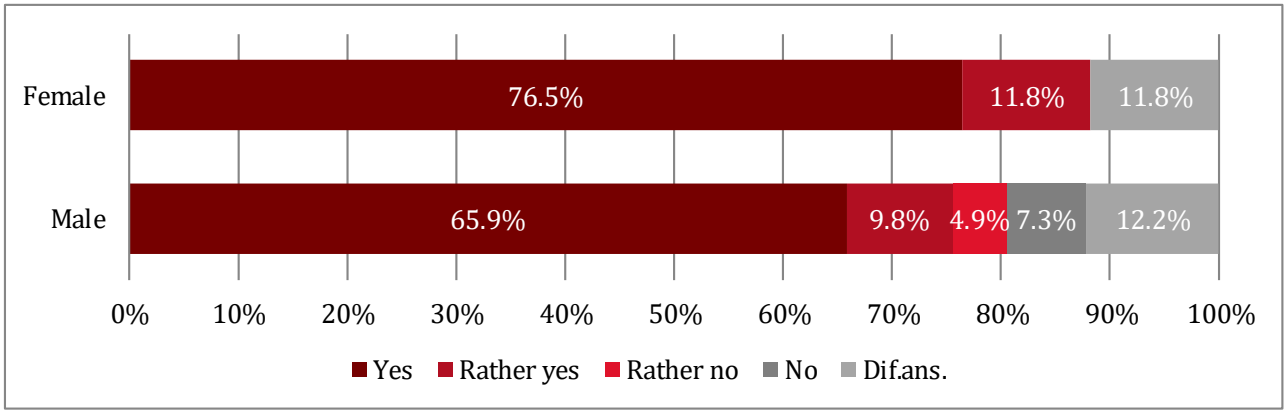
4.7% of men stated that they were suggested regulating an issue in an informal way. No women gave this answer.

Satisfaction level of women with regard to professional skills of bankruptcy administrators and their attitude towards their case is higher (57.4% and 61.7% respectively) than the level of

[6] Pearson Chi-Square coefficient of correlation between the variables was 0.005.

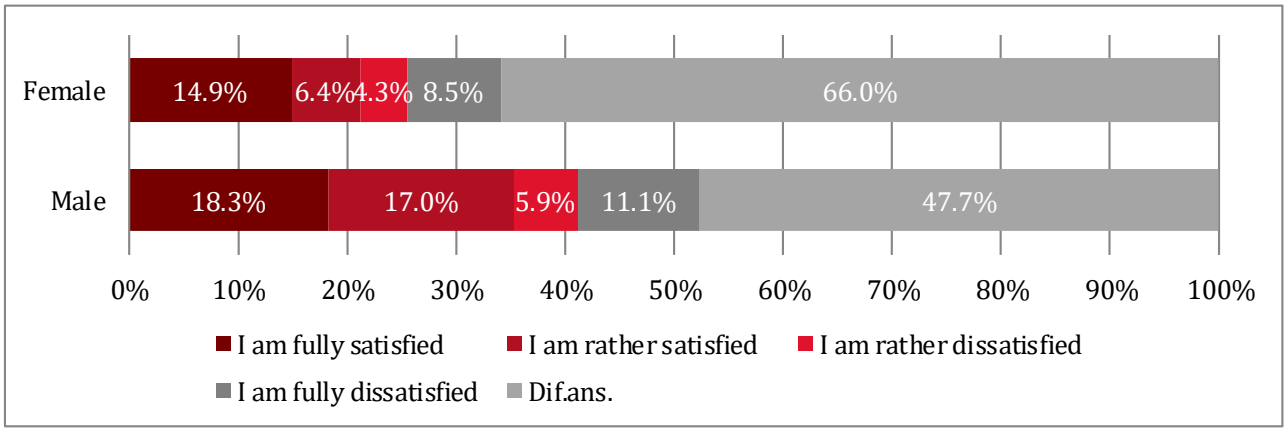
satisfaction of men (39.2% and 35.9% respectively)[7]. Their opinion with regard to professional knowledge of attorneys is also higher. (See **Chart 56.**)[8].

Chart 56. Did the attorney have professional knowledge to present the interests of the debtor in the framework of bankruptcy proceedings?



However, the satisfaction level of men with regard to professional skills of judges is higher than women (See **Chart 57.**)[9].

Chart 57. Satisfaction level of women and men with regard to professional skills of the judge



FRP was submitted by 18 men (11.8% of respondent men) and 2 women (4.3% of respondent women)[10]. 6 out of 7 approved plans were submitted by men and 1 by a woman.

[7] Pearson Chi-Square coefficient of correlation between the variables was 0.577.
[8] Pearson Chi-Square coefficient of correlation between the variables was 0.426.
[9] Pearson Chi-Square coefficient of correlation between the variables was 0.176.
[10] Pearson Chi-Square coefficient of correlation between the variables was 0.176.

LESSONS LEARNED BY DEBTORS FROM THEIR BANKRUPTRY EXPERIENCE

Debtors who had gone through the bankruptcy process tried to analyze the lessons learned and answer how they would have acted if they had known beforehand that after completion of bankruptcy proceedings they were going to face certain negative consequences by law. The answers referred to:

- review of business strategy,
- improvement of laws,
- greater awareness of level of their loans,
- legal awareness and awareness of bankruptcy procedures,
- choice of partners,
- negotiations with creditors.

Table 9. The assessments of debtors on how they would have acted if they had known beforehand that after completion of bankruptcy proceedings they were going to face negative consequences by law

Answers	Percentage
I would have paid more attention to the points of loan contracts, the fulfillment of obligations in a timely manner	**29.6**
I would have not made certain transactions at all, would have been careful	**16.0**
I would have studied legislative regulations	**10.3**
I would have chosen partners more thoroughly	**6.9**
I would have paid more attention to company management	**4.8**
I would not have taken anything in my own name for someone else, would not have taken a loan, would not have given my property as pledge on someone else's behalf	**4.2**
I would have hired a good attorney group or a legal consultant	**3.6**
I would have studied the particular business area, would have observe my competitors	**3.0**
I would have paid more attention to the staff recruitment and training	**2.4**
I would have negotiated with each creditor separately on fulfillment of liabilities as much as possible	**1.5**
I would not have started a business in Armenia	**1.2**
I would have hired a good accountant, financial expert	**.6**
I would have made useful acquaintances	**.6**
I would have suggested reviewing the auction process	**.6**
I would have performed internal audit in the organization periodically	**.3**
I would have suggested making changes in the law so it would not contradict the civil law	**.3**

I would turn the producers' cooperative into LLC	**.3**
If I had known the political situation would change in the country, I would have waited till May 2018	**.3**
I would have applied for bankruptcy earlier	**.3**
In any case, I would not have initiated anything	**8.5**
Had a difficulty in answering	**4.2**
Total answers	**100.0**

The answer "*I would have paid more attention to the points of loan contracts, the fulfillment of obligations in a timely manner*" was most frequently heard (20.2%). The second most frequent was *"I would have not made certain transactions at all, would have been circumspect"* (16%). The third answer was "*I would have studied legislative regulations"* (10.3%). Only 8.5% of respondents stated thatthey would not have initiated anything (See **Table 9.**).

CASE STUDIES

DOCUMENTARY ANALYSIS OF SEVERAL CLOSED BANKRUPTCY CASES

Number 1

Articles of all laws (in force at the time of the relevant legal relation)

The bankruptcy case is conventional. The peculiarity of this case is that the individual by resorting to voluntary bankruptcy tries to avoid the fulfillment of liabilities undertaken. These cases are typical for individuals rendering services in the sphere of regular passenger transportation.

Reasons of bankruptcy proceedings

It is not possible to draw a conclusion on economic reasons for bankruptcy proceedings because of minimal relevant documents. As for "procedural" reasons for being declared bankrupt, it should be noted that the person has not been declared bankrupt.

Although the application on being declared bankrupt formally complied with requirements of law, the documents attached to the given application were not sufficient to provide a conclusive ground for declaring the debtor a bankrupt.

Thus:

1) as proof on existence of an overdue liability and the amount the applicant-debtor has submitted statements issued by the bank;

2) as confirmation of an overdue liability the applicant-debtor has submitted a receipt for the borrowing. The applicant-debtor has failed to present information on whether the creditor has demanded the borrowed sum. The materials of the case lack also the initial claim by bailor or any justification for failing to fulfill this liability;

3) applicant-debtor has failed to submit the loan contract concluded with the bank.

Pursuant to information presented by the applicant-debtor only the bank from the creditors has provided information on the debtor's liability, and no information has been provided by the bailor.

Procedural issues

The court accepted the bankruptcy application for proceedings on 25 September 2017. Pursuant to sub-point "b" of part 2.1 of Article 13 of the Law "On bankruptcy", *"If provided for by part 2 of this Article the court shall appoint a candidate nominated by Self-Regulatory Organization of Administrators in the manner prescribed by Article 22 of this Law as a temporary bankruptcy*

administrator – if the case is initiated under the voluntary bankruptcy application. Moreover, the court shall submit request on nominating temporary administrator candidacy to Self-Regulatory Organization of Administrators within one working day after adopting decision on acceptance of application for proceedings."

The time when the court sent the request to Self-Regulatory Organization of Bankruptcy Administrators after acceptance of the bankruptcy application for proceedings was not clear from the materials (no postal approval on sending the request to the organization).

On 12 October 2017 the bankruptcy administrator was selected on the basis of results of drawing of lots and on the same day the organization notified the court. All participants in bankruptcy proceedings were notified on time and the place of the court sitting. Creditors did not attend the sitting.

The bankruptcy proceedings started on 25 September 2017 and terminated on 17 November 2017.

Potential corruption risks

No corruption risks have been detected taking into account that the applicant-debtor has not been declared bankrupt.

Financial recovery plan:

The issue of an FRP of an applicant-debtor was not discussed; therefore an FRP has not been submitted.

Assessment of actions of the judge with regard to objectivity & impartiality:

Although the debtor has not been declared bankrupt during the bankruptcy proceedings, the court has failed to undertake measures for fulfillment of obligations of the administrator (the bankruptcy administrator carries out activities under the court's supervision).

Assessment of the bankruptcy administrator's actions:

Pursuant to point "b" of part 2 of Article 21 of the Law "On bankruptcy", *"The temporary bankruptcy administrator shall exercise the powers provided for by points "e", "f" and "k1" of part 1 of Article 29 of this Law until the entry into legal force of the judgment on declaring the debtor bankrupt".*

Points "e", "f" and "k1" of Article 29 prescribe:

"The appointed bankruptcy administrator shall:

e) arrange the inventory of, and take measures for ensuring the maintenance of property of the debtor;

f) analyse the financial condition of the debtor, reasons of bankruptcy, as well as financial, economic and investment activities of the debtor and the position thereof in the commodity market;

k1) apply for the registration of restrictions applied with regard to the movable

property in the manner prescribed by law."

Materials lacked information on maintenance, inventory of the debtor's property by the bankruptcy administrator, analyses of the debtor's financial condition, reasons for bankruptcy, as well as financial, economic and investment activities, information on applying restriction with regard to movable property, taking into account that the debtor owned a car.

Peculiarities of application of the Law "On bankruptcy" to which to pay attention: See above.

Other peculiarities in the case

No other peculiarities are available.

Points to be paid attention to:

- only one bankruptcy administrator has participated in drawing of lots conducted in SRO of Bankruptcy Administrators;
- the bankruptcy administrator has not studied the loan contract concluded with the individual;
- creditors with secured rights, generally, do not participate in the court sitting convened for discussion of the bankruptcy issue.

Number 2

Articles of all laws (in force at the time of relevant legal relation)

Bankruptcy case is not conventional. Legal entity has filed an application on bankruptcy threat to the court. Together with the application, the legal entity has submitted a financial recovery plan. According to the plan, the legal entity, has applied to another trade bank to be refinanced.

Reasons for bankruptcy threat proceedings

It is not possible to establish the economic reasons for the bankruptcy threat because of lack of relevant documents. The court accepted the bankruptcy threat application. The applicant-debtor has submitted the loan contracts concluded with the bank, stated the amount of overdue liabilities and the consent of the new bank to refinance the debt to the court. The creditor bank submitted to the court the ground stating that there are overdue liabilities by the debtor.

Procedural issues

On 10 November 2016 the court of general jurisdiction of Kentron and Nork Marash administrative districts of Yerevan accepted the bankruptcy application for proceedings. On 21 November 2016 the court of general jurisdiction of Kentron and Nork Marash administrative districts of Yerevan satisfied the application of a bankruptcy threat and a bankruptcy

administrator was appointed. On 25 September 2018 the court of general jurisdiction of Kentron and Nork Marash administrative districts of Yerevan issued a judgment to close proceedings on the bankruptcy threat.

Potential corruption risks

No corruption risks have been detected, as the applicant-debtor has not been declared bankrupt.

Financial recovery plan

A financial recovery plan has been submitted and it was approved by the court. The mandatory conditions of the financial recovery plan are prescribed by Article 61 of the Law "On Bankruptcy". In the context of this article, the financial recovery plan does not include the following provisions:

a) *the redemption schedule of liabilities with respect to secured, unsecured and other creditors, the order of payment execution against their claims, including the order of satisfaction of claims with immovable property belonging to the debtor and other property subject to state registration;*

b) *the order of discharging the debtor from obligations, of postponing or restructuring obligations and the amounts thereof;*

c) *aimed at restoring the debtor's financial solvency, contents of measures prescribed by Article 59 of this Law and the procedure and time limits for implementation thereof; grounds for increase of opportunities for creditors' claims satisfaction while continuing the debtor's activities in the result of implementation thereof, and in case of sale of the property belonging to the debtor – property assets on sale.*

Assessment of actions of judge for the case, with regard to objectivity, impartiality

The court has failed to undertake measures for fulfillment of obligations of the administrator.

Assessment of bankruptcy administrator's actions

Legal regulations on bankruptcy threat have been established by making amendments and supplements to the Law "On Bankruptcy" by Law HO-105-N. The grounds for the bankruptcy threat were the guidelines established by the United Nations Commission on International Trade, as well as the experience of European countries, such as France, Austria, etc.

The main aim of bankruptcy threat is to prevent the process of declaring an individual or legal entity bankrupt. In compliance with part 1 of Article 15.1 of the Law "On Bankruptcy" *"The Court shall carry out investigation on bankruptcy threat application filed by the debtor in*

compliance with the rules of bankruptcy proceedings stipulated by this Law preserving the specific rules prescribed by the provisions of this Chapter.".

In compliance with point 2 of part 1 of Article 15.4 of the Law "*The Court, after entering into legal force of the judgment on satisfaction of the debtor's bankruptcy threat application and approval of financial recovery plan:*

(2) shall oblige the administrator, not later than within five days after the moment of entering into force of judgment on satisfying the bankruptcy threat application, to publish information on satisfaction of the debtor's bankruptcy threat application in the official internet website of public notices of the Republic of Armenia – on debtor's account, and to post it in the special place allocated for it in the court building."

(In summary, the rules referring to bankruptcy proceedings are applicable for the bankruptcy threat proceedings, unless other rules are stipulated by Chapter 2.1).

The judgment of 21 November 2016 has entered into legal force immediately on publication. Looking at the internet website of public notices, no information was available concerning the debtor.

In compliance with point (1) of part 1 of Article 15.7 of the Law *apart from the terms and provisions stipulated by this Law, financial recovery plan of the debtor presented in the bankruptcy threat proceedings, should also include administrator's competences*. This provision has also been recorded in the judgment of the Court; however, the competences are not clarified either in the court judgment or in the agreement with the bank.

Taking into account that the norms and rules prescribed for the bankruptcy proceedings also refer to bankruptcy threat proceedings in compliance with the Law, the bankruptcy administrator must analyse the financial condition of the debtor, bankruptcy reasons, as well as financial, economic and investment activities of the debtor and the position thereof at the commodity market. The administrator has not fulfilled this obligation.

Peculiarities of application of the Law "On bankruptcy" which shall be paid attention to: refer sub-titles above.

Other peculiarities in the case

No other peculiarities are available.

Points to be paid attention to:

- An application on bankruptcy threat has been filed to the court by the debtor for refinancing financial obligations; this action could be conducted without applying to the court.
- The official letter of the refinancing organization was viewed as a financial recovery plan.
- The bankruptcy administrator has not made analysis of the financial state.He has submitted the letter of the bank as a financial recovery plan.

Number 3

Articles of all laws (in force at the time of relevant legal relation)

The bankruptcy case is definitely a typical one. It may be described as an "empty" bankruptcy case often encountered in practice. Namely, no property of the debtor was detected, as a result whereof the claims of creditors were satisfied. On the other hand, the debtor was declared bankrupt with a simplified procedure as an "absent" debtor (this procedure is stipulated by Article 103 of the RA Law "On bankruptcy"). The debtor did not receive any notification, and did not participate in the proceedings in any way. Similar cases are also often encountered in practice.

