Individual Bankruptcy Law in US, UK and Germany. Lessons for: Georgia.

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Abstract

Law of insolvency is in tight connection with the development of economy. This includes consumer (individual) indebtedness, notwithstanding of what in many countries the bankruptcy systems lacks the regulations towards individual person's indebtedness. The main advantage of a developed individual bankruptcy system is that it provides honest but over indebted individuals with a fresh start through discharging a substantial part of their debts. As Georgia has no individual bankruptcy laws as of yet, this thesis will try to see the key advantages of such developed systems as Germany, UK and the US to see which model is adaptable in Georgia.

In the first part of this thesis discourse will be taken to the history of bankruptcy law and development of discharge notion in the United States, Germany and UK. There will be given a review of all main acts of related to the bankruptcy of individual persons, starting from the early times, concluded in today's existing laws and procedures. In the second, third and forth chapter main points will be made on who is eligible under each system to file for bankruptcy proceedings, what kind of debts can be discharged and what assets can be qualified as exclusion, in other words which assets can be preserved by the debtor. The fifth chapter will be devoted to Georgia. In this chapter will be reviewed existing law related to individual bankruptcy and lastly will be suggested a new model for individual bankruptcy.

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Introduction

Indebtedness of individual persons is a common problem in many countries, due to spreading of credit cards, cheap housing, leasing and etc. Facing this problem many countries introduced Individual bankruptcy and gave a helping hand to over indebted individual persons. The notion of consumer bankruptcy leads from the US, as the US was the first introducing consumer bankruptcy law in the middle of 19th century,[1] since then other countries also recognized need for consumer bankruptcy as day by day consumer debt increased and consumer were in need for some help. Where debt goes there always comes a risk of inability to pay debts.[2] Individuals can easily access to credits, which increases the number and risk of consumer over-indebtedness.[3] Widely accessible consumer credit raises the need for relief.

The significant point of individual bankruptcy is that it offers over-indebted individuals fresh start. A fresh start policy generally includes a provision for debt forgiveness and also offers a plan of paying debts, which gives the opportunity to begin a new and unencumbered financial chapter of his/her life. Effective consumer bankruptcy doesn't only promotes individuals who seek the financial relief and expansion of consumer lending, which is beneficial for growth and development of financial market, but also creditors itself. [4]

The advantages of consumer bankruptcy are apparent but some countries still have not introduced it yet. In Georgia because often social economic situation, many individuals take credits and majority of them become insolvent to pay its debts. Under Georgian law, only merchants are eligible to file for bankruptcy. So Georgian legal system isn't giving a helping

[1] Tabb Charles J.: Lessons from the Globalization of Consumer Bankutyruptcy; Law & Social Inquiry, Vol.30, No.4 (Autumn 2005), pp.763-782
[2] Ibid
[3] Gerard McCormack , Andres Keay, Sarah Brown: European Insolvency Law: Reform and Harmonization (published Cheltenham, UK:Edward Eldgar Publishing, 2017.).
[4] Adam Feibelman, Consumer Bankruptcy as Development Policy, 39 Seton Hall L. Rev. 63 (2009)

hand to individuals and does not allow filling under bankruptcy provisions. Legal and advocates emphasize the need for individual bankruptcy, as individuals suffer from the pressure of thir debts.

In this thesis, I will compare U.S, UK and German Bankruptcy code provisions regarding individual bankruptcy, make a desk research and use different types of law sources including cases, jurisdictions, articles and etc. I will give an overview of the historical development of individual bankruptcy and the fresh start, and try to establish basic notions of a possible Georgian regulation.

Chapter One - General Overview of Individual Bankruptcy Law

1.1 Definition and Historical Development

Depending on the history of the bankruptcy law, bankruptcy was intended only for business entities, and individuals were excluded from the use of bankruptcy law.(and benefits, which bankruptcy law offers to individual persons.) The term bankruptcy or bankrupt was associated with the financial failure of the persons and was symbol of an insolvent merchant.[5] The way of thinking of the society towards individuals who filed for bankruptcy was harsh.[6] Those debtors who were unable to repay their debts were subject of punitive treatment, this included confiscation of all property, debtors' were humiliated publicly and degraded as slaves, they were imprisoned and could be subject of death penalty.[7] "Bankrupts were labeled as "deceivers," "frauds," "offenders," "cheaters," and "squanderers."[8] Bankruptcy law was totally focused at that time only on the welfare of creditors.[9] The early bankruptcy law encompassed creditors to punish debtor for non-payment of the debts by drastic and brutal means.[10] Fortunately for debtors, above mentioned humiliating ways of debtors weren't helpful for creditors, because there were no assets to be sold and creditors simply weren't able to return their money back.[11]