Reasons for bankruptcy proceedings

It is impossible to make conclusions on the economic reasons of bankruptcy proceedings because of the absence of relevant documents. As for the "procedural" reasons of being declared bankrupt, it may be affirmed that the debtor was declared bankrupt:

1. because the debtor had not been informed and was not initially involved in the case

2. another court specific reason was the negligence of the judge

The creditor did not properly substantiate the existence, basis and amount of the default liability. Although the bankruptcy application formally complied with the requirements of the law, the documents attached to that application were not adequate for declaring the debtor bankrupt. Thus:

(1) as evidence of the existence of the default liability and its amount, the applicant-creditor submitted a self-made accounting statement that is not sufficient ground for declaring the debtor bankrupt;

(2) as evidence of existence of default liability and its amount, the applicant-creditor submitted documents and letters not related to the debtor (but, rather to third parties (whose links with the debtor are not evident from the materials of the case));

(3) as evidence of the existence of default liability and its amount, the applicant-creditor submitted documents, which, do not clearly evidence the amount of the default debt (the balance of the debt not paid);

(4) a significant document was submitted in English, without an Armenian translation;

(5) as grounds for the default liability arising, the applicant-creditor tried to prove the fact of concluding the contract by other written documents (as there was no written loan contract between the parties). Pursuant to part 1 of Article 880 of the Civil Code, this poste restante (a mail service by which letters and packages that are sent to you are kept at a particular post office until you collect them) loan is considered in default 30 days after the lodging of the claim on return of the loan amount by the lender. In this case, although the applicant-creditor lodged the advance claim on return of the loan amount sent to the debtor, **no evidence that the debtor had**

received this advance claim was lodged to the court. Thus, there were not sufficient factual grounds that could show unequivocally the default of the debtor.

The court did not properly verify the existence of grounds for declaring the debtor bankrupt. This is possibly due to the fact that the debtor did not appear and has never disputed its bankruptcy. The court demonstrated a formal approach by declaring the debtor bankrupt and only confirming in the decision that "there was a liability based on the written transaction that was not properly extinguished." The court did not conduct its own examination and did not attempt to determine whether there was sufficient evidence, etc.

This is a common practice i.e. the courts, in the absence of the objection of the debtor, do not thoroughly examine evidence for the application and presume authenticity of the information given by the applicant-creditor.

Thus, if the debtor appeared and objected to the application of declaration of bankruptcy, and if the judge examined carefully the grounds for the submitted application, the debtor would not be declared bankrupt. The creditor waited a long time from the default of the debtor, prior to applying to the court with a bankruptcy claim (two years). The applicant (creditor) tried to inform the debtor in advance of his debt by sending an advance claim.

Article 11 of the RA Law "On bankruptcy" states that documents attached to the application shall be submitted as originals or as properly certified copies. The impossibility to submit the documents as required must be substantiated by the applicant.

In this case, the applicant-creditor provided most documents as simple copies.This fact was considered by the court.

Procedural issues

The debtor did not receive any notification (including, the decision of the court on accepting the application for proceedings). The court, reply on Article 103 of the RA Law "On Bankruptcy", announced the search of property, documents and director of the debtor legal entity. The bankruptcy proceedings were suspended based on point 2 of part 1 of Article 106 of the RA Civil Procedure Code (the defendant is under search).

An enforcement proceeding was instituted on the basis of the enforcement paper issued by the court. However, from the enforcement activities, it was impossible to see clearly the property and documents of the debtor legal entity, or the director of the legal entity. After completion of enforcement proceedings, bankruptcy proceedings resumed the motion of the bankruptcy administrator and the court decision.

After resuming the bankruptcy proceedings, the court tried to inform the debtor again (as prescribed by part 2 of Article 103 of the RA Law “On bankruptcy”). The debtor did not receive this notification. Thus, the court declared the debtor bankrupt as prescribed by part 3 of Article 103 of the RA Law “On bankruptcy” as an “absent debtor”.

In the bankruptcy proceedings, the applicant-creditor and the SRC lodged claims against the debtor. Both creditors were in the preliminary and final lists of claims.

The first meeting of creditors was called and held in in the manner prescribed by law. No stakeholder submitted a FRP for the debtor. The bankruptcy administrator lodged a motion to the court to adopt a decision to initiate the liquidation proceeding of the debtor legal entity (part 1 of Article 70 of the RA Law "On bankruptcy").

The court accepted the motion of the administrator and adopted a decision to initiate the liquidation proceedings of the debtor. The announcement on the initiation of the liquidation proceeding of the debtor was published in the manner prescribed by law.

By another decision the court, suspended all rights of the debtor to administer and dispose of the property (part 1 of Article 72 of the RA Law "On bankruptcy").

Later, the bankruptcy administrator of the debtor lodged a motion to the court to close the bankruptcy case submitting to the court the final report (Article 87 of the RA Law "On bankruptcy"). The creditors supported ending the bankruptcy case, as before the bankruptcy administrator lodged the relevant motion, the issue of closing the bankruptcy case had been examined and approved by the Meeting of Creditors.

The court closed the bankruptcy case on the basis of point (a) of part 1 of Article 105 of the RA Law "On bankruptcy" (At any stage of the bankruptcy proceeding the judge ... shall render a judgment on closure of the bankruptcy case, where… the debtor has no property). Based on the judgment of the court the debtor was liquidated.

Broadly, the bankruptcy proceeding was initiated in December 2013 and closed in March 2016. As a result of the bankruptcy proceeding, no claim of any registered creditor was satisfied.

Potential Corruption Risks

The applicant-creditor did not have continuous cooperation with the temporary administrator elected by him. A number of other bankruptcy proceedings were instituted by this creditor, and others were appointed as temporary administrators of bankruptcy.

The applicant-creditor itself was previously a company declared bankrupt. The bankruptcy administrator of the applicant-creditor submitted an application in its name to declare the debtor bankrupt.

The court sent a claim to the SRO of bankruptcy administrators suggesting submitting the candidacy of bankruptcy administrator of the debtor. **Based on the claim sent by the court, a ballot took place at the SRO, with only one participating administrator. It was the person who was appointed as a temporary bankruptcy administrator upon the applicant's offer and the court's decision. Naturally, person won the "won" as its only participant) and was appointed as a bankruptcy administrator on the basis of the ballot. Moreover, that person signed a protocol of the results of the ballot as the chairperson of the commission (the commission consisted of three members).**

This mechanism is wide-spread in practice i.e. only the person, **who is the debtor's temporary administrator in the bankruptcy case**, participates in the "ballot" of appointment of the bankruptcy administrator, and wins

Financial recovery plan

The financial recovery issue of the debtor was not discussed. Therefore, no financial recovery plan was submitted.

Assessment of actions of the judge in view of objectivity, impartiality

The court did not properly discuss the issue of the existence of grounds for declaring the debtor bankrupt. The obligation underlying the declaration of the bankruptcy of the debtor is disputable, but this did not restrict the court from declaring the debtor bankrupt.

However, this reflects negligence and lack of motivation to study in detail the fact. Effectively, the position of the judges: **"If the debtor is not interested in his/her bankruptcy issue, why should the judge bother (instead of the debtor) to create problems for the creditor?"**

It is difficult to assess the objectivity of the judge on other matters as there were no questionable situations, the debtor did not show any commitment, the creditors did not "fight" against each another or the bankruptcy administrator. The bankruptcy case was conducted in a mutually agreed manner (except for the debtor, who was not found).

Assessment of actions of the bankruptcy administrator

The bankruptcy administrator did not undertake the collection of the debtor's assets/accounts receivable (including the institution of requests prescribed by Article 54 of the RA Law "On bankruptcy") as it was not possible to obtain the accounting or other documents of the debtor.

Without documents, the administrator could not know accounts receivable of the debtor or other assets subject to collection. Based on information received from the bodies prescribed by the RA Law "On bankruptcy", the debtor did not have any property, and during the last five years the debtor did not alienate real estate.

The bankruptcy administrator tried to make an inventory of the property of the debtor, but no property subject to inventory was found at the legal address of the debtor company.

As no property of the debtor was found, it was impossible for the bankruptcy administrator to conduct an assessment of the property.

The analysis of the debtor's financial situation was made within the deadline established by law. The bankruptcy administrator, however, showed a formal approach in relation to this document. Thus:

(1) Regarding reasons for bankruptcy and the existence of false or intentional bankruptcy features, the administrator simply mentioned that "no fraudulent or intentional bankruptcy features were detected".

(2) Regarding the sufficiency of debtor's assets to compensate of court expenses and for the remuneration of the administrator, the document does not contain any reference.
(3) Regarding the possibility of restoring the debtor's solvency, the document does not contain any reference.
(4) Regarding the possibility of collecting accounts receivable of the debtor, the administrator mentioned that there was no such possibility as the documents of the debtor were missing.
(5) The administrator did not make any conclusions regarding voidable transactions concluded by the debtor, referring again to the absence of documents from the debtor company.
The bankruptcy administrator at the end of his/her financial analysis noted that it may not be considered a reliable analysis because of the lack of documents from the debtor company.
The bankruptcy administrator could not make a complete and reliable financial analysis objectively, as the financial and other documents of the debtor company were missing. But the bankruptcy administrator could lodge a motion to the court to extend the deadline for submitting the financial analysis. The bankruptcy administrator did not lodge such a motion, and the analysis was purely formal. **This implies the bankruptcy administrator believed the financial, accounting and other documents of the debtor company would never be found. If the administrator did not have such conviction, he/she would try to wait for at least some time for finding the documents, periodically extending the deadline for submission of the financial analysis.**

Peculiarities of application of the Law of the Republic of Armenia "On bankruptcy" which shall be paid attention to: as above. There is no additional essential circumstance.

Other peculiarities available in the case
As mentioned, the debtor company was not notified about the bankruptcy proceeding. Although not obligatory the court could have sent notifications also to addresses of shareholders of the debtor company and the director (addresses were available).
The court was not particularly interested in finding the debtor.
The debtor company had a legal address where it was not actually situated there. The bankruptcy administrator could find out who the owner of the legal address of the debtor company was and whether this had any information concerning the debtor company.
If finding any "trace" of the debtor company, its financial and accounting documents might have been found too.
The bankruptcy proceedings were passive. Everything was done with mutual consent of all stakeholders). The administrator apparently concluded that he was dealing with an "empty" company and lost his interest. **However, the legal address of the applicant-creditor company is very close to the legal address of the debtor company. Without disclosing the specific addresses, the address of the applicant-creditor company was: Yerevan city, X street, number Y, and the**

address of the debtor company was: Yerevan city, X street, number Y/1. Possibly two companies were in some way related.

When the applicant-creditor filed a bankruptcy claim against the debtor, he was bankrupt and had a bankruptcy administrator (who worked at a different address), but possibly the bankruptcy proceedings were mutually agreed, and this explained the non-appearance of the debtor company as well as the passivity of the other participants.

Points to be paid attention to:

- **the grounds for declaring the debtor bankrupt were questionable, and the court did not properly check and discuss the existence of such grounds,**
- **as a result of the bankruptcy proceedings, claims of creditors were not satisfied;**
- **only one bankruptcy administrator participated in the ballot conducted in the SRO of bankruptcy administrators;**
- **as it was not possible to find accounting and other documents of the debtor, the bankruptcy administrator did not carry out (did not carry out properly) a number of actions prescribed by law;**
- **the court (although it was not obliged to)could take additional steps to find and inform the debtor.**

Number 4

Articles of all laws (in force at the time of relevant legal relation)

The bankruptcy case is unequivocally standard. It may be characterized as a case common in practice when the debtor actually gets recovered without submission and approval of the financial recovery plan. On the other side, the case concerned is a common example of the situation when all the interested parties (the Court, creditors, debtor, bankruptcy administrator) closely cooperate and bring the bankruptcy case to a "positive" ending favourable for all of the parties, by breaking some norms of the Law of the Republic of Armenia "On bankruptcy" in a "silent and mutually agreed" manner.

Reasons of bankruptcy proceedings

The unexpected financial difficulties (which were indicated namely by the debtor) having arisen with the debtor-legal entity were the economic reasons of bankruptcy proceedings.

There are no "procedural" reasons of the bankruptcy proceedings or those related to the legal procedure. The grounds for declaring the debtor bankrupt knowingly existed. Moreover, though the debtor partially objected the extent of the liability serving the basis to declare him/her

bankrupt, even under that objection, the part of the liability free from objection was fairly enough to declare the debtor bankrupt.

It needs to be mentioned that the petitioner-creditor has been in the expectation period for about five months from the moment of the default of the debtor. But the further course of the bankruptcy case shows that the petitioner-creditor most probably has not attempted to come to agreement with the debtor before filing the petition. The course of the bankruptcy case indicates that if negotiations were held in advance, no necessity to commence the bankruptcy proceedings would appear.

Procedural issues

- The petition on declaring the debtor bankrupt was filed in April 2017. On the same day the petition on declaring the debtor bankrupt was seized with proceedings by the court. The petitioner-creditor has not nominated any candidacy for the temporary bankruptcy administrator. The court has applied (as prescribed by law) to the SRO of the Bankruptcy Administrators, with a request to propose a candidacy for the temporary bankruptcy administrator. 25 bankruptcy administrators participated in the lot drawing held in the SRO of the Bankruptcy Administrators. Following the lot drawing held, the SRO of the Bankruptcy Administrators proposed a candidacy for the temporary bankruptcy administrator to the court, which has further been approved by the court decision.
- The debtor received the decision on seizure of the petition on bankruptcy with the proceedings and delivered a formal objection wherein stated that for the moment he/she had financial problems and negotiations with the creditor were in process. The objection also stated that supplementary justifications on non-declaration of the debtor bankrupt are attached to the objection, but such justifications were lacking in the case.
- The court failed to consider the objections delivered, by indicating in the judgment on declaring the debtor bankrupt that "no objections were delivered by the debtor within the time limit prescribed by law". The debtor was declared bankrupt in May 2017. Under the decision rendered in May 2017, the court appointed the first meeting of creditors (July 2017) and as prescribed by the Law of the Republic of Armenia "On bankruptcy", appointed the temporary administrator as the debtor's bankruptcy administrator, based on the fact that the interested parties did not object the candidacy thereof and did not nominate any other candidacies. The bankruptcy administrator posted the announcement on declaring the debtor bankrupt, appointing a bankruptcy administrator and the first meeting of creditors at www.azdarar.am website.

- The debtor appealed against the judgment on declaring him/her bankrupt, but shortly after withdrew the appeal petition filed thereby. Based on the debtor's application on withdrawal of the appeal petition, the Court of Appeal has returned the appeal petition of the debtor.
- The court has sent relevant notifications and inquiries with the view to receive information concerning the property of the debtor declared bankrupt, to the state bodies prescribed by the Law of the Republic of Armenia "On bankruptcy". Pursuant to the information received, several units of immovable property and several transport means belonged to the debtor declared bankrupt on the right of ownership.
- In June 2017, the debtor's shareholder settled the creditor's claim at his account, paid off the judicial expenses and the remuneration of the bankruptcy administrator. Based on the above-mentioned, the debtor's shareholder requested for closure of the bankruptcy case. During the same month, the bankruptcy administrator filed a motion to complete the examination of the bankruptcy case. Three days after the administrator had filed the motion, the court delivered a judgment on closure of the bankruptcy case.
- The bankruptcy case was closed on the basis prescribed by part 1 of Article 89 of the Law of the Republic of Armenia "On bankruptcy" (the case may be closed at any stage of the bankruptcy case where the claims of creditors are granted, including by way of transferring — on a free-of-charge basis —monetary funds to the bankruptcy special account for complying with the liabilities of the debtor by the shareholders). Under the court judgment, the debtor has been considered financially recovered. Thus, the bankruptcy proceedings commenced at the beginning of April 2017 and finished at the end of June of the same year. The whole bankruptcy proceedings lasted approximately three months.

Potential corruption risks

- Examination showed that the whole bankruptcy proceedings, starting from a certain moment, took its course in a completely agreed manner. All the interested entities acted in an agreed manner.
- Also, some suspicious details were found in the case materials. **For instance, at the end of May 2017 (when the debtor had already been declared bankrupt), the debtor submitted an application with the request not to consider the objections thereof against the decision on declaring him/her bankrupt**. Whereas, there was no necessity for such an application, because those objections had not been anyway delivered within the time limit prescribed by law and had not been considered by the court. Probably, this has been done under the guidance by the court, with the view to "clear" the proceedings and to avoid further problems. **Moreover, on the same day the debtor submitted another application with the Court on delay of the court hearing and consideration of the issue on declaring him/her bankrupt**. The aim of such an application is at least unclear, because as already stated, the debtor had been declared bankrupt for the given moment (the issue on declaring the debtor bankrupt had already been considered and settled).

Another detail proving the mutually agreed acting of the debtor and the creditor: in June 2017, the debtor's shareholder partially objected the extent of the creditor's liability, and expressed willingness to discharge the undisputed part of the liability at own expenses. On the same day the creditor submitted an application with the court, whereby correspondingly lowered the extent of the claim. On the same day again, the debtor's shareholder submitted another application reporting that he/she had fully discharged the debtor's liability at own account, paid off the judicial expenses and the remuneration of the administrator. Based on it, the debtor's shareholder requested to close the bankruptcy case.

- **Three days later the debtor's bankruptcy administrator submitted an interim distribution plan.** On the following day both the debtor and the creditor informed that they did not object the interim distribution plan. Both of them requested to close the bankruptcy case. Afterwards, on the same day the debtor's bankruptcy administrator submitted the final report envisaged by the Law of the Republic of Armenia "On bankruptcy" and requested to complete the case proceedings. As already stated, three days later the court delivered a judgment on closure of the bankruptcy case.
- **Meanwhile, all the documents on the legal proceedings submitted by the debtor and the creditor fairly resemble each other. They are written using the same font type, font size, the same pattern and style. It is obvious that they were compiled by the same person. Moreover, both the debtor and the creditor have always indicated wrongly the date declaring the debtor bankrupt in the documents on the legal proceedings submitted thereby. The existence of the mutually agreed actions of the interested entities derives both from the above-mentioned and the fact that both the court and the bankruptcy administrator responded the applications of the debtor and the creditor in an expeditious manner. Such an expeditious consideration is not usually typical of the bankruptcy cases. It is obvious that all the parties pursued the aim to quit the case quickly.**
- **Moreover, after the closure of the bankruptcy proceedings (in July 2017) the State Revenue Committee filed a claim against the debtor declared bankrupt. It is obvious that such an application could not have any legal consequences within the bankruptcy case concerned (because the case was closed). However, a week later the bankruptcy administrator furnished the Court with proofs evidencing that the tax liabilities of the debtor had been discharged. We may suppose that the judge has informed the debtor on the application and "urged" to settle the tax liabilities in order to "clean" the proceedings and avoid further problems.**

Financial recovery plan

- No issue on the financial recovery of the debtor for the bankruptcy case concerned was discussed, and consequently, no financial recovery plan was submitted. Nevertheless, the debtor actually got recovered without the financial recovery plan.

- We may suppose that the debtor's shareholder, considering the way of the financial recovery as very complicated, preferred to discharge the debtor's debt at own expense, due to which the debtor got financially recovered and continued its activities.

Assessment of actions of a judge for the case, with regard to objectivity, impartiality

- For the examined bankruptcy case, a number of legal norms were violated, which are further highlighted. However, apart from the above-mentioned issue of "the mutual agreement", there are no other circumstances questioning the objectivity and impartiality of the judge.

Assessment of the bankruptcy administrator's actions

- The remuneration of the bankruptcy administrator has been calculated in compliance with the requirements of law.
- The bankruptcy proceedings lasted quite short. Within such a short period of time, the bankruptcy administrator could not objectively launch the collection of the debtor's assets and the process of instituting relevant claims on the behalf thereof. As the debtor's debt was discharged within a short period of time, the administrator did not find any necessity to start such a process.
- Within the time limit prescribed by law, the bankruptcy administrator failed to make the inventory of the property belonging to the debtor. It needs to mention that at the moment of the expiry of the time limit prescribed by law, it could be explicit for the administrator that there was no necessity for it. For the same logics, the bankruptcy administrator also failed to perform the valuation of the property belonging to the debtor.
- Within the time limit prescribed by law, the bankruptcy administrator failed to make the analysis on the financial condition of the debtor. It needs to mention that at the moment of the expiry of the time limit prescribed by law, it could be explicit for the administrator that there was no necessity for it.
- Prior to holding the first meeting of creditors, appointed by the court, the bankruptcy case proceedings were already completed, therefore the administrator did not take any actions in relation to convening the creditors' meeting.
- The bankruptcy administrator did not compile the preliminary list of the claims against the debtor (this issue is further referred to in details).
- As indicated, the debtor's shareholder discharged the debtor's debt. The payment made by the debtor's shareholder was "distributed" under the interim distribution plan by the bankruptcy administrator. While Articles 70 and 80 of the Law of the Republic of Armenia "On bankruptcy" imply that the interim distribution plan shall be drawn up where the court renders a decision on launching liquidation proceedings against the debtor, and the property thereof is sold based thereon (which did not occur in the given case). However, it needs to mention that

the bankruptcy administrator acted this way due to the gap in law (the Law of the Republic of Armenia "On bankruptcy" does not clearly stipulate under what other mechanism the received funds must be distributed in the situation for the given case).

- It is also important that the final report submitted by the administrator, though not having actually caused any problems or violated the rights of any person, knowingly and formally failed to comply with the requirements of the Law of the Republic of Armenia "On bankruptcy".

Peculiarities of application of the Law of the Republic of Armenia "On bankruptcy" which shall be paid attention to

The petition on declaring the debtor bankrupt failed to comply (under the formal criteria) with the requirements of the Civil Procedure Code of the Republic of Armenia (whereas pursuant to the Law of the Republic of Armenia "On bankruptcy", it should have complied with the requirements of the Civil Procedure Code of the Republic of Armenia). But the Court disregarded the formal omissions in the petition, seized it with proceedings and granted it.

Moreover, the edition of the Law of the Republic of Armenia "On bankruptcy" in force at the time of accrual of the given legal relation stipulated (and currently does) two alternative options for the case where the debtor does not object, within the time limit prescribed by law, the petition on declaring him/her bankrupt.

Part 2 of Article 16 of the Law stipulates that within 15 days after seizing the petition on the forced bankruptcy with proceedings, the judge shall hold a court hearing whereto the debtor and the creditors indicated in the petition are invited.

Moreover, the application of this legal norm does not anyhow depend on the fact whether or not the debtor disputes the bankruptcy thereof.

Article 17 of the Law stipulates that where within 15 days following the receipt of the Court decision, the debtor fails to dispute in writing the bankruptcy thereof, on the 16th day the judge shall — without holding a court hearing — deliver a judgment on declaring the debtor bankrupt where the debtor is insolvent or the grounds envisaged by point 2 of part 2 of Article 3 of the Law exist. Simultaneously, the same article stipulates that where the debtor disputes in writing the bankruptcy thereof, a court hearing shall be convened.

Thus, the Law of the Republic of Armenia "On bankruptcy" stipulates two regulations contradicting each other. The first regulation stipulates that in case of seizing the petition on the forced bankruptcy with proceedings, the Court should appoint a court hearing (without underlining the fact whether or not any objections have been delivered by the debtor). The second regulation stipulates that where the debtor does not deliver any objection within the time limit prescribed by law, the Court shall settle the issue on declaring the debtor bankrupt without

convening a court hearing. The court hearing shall be convened where the debtor objects the petition. In this particular case, the judge acted in accordance with the second regulation.

Other peculiarities in the case

- In fact, there were two claims against the debtor for this particular case. The first one was the claim of the petitioner-creditor who did not file any claim against the debtor as prescribed by law after the debtor had been declared bankrupt (though the Law of the Republic of Armenia "On bankruptcy" does not provide for any exceptions for the petitioner-creditor and does not release him/her from the obligation to file claims on equal basis with other creditors). The second one was the claim of the State Revenue Committee which filed the claim after closure of the bankruptcy case.
- **Based on it, the bankruptcy administrator did not compile the preliminary list of the claims by creditors, and the Court did not approve the final list of the claims.**

Points to be paid attention to:

- **the debtor actually "got recovered" without submission and approval of the financial recovery plan;**
- **if the creditor negotiated with the debtor in advance, most probably no necessity to commence the bankruptcy proceedings would appear;**
- **all the interested entities of the bankruptcy proceedings, starting from a certain moment, acted in a completely and mutually agreed manner;**
- **some legal norms of the Law of the Republic of Armenia "On bankruptcy" were violated by the "silent" agreement of all the entities;**
- **the bankruptcy administrator did not compile a preliminary list of the claims for this particular case, and the Court did not approve the final list of the claims.**

Number 5

All articles of laws (in force at the time of relevant legal relation)

The bankruptcy case is conventional. It refers to voluntary bankruptcy cases where the debtor tries to avoid liabilities. Typical for such cases no property of debtor has been found, as a result of which the creditor's claims have not been satisfied, except for the creditor secured by pledge who has submitted a motionto apply an extrajudicial levy of execution on the collateral.

Reasons for bankruptcy proceedings

There is no information on economic reasons for bankruptcy. In the application filed by the debtor "procedural" reasons are mentioned. The judicial act is based on loan relations between applicant-debtor and claimant. Pursuant to the judicial act the creditor-individual's right of claim against the debtor, without interest subject to accrual, exceeds AMD 1m. A writ of execution has been issued.But as no property in the debtor's name has been founf during enforcement proceedings, the debtor's property is not sufficient for satisfaction of claims, Judicial Acts Compulsory Enforcement Service (JACES) has suspended the enforcement proceedings suggesting debtor or creditor to file a bankruptcy action with the court.

There have been prima facie grounds for declaring the debtor bankrupt.

Procedural issues

After suspension of enforcement proceedings by JACES the debtor filed an application with the court on declaring him bankrupt, except for the above-mentioned liability underlying the claim. The debtor, mentioning data on two other creditors, one of which is a bank (later named as Bank in the list of creditors), and the other is a credit organisation (later is named as Credit Organisation 3 in the list of creditors). The debtor also nominated a temporary bankruptcy administrator candidate under the application by attaching a copy of passport and certificate of the latter (we address this issue later).

The court accepted the application for proceedings and appointed a temporary bankruptcy administrator **on the second day after filing the application**. The court appointed a person nominated by the debtor as a temporary administrator, referring to the procedure for appointing a temporary administrator in case of involuntary bankruptcy in the substantiations of the judicial act. Under point 2.1 of Article 13 of the Law, in case of voluntary bankruptcy the court shall appoint a candidate nominated by the Self-Regulatory Organisation of Administrators in the manner prescribed by Article 22 of the Law as a temporary bankruptcy administrator. The court's decision and copies of documents attached to the application were sent to the temporary administrator on the same day.

The court sent the decision to all authorities prescribed by law, including the creditors mentioned by the debtor, **which is not a direct requirement of law.**

The court declared the debtor bankrupt by judgement breaching the time limit of three days after acceptance of application for proceedings, imposing an attachment on the debtor's property, except for property which may not be subject to levy of execution pursuant to law. The Court resent the decision to creditors specified by the debtor, although there is no direct requirement pursuant to law.

On the third day after the receipt of decision by the debtor the court appointed the bankruptcy administrator. (The law specifies the time of rendering the decision and not receipt by participants. i.e. pursuant to point 2.1 of Article 22 of the Law, where within three working days after the rendering of the judgment on declaring the debtor bankrupt, the debtor and the creditor

(having participated in the case as an applicant) fail to file an objection to appoint the temporary administrator as the administrator).

On the same day as appointing the administrator, the court as prescribed by law rendered a decision on scheduling the first meeting of creditors.

Decisions were resent to all competent authorities, all creditors mentioned by the debtor (no direct requirement of law with regard to creditors) and the administrator. The text of the announcement and writ of execution have been provided to the administrator obliging the debtor to submit the documents prescribed by Article 12 of the Law to administrator. The administrator has published an announcement in Azdarar [official website of internet notifications in Armenia] and in print media within the five-day period prescribed by law. The administrator, concurrently published all announcements subject to published in Azdarar in print media (not legal requirement).

<u>Lodging of claims:</u>

1. Creditor-credit organization 1 lodged a monetary claim within the one-month period prescribed by law, as well as a motion on selling collateral (gold) under an extrajudicial procedure.

2. Creditor-credit organization 2 lodged a monetary claim within the one-month period prescribed by law.

Loan contracts underlying the two claims referred to, were concluded by the debtor after submission of writ of execution of judgement underlying the bankruptcy by creditor to JACES by creditor, during the short period preceding filing of the bankruptcy application to the court nearly two months earlier.

3. The bank lodged the claim violating the one-month time limit prescribed by law. The ground of the claim was the loan contract for purchasing expensive mobile phone concluded by debtor days prior to applying to the court. At the time of lodging claim the debt amounted to approximately half of credit sum. At the time of filing the application, data of the bank-creditor have been presented by the debtor and there are notifications in the case whereby the court notified the bank of the case.

Lodging of 4th and 5th claims, also violated the time limit.

All procedural grounds on lodging the claims were observed by creditors.

The administrator prepared the preliminary list of creditors within the time limit and sent it to the parties and published it in Azdarar and print media. After failing to receive objections within the time limit, **the court approved the final list of claims by decision (without claims 3-5, as far as they were lodged later). The decision was immediately sent to all parties.**

The first meeting of creditors was held on the date prescribed by the court decision.It was mentioned that no recovery plan was submitted, no recovery intention was expressed by the debtor. Register of claims of creditors was drawn up which included three creditors.

There was a mistake in the list of the creditors under the decision made by the bankruptcy administrator.T claim of the credit organisation was secured, but was specified as unsecured, which was automatically approved by the court without verification.The court rendered a decision on rectifying the error by registering the claim of credit organisation 1 as secured.

The decision was immediately sent to all parties.

On the day of rendering the decision on rectifying the error the court addressed the motion of credit organisation 1 filed together with the claim permitting the sale of pledged property under extrajudicial procedure.

On the day after rendering the decision the package was sent to administrator who on the same day published it in Azdarar, print media and sent it to the debtor.

As a result of the decision the administrator later removed credit organisation 1 from the list of creditors.

Thus, the court violated the time limits prescribed by Articles 39.1-39.2 of the Law with regard to consideration of the mentioned motion. The creditor initially should not have been included in the final list of creditors where there was a decision on extrajudicial levy of execution on property. Attention should be paid to the fact that the court automatically approved the list submitted by administrator without verification. On the administrator's motion the court rendered a decision on announcing a search for the debtor's property JACE service was obliged to inform the administrator in case of finding property and assets, as well as transfer property and assets to the disposal of the administrator, writ of execution was issued. Prior to completion of enforcement proceedings the administrator submitted to the court a report on the status of the debtor's property and all actions undertaken thereby. Pursuant to the report no property or other funds in the name of debtor were found. The report was followed by decision of JACES on termination of enforcement proceeding on the ground of failing to find debtor's property or funds.

The meeting of creditors was convened by the administrator for consideration of the work carried out by the administrator, the minutes of which are not available.

The claim of the 4th creditor was filed with the court violting the time limit.. The ground - demand loan. The court informed the applicant in writing that the claim was lodged with procedural mistakes, application was refiled with corrections, sent to the administrator and published in Azdarar and print media by the latter in the manner prescribed by law.

The administrator drew up a new register of the creditors' claims excluding credit organisation 1 and including the individual as an unsecured secondary creditor together with the bank.

The claim of the 5th creditor (credit organisation 3), was filed with the court violating the time limit. Ground of the claim was a credit contract concluded by the debtorthree months preceding application to the court. The claim was sent to the administrator, included in new register of creditors' claims, which was re-published in Azdarar and print media.

After summarising of these claims a new report was submitted to the court by the administrator, and a new register of creditors' claims was drawn up. The administrator convened the meeting of creditors which did not take place to the extent none of the creditors attended. The judicial case has no minutes on failure to hold the meeting. This is seenfrom objections filed by the administrator with regard to the appeal.

The administrator's final report and motion on termination on the basis of the debtor having no property submitted to the court. It was sent to all participants.

The responses of competent authorities on the debtor's property, assets, absence of transactions carried out by the debtor, which were received by administrator at the beginning of examination of the case, were also submitted to the court.

On consideration of the motion, the court rendered judgement on closing the bankruptcy case and considering the administrator's powers terminated.

The court's judgement was sent to participants, administrator and competent state authorities.

Credit organisation 3 filed the appeal against the judicial act. The appellant's claim was the largest as compared with other claims. Grounds of the claim:

- responses not obtained from all banks on existence/absence of accounts. Only 2 banks responded. There is a response from Unibank that there is an account. This fact was not taken into account;
- the debtor has a regular salary with respect to which no execution was levied, even partially;
- the administrator was appointed in violation of law. The debtor did not have the right to nominate a temporary administrator who later became an administrator.

The appeal was returned on the ground of no state duty payment receipt and evidence substantiating sending to creditors.

The appeal corrected within the time limit was refiled and accepted for proceedings.

Objections were filed by the debtor and the administrator.

The court rendered decision on examining the case under a written procedure, and during the examination court rendered decision on dismissing the appeal.

The decision of the court of appeal by the fact that appellant failed to mention the circumstances specified in the appeal in court of first instance, though having a procedural opportunity.

The court of appeal did not address the arguments of the appellant on the procedure of appointing the bankruptcy administrator.

Potential corruption risks

The appointment of a temporary bankruptcy administrator is important. A difference between a voluntary and involuntary proceeding is the appointment of a temporary bankruptcy administrator. In case of a voluntary bankruptcy, the debtor has no procedural opportunity to nominate a temporary administrator candidate, and the legislative norm is definite for the court i.e.- *by SRO in the manner prescribed by Article 22 of the Law. The dbtor suggested a temporary bankruptcy administrator's name to the court and copies of administrator's passport and certificate were submitted. The presumption is that filing of a voluntary bankruptcy application was carried out based on advice and instruction of a bankruptcy administrator.*

The conclusion of credit contracts before applying to the court and purchasea new expensive mobile phone through consumer credit prove that the debtor, who got professional consultation, had a clear understanding of peculiarities of bankruptcy proceedings and had knowledge that he or she can avoid the fulfilment of credit liabilities.