So there was a need for a change. Besides "Individual collective remedies such as writs of *fieri facias, elegit and levari facias",* [12] couldn't effectively deal with the existed problems

[5]G.Stanley Joslin, The Philosophy In Bankruptcy: A Re-Examination, 17 U.L.Rev. (1964-1965), p189.
[6]Rafael Efrat, The Evolution of bankruptcy Stigma & Theoretical Inq. L.365 (2006), p. 367.
[7]*Ibid*, see also Charles J. Tabb, The History of The Bankruptcy Laws in The Unites States, 3 Am. Bankr. Inst.L.Rev 5 (1996) p.7.
[8] See Rafael Efrat, *supra note 2*, p. 367.
[9] See G. Stanley Joslin, *supra note* 1,p.190.
[10]See Rafael Efrat, *supra note 2*, p.367, see also Nathalie Martin. Common Law Bankruptcy Systems: Similarities and Differences, 11 Am. Bankr. Inst. L. Rev.367 (2003), p. 371.
[11] See G. Stanley Joslin, *supra note* 1, p.190.
[12] See Charles J. Tabb, *supra note* 3,p.7.

triggered by debtors' several failures to pay debts. Call for changes led to make reforms in bankruptcy law, in such a way, which would be beneficial, both for creditors and debtors. Especially expansion of commerce and credit on daily basis pushed for the need of collective mechanism to collect debts [13] "The race of diligence" between creditors was one of the reasons, which gave rise to change in the bankruptcy law.[14] Additionally, creditors needed mechanism of protection from each other as well, because of this race of diligence.[15]

Firstly discharge was invented under English law and honest debtors were given a chance to be released from their debts and to start a new life, on condition that they distributed all their assets equally between their creditors. [16] The Industrial Revolution turned the attitude towards trade and credit, and admitted it as essential.[17]Firstly the notion of discharge was included in the law of England in 1705.[18] After that bankruptcy, being associated with the failure of individual, was transformed into a rehabilitation tool. [19] The adjustment of the notion of discharge was vital element in the history of individual bankruptcy. This led to fundamental changes throughout the world and had a significant influence to the United States approach towards bankruptcy. [20]

Regardless the harsh attitude towards individual bankruptcy in the past, nowadays many countries reformed their bankruptcy laws and provided financial relief to over indebted individuals. [21] Nevertheless, it is a fact that there is variance between countries regarding to fresh

[13] See Charles J. Tabb, *supra note* 3,p.7.
[14] Michelle J. white, Why don't More Household File for bankruptcy, Journal of Law, 14 Economics, & Organization, 205 (1998) pp. 210-211.
[15] See Charles J. Tabb, *supra note* 3,p.7.
[16] See G. Stanley Joslin, *supra note* 1, p.191-192.
[17] See Charles J. Tabb, *supra note* 3,p.10-11.
[18]*Ibid*, see also .Charles J. Tabb, The Historical Evolution of Bankruptcy Discharge, 65 Am. Bankr. L. J, 325 (1991), p.333, see also Malhotra, Vibhooti, Debtors Discharge Under United States Bankruptcy Code: Mechanisms and Consequences (March 21, 2010), p.7.
[19]See G. Stanley Joslin, *supra note* 1 p.193.
[20]*Ibid*, p.194.
[21] Rafael Efrat, Global Trends in Personal Bankruptcy, 76 Am. Bankr. L. J, 81 (2002), p.81

start policy and the use of individual bankruptcy law.[22] The difference between countries affording debtors financial relief or not, depends on the grounds of countries tendency and attitude towards entrepreneurship and centralized economy. Furthermore, it depends on countries "availability, certainty and promptness of debt forgiveness feature".[23] There are only two ways jurisdictions afford- there may be no access for individuals to use bankruptcy or they have access to the use of bankruptcy but are not eligible to debt forgiveness. In the second way counties allow individuals to file for bankruptcy and offer them debt forgiveness mechanism. The United States is in the list of countries, affording financial relief to individual debtors.[24]

Nowadays there is a trend of reforming bankruptcy laws and making them more liberal ones, in the sense that it is extended and makes individual persons eligible to use its benefits, there still exists differences in approaches.[25] These differences are results of different political values and view of countries, as well as their economic and credit market situation. But even those countries who generally had harsh laws and only merchants were able to use advantages of bankruptcy law, they also shifted from this approach radically and reformed their laws in a way to allow individuals use bankruptcy law and be eligible of discharge and fresh start policy.