This argument is justified also by the fact that there are certain minor mistakes in the application filled by the creditor, which could be made in case the creditor previously worked on an application for another case with similar factual circumstances. E.g., the date of rendering judicial act underlying the bankruptcy is wrong, but the number of case is right. The same goes for the date of issuing writ of execution. There are a few descriptive, factual parts in the application, while formalities, references to legislative acts are clearly observed, the application ends with professional formulations resembling report on debtor's property condition.

Additionally is the court's review of the documents and motions submitted by bankruptcy administrator presume of authenticity, and are without an appropriate examination of bankruptcy applications. Thus, creditor 1 along with the application on the registration of claim filed a motion on extrajudicial levy of execution on the pledged property, which was not examined by the court within the prescribed time limits. Such behaviour of the court implies negligence, and not deliberateness. However, such behaviour of the court was preceded by the bankruptcy administrator's "mistake", when the fact that the creditor's claim was secured by pledge was ignored by the administrator when drawing up the creditor's list, and automatically approved by the court. Additionally, no thorough study of creditors' claim was carried out by the court during filing of claim, which would have enabled the court to "notice" the fact that the claim was secured and the motion on levying extrajudicial execution on property, which was not submitted in the form of separate document, but was included in the claim's text.

The next important risk is no analysis of the debtor's financial condition, a violation of requirement of Article 58 of the Law. It also implies avoidance to fulfil the obligation prescribed by law on "paying attention to" certain facts. Pursuant to the Law, the administrator shall submit

ananalysis of the financial status of the debtor to the court within 35 days after declaring the debtor bankrupt, which shall include information on:

a) bankruptcy reasons, including information on the existence of fraudulent or intentional bankruptcy features;

b) sufficiency of the debtor's funds for the compensation of court expenses and for remuneration of the administrator;

c) possibilities of restoring the solvency of the debtor;

d) possibility of collecting accounts receivable of the debtor;

e) voidable transactions concluded by the debtor.

Such analysis is important. It can officially documents circumstances dismissed by the court and the administrator. With regard to this case the debtor, having a stable salary obtained credit, purchased a mobile phone (nearly AMD 400.000 by credit), then, appealed to the court trying to "waive" his payment liabilities. The behaviour may include elements of a criminally punishable act, which was not paid attention to as prescribed.

Attention should be paid to the behaviour of two creditors data regarding whom were initially presented to the court by the debtor. The court from the beginning of the bankruptcy proceeding sent all notifications and decisions to creditors not being obliged to do so. Creditors sent their claims violating the time limits, which is unusual as both should be professional. Credit organisation 3, being informed of proceedings from the beginning of bankruptcy lodged a claim in violation of the time limit, did not participate in any process during the case, did not participate in the meeting of creditors, but later filed an appeal. It referred to violations of procedural and substantive rights which were not mentioned in the court of first instanc (formally procedural rights thereof were not restricted). The behaviour demonstrated non-professionalism, or negligence or something else.

Financial recovery plan

The issue of the debtor's financial recovery in the case was not discussed.No financial recovery plan was submitted.

Assessment of actions of the judge for the case, with regard to objectivity, impartiality

The number of violations of procedural norms have been described above. Some have objective reasons (addressed later), the others are conditioned by "co-operation and trust" between administrator and court, which we addressed above.

Assessment of the bankruptcy administrator's actions

The bankruptcy administrator's remuneration was calculated in accordance with the requirements of law.

The bankruptcy proceeding was short. Reports were drawn up and submitted with the court by the administrator in with the period prescribed by law, procedural requirements prescribed by law were observed, except for the above-mentioned violations, including the failure to carry out analysis of debtor's financial condition, and no actions to take inventory of property belonging to debtor have been undertaken. There was information provided by Unibank of an account in the name of debtor without details funds on the account. There is no additional document in the case which would specify the measures undertaken for clarifying additional information about the account.

Peculiarities of application of the Law "On bankruptcy" which shall be paid attention to

The court rendered a decision on accepting application for proceedings and appointing a temporary bankruptcy administrator only on the second day of filing the application on voluntary bankruptcy.

Pursuant to Article 13 of the Law, the court shall accept application for proceedings on the day of receipt thereof. This time limit and some procedural time limits prescribed by the Law are violated by the court, which, possibly reflects non-proportionality of prescribed time limits and actions required by the court during this period. The same is true for the selection of administrator. Thus, pursuant to point 2.1 of Article 22 of the Law, where within three working days after the rendering of the judgment on declaring the debtor bankrupt, the debtor and the creditor having participated in the case as an applicant fail to file an objection to appointing the temporary administrator as the the court may render a decision on appointing the temporary bankruptcy administrator as the administrator. The law specifies the time for rendering the decision and not of receipt thereof by participants. However,, creditors may not object until they have been informed of the judgment on being declared bankrupt. In the mentioned case the court, by violation of direct requirement of law, ensured an objective opportunity of exercise of the rights of participants of proceedings.

Another peculiarity of the law is levying of extrajudicial execution on the property by a creditor with a secured claim. After the court's permission for levying of extrajudicial execution on property the there is no information on the valuation of property at time of levying execution. It appears that where property exceeds the credit amount, the difference of may be returned to the debtor. After obtaining permission for the sale of property by the creditor in the result of direct application in terms of law, the creditor gets removed of the creditor's list, but also the property sold by the latter goes beyond "control" of administrator and other creditors. However, if an appropriate inventory was conducted by the administrator, we believe the administrator is entitled to demand and receive additional information from the creditor on the sale of property and if anything remains.

Point 6 of Article 93 of the Law prescribes the following: "Publication of information on bankruptcy of an individual shall be carried out by the given individual, where the application

on declaring bankrupt has been filed by the individual.". Within the framework of this case publication of information has wholly been carried out by the bankruptcy administrator. The above-mentioned is of common nature, which is possibly conditioned by the circumstance that establishment of such a liability for a non-professional participant in proceedings is not feasible and in practice can result in difficulties.

Other peculiarities in the case

The CSAR authority did not provide information to the administrator on the marital status of the debtor by referring to the legislative ground that the administrator is not among entities entitled to receive such information. We think that the administrator is entitled to receive such information from CSAR.

Other peculiarities are described above.

Points to be paid attention to:

- **claims of none of creditors were satisfied in the bankruptcy proceedings, except for the one secured by pledge who applied extrajudicial procedure for levying of execution;**
- **a bankruptcy application was accepted for proceedings; the debtor was declared bankrupt by judgment with violations of procedural time limits prescribed by law;**
- **when selecting a temporary bankruptcy administrator the court applied an involuntary bankruptcy procedure instead of voluntary one, appointing a candidate nominated by the debtor as a temporary administrator;**
- **the court during the whole proceedings notified not only entities prescribed by law, but also all known potential interested persons (future creditors);**
- **as far as it was not possible to find the debtor's accounting and other documents, the bankruptcy administrator failed to undertake (properly undertake) number of actions prescribed by law;**
- **the mistake made in creditors' list by the administrator was reaffirmed by the court as well, resulting in a judicial mistake;**
- **analysis of the debtor's financial condition was not carried out;**
- **a financial recovery plan was not submitted.**

Number 6

Articles of all laws (in force at the time of relevant legal relation)

The bankruptcy case is standard. It may be characterized as a "blank" bankruptcy case which is common i.e. no property of the debtor has been identified, allowing to grant the creditors any of

the claims. The debtor has been declared bankrupt under a simplified procedure as a "missing" debtor (this procedure is prescribed by Article 103 of the Law of the Republic of Armenia "On bankruptcy"). The debtor has not received any notification, has not participated in the proceedings anyway. Such cases are common.

Reasons for bankruptcy proceedings

It is hard to make conclusions on the fundamental economic reasons of bankruptcy proceedings due to the lack of information. From the procedural point of view, the inspection conducted by the tax authorities is the reason for the bankruptcy. Under the inspection a tax liability has been imposed on the company. It seems the company has intentionally concealed a significant tax liability via a second set of books (black accounts).

In spite of the grounds for declaring the debtor bankrupt there might have been grounds to object to the petition. Thus, although the petition for declaring bankrupt has formally met the law requirements, the documents attached to the petition were not sufficient and undisputed grounds for declaring the debtor bankrupt. Thus:

(1) the petition is based on the inspection act made more than 5 years earlier ie outside the statute of limitations for appeal. The calculation delivered by the petitioner comprises not only the tax liability, but also interest and fines on the tax liability.

(2) the creditor has attached a judgment to the petition, whereby the director of the legal entity-debtor has been declared guilty by part 2 of Article 205 of the Criminal Code. The payment obligation the petition is based on is subject to recovery from the director of the company-debtor.

- The court failed to properly check the grounds available for declaring the debtor bankrupt. The fact that the debtor has not appeared or ever disputed the bankruptcy. Considering the facts the debtor would not be interested to be involved as it was "playing into the hands" of the debtor that the company was declared bankrupt and liquidated.
- This is a widespread practice when the courts — in the absence of objections by the debtor, — fail to examine the justification.
- If the debtor appeared and objected to the petition on bankruptcy and if the judge examined the grounds with due diligence, the company-debtor might not be declared bankrupt. The bankruptcy proceedings are used to liquidate a company with major tax liabilities and possessing no payment instruments or property.

Procedural issues

- The petition for declaring the debtor bankrupt passed on the day following its receipt, which is a violation of the law. Failure to comply with the time limits is common.
- The petitioner-creditor has not nominated any candidacy for the temporary bankruptcy administrator. The Court has applied (as prescribed by law) to the SRO of the Bankruptcy Administrators, with a request to propose a candidacy for the temporary bankruptcy administrator. Thirty-six bankruptcy administrators participated in the lot. The SRO of the Bankruptcy Administrators proposed a temporary bankruptcy administrator to the court, which has been approved.
- The debtor has not received any notice (including the court decision on seizure of the petition with the proceedings). Guided by Article 103 of the Law "On bankruptcy", the court issued a wanted notice for the property, documents and the director of the legal entity-debtor. The proceedings for the bankruptcy case ceased based on point 2 of part 1 of Article 106 of the Civil Procedure Code (the respondent is on the wanted list). However, as execution proceedings failed, the proceedings for the bankruptcy case resumed under the motion of the bankruptcy administrator and the court decision.
- After the proceedings for the bankruptcy case resumed, the court attempted again to give notice to the debtor (as prescribed by part 2 of Article 103 of the Law of the Republic of Armenia "On bankruptcy"). The debtor has not received this notice, either. Finally, the court declared the debtor bankrupt part 3 of Article 103 of the Law "On bankruptcy" — as a "missing debtor".
- After the judgment had been delivered, the court again applied to the SRO, with a request to provide the data on the candidate for the administrator and mention who the temporary administrator for the case concerned had been. **Based on the letter of request sent by the court, a lot drawing was held in the SRO, with one administrator participating. It was the person who was previously selected. The person won again.**
- After the judgment on declaring bankrupt had been delivered and the data on the bankruptcy administrator had been received from SRO, the court appointed the first meeting of creditors and appointed a bankruptcy administrator within the time limit as prescribed by law. The announcement on declaring the debtor bankrupt, appointing a bankruptcy administrator and the first meeting of creditors has not been posted at www.azdarar.am website for technical reasons, while it has been published in the press. Bylaw the announcement must be placed in the court building and posted at www.azdarar.am website.
- Within the bankruptcy proceedings, only the petitioner-creditor — (the Ministry of Finance), filed a claim against the debtor. In the claim, the calculation of the default penalty and other financial sanctions of duties and other mandatory payments continued

after the date the debtor had been declared bankrupt. No response came from the court or the bankruptcy administrator.

- The administrator has submitted to the court the analysis on the financial condition, compiled the preliminary list of the demands of the creditors, published it under the established procedure, then, not receiving any objections within the time limit set by law, has filed a motion with the Court to approve it. Under the court decision the final list of creditors has been approved.
- The first meeting of creditors was convened and held as prescribed by law. No financial recovery plan of the debtor was presented. Guided by part 1 of Article 70 of the Law of the Republic of Armenia "On bankruptcy", the bankruptcy administrator filed a motion with the Court to render a decision on commencement of proceedings for liquidation of the legal entity-debtor.
- The court granted the motion of the administrator and rendered a decision on commencement of proceedings for liquidation of the debtor. The announcement on commencement of proceedings for liquidation of the debtor was published as prescribed by law.
- By another decision, the court (based on part 1 of Article 72 of the Law "On bankruptcy" has — terminated all the rights of the debtor to manage and dispose of the property.
- Some time later the bankruptcy administrator filed a motion with the court to close the bankruptcy case. Submitted to the Court the final report (prescribed by Article 87 of the Law "On bankruptcy"), where it is stated that (pursuant to part 1 of Article 105 of the Law "On bankruptcy"), the administrator had sent a notice on intention concerning closure of the case to the only creditor and had not received any objections within the established time limit.
- The court closed the bankruptcy case ("a" of part 1 of Article 105 of the Law "On bankruptcy" (at any stage of the bankruptcy proceedings the judge… shall deliver a judgment on closure of the bankruptcy case, where… the debtor does not possess any property)). Under the court judgment, the debtor was liquidated.
- Broadly bankruptcy proceedings commenced in late 2014 and ended early in 2017. The only creditor registered following the bankruptcy proceedings has not been granted any claim.
- There is a statement of information within the judicial case, pursuant to which the liquidation of the company was registered by the registry three months after delivering the judgment. The same statement of information also indicates that the staff of the court has applied to the administrator for several times in order to submit the statement of information on liquidation.

Potential corruption risks

- The petitioner did not explicitly participate in the process of electing a temporary administrator. The administrator demonstrated passive behavior, leaving the choice to the SRO. The SRO elected the bankruptcy administrator, but only one candidate (the temporary administrator) participated in the lot. This is common. Since in its letter of demand related to sending the data concerning the administrator, the court has indicated the name of the temporary administrator for the case, which seems to facilitate the process.

Financial recovery plan

- No issue on the financial recovery of the debtor for the bankruptcy case concerned was discussed, and consequently, no financial recovery plan was submitted.

Assessment of actions of a judge for the case, with regard to objectivity, impartiality

- As stated above, the court failed to properly examine the grounds for declaring the debtor bankrupt. It failed to consider that there is another judicial act in force concerning the same payment obligation, where the obligation is imposed on the director of the legal entity-debtor, and not on the debtor. The court failed to properly consider the calculation made by the only creditor when filing the claim i.e. that the calculation of fines and interest continued even after the judgment on declaring bankrupt had entered into legal force. The administrator did not raise this. Since the debtor and the creditors for such cases are passive, there is no risk that the actions of the court might be appealed by the participants.
- It is hard to assess the objectivity of the judge for other aspects, because there are no "disputable" and problematic situations for the case. The bankruptcy process has taken its course in a mutually agreed manner (except the debtor has never been found). Under such conditions, it is hard to assess the objectivity of the judge.

Assessment of bankruptcy administrator's actions

- The bankruptcy administrator did not not collect the assets/receivables of the debtor (also, did not institute claims (prescribed by Article 54 of the Law "On bankruptcy"), because it was impossible to find the books other documents of the debtor. Without documents, the administrator could not have any idea about the receivables and other assets, of the bankrupt debtor. Pursuant to the information received from the bodies prescribed by the Law of the Republic of Armenia "On bankruptcy", the debtor did not have any property, and during the last five years did not alienate any immovable property.

- The bankruptcy administrator has tried to make an inventory of the property of the debtor, but no relevant property was found at the legal address of the company-debtor.
- Because no property of the debtor has been found, the bankruptcy administrator could not make any valuation of property. The administrator compiled an inventory act which stated that no property had been found.
- The analysis on the financial condition of the debtor has been delivered within the time limit established by law. The bankruptcy administrator, though, has treated this document formally. Thus:
  (1) among the reasons for bankruptcy, failure to perform the tax obligations was stated,
  (2) no reference was made to the means of the debtor to be sufficient for recovery of the judicial expenses and remuneration of the bankruptcy administrator;
  (3) it was mentioned that there are no prospects for restoration of solvency of the debtor ;
  (4) the administrator stated that there are no receivables, no disputable transactions concluded, and the debtor does not have means to grant the claims. The administrator stated that no property belonging to the debtor was found due to the actions undertaken.

The administrator never had any document of the debtor tomake such categorical conclusions. Though it was impossible to make a complete and reliable financial analysis under such conditions, there is information indicating a criminal case on the same facts (failure by the debtor to pay taxes) had been examined, and it is logical that all the documents concerning the company might have been seized within the case concerned. We think that the bankruptcy administrator failed to demonstrate the diligence to find the financial and other documents of the debtor company.

Peculiarities of application of the Law "On bankruptcy" which shall be paid attention to

Within the case concerned, there are no remarks apart from those mentioned above.