1.2 History of US discharge and Fresh Start

Discharge and fresh start are the cores of the individual bankruptcy. Discharge can be obtained if individual debtor will concede all of his exempt assets to creditors or if he/she will use portion of his future earnings to cover incurred debts. Discharge not only "frees" a debtor from it's past obligations, but also protects debtors from any additional acts of creditors, for

[22] See Rafael Efrat, *supra note* 17.
[23] *Ibid*,p.82.
[24] *Ibid*,p.82-88.
[25] *Ibid*,p.91.

collecting their debts. That's why Discharge is considered as a "fresh start" for debtors.[26] As it was mentioned above firstly the theory of discharge was introduced in England in 1705.[27] The roots of Unites states discharge was exactly the English Law, which later was developed and ameliorated in the United states. The merit of discharge is that the harsh attitude towards individual debtors and protection, which entitled only to creditors shifted and made debtors eligible to the benefits of the bankruptcy law. The first steps in Anglo-American history of bankruptcy towards the discharge theory were made in 1705. The statute of Anne enabled honest but unfortunate debtors to take advantage of discharge and release them from their past debts. Mostly the main goal of this statute and discharge was to ensure and protect creditors from frauds perpetrated by bankrupt's.[28] Notwithstanding, this movement incidentally gave rise to more humane treatment of debtors and as well had a favorable effect.[29] Despite all above mentioned advantages, the firstly (newly) appeared discharge theory was in some sense troublesome. Firstly, the discharge wasn't self-executing, it needed conformity of creditors. This control method was overturned and instead courts were given preference to grant or deny discharge. [30]Secondly only traders had an opportunity to receive discharge, which was result of those days' moral standards. Credits used by debtors were unjustified and linked to fraudulent conduct. [31] Thirdly discharge was an involuntary remedy. Only creditors, seeking repayment, had a right to file and start bankruptcy proceedings.[32]As a consequence that is to say that early English law was more focused on creditors and the intent of it wasn't to provide help to debtors.

[26]Thomas H. Jackson, The Fresh Start policy in Bankruptcy Law, 98 Harv. L. Rev., 1393 (1985), p. 1393.
[27] John M.Czarnetzky,.: The Individual and Failure: A Theory of the Bankruptcy Discharge; Arizona State Law Journal Summer, 2000; 32 Ariz. St. L.J. 393 (hereinafter: The Individual and Failure) p.400 and 424.
[28]Douglas G. Baird, ELEMENTS OF BANKRUPTCY, The Foundation Press, (2010) p.37.
[29] Charles J. Tabb, supra note 14.
[30] *Ibid*, p.363.
[31] See G. Stanley Joslin, *supra note 1*,p.189.
[32] See Charles J. Tabb, *supra note* 14, pp 333-336.

It should be pointed out that this was the first move towards to the tolerant approach of insolvent debtors. All of this promoted the development of present existing individual bankruptcy law.

In the United States the bankruptcy clause firstly was drafted in the constitution in 1787.[33] At that time Bankruptcy law varied from state to state, as there was a lack of federal bankruptcy law. Some states allowed individuals take the advantage of bankruptcy law and their debts were discharged, while other states totally excluded individuals from bankruptcy. The first federal bankruptcy law was implemented in 1800.[34] The goal of this act wasn't to support debtors but rather facilitated creditors, like the English Law. Obviously, it restated the English law. Under bankruptcy act of 1800 only merchants were allowed to be debtors, bankruptcy was involuntary, and to obtain discharge consent from commission was needed.[35] The first Bankruptcy law which primarily strived of the protection of individual debtors was put in a practice in 1841. The Bankruptcy Act of 1841 allowed individual debtor's seeking for financial relief to file for bankruptcy proceedings and benefit from discharge policy.[36] Instead of debtors having needed the consent of their creditors to file for bankruptcy, rather the obligation reversed to creditors to file dissent. The scope of eligibility under this act was expanded and all persons who owned a debt had a right to file a bankruptcy petition. Moreover, 1841 act provided several grounds for denial of discharge, which were broader in contrast to 1800 act. Additionally, debtors receiving denial of discharge had a right to appeal. Soon this law was revoked, because of the boom of debtors seeking for discharge, minimal paid dividends and high administration fees.[37] Later Bankruptcy Act of 1867 expanded grounds for denial of discharge, which made

[33] See Charles J. Tabb, *supra note 3* p.13.
[34] *Ibid*, p.14.
[35] *Ibid*, see also Charles J. Tabb, *supra note* 14,pp 345-366.
[36] See Charles J. Tabb, *supra note 3* p.16.
[37] *Ibid* Charles,p18.

harder to obtain it.[38] Enactment of another bankruptcy law after the failure of previous one was provocation of American Civil war. At that time several states didn't have discharge law at all and those one who had couldn't enforce it as a result of two Supreme Court cases- *Sturges* and *Ogden.*[39] In *Sturgesv. Crowninshield*[40] Supreme Court held that states granting discharge of preexisting debts was unconstitutional. In *Ogden v. Saunders*[41]court said that discharge granted in one state couldn't be used in another state by the same citizen. [42]As a consequence, there was a need for federal bankruptcy law and led to passing of Bankruptcy Act 1867. This bankruptcy act acknowledged both "voluntary" and "involuntary" bankruptcy. Under this act companies were also eligible to file for bankruptcy proceeding. District courts were authorized to lead bankruptcy proceedings, but they had to appoint a register, who would give a helping held to the judge. [43] The basic beneficial point of this act was granting debtors right to choose state exemption laws instead of federal law, which questioned the constitutionality of this act, because it violated the uniformity of the bankruptcy law. Likewise, the earlier bankruptcy act was also in need of amendments.[44]

The bankruptcy act of 1898 is considered as roots of the today's bankruptcy law. It changed and reformed several times till it wasn't formed like it is today. Fundamental changes were made by the Chandler's Act in 1938, which set out structure for individual debtors to propose payment plans to use their income rather than existing assets to pay for their debts over certain time period.[45] The 1898 act abolished restrictions of control exercised by the court and

[38] see Charles J. Tabb, *supra note* 14,pp357-358.
[39] *Ibid*, p.354.
[40] 17 U.S. (4 Wheat.) 122 (1819)
[41] 25 U.S. (12 Wheat.) 213 (1827)
[42] See Charles J. Tabb, *supra note* 3, p15, see also Charles J. Tabb, *supra note* 14,p 354;.see also Thomas H..Jackson, *supra note* 22, p.1437.
[43] See Charles J. Tabb, *supra note* 3, p.19.
[44] *Ibid*, p.19- 20.
[45] Jason J. Kilbron Comparative Consumer Bankruptcy p.53.

creditors. The belief that discharge encouraged debtors to cooperate with creditors and the view that bankruptcy was a collective tool for creditors was abandoned.[46] Rather it was said that granting discharge to "honest but, unfortunate debtors" was a public interest. Debtors who receive fresh start can again be productive and merit the whole community. The 1898 Act laid the foundations for the basic principle of an immediate discharge and a fresh start to begin new unencumbered life.[47] Adherents of 1898 act believed that it would "encourage trade, enlarge and extend credit, build up and promote business, put active, energetic, and brainy men at work, and add to the dignity and wealth of our common country".[48] The grounds for denial of discharge were only fraud and bankruptcy crimes committed by the debtor. There was need to differentiate and make distinctions between fraudulent debtors and honest but unfortunate debtors. Firstly, this variation was made by statute of 4 Anne. Hence was born theory of "honest but unfortunate debtor".[49]

Bankruptcy was a control mechanism of a debtor. Creditors used bankruptcy as a collective tool for debt. It helped creditors to seize the assets of debtors, sell it and then distribute it among themselves. Besides, discharge as well was introduced as a helping aid of debt collection for creditors. Later ideology and viewpoint towards bankruptcy law and discharge was changed. In the case *Local Loan Co. v. Hunt*[50]Supreme Court said incentive of Bankruptcy is to "relieve the honest but unfortunate debtor form the weight of oppressive indebtedness and permit him a fresh start free from the obligations and responsibilities consequent upon business