Other peculiarities in the case

The key peculiarity of the case is that the registered address of the debtor company coincides with the address of the director-founder. The director-founder of the legal entity-debtor has been sentenced to imprisonment for failure to perform the payment obligations on which the claim of the petitioner is based. Subsequently, the debtor changed the place of residence (all the envelopes were returned marked "moved to another place", "sold" and other similar notes). Both the court and the bankruptcy administrator, took no steps to find the debtor, e.g. information from the Police concerning the new registered address of the director. The main reason for such passive behavior is the "pointless" nature of the case

Points to be paid attention to:

- the grounds to declare the debtor bankrupt are not unambiguous. The court failed to properly examine and consider the availability of those grounds;
- the creditor has not been granted any claim following the bankruptcy proceedings;
- the petition for bankruptcy was processed by the court on the following day, which is a violation of the procedural deadline;
- only one bankruptcy administrator has participated in the lot drawing held in the SRO of the bankruptcy administrators;
- because it has been impossible to find the accountancy and other documents of the debtor, the bankruptcy administrator (has not properly performed) some actions prescribed by law;
- though the court has not been bound by law, it could however take supplementary measures to find and notify the debtor;
- though the analysis on the financial condition is available, it has been carried out to comply with the formal requirement;
- no financial recovery plan has been discussed.

APPENDIX 1: RESEARCH METHODS

Based on the objectives proposed in the scope, the following research methods were selected:

- **Sample semi-structured interview** with the debtors;
- **Focus group discussions** with a number of target groups related to the bankruptcy system;
- **In-depth interviews** with relevant experts and representatives of other interested parties;
- **Study of court cases**.

The selected methods enabled collection of both quantitative and qualitative information on the bankruptcy system and process. The approach was to find causality and make recommendations.

Sampling of semi-structured interviews

Face-to-face semi-structured interviews were carried out with the legal entities and individuals adjudged bankrupt (including finished bankruptcy cases) or those involved in the bankruptcy process. Selection of court cases was carried out by the sampling methodology of multi-layered stratification. Bankruptcy courts and regions acted as a stratification feature.

The basis for the research was the list of court cases available from 2016 to 2018[11] **7387 court cases**. The sample size was determined by the following formula of random non-repetitive sampling:

$$n = \frac{k_\alpha^2 \sigma_{\max}^2 N}{\Delta^2 N + k_\alpha^2 \sigma_{\max}^2}$$

Where:

N= 8483 - is the sample size

$k_\alpha = 1{,}96$ - is a credibility coefficient

$\Delta = 0{,}05$ - is a 5 % -magnitude of threshold error

$\sigma_{\max}^2 = 0{,}25$ - is an average square deviation.

As a result 365 court cases should be considered from all the bankruptcy courts, each 20th court case was selected out of the lists of bankruptcy cases of 2016-2018[12]. This approach ensured random and representative sampling and data according to regions and courts.

The plan was to carry out 365 interviews. However finding the debtors for carrying out interviews was difficult Contact date of 204 debtors was found. Face-to-face semi-standardized

[11] The selection of the abovementioned period is preconditioned as RA Law "On bankruptcy" was amended in 2016. In particular, by the RA Law "On making amendments and changes to the Law "On bankruptcy" of 17 June 2016", the bankruptcy threat proceeding was envisaged, as well as the enforcement of secured rights and the procedure of examination for approving the amount of secured claims were regulated, (intended to change the number of bankruptcy cases.

[12] Bankruptcy cases of the first half of 2018 were included in the sampling.

surveys were held with 200 debtors from Yerevan and all RA regions. This comprised 55% of the plan.

125 residents of Yerevan, i.e. 62.5% of respondents and 75 residents of the RA regions - 37.5% were involved (See **Table 1.**).

Table 1. Distribution of respondents by RA regions

	Total	
	Number	Percentage
Yerevan	125	62.5
Shirak	14	7.0
Ararat and Vayots Dzor	13	6.5
Kotayq	12	6.0
Lori	10	5.0
Armavir	8	4.0
Syuniq	6	3.0
Aragatsotn	5	2.5
Gegharuniq	4	2.0
Tavush	3	1.5
Total	200	100.0

Data analysis was carried out by the SPSS statistical package: frequencies and interconnections were calculated, cross and factor analyses were carried out.

Focus group discussions

The aim of focus groups is to check the data acquired from the semi-structured and to reveal causal links. Focus groups were carried out with different groups of relevant specialists. 6-10 participants were involved in each group.

Focus groups were carried out with representatives of the following target groups:

1. Bankruptcy administrators – two focus groups
   - Bankruptcy administrators who had conducted the maximum and minimum number of bankruptcy cases were included in one group,
   - Bankruptcy administrators whose names had been mentioned most often during the surveys with the debtors, as well as the bankruptcy administrators with the longest work experience were included in the other group;
2. Judges conducting bankruptcy cases - one focus group

- The former judges of the bankruptcy court who had been hearing bankruptcy cases, and whose names had been mentioned most often during the surveys with the debtors, as well as the judges who had been hearing the maximum (as they could present regularities based on their repeated practice) and the minimum number of bankruptcy cases were included in this group;

3. Attorneys - one focus group
   - 9 attorneys who were the first to react to the announcement for participation in the discussion published in the network of attorneys, were included in this group;
4. Prosecutors and investigators - one focus group
   - 4 prosecutors and an investigator who had the most cases with fraudulent bankruptcy features, were included in this group;
5. Judges of the Court of Appeal - one focus group;
6. Representatives of business – two focus groups:
   - Representatives of businesses in areas that appeared in the bankruptcy process more often were included in one group;
   - Representatives of businesses in areas that appeared in the bankruptcy process comparatively rarely were involved in the other group.

In total, 8 focus groups were carried out.

<u>In-depth interviews</u>

Ten in-depth interviews on bankruptcy were carried out with judges involved in the court processes; they commented on the quantitative data acquired in the process of research, provided information on court practices, facts and issues, as well as expressed opinions on possible solutions for prevailing issues.

Eleven in-depth interviews were also carried out with the representatives of other interested parties and appropriate experts; each considered the bankruptcy system and current procedures from his/her professional point of view and commented on findings from the research. Interviews were carried out with the following:

1. representatives of the interested institutions, whose responsibilities were directly related to the bankruptcy processes; RA Ministry of Justice

- RA Ministry of economic development and investments
- RA Central Bank
- State Revenue Committee
- Five Commercial Banks
- Court of Appeal
- Court of Cassation
- “The Collegium of Business-Managers on Bankruptcy” Self-Regulatory Organization (SRO)

2. representatives of Five Commercial Banks that were selected according to their involvement pointed out by respondent debtors, as non-performance of obligations from their loans led to commencement of the bankruptcy process

The interviews provided comprehensive information and ensured reliability and creditability of the qualitative information collected.

Tools of quantitative research

For quantitative surveys a closed-ended questionnaire was used, which is attached to this report as Appendix 4.

Before drawing up a sociological questionnaire, a working group which includes experts of different areas conducted work discussions and listed areas to be investigated from inter alia considering domestic legislation and practice.

A plan has been submitted to a sociological organization which has developed the presented questions preserving sociological rules and requirements thus providing a public questionnaire. To discuss the issue in the framework of desirable questions and to ensure efficiency of summarizing results, a closed-ended questionnaire is used. There are also a few open-ended questions. Possible answers designed to be neutral.

The questionnaire consists of three main parts: introductory questions, main questions and, tables for general assessment of procedures and the actors' activities.

The survey is a, informing the respondent about it in advance and not asking any identifying data.

Tools of focus group discussions

Taking into account the fact that during the public survey a larger number of questions are covered and a larger volume of information is collected, it is impossible to present all the questions to the participants of focus group discussions. The most contradictory or the most important issues (selection of importance is carried out by experts, according to aims and objectives of research) or their summaries (10-12 issues and the results of public opinion collected) are presented to the participants of focus groups to obtain their observations, and views.

The aim of focus group discussions is not only to accept or refute the issues from public opinion but also to bring professional arguments and viewpoints why this or that opinion exists on each issue and what can be done to improve the situation.

For focus group discussion:

- charts that summarize the research from social opinion and refer to questions discussed is presented
- open-ended questions which allow respondents to freely express their view are asked.

The number of focus group participants should be 6-10, the period 45-90 minutes, and the number of questions should not exceed 12. 1-2 questions should be introductory, 7-8 questions should be main/substantive and 1-2 questions should summarize.

In order to carry out an expert focus group survey, the method of snowball (Delphi) method is used. Each member of each group presents his opinion about the cause of the problem. Afterwards, the other participants agree or disagree. This approach is developed as a method of group communication that allows reaching an agreement within the group.

Focus group discussion is led by people aware of the results of the study of public opinion, the aims of the survey and able to comment on what is implied by a given statement. The moderator should not present his view and should be neutral.

The number of interviews partly depends on the extent to which information is repeated or new issues are surfaced.

Tools of in-depth interviews

In-depth interviews are conducted through a questionnaire of open-ended questions, which consists of 2 parts:

- In the first part the respondent answers a question giving his opinion on a certain issue.
- Public opinion on the question is presented to the respondent and he/she comments

Most questions include the concept «and how can the situation be corrected/improved».

Correlation of quantitative and qualitative results

Collection of results is carried out stage by stage. By the sociological organization that has conducted the surveys in cooperation with the research group of lawyers.

At the first stage, the data received is entered into the SPSS program.

A summary is prepared. The second stage i.e. the process of collecting qualitative data that includes focus group discussions and in-depth interviews happens only after summarising the first stage results. Questions follow from quantitative data. It involves comparing social opinion and expert views i.e. the social point of view on a certain question is partly / fully denied or confirmed by the experts, who bring appropriate justification to support their opinion. The results, however, have a more substantive character.

Nevertheless, both general opinions and individual views are equally valuable.

Study of court cases

Certain principles were adopted:

1. Cases that were closed during the research were selected
2. Cases with factual circumstances considered common were selected
3. Cases were identified through www.datalex.am website applying random principle while making selection.

The experts submitted an application to the head of judicial department to get materials for documentary examination of the cases, based on appropriate letters. Copies of the materials of all selected judicial cases were provided to the experts.

Selection of cases was done in a way that:

- voluntary and compulsory bankruptcy cases were included
- they referred to legal entities and individual debtors
- at least one case referred to a female debtor
- as a result of all cases the debtor was adjudged bankrupt
- at least one case referred to bankruptcy risk
- at least one case considered simplified procedure in the absence of the debtor.

To avoid identification of cases, data on parties and the chronology of cases was not provided.

The experts made a full documentary examination of judicial cases and the conclusions made reference to the general description of the case, reasons for bankruptcy proceedings, procedural problems, possible corruption risks, the issue of a recovery plan, evaluation of the actions of bankruptcy administrator and the judge, aspects of RA Law "On bankruptcy" that are worth attention in the given case. Noteworthy points identified by the experts are mentioned.

APPENDIX 2: DATA ON RESPONDENTS

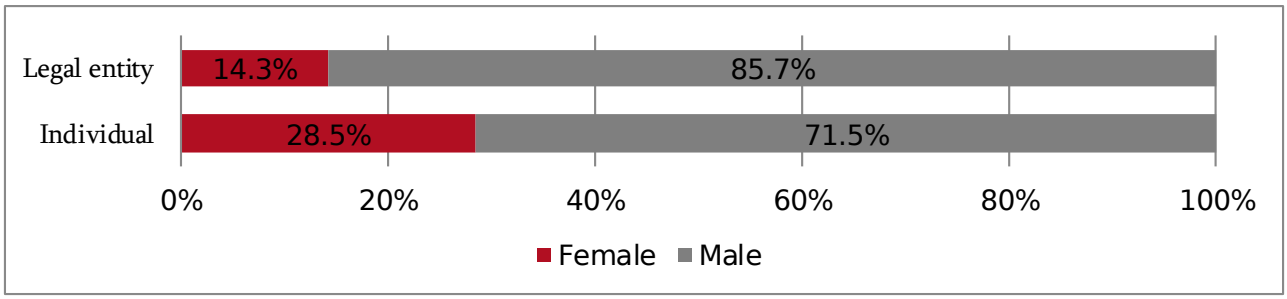
Face-to-face semi-standardized interviews were carried out with 200 representatives of bankrupt businesses or involved in the bankruptcy process during 2016-2018; 123 of them were individuals and 77 – legal entities. 62.5% of surveys (125 respondents) were conducted in Yerevan, and 37.5% (75 respondents) – in 10 RA regions (See **Table 2.**).

Table 2. Distribution of respondents by individuals and legal entities in Yerevan and regions

Place	Number of debtors that took part in survey		
	Total	Of which individuals are:	Of which legal entities are:
Yerevan	125	72	53
Regions	75	51	24
Total	**200**	**123**	**77**

23.5% of respondents were female representatives, 76.5% male. Percentage of women was high regarding individuals (28.5%) as compared with legal entities (15.6%) (See **Chart1.**).

Chart 1. Gender distribution of respondents by individuals and legal entities



Most respondents were representatives of 36-65 age group (See **Table 3.**).

Table 3. Distribution of respondents by age groups

Age	Percentage
18-25	**0.5**
26-35	**14.5**
36-45	**27.5**
46-55	**28.5**
56-65	**25.0**
66 and more	**4.0**
Total	**100.0**

Most respondents (58.3%) had higher education, 17.5% vocational education, 17.5% secondary education, and 6.5% had two higher or post-graduate educations (See **Table 4.**).

Table 4. Distribution of respondents by education

Education	Percentage
Secondary	17.5
Vocational	17.5
Higher	58.3
2 higher /post-graduate	6.5
Total	100.0

71.8% of respondents were owners or founders of organisations, 20% - executive directors, 8.3% held other positions, including board members, lawyers and accountants (See **Table 5.**).

Table 5. Distribution of respondents by positions held in the organizations adjudged bankrupt

Position	Percentage
Owner, founder	71.7
Executive director	20.0
Board member	1.2
Chairperson of the Board of Directors	1.2
Lawyer	2.4
Accountant	3.5
Total	100.0

80.5% of individuals had permanent, sustainable source of income before adjudged bankrupt. Their average monthly income according to median distribution was AMD 250k-500k.

17 % of studied cases were still in the process, 83% were already adjudged bankrupt.

Data on cases of studied legal entities

58.4% of legal entities were limited liability companies (LLC), 27.3% individual entrepreneurs (IE), and open joint stock companies (OJSC), cooperatives and closed joint stock companies (CJSC) comprised 6.5%, 5.2% and 2.6% respectively (See **Chart 2.**). Most organisations (52%) had 1-5 employees (See **Chart 3.**).

Chart 2. Form of legal entities registered in State Register

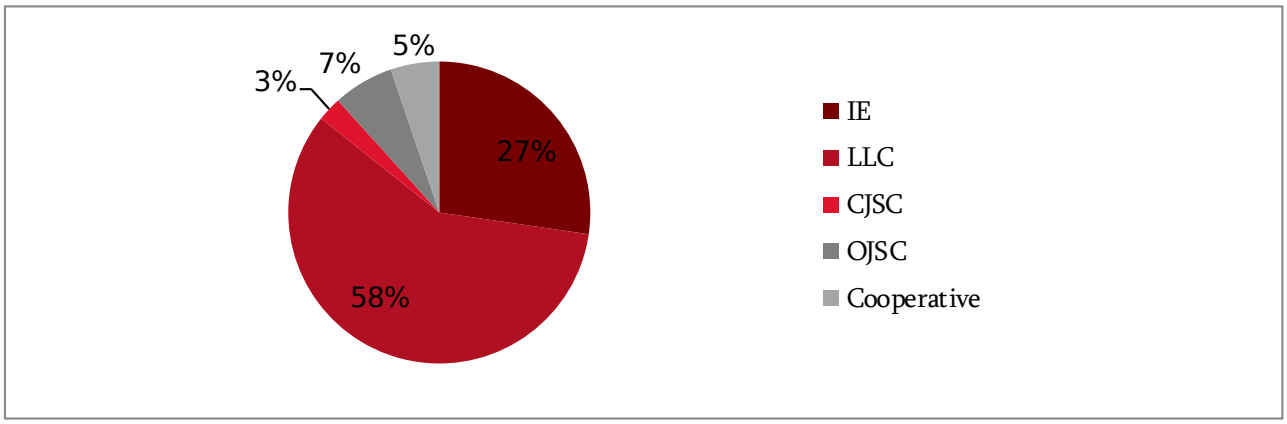
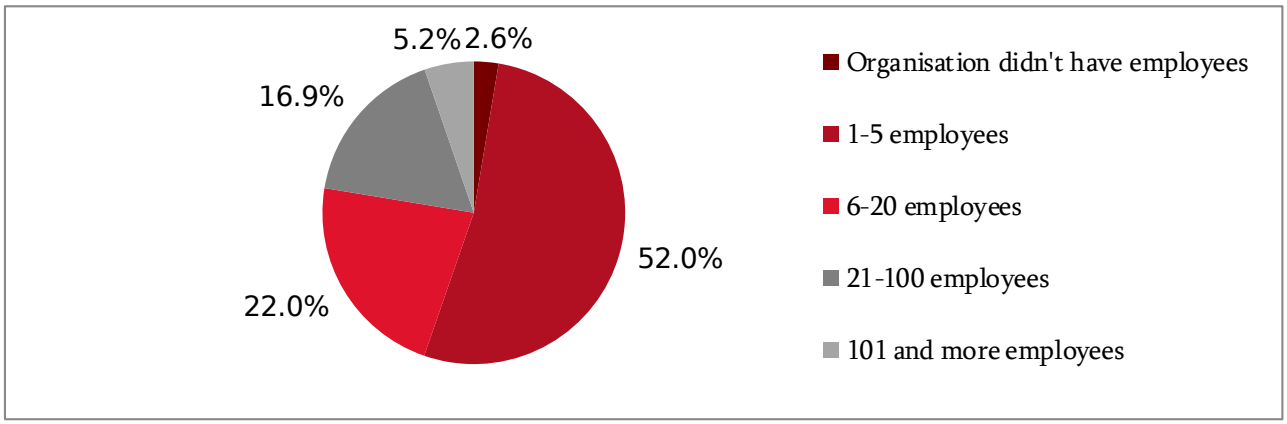
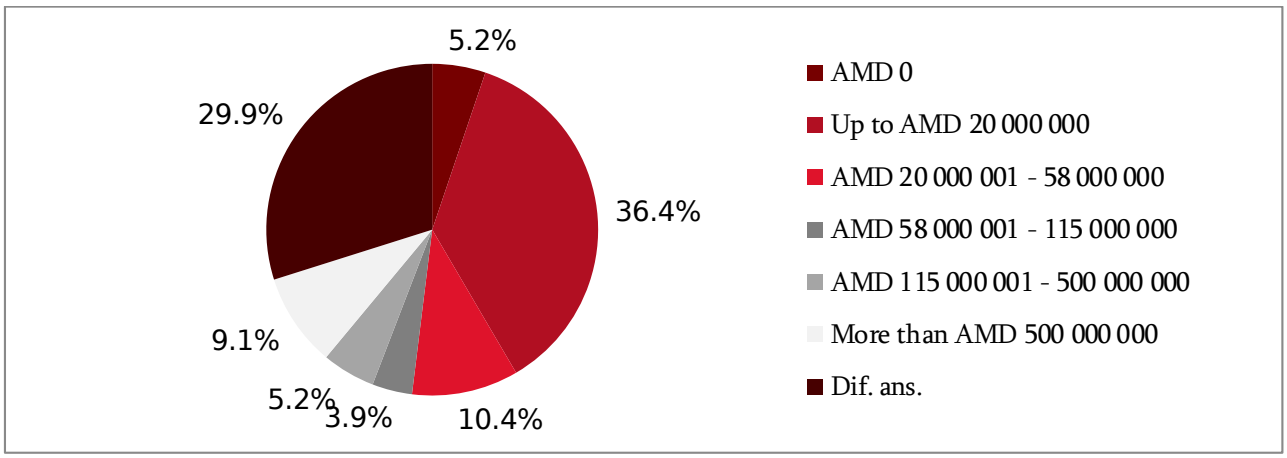