[46] See John M. Czarnetzky *supra note* 23,p. 425.
[47] See Jason J. Kilbron *supra note* 41,p.53,; see also Barry E. Adle, Douglas G. Baird, Thomas H. Jackson, BANKRUPTCY CASES. PROBLEMSAND MATERIALS, Foundation Press 2007, New York, p.25
[48]See John M. Czarnetzky *supra note* 23 p. 430 (quoting Hon. George W. Ray, Add to the Dignity and Wealth of Our Country,,Bankr. Mag., Apr.1898, at 46).
[49]
[50] 292 U.S. 234, 244 (1934)

misfortunes." [51] This gives to the "honest but unfortunate debtor" opportunity to start a new unencumbered life. All pre-petition debts were discharged, and future incomes couldn't be attached by the creditors. The intolerable approach towards individual bankruptcy and the cruel treatment of debtors throughout centuries developed and transformed into a liberal system, which gives a helping hand to individuals, who are unable to pay back their debts. Creditors were discontented especially with trouble-free access of Chapter 7. They complained that debtors were abusing the bankruptcy system. The individual debtors who were able to pay creditors from their future income misused discharge and fresh start policy and weren't acting in a good faith towards their creditors.[52] Therefore there was a need for certain modifications.

Until 2005 the US Bankruptcy code provided broad scope for discharge. In 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act were passed. [53] As Charles Tabb said - "the enactment of BAPCPA marked the successful culmination of over two score years intense, fervent and well-funded lobbying by the consumer credit industry." [54] BAPCPA amended bankruptcy law in favor of creditors. By passing BAPCPA congress wanted to prevent abuse of Bankruptcy law by debtors, customers and force.[55] So BAPCPA made four significant changes in the 11th title of US bankruptcy code. Firstly, it put into action the mean test, which is obligatory to qualify if person wants to receive an immediate discharge. The means test restricted eligibility for chapter 7.[56] Secondly time intervals between two discharges were enlarged.[57] Thirdly, it obliged debtors to get a credit counseling service, before filing for bankruptcy and at

[51] See Thomas H. Jackson, *supra note*22,p.1394; see also Doug Rendleman, The bankruptcy Discharge: Towards A Fresher Start, 58 N.C. L. Rev. 723 (1979-1980), p. 723; see also Michael D.Sousa, The Principle of Consumer Utility – A contemporary Theory of the Bankruptcy Discharge, Kansas Law Review 2010. Vol.58. p 566

[52] See Jason J. Kilbron, *supra note* 41 p.55.

[53] Public Law 109-8, 119 STAT.23, Apr. 20, 2005 (hereinafter: BAPCPA) http://library.clerk.house.gov/reference-files/PPL_109_008_BankruptcyAbusePrevention_2005.pdf

[54] Charles J. Tabb, The Top Twenty Issues in the History of Consumer Bankruptcy, 2007 U.ILL.L. Rev. 9, 9.

[55] For more information see დავწერო თავების ნომრები.

[56] For more information see დავწერო თავების ნომრები.

[57] See Michel D.Sousa, *supra note* 47, p.58.

last limited availability of discharge.[58] Another aim of BAPCA was to force individual debtors to file under chapter 13 proceedings rather than chapter 7 and receiving an immediate discharge.[59] However BAPCPA couldn't reach the result which congress aimed. The reason of this was that generally "individuals filing for bankruptcy aren't high income earners, but rather individuals and families struggling with huge amount of debts."[60]

[58] See Michel D.Sousa, *supra note* 4, p.579.
[59] See Charles J. Tabb, *supra note* 50, p.9
[60] See Michel D.Sousa, *supra note* 4, p.579

1.3 Justifications of Discharge and Fresh Start

Discharge wasn't a characteristic feature of the first bankruptcy law. On the contrary it was utilized on side of creditors as a collection tool. Generally, bankruptcy was available only to businesses. This gives evidence that bankruptcy law was moving around only to creditors. Later reforms were made and this stigmatized bankruptcy law made debtors eligible to file for bankruptcy and even receive discharge. So, in the past disrespectful debtors, now if they who were honest towards their creditors, were receiving the ability of fresh start.[61]"The bankruptcy discharge is both an end and a beginning." [62] Obtaining discharge ends the bankruptcy proceedings and gives a rise to a new life, free from debts.