Chart 3. Total number of employees in the organisation



36.4% of organizations studied, according to analysis data, had up to AMD 20 mil turnover during the year preceding the bankruptcy process, 10.4% from AMD 20 000 001 to 58 000 000, 3.9% from AMD 58 000 001 to 115 000 000, 5.2% from AMD 115 000 001 to 500 000 000, 9.1% more than AMD 500 mln. Another 5.2% stated that the turnover during the year preceding the bankruptcy process was AMD 0 (See Chart **4.**).

Chart 4. Turnover of the organisations studied during the year preceding the bankruptcy process



In the studied organizations, different bodies made strategic decisions and signed important documents. Owners were most frequently mentioned as the body to make strategic decisions and sign important documents (88.3%); executive directors were mentioned –less (32.1%) (See **Table 6.**).

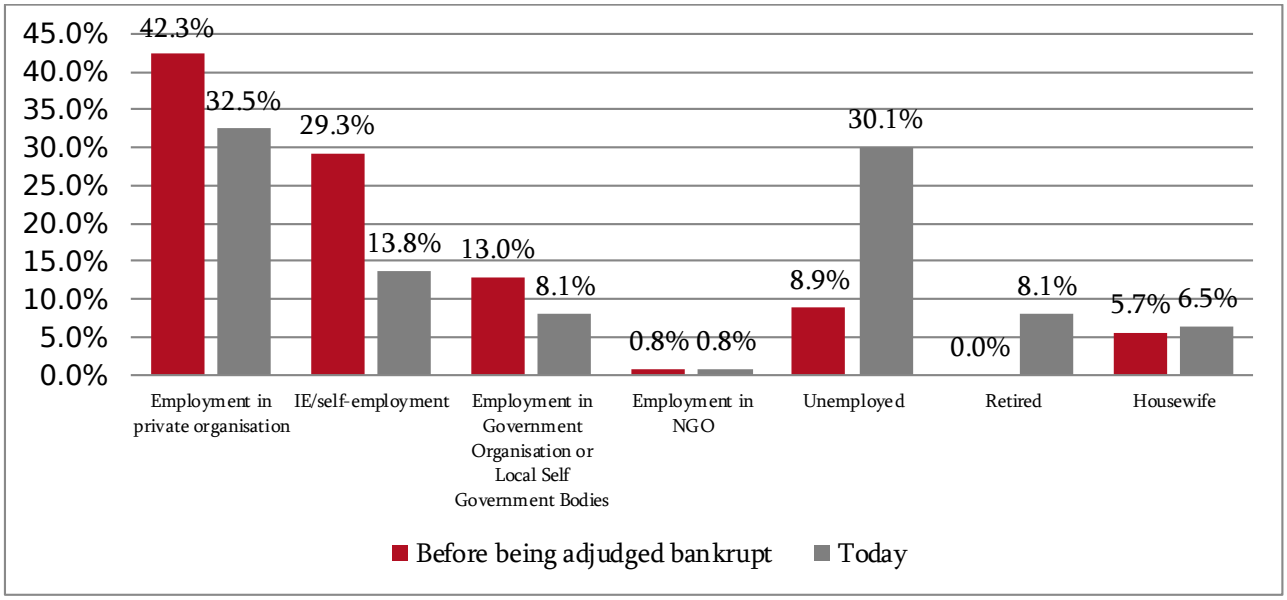
Table 6. Bodies to make strategic decisions and to sign important documents in the organizations studied.

Position	**Yes**	No	Total
Owner	**88.3%**	11.7%	100%
Executive director	**31.2%**	68.8%	100%
Board of Directors	**9.1%**	90.9%	100%
General Meeting of participants/shareholders	**5.2%**	94.8%	100%
General Meeting of Members	**2.6%**	97.4%	100%

Change of the status of individuals as a result of bankruptcy

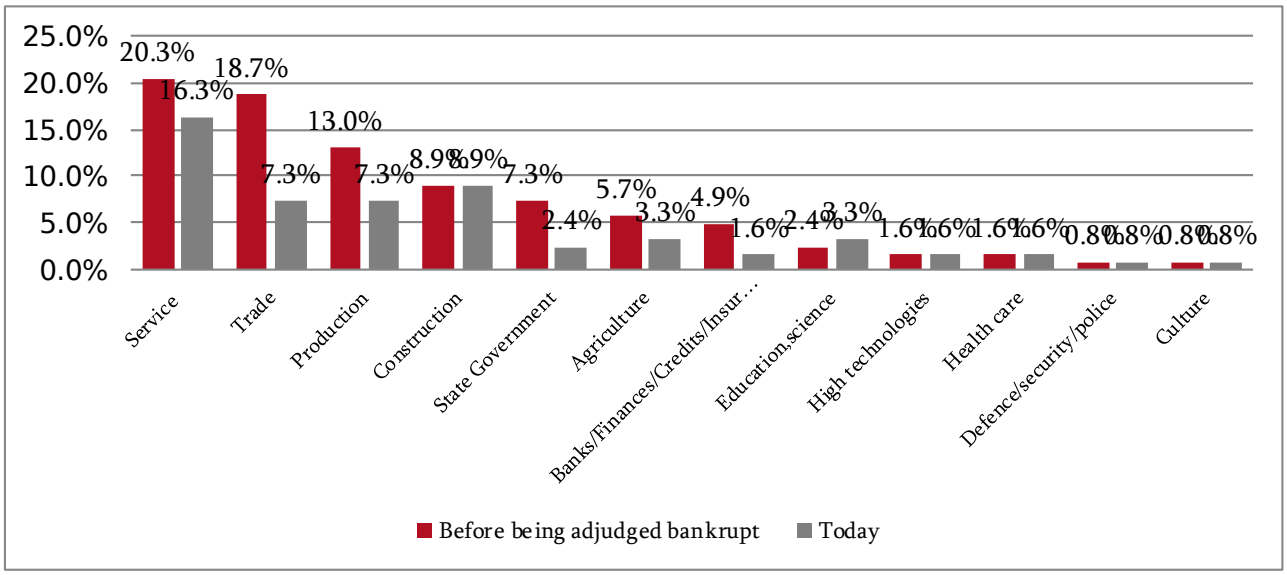
The bankruptcy process has negative consequences on the social welfare of debtors. The percentage of employment was decreased within the respondents as a result of bankruptcy (by 30.2%).The percentage of unemployed considerably increased (by 21.2%). The percentage of retired people and housewives also increased by 8.1% and 0.8% respectively (See **Chart 5**).

Chart 5. Employment of individuals before being adjudged bankrupt and today



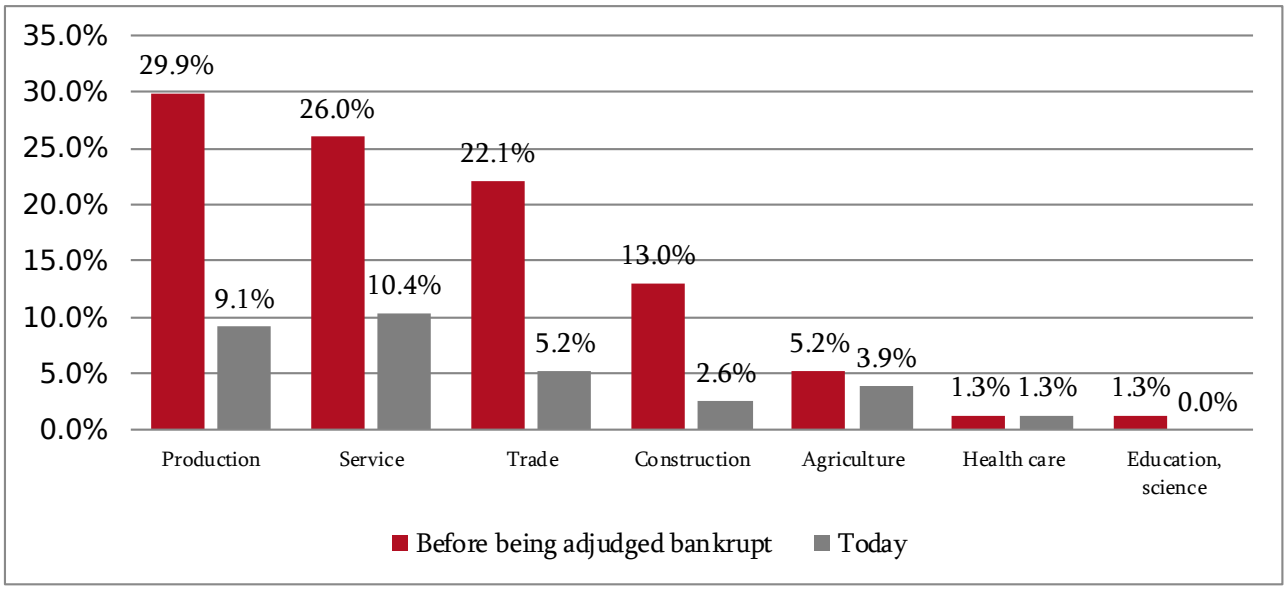
Clearly, after bankruptcy the percentage of individuals not performing any activity has increased to 44.7%, and the percentage of individuals performing activities in services, trade, production, state or local government, agriculture and finance and banking has decreased. The percentage of individuals performing activities in the areas of construction, high technologies, health care, culture and security has not changed, and the percentage of individuals performing activities in the areas of education has increased (See **Chart 6.**).

Chart 6. Nature of activities of individuals before being adjudged bankrupt and today



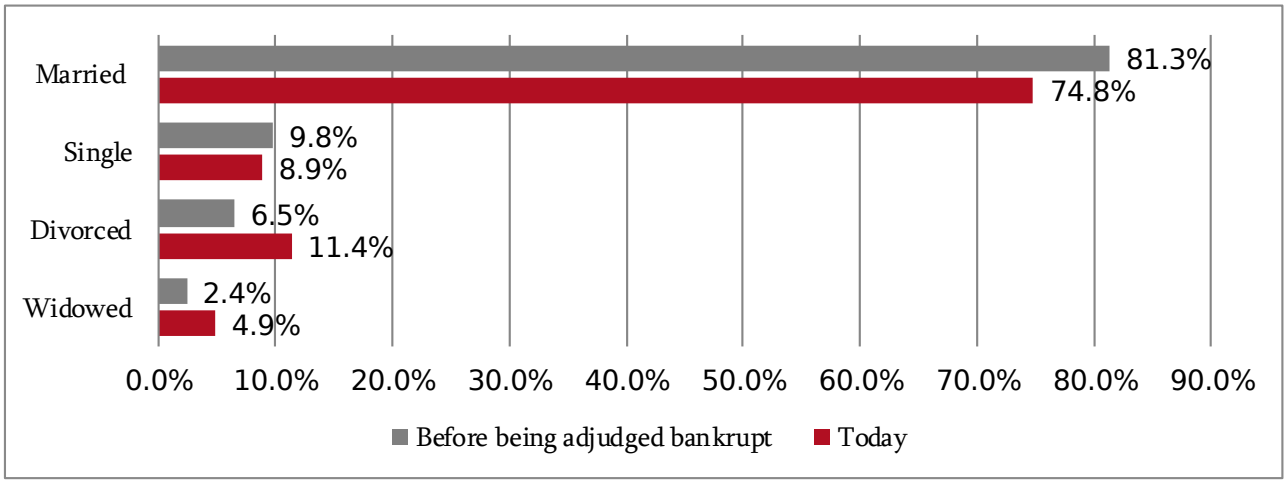
The picture is worse for legal entities. Where 44.7% of individuals do not perform activities any more, 67.5% of legal entities that have become bankrupt do not continue their activities. The legal entities considered, before being adjudged bankrupt, mainly performed activities mainly in the areas of production, service, trade and construction. Fewer were involved in agriculture, health care and education (See **Chart 7.**).

Chart 7. Nature of activities of legal entities before being adjudged bankrupt and today



Bankruptcy also effects negatively the family status of debtors. Where 81.3% of the respondents, before being adjudged bankrupt, were married, after bankruptcy only 74.8% remained married. The percentage of divorces and widows increased (See **Chart 8.**).

Chart 8. Family status of individuals before bankruptcy and today



APPENDIX 3: TERMS AND ABBREVIATIONS USED

Research - Collected and analyzed quantitative and qualitative data on the prevailing situation of bankruptcy system in the framework of this project

RA – Republic of Armenia

Debtor – a legal person, an individual or an organisation that owes money

Monitoring – monitoring aimed at control over a certain situation or quality assessment of situations

Quantitative data – mathematical comparison of responses of social opinion

Qualitative data – results of study of expert opinion

Study of public opinion – information collected through sociological surveys from legal entities and individuals in the bankruptcy process or already bankrupt

In-depth interview – self-assessment carried out with experts of the system and focus group discussions

Focus group discussion – expert discussion on separate issues with a small group of experts (5-9 people) aimed at collection of their opinions and observations

Open-ended question – a question that does not provide answer options and a respondent directly expresses his/her thoughts

Closed-ended question – a question that has answer options and a respondent selects the most preferable answer from the options

Respondent – a person who responds an interviewer's questions

Interviewer – a person who addresses the questions of the questionnaire to the respondent and writes answers in the questionnaire

SPSS system – a special computer program that develops sociological data based on data provided

Beneficiary – a person related to the particular institution

Field work – a stage of carrying out actual surveys

Tools – integrity of documents through which the research is carried out, in particular questionnaires, methodology, guidelines, etc.

One-dimensional table – a table for summarizing the survey results in which quantitative answer of only one question is depicted

Two-dimensional data - a table for summarizing the survey results that combines answers to several questions

Anonymous survey – a survey in which the respondent's name is not disclosed

Sampling – target group separated for survey

BA – bankruptcy administrator

SRO – The Collegium of business-managers on Bankruptcy Self-Regulatory Organization

FRP – Financial recovery plan

APPENDIX 4: QUESTIONNAIRE

Questionnaire No _____

Hello, my name is _____. I am representing the **«SPRIN GROUP»** Research Company. We are conducting a sociological survey to study the phenomenon of bankruptcy and related processes. It will take you only 15-20 minutes. I would like to note also that this survey is anonymous and all answers will be used in a generalized form.

Q1. Please, tell me whether the bankruptcy process was related to you as:

1. A physical person (shift to Q2)
2. A legal person (shift to Q2.4)

99.I find it difficult to answer

Some information about you.

Q2. Please, tell me, what activities you were engaged in before having been declared bankrupt.