Generally, it is based on contractual relationship emerged between debtor and creditor. General rule is that a debtor is obliged to pay existing debt to a creditor.[63] However, if a debtor goes bankrupt, files for bankruptcy proceedings and receives discharge, he/she will be freed from existing debts. So Discharge totally goes contrary to the standard way of contractual and obligation law. Discharge is remarkable exception and needs justification.[64] Scholars provide several justification policies for discharge, which was developing from the early days of its existence. Below will be discussed two justifications of bankruptcy discharge. These justifications aren't internationally agreed characteristic features and vary from country to country. A distinct justification is a consequence of different social-economic and political structures which exists in particular country.

[61] See Charles J. Tabb, *supra note* 50, p.333.
[62] See Doug Rendleman, supra note 47, p.723.
[63]
[64] Howard, Margaret: A theory of Discharge in Consumer Bankruptcy; Ohio state Law Journal 1987; 43 Ohio St. L.J. 1047 (hereinafter: A Theory of Discharge in Consumer Bankruptcy) pp.1047-1048

1.3.1 Entrepreneurial Justification

Individual bankruptcy has a significant function in entrepreneurship. Entrepreneurs generally are individuals with new innovative ideas. Commonly the start- up companies is not incorporated and the entrepreneurs will be personally liable for the acts of their company. And as individual persons they will be eligible to file under individual bankruptcy provisions and obtain discharge if their acts won't be fraudulent. Entrepreneurs should concede all their existing property and after that will receive a fresh start, which means that all their future earnings will be free from creditors. Individuals are more likely to start business and become entrepreneurs in countries, which provide exemption laws. Entrepreneurs face high risk of failing in today's developing world. Restrictions of credit availability are obstacle for starting a business. Individuals with having start-up ideas may be constrained by availability of credit and afraid of taking risks[65]. If countries provided for such individuals bankruptcy legislations with high exemption laws will have a push towards setting up new business entities[66]. Individual bankruptcy plays a role of insurance policy with discharge and fresh start availability for entrepreneurs.[67] Otherwise if failed entrepreneurs had to face harsh punishment methods they would never have taken those risks of starting a new business. [68] Individuals taking such high risk are mainly motivated with discharge and fresh start policy. Entrepreneurship is developed in countries, which encourage individuals of discharge of their debts. [69] Automatic discharge has a significant influence on entrepreneurs; because time is essential for them and it can be said that it is a good signal for them. Countries seeking for individual bankruptcy should take into

[65]Wei Fan & Michelle J.White, Personal Bankruptcy and the Level of Entrepreneurial Activity, 46 Journal of Law and Economics, 545 (2003), pp. 543-544
[66]Id., p.563
[67]*Id. pp* 547, 522
[68] See John Armour & Douglas Cumming, Bankruptcy and Entrepreneurship Law, Working Papers 105/2008, p.4, see also John M.Czarnetzky *supra note* 23,p.398-399.
[69] See Rafael Efrat, supra note 2, pp. 98-99

consideration that automatic discharge and fresh start encourage entrepreneurs to start businesses, which will definitely have a positive impact on the economy and to the employment of its citizens.

1.3.2 Deregulation of Consumer Credit

Extensive use of credit by consumers increased number of individuals using bankruptcy law. At first bankruptcy was available only for traders. Deregulation of consumer credit is often referred as "the democratization of credit" on the grounds that it made credit available for whole the whole public.[70] By the time when credit become accessible as well as for another class of people, demand towards bankruptcy increased and reforms need to be taken.[71] Existing competition between individuals seeking for credit alsoled towards, the deregulation of the credit market and made it more easily accessible to consumers.[72] This vast access gave rise to the financial problems of individuals as they had to tackle with immoderate amount of debt. As a result, amendments were made in bankruptcy law; scope of it was expanded and individuals became eligible to file for bankruptcy. Bankruptcy gave a chance to individuals to receive a relief from their indebtedness and start a new unencumbered life.[73]

[70] See Jason J. Kilbron, *supra note* 41, p. 7.
[71] See G. Stanley Joslin, *supra note* 1, p.189.
[72] See Rafael Efrat, *supra note* 17, p.92.
[73] *Ibid*, p.92-93.

1.4 Bankruptcy Stigma

Bankruptcy stigma exists from early years. Perception of society towards individuals who were unable to pay their debts was severe. Debtors were treated as criminals, fraudsters and bankruptcy was equivalent of committing a crime.[74] Just because of being incapable to pay their debts individual debtors were subject of punitive treatment. Such individuals were treated as slaves, imprisoned and even could be sentenced a death penalty.[75] Bankruptcy stigma is pervasive and its affects can be seen almost in every bankruptcy systems. As professor Tibor Tajti discusses in his article - the reinforcement of bankruptcy stigma differs from country to country by reason of history, economics and non- uniform bankruptcy laws.[76] Stigma has a significant impact on the function of bankruptcy law. Bankruptcy stigma can be detected all over the place from the United States, thorough Europe. It can be confusing mentioning that bankruptcy stigma exists in the United States, as US is regarded to have the most convenient Bankruptcy law. US bankruptcy law offers overburdened individual debtors several options for filing and receiving discharge of their debts. However in the US stigma appears to be lowest. [77]Bankruptcy stigma triggers problems regarding individual bankruptcies. More precisely it's troublesome to encourage individual's persons to engage in bankruptcy proceedings and seek for relief from their debts, exactly because of existing stigma in the society. As in the 2013 World Bank in its Personal Insolvency Report

[74] Charles J. Tabb and Ralph Brubaker, BANKRUPTCY LAW: PRINCIPLES, POLICIES AND PRACTISE, 2003 Anderson Publishing, p.1.
[75] See Rafael Efrat, supra note 2, p.366.
[76] Tabor Tajti , Bankruptcy Stigma and the second chance policy: the impact of bankruptcy stigma on business restructurings in China, Europe and the united States .p.3
[77] Ibid, p.15

said: "even in well-developed insolvency regimes, significant numbers of debtors continue to avoid seeking relief, or they seek relief for later than would be optimal, [because] insolvency systems reveal pervasive and profound feelings of guilt, shame and stigma."[78] In present days when bankruptcy of person is revealed, he/she may face another kind of dilemmas and obstacles. When public gets to know bankruptcy of a person, consumers, clients and business organizations may try to avoid business relations with them as they may be under impression that persons who filed for bankruptcy won't be able to cover costs and even try to avoid payment. So bankruptcy stigma plays a contradictory role in debtor's rehabilitating theory. While fresh start gives debtor opportunity to start a new, bankruptcy stigma closes doors to debtors who filed for bankruptcy.[79] The role of stigma is so intense that even those entities or persons who will give a helping hand to a bankrupt individuals that the negative perception of bankruptcy may shield on them as well. As an example professor Tajti brings China. In China several municipalities created funds to honor companies that were listed on their territories. However if awarded corporations became bankrupt, the stigma would have an influence on them and as the governments. Because of these consequences individuals and even governments try to avoid bankruptcy proceedings. [80] Professor Tibor Tajti offers several means to cope with existing bankruptcy stigma and decrease it's influence on society. Firstly, educating and introducing, consumers (debtors as well as creditors) businesses and different

[78] As cited in Tajti, see supra note 76, See also World Bank, Insolvency and Creditor/Debtor Regimes Task Force, Report on the Treatment of the Insolvency of Natural Persons (2013), section I.10, p.43 available electronically at http://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf.[her einafter: 2013 world bank report]. As cited in Tibor Tajti p9

[79] See Tibor Tajti, supra note 76.

[80] As cited in See Shuguang Li and Zuofa Wang, china's bankruptcy law after Three Years: the Gaps between Legislation Expectancy and Practice and the future roas. Int'l Corp. Rescue, vol. 7, No. 1, 303-312 (2010)

entities, various aspects of bankruptcy system. Secondly, there should be properly educated and trained lawyers, who will create a suitable platform for bankruptcy and ensure its proper functioning. Thirdly, countries should share their own experiences and learn in each other's mistakes. Also US bankruptcy law, which gives two possibilities to individual debtor, Chapter 7- immediate discharge or chapter 13 –adjustment of debts, can play an essential role to diminish impact of stigma on society. As under chapter 13 debtors cover part of their debts with their future income. US individual bankruptcy gives choice to debtors.

So the stigma is present nowadays also. Those countries who still haven't introduced individual bankruptcy should take into consideration existence of stigma while enacting new regulations.