Before bankruptcy	Currently
1. I worked in a governmental organization or in a local self-government bodies	1. I work in a governmental organization or in a loca-self-government bodies
2. I worked in a private organization	2. I work in a private organization
3. I worked in an NGO	3. I work in an NGO
4. I was a sole entrepreneur/self-employed	4. I am a sole entrepreneur/self-employed
5. I was a housewife	5. I am a housewife
6. I was unemployed	6.I am unemployed
7. I was retired	7. I am retired
8. Other _____	Other _____
99. I find it difficult to answer	99. I find it difficult to answer

Q2.1 Please, tell me whether before being declared bankrupt you had a main, stable source of income, and if so, how much approximately your monthly income was. – FOR PHYSICAL PERSONS ONLY.

1. Yes, indicate the amount (in AMD) _____
2. No

99. I find it difficult to answer

Q2.2 Please, tell me what marital status you had before becoming bankrupt and what is your current status- FOR PHYSICAL PERSONS ONLY.

Before bankruptcy	Currently
1.. Single/unmarried	1 . Single/unmarried
2.. Married	2.. Married
3.. Divorced	3. . Divorced

4.. Widow	4.. Widow
5.. Other	5.. Other

Q 2.3 What was the sector of your activity before your bankruptcy and what is the sector of your current activity? THIS QUESTION IS BOTH TO PHYSICAL AND LEGAL PERSONS

Sector	Before bankruptcy	Currently
1. Health Care	1.	1.
2. Production/manufacturing	2.	2.
3. Trade	3.	3.
4. Education, Science	4.	4.
5. Public Administration	5.	5.
6. Judicial System, Justice	6.	6.
7. Defence / Security / Police	7.	7.
8. Construction	8.	8.
9. Banks / Finances / Loans / Insurance	9.	9.
10. High Technologies	10.	10.
11. Services	11.	11.
12. Culture	12.	12.
13. Agriculture	13.	13.
14. Other_____	14.	14.

Q3. Please, specify as exactly as possible the date when the bankruptcy process started.

1. month_____ 2. year_____

Q4. Please, tell me whether you (or your company) have already been declared bankrupt, and, if so, specify when it happened as exactly as possible.

1.Yes, the period _____ 2. No, it's still in process.

Q5. Please, indicate the name of the bankrupt company. From Q5 to Q14 – FOR LEGAL PERSONS ONLY **_____**

Q6. What was the organizational and legal form of your company? (indicate the form as registered in the RA State Register)

1. Sole Entrepreneur
2. Limited Liabilities Company
3. Closed Joint Stock Company
4. Open Joint Stock Company
5. Cooperative
6. Non-Governmental Organization
7. Other

99 I find it difficult to answer

Q7. Please, tell me the total number of employees of the bankrupt company._____

Q8. Please, tell me the total number of women working in the bankrupt company, taking into account all the positions._____

Q9. Please, tell me which body/who was making strategic decisions and signing documents in the bankrupt company. . MARK ALL RELEVANT OPTIONS

1. General Meeting of Participants / Shareholders
2. General Meeting of Members
3. Administration
4. Owner
5. Executive Director
6. Board of Directors (shift to Q10)
7. Other _____

99. I find it difficult to answer

Q10. Please, indicate the number of women in the head office of the bankrupt company. _____

Q11. Please, indicate the gender of employees who had occupied the positions indicated below before the company was declared bankrupt.

Position	Woman	Man	There is no such position	Difficult to answer
1. Owner	1	2	3	4
2. Executive Director	1	2	3	4
3. Deputy Director	1	2	3	4
4. Chief Accountant	1	2	3	4
5. Chief Lawyer	1	2	3	4
6. Chairman of the Board of Directors	1	2	3	4
7. Other_____	1	2	3	4

Q12. Please, tell me, what position you had in the bankrupt company (indicate all the positions you had)

1. Owner
2. Executive Director
3. Board Member
4. Chairman of the Board of Directors
5. Board Member
6. Lawyer
7. Accountant
8. Other _____

99 I find it difficult to answer.

Q13. What was the money turnover of the company in the year preceding the bankruptcy process?

1. Up to AMD 20 000 000
2. AMD 20000 001-58 000 000
3. AMD 58000 001-115 000 000
4. AMD 115000 001-500000 000
5. Above AMD 500 000 000

99 I find it difficult to answer

THE LEVEL OF AWARENESS AND INFORMATION SOURCES

Q. 14. Please, tell me, how much you knew about bankruptcy process prior to beginning of the bankruptcy case related to you.

1. I was fully informed
2. I was rather aware than not
3. I was rather not aware than aware
4. Absolutely not informed
5. Other_____

Q 15. Please, specify the main sources of your information about the bankruptcy proceedings prior to launch of your bankruptcy case. PROVIDE UP TO THREE ANSWERS. QUESTIONS MUST BE ANSWERED.

1. Television
2. Printed mass media
3. Radio
4. Books/friction and professional literature
5. Movies, specialized programs
6. Electronic information websites
7. Social networks
8. Electronic legislative databases
9. Legal Partners / Staff
10. Personal experience
11. Familiarization with (reading) the law on own initiative
12. Experience of friends, relatives, acquaintances
13. Talks, rumours of friends, relatives, acquaintances
14. Other_____

98. I did not have any information 99. I find it difficult to answer.

Q16. Please, tell me, how you would assess the current level of your awareness of the bankruptcy process/proceedings.

1. Fully aware of
2. Rather aware than not
3. Rather not aware than aware of
4. Absolutely not informed
5. Other _____

99. I find it difficult to answer.

Q17. Please, list all the sources where you were getting information about the bankruptcy proceedings related to your case and classify those sources by importance. MARK ALL RELEVANT OPTIONS AND CLASSIFY THEM ACCORDING TO IMPORTANCE THEREOF (1st is the most important).

Information Source	Importance
1. Official websites of the Judiciary of the Republic of Armenia (Datalex.am, acts.court.am)	
2. The official website of the RA public notices azdarar.am	
3. Correspondence, electronic notices from the judicial body	
4. Correspondence, notices from the judicial body in paper form	
5. Personally the bankruptcy administrator, verbally	
6. Correspondence, electronic notices from the bankruptcy administrator	
7. Correspondence, notices from the bankruptcy administrator, in paper form	
8. Bankruptcy case lawyer	
9. Legal partners / employees	
10. Friends, relatives, acquaintances	
11. Other _____	
99. I find it difficult to answer	

Q 18. How would you assess the information related to your case?

Indicators	Fully yes	Rather yes, than no	Rather no, than yes	Absolutely no	Difficult to answer
1. Operational/timely	1	2	3	4	99
2. Reliable/objective	1	2	3	4	99
3. Accessible	1	2	3	4	99
4. Available/clear	1	2	3	4	99
5. Useful	1	2	3	4	99
6. Detailed	1	2	3	4	99

Q19. How would you assess the information, provided to you by the above-mentioned sources, if we evaluate it separately by a 5-point scoring system, (where 5 is the highest score)?

Information source	Operational/timely	Reliable/objective	Accessible	Available/clear	Detailed	Useful	Difficult to answer
1. Website of the judicial authority/ministry (Datalex.am, acts.court.am)	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99

2. Bankruptcy administrator	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99
3. Bankruptcy case lawyer	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99
4. Bankruptcy case judge/staff	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99
5. www.azdarar.am	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99
6. Other_____	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	99

Q20. Assess, please, how effective was the collaboration of the below mentioned bodies with you in terms of ensuring availability of documents.

Indicators	Completely effective	Rather effective, than not	Rather ineffective, than effective	Absolutely ineffective	Difficult to answer
1. Bankruptcy administrator	1	2	3	4	99
2. Bankruptcy case lawyer	1	2	3	4	99
3. Bankruptcy case judge/staff	1	2	3	4	99
4. Other _____	1	2	3	4	99

Q21. Assess, please, how efficient were the following electronic resources (timely update, replenishment, and feedback).

Indicators	Fully efficient	Rather efficient, than not	Rather inefficient than efficient	Absolutely inefficient	I don't use those	Difficult to answer
1. datalex.am	1	2	3	4	5	99
2. court.am/	1	2	3	4	5	99
3. azdarar.am	1	2	3	4	5	99
4. snank.am	1	2	3	4	5	99
5. Other _____						

Q21. What do you think, if you had created a special electronic platform (e.g., e-bancruptcy.am), where all documents and decisions related to your bankruptcy case were available, would it:

Possible answers	Definitely yes	Rather yes, than no	Rather no, than yes	Absolutely not	Dif. to answer
1.Help act faster, save time.	1	2	3	4	99
2.Help avoid some of the difficulties.	1	2	3	4	99
3.Fascilitate the process, releasing me from unnecessary fuss.	1	2	3	4	99
4.Complicate things, because I have no experience of using e-platforms.	1	2	3	4	99
5.I do not use electronic sources of information in principle.	1	2	3	4	99
6.Other_____	1	2	3	4	99

Q21.1 Please tell me, did you/do you have a valid:

1.Electronic signature	1. Yes	2. No	3. It is not valid at this moment	4. I am not aware of
2.Identification card (ID) provided by EKENG	1. Yes	2. No	3. It is not valid at this moment	4. I am not aware of

Q21.2 Please tell me how ready/willing you are to receive electronic messages related to your case via electronic mail (e-mail) or E-citizen notification system.

1. I prefer to receive the messages via e-mail.
2. I prefer to receive the messages by E-citizen official notification.
3. I prefer to receive them by both e-mail and E-citizen official notification system.
4. I prefer paper notices via registered letters from ArmPost.
5. I prefer to receive electronic notices along the paper notices.

99. It is difficult to answer.

REASONS OF INITIATING BANKRUPTCY PROCEEDINGS

Q22. Please, tell me whether in order to satisfy a creditor's claim and avoid bankruptcy proceedings, you would be ready to work under his/her control under some arrangements, until you repay the debt to this creditor.

1. Yes, under any arrangement
2. Yes, in case of a reasonable arrangement
3. Definitely not
4. I find it difficult to answer

Q23. How long were your overdue liabilities before the creditor submitted the bankruptcy claim?

1. 60 days
2. 61-90 days
3. 91-180 months
4. More than 181 days

99. I find it difficult to answer

Q24. Please tell me whether you were aware of your overdue obligations or not, and if not, what was the reason.

1. I was aware.
2. I did not know because I personally did not control the state of affairs and was not informed of their progress.
3. I did not know because the decision-making body kept it secret from me.
4. I did not know, because the actual situation was not reflected in the company's documents.
5. I did not know because my knowledge and experience were not enough to understand the issue.
6. Other _____

99. I find it difficult to answer.

Q25. Did you predict or expect your bankruptcy?

1. Yes, because _____
2. I did not exclude such possibility because of some potential risks (specify)
3. It was absolutely unexpected

99. I find it difficult to answer

Q26. Please tell me whether the following factors have affected your bankruptcy process and to what extent.

Indicator	Definitely yes	Rather yes, than no	Rather no, than yes	Absolutely not	DA
1. Intentionally wrong decisions made by the participants (shareholders).	1	2	3	4	99
2. Wrong decisions of the participants (shareholders) made by negligence.	1	2	3	4	99
3. Negligence of the company's executive body.	1	2	3	4	99
4. Intent of the company's executive body.	1	2	3	4	99
5. Negligence of other decision-making person(s) in the company.	1	2	3	4	99
6. Intent of other decision-making person(s) in the company.	1	2	3	4	99
7. Existing legislation	1	2	3	4	99
8. Lack of appropriate informal contacts	1	2	3	4	99
9. Rejection of engagement in informal deal (corruption/bribe)	1	2	3	4	99
10. Other					

Q26.1. 1. Please evaluate the degree of importance of each of the problems existing in the bankruptcy system.

Problems	Extremely important	Rather important, than not	Rather not important, than important	Absolutely not	Dif.to answer
1. Bad legislation	1	2	3	4	99
2. Discredited and non-transparent bankruptcy system	1	2	3	4	99
3. Lack/scarcity of information about the bankruptcy process	1	2	3	4	99

4. . Contradiction between legislation and practice	1	2	3	4	99
5. Other_____	1	2	3	4	99

Q26.2. Please tell me whether you think it is necessary to improve bankruptcy legislation.

1. Yes, it is necessary and possible.
2. Yes, it is necessary, but it is not possible.
3. It is not necessary, but it is possible.
4. It is neither necessary nor possible.
5. I don't have any position/opinion on that.

99. Difficult to answer

Q27. Did you receive the decision on acceptance of the bankruptcy claim to initiate proceedings?

1. Yes
2. No

99. I find it difficult to answer.

PROCEDURAL ISSUES AND POSSIBLE CORRUPTION RISKS

Q28. Where does the liability causing declaration of bankruptcy arise from?

1. Contract (shift to Q28.1)
2. Enforced judicial act
3. Resignation letter. SHIFT TO Q28.2 and Q28.3
4. Other _____

Q28.1. If contract, what kind of contract it was?

1. Credit
2. Loan
3. Service delivery
4. Sales/supply
5. Other _____

99. I find it difficult to answer

Q 28.2 . Please tell me what goal you pursued when filing a bankruptcy application.

1. To get rid of the obligations
2. To maintain business reputation through a transparent legal process
3. Other_____

99 I find it difficult to answer

Q28.3. Looking back at your voluntary initiation of bankruptcy process, how would you evaluate it?

1. It was a right decision
2. It was a wrong decision
3. It would be better if the creditors filed my bankruptcy case
4. Other _____

99 I find it difficult to answer

Q29. Please, tell me how much your (company's) liability was, that led to declaring you (or the company) bankrupt.

1. Up to AMD 1.000.000
2. AMD 1.000.001 – 5.000.000,
3. AMD 5.000.001 - 10.000.000,
4. AMD 10.000.001 – 20.000.000,
5. AMD 20.000.001 and more.

Q30. Please, tell me, if you had some income-securing assets at the moment you were declared bankrupt.

1. I had some income-securing asset and I used it.
2. I had some income-securing asset, I used it, but it was not sufficient.
3. I had some income-securing asset, but I did not use it. Please, indicate the reason _____
4. No, I did not have any. SHIFT to Q32
   99 I find it difficult to answer.

Q31 In case you had such assets, what was their value at the moment when you were declared bankrupt.

1. The value of assets exceeded the amount of liability, based on which the judgment on bankruptcy was made.
2. The value of assets was equal to the amount of the liability, based on which the judgment on bankruptcy was made.
3. The value of assets was less than the amount of the liability, based on which the judgment on bankruptcy was made.

99. I find it difficult to answer.

Q32. Have you tried to «restructure» your debt?

1. Yes, I have tried. I applied to a bank/credit organization for them to re-credit my credit.
2. Yes, I have tried. I negotiated revision of the amount of my contractual obligations.
3. Yes, I have tried. I negotiated revision of liability payment schedule.
4. No, I have not tried to «restructure» my debt.
5. Other_____
   99. I find it difficult to answer.

Q32.1 Tell me, please, have you been able to keep/continue the current supply and service contracts during the bankruptcy process?

1. Yes 2. No 3. I did not have any 4. Other_____99. Difficult to answer.

Q32.2 Have you had a chance during the bankruptcy process, including through the bankruptcy administrator or the court, to suspend the ongoing transactions, implementation

of which required more expendentures than the benefits derived therefrom, when the parties did not fully comply with their commitments?

1. Yes 2. No 3. Did not have 99. Difficult to answer.

Q32.3 Please tell me, if you were able to get a new loan, not part of the financial recovery plan, to cover your current business needs during the bankruptcy process before a financial recovery plan was approved.

1. I applied and got it. 2. I applied, but did not get it. 3. I did not apply. 99. Difficult to answer.

Q33. Please, tell me whether at the investigation stage of the bankruptcy case or during the bankruptcy proceedings you tried to reach agreement with the creditor in the court or extrajudicially (Conciliation Agreement, withdrawal of the bankruptcy claim filed by the creditor, etc.).

1. Yes, SHIFT to Q33.1
2. No
3. Other_____

99. I find it difficult to answer.

Q33.1. If so, please, tell me what the creditor's reaction was.

1. Before the launch of the bankruptcy proceedings, but the creditor refused.
2. At the trial stage, but the creditor refused.
3. The creditor had come to agreement with the debtor, which however was violated later.
4. Other_____

99. I find it difficult to answer

Q 34 . Please, tell me if the creditor has ever asked for illegal payment or reached an illegal agreement related to the bankruptcy proceedings.

1. Yes
2. No. SHIFT to Q 35
3. I find it difficult to answer

Q34.1. If so, how much? _____

Q34.2. If so, whom with? _____

Q35. What do you think, did the bankruptcy administrator have a direct or indirect benefit from your bankruptcy process, other than the committed remuneration?

1. Yes, he/she certainly had.
2. Probably yes.
3. I don't think, he/she had (shift to Q37).
4. Definitely did not have (shift to Q37).

99. I find it difficult to answer.

Q36 . If yes, please, provide the details.

_____

_____

Q 37. Have you ever been contacted by any other institution (except the court and bankruptcy administrator) and asked to share your viewpoints and assessments of the bankruptcy process at any stage of that process?

1. Yes, it happened – SHIFT to Q 37.1.
2. No, it never happened.

99 I find it difficult to answer.

Q37.1. If yes, please, indicate the name of that institution. MARK ALL RELEVANT ANSWERS

1. The authority, to which I filed my complaint _____
2. Self-regulatory organization
3. Ministry of Justice
4. Supreme Judicial Council/Judicial Department
5. Mass Media
6. Other _____

Q38. Have you ever been offered during the bankruptcy proceedings to settle a problem informally?

1. Give a bribe to the judge
2. Give a bribe to the bankruptcy administrator
3. Give a bribe to a representative of some governmental body
4. No, I haven't been offered.
5. I refuse to answer.
6. Other _____

Q39 . Are you aware of any connection between the court and a person or a company related to the bankruptcy case?

1. Yes. SHIFT to Q 39.1.
2. No. SHIFT to Q 40.
3. No, but there are doubts. SHIFT to Q 40.

Q39.1 . If you are aware of or have some doubts, please indicate what connections they were.

_____

_____

Q40. Have you had any information, doubts, or impressions about any corrupt communication?

1. Yes, I had information that the bankruptcy administrator always «worked» with that creditor.
2. Yes, I had information that the judge "worked" mostly with that bankruptcy administrator.
3. Yes, I had information about the informal connection between the administrator and a representative of some governmental authority.
4. I did not have any information, but my impression was that the actions of the administrator were a clear manifestation of bias.
5. I did not have any such information or insight.
6. I refuse to answer.
7. Other _____

99. I find it difficult to answer.

Q 41Please, tell us if you were aware of other bodies where you could apply either to get help or to file your complaints related to your bankruptcy case.

1. Yes, I was aware of those, but I did not apply to.
2. Yes, I was aware of such bodies; I applied to them and received their assistance.
3. Yes, I was aware of such bodies; I applied to them, but did not get any assistance.
4. No, I wasn't aware of those. SHIFT to Q 42

99. I find it difficult to answer.

Q 41.1. If you were aware of such bodies, please, indicate the names. MARK ALL RELEVANT ANSWERS.

1. RA President
2. RA Prime Minister
3. RA National Assembly Members
4. RA Prosecutor General/ Prosecutor
5. Human Rights Defender (Ombudsman)
6. Self-regulatory organization
7. Ministry of Justice
8. Other _____

Q42. Did you (based on some grounds) request the court to early terminate the powers of the bankruptcy administrator (change the bankruptcy administrator)?

1. Yes, specify the basis ——————————————————SHIFT Q 42.1
2. No

Q42.1. If so, what was the action of the court?

1. The Court satisfied my claim and requested the Self-Regulatory Organization (SRO) of the Bankruptcy Administrators to change the administrator.
2. The court did not satisfy my requirement.
3. Other _____

99. I find it difficult to answer.

Q43. Have you applied to the court for termination of the bankruptcy proceedings?

1. Yes, indicate the basis ——————————————————SHIFT to Q 43.1
2. No

Q43.1. If so, what was the court's action?

1. The court satisfied my petition and terminated the bankruptcy proceedings.
2. The court satisfied my petition partially and the bankruptcy proceedings were terminated for a certain part.
3. The Court rejected my petition.
4. Other _____

99. I find it difficult to answer.

Q 44. What procedure was used for appointment of the bankruptcy administrator?

1. Appointment was done by the court, at its sole discretion.
2. On the basis of the debtor's petition.

3. On the basis of the creditor's petition.
4. On random-based principle.
5. As a result of negotiations between the Parties.
6. Appointed by the self-regulatory organization, at its sole discretion.
7. Other _____

99. I find it difficult to answer.

Q 45. From the point of view of increasing the independence and performance efficiency of the bankruptcy administrator, what do you think, which is the most appropriate procedure for appointing a bankruptcy administrator?

1. By the court, at its sole discretion.
2. Based on the debtor's petition.
3. Based on the creditor's petition.
4. On random-based principle.
5. As a result of negotiations between the Parties.
6. By the self-regulatory organization, at its sole discretion.
7. Other~ _____

99. I find it difficult to answer.

Q46. How satisfied are you with the bankruptcy administrator's professional skills related to your case?

1. Fully satisfied.
2. Rather satisfied than not satisfied.
3. Rather dissatisfied than satisfied
4. Not satisfied at all.

99. I find it difficult to answer.

Q47. Please, explain your answer.

_____
_____
_____:

Q48. How satisfied are you with the attitude of the bankruptcy administrator to your case?

1. I am fully satisfied.
2. I am rather satisfied than not satisfied.
3. I am rather dissatisfied than satisfied.
4. Not satisfied at all.

99. I find it difficult to answer.

Q 49. Please, explain your answer.

_____
_____
_____:

FINANCIAL RECOVERY PLAN

Q50. Did you want to submit a financial recovery plan during your bankruptcy proceedings?

1. Yes. SHIFT to Q 51
2. No. SHIFT to Q50.1

Q50.1 If you did not want to submit a financial recovery plan during your bankruptcy proceedings, what was the reason?

1. I was not aware of such right and nobody informed me of that.
2. I did not consider financial recovery as something beneficial for me.
3. I did not consider financial recovery to be realistic.
4. I did not want to submit a financial recovery plan in principle.
5. Other_____

99. I find it difficult to answer.

Q51. If you wanted to submit a financial recovery plan, did you do that?

1. Yes, I did. SHIFT to Q 52
2. No, I did not. SHIFT TO Q 51.1

99. I find it difficult to answer.

Q51.1 If you did not submit a financial recovery plan, what was the reason? MARK ALL RELEVANT ANSWERS

1. I have not managed to submit it, because the law sets a tight deadline for submission of a financial recovery plan.
2. A financial recovery plan has a maximum deadline, which I could not comply with.
3. I did not have enough professional knowledge to develop a financial recovery plan and did not get any relevant support from anyone.
4. The bankruptcy administrator did not complete the inventory of my assets and the analysis of my financial situation by the end of the deadline set by the law.
5. The bankruptcy administrator did not properly carry out my asset inventory and my financial situation analysis.
6. Other_____

99. I find it difficult to answer.

Q52. Please, tell me how the persons indicated below influenced on your willingness to present a financial recovery plan or on the plan presentation process.

	Tended to my financial recovery.	**Convinced me not to present the recovery plan.**	**Demonstrated such a behavior that I found it senseless to work towards recovery.**	**Direct or indirect obstruction**	**No impact**
1.Court	1	2	3	4	5
2. Bankruptcy administrator	1	2	3	4	5
3.Lawyer	1	2	3	4	5
4.Creditor(s)	1	2	3	4	5
5.Secured creditor(s)	1	2	3	4	5

Q53. If a financial recovery plan was submitted, was it approved then?

1. Yes. SHIFT to Q 54
2. No. SHIFT to Q 53.1

99. I find it difficult to answer.

Q 53.1 If the presented financial recovery plan was not approved, what was the reason?

1. It did not meet the law requirements.
2. The court did not consider it realistic.
3. The secured creditor against whose claim the property was pledged and use of which was required for implementation of the financial recovery plan, did not give his/her agreement.

4. Other _____
99. I find it difficult to answer.

Q54. How did the persons indicated below behave themselves while discussing the approval of a financial recovery plan?.

	Indifferent attitude	Tended to approve the recovery plan	Did not tend to approve the recovery program, however did not create obstacles	Hindered the plan approval	Difficult To answer
1. Court	1	2	3	4	99
2. Bankruptcy administrator	1	2	3	4	99
3. Creditor/s	1	2	3	4	99
4. Secured creditor(s)	1	2	3	4	99

Q55. Was there an early termination of the presented recovery plan?

1. Yes, it was terminated pursuant to the law.
2. Yes, it was terminated in violation of the law.
3. Yes, it was terminated, because the court did not consider its continuation realistic.
4. Yes, it was terminated on the grounds prescribed by the law, but being just a formality.
5. Yes, it was terminated because of some other reasons (specify) _____
6. No, it was not. SHIFT to 56
7. Other _____
99. I find it difficult to answer.

Q55.1. If the financial recovery plan was terminated early, had you tried before the termination to negotiate with the interested party to give you a «second chance»?

1. Yes, I had tried.
2. No, I had not tried. Indicate the reason_____
3. Other _____
99. I find it difficult to answer

Q56. Please indicate the role and engagement of the persons listed below in presentation and early termination of the recovery plan, using the scoring scale from 0 to 4 (0 - no role, 4 – the highest engagement).

	Presentation of the financial recovery plan	Filing petition for early termination of the recovery plan	Dif. to answer
1. Debtor			**99**
2. Bankruptcy administrator			**99**
3. Creditor(s)			**99**
4. Secured creditor(s)			**99**

Q57. If you needed new investments for submission or normal continuation of the recovery plan, what were the actions of the persons listed below?

	Found investors	Did his/her best, but could not find investors	Did some actions, which were not sufficient to find investors	Did nothing	Hindered the process	Dif. To answer
1. Debtor	1	2	3	4	5	99
2. Debtor's lawyer	1	2	3	4	5	99
3. Bankruptcy administrator	1	2	3	4	5	99
4. Creditor(s)	1	2	3	4	5	99
5. Secured creditor(s)	1	2	3	4	5	99

Q58. Was a motivated investor found?

1. Yes.
2. No, indicate the reason_____
3. Other_____

99. I find it difficult to answer

Q59. Were there appropriate investments made?

1. Yes
2. No, indicate the reason _____
3. Other_____

99. I find it difficult to answer

Q60. Please, indicate which of the following situations existed in your bankruptcy case –MARK ALL RELEVANT ANSWERS

1. You and all the creditors wanted to submit jointly a recovery plan, but the plan was not approved by the court, because its duration was longer than the maximum term prescribed by the law.
2. The creditor(s) did not approve the recovery plan, because you did not reach agreement on who should carry the "burden" of paying the bankruptcy administrator's remuneration in the result of the program implementation.
3. The obstacles to the submission and approval of the recovery plan were so serious that you bypassed the requirements of the RA Law on Bankruptcy, and through illegitimate mechanisms and internal agreements beyond the bankruptcy proceedings have actually satisfied claims of your creditors or of some of them.
4. None of these
5. Other _____

99. I find it difficult to answer

Q61. If a creditor hindered the process of submission, approval or implementation of the recovery plan (including early termination of the recovery plan based on the creditor's petition), such creditor

1. Did not receive satisfaction towards his/her claim
2. Received full satisfaction towards his/her claim
3. Received partial satisfaction of the claim (less, than would have received if the recovery plan were implemented)

4. Received a partial satisfaction towards his/her claim (more, than would have received if the strengthening program were implemented)
5. Other _____
   99. I find it difficult to answer

Q 62. Please, tell me whether an auction was organized on the subject of your case.

1. Yes
2. No. SHIFT to Q67
3. Other _____
   99. I find it difficult to answer

Q 63. Do you think the bankruptcy administrator conducted the auction process fairly?

1. Definitely yes
2. Rather yes, than no
3. Rather no, than yes
4. Definitely no
   99 I find it difficult to answer

Q 64 . Did you understand the methodology that the bankruptcy administrator used in auction process?

1. Definitely yes
2. Rather yes, than no
3. Rather no, than yes
4. Definitely no
5. I find it difficult to answer

Q 65. Do you think the bankruptcy administrator benefited from the auction process?

1. Definitely yes. SHIFT to Q 66
2. Rather yes, than no. SHIFT to Q 66
3. Rather no, than yes. SHIFT to Q 67
4. Definitely no. SHIFT to Q 67
   99. I find it difficult to answer

Q66. If yes, how did he/she benefit?

1. In cash
2. In the form of property
3. Did a «favor» to someone
4. Other_____
   99. I find it difficult to answer

Assessment of the Activities of the Bankruptcy Administrator, the Court, and the Lawyer

Q67. Do you think the court ensured effective, fair, and adequate application of procedures when managing the process?

1. Definitely yes
2. Rather yes, than no
3. Rather no, than yes

4. Definitely no
5. I find it difficult to answer

Q68. To what extent are you satisfied with the judge's professional skills?

1. I am completely satisfied
2. Rather satisfied than not
3. Rather not satisfied than satisfied
4. Not satisfied at all

99. I find it difficult to answer

Q69. Please, explain your answer

_____
_____
_____

Q70. To what extent do you agree with the following statements about your bankruptcy case administrator?

	Agree	Rather agree than not	Rather disagree than agree	I don't agree	Dif. to answer
1. The bankruptcy administrator artificially "exaggerated" his/her or administration staff costs or the wages of employees.	1	2	3	4	5
2. The bankruptcy administrator unreasonably banned you from performing some actions, which could have a positive impact on satisfaction of the claims and recovery of your solvency.	1	2	3	4	5
3. The bankruptcy administrator could take additional actions to collect the assets, but did not.	1	2	3	4	5
4. The bankruptcy administrator performed a really adequate analysis of your financial situation.	1	2	3	4	5
5. The bankruptcy administrator took all the necessary measures to keep your property.	1	2	3	4	5
6. You agreed with the results of the property valuation done by the bankruptcy administrator.	1	2	3	4	5
7. The bankruptcy administrator gave proper time and attention to your case.	1	2	3	4	5

8. The bankruptcy administrator was always chosing the most optimal and less costly solutions for you, promoting your solvency recovery, even though he/she was receiving less reward than could receive.	1	2	3	4	5

Q71. Please, tell me whether the bankruptcy administrator has ever demanded additional documents from you during the bankruptcy proceedings?

1. Yes
2. No
99. I find it difficult to answer

Q72. To what extent do you agree with the following statements about the court's actions related to your case?

	Agree	**Rather agree than not**	**Rather disagree than agree**	**I don't agree**	**Dif. to answer**
1. The court unreasonably banned you from performing some actions during the bankruptcy proceedings, thus hindering your regular activity.	1	2	3	4	5
2. In the process of the bankruptcy proceedings the court groundlessly refused to offset similar mutual liabilities of you and the creditor during the moratorium.	1	2	3	4	5
3. The court unreasonably banned you from taking some actions, which could have a positive impact on satisfaction of the claims and recovery of your solvency.	1	2	3	4	5

Q73. Had the court terminated your rights to manage or dispose your property before the decision on the liquidation was made?

1. Yes
2. No
99. I find it difficult to answer.

Q74. Please, evaluate the actions of your lawyer(s) during the bankruptcy proceedings

	Yes	Rather yes, than no	Rather no, than yes	No	Dif. to answer
1. The lawyer provided adequate time and attention to your case.	1	2	3	4	5
2. The lawyer had sufficient professional knowledge to represent your interests in the scope of the bankruptcy proceedings.	1	2	3	4	5
3. The lawyer sufficiently cooperated with the bankruptcy administrator in the issue related to recovery of your solvency.	1	2	3	4	5
4. The lawyer lodged a complaint in case he/she did not agree with actions or inaction of the bankruptcy administrator or the court.	1	2	3	4	5

Q75. Did the lawyer participate in the meetings of the creditors?

1. Yes
2. No
99. I find it difficult to answer.

Q76. Please, tell me if you had known beforehand that after completion of the bankruptcy proceedings you would face some negative consequences prescribed by the law, how would you act? MARK 3 ANSWERS BY PRIORITY ORDER

1. I would pay more attention to management of the company.	1	2	3
2. I would pay more attention to the issues of staff recruitment and training.	1	2	3
3. I would be more scrupulous in selecting partners.	1	2	3
4. I would not engage in some deals, I would be more cautious.	1	2	3
5. I would pay more attention to familiarizing myself with legislative regulations.	1	2	3
6. I would hire a group of good lawyers or a legal counsel.	1	2	3
7. I would be more attentive to the provisions of loan agreements.	1	2	3
8. I would regularly conduct internal audits in the company.	1	2	3
9. I would hire a good accountant and a financial specialist.	1	2	3
10. I would make useful contacts.	1	2	3
11. I would study better this business sector and would follow/monitor the competitors.	1	2	3

12. I would be more scrupulous regarding timely compliance with obligations.	1	2	3
13. Anyway, you would not initiate anything	1	2	3
14. Other_____	1	2	3
15. I find it difficult to answer	1	2	3

Personal Data. TO BE FILLED BY THE RESPONDENT

P1. Starting point N _____

First name, last name, and code of the interviewer _____

Address

_____

Telephone number_____

Date of the interview _____/_____/_____(day/month/year)

Start of the interview_____/_____ **Completion of the interview**_____/_____

1.Yerevan

1.1. Yerevan Communities THE INTERVIEWER TO INDICATE THE CODE OF COMMUNITY WHERE THE SURVEY WAS CONDUCTED	
1. Ajapnayk	7. Malatia-Sebastia
2. Avan	8. Noubarashen
3. Arabkir	9. Nork Marash
4. Davidashen	10. Nor Nork
5. Erebouni	11. Shengavit
6. Kentron	12. Qanaker-Zejtoun

2. Region (Marz)_____**Marz Code** _____

2.1. City_____ **City Code**_____

2.2. Village_____ **Village Code** _____

P2. Please, indicate your age. THE INTERVIEWER - TO RECORD IN FIGURES THE REAL AGE (FULL YEARS). FINISH THE INTERVIEW IF THE RESPONDENT IS YOUNGER THAN 18 OR OLDER THAN 70.

_____ years old

P3. Gender of the respondent. INDICATE WITHOUT ASKING:

1. Male

2. Female

P4. Please, indicate your education

1. Secondary
2. Vocational
3. Higher
4. 2 Higher/PHD

THANK YOU FOR INTERESTING ANSWERS