Chapter 2 – Individual Bankruptcy in the United States

In the U.S provisions of bankruptcy law can be found in bankruptcy code, which is the 11th title of the US state codes. Chapter 1, 3 and 5 of the US bankruptcy code are general provisions, which are applicable to the all types of the bankruptcy cases. The remaining chapters are specifically designed and each of these chapters is devoted to various kinds of bankruptcy cases. For the purposes of this thesis I will review Chapter 7 and Chapter 13 of US bankruptcy code, which are related to individual debtors. The US bankruptcy law offers two ways to debtors who aren't able to pay their debts. More Precisely debtors unable to pay their debts they can choose filing between the Chapter 7 "writing off" or Chapter 13 "repayment plan" proceedings. The benefits of US individual bankruptcy is the fresh start and discharge policies, which are offered to individual person[81], but not all the debtors, can be discharged and this is in connection with the special provisions with regard to the exemption law. Chapter 7 is designed for lower-middle-class working persons, which offers full discharge of their debt and fresh start in exchange for debtors all exempt assets[82]; trustee will seize this assets, sell, and distribute to creditors. After this all remaining debts, which are considered under exemption laws as such will be discharged, debtors will enjoy with fresh start.[83] Besides Individual debtors filling chapter 7 procedures will also gain profit from the automatic stay from the moment of filing for bankruptcy procedure. Chapter 7 is considered as an equivalent of business liquidation, in other words called a straight bankruptcy.

[81] Thomas H. Jackson the Logic and limits of Bankruptcy law; see also Carl Felsenfeld, *Denial of Discharge for Substantial Abuse: Refining—Not Changing—Bankruptcy Law*, 67 FORDHAM L. REV. 1369 (1999). Available at: https://ir.lawnet.fordham.edu/flr/vol67/iss4/4

[82] See Michelle J. White, supra note 10, p.20

[83] Robert H. Scott III, Bankruptcy Abuse Prevention and Consumer Protection Act 2005: How the Credit Card Industry's Perseverance Paid Off, Journal of Economic Issues, 943 (2007), p.944 https://doi.org/10.1080/00213624.2007.11507082

While chapter 13 is designed for working individual debtors, couples with limited financial affairs and proprietors of small businesses.[84] More precisely chapter 13 is about adjustment of debts and under this chapter debtors with regular income are eligible[85]. Debtors need to provide a repayment plan of their debts, which they will repay from their future income and they will receive discharge upon the completion of the repayment plan[86]. The main advantage of chapter 13 is that debtors can keep their existing assets and collateral, except of portion of future wages. The US law gives a general frame and illustrates main topics of consumer bankruptcy. The primary principle of consumer bankruptcy is an immediate and indubitable termination of ex post existing debt by providing individual persons discharge and the fresh start policy.[87] The chapter 13 helps over indebted debtors to rehabilitate.

Comparing Chapter 7 and Chapter 13 each of them has its own advantage. Chapter 13 will be interesting mostly for those individual with permanent income and their assets aren't shielded by exemption laws and they are facing risk of losing everything. For such individuals chapter 13 gives ability to keep their assets and pay and cover their debts over years according to the repayment plan by their future earnings.[88] Also the main advantages of chapter 7, which should be noted is the instant discharge and the automatic stay. However, the number of individual filing under chapter 7 outweighs the number of individual filing under chapter 13 – adjustment of debt despite the fact that they can

[84] See Douglas. G. Baird, supra note 41, p.
[85] See Michelle J. White, supra note 10, p.207.
[86] Michelle J. White, Why it pays to File for Bankruptcy: A Critical look at the Incentives under U.S Personal Bankruptcy Law and a Proposal for Change, The University Chicago Law Review,Vol.65,No3 685 (1998), p.691; see also Robert H. Scott, supra note 78, p.944.
[87] See Jason J. Kilborn, supra note 41, p.
[88] Richard M. Hynes, Why (Consumer) Bankruptcy, 56 Ala. L.Rev. 121 (2004) p.130-131

preserve their assets.[89] In this chapter I will describe the core elements of two US individual bankruptcy chapters- Chapter 7 and Chapter 13.

2.1 Butner Principle

From the starting point, should be pointed out the relationship between bankruptcy and non-bankruptcy law. Interdependence and connection of bankruptcy and non-bankruptcy law is unequivocal. Discharge, which is a key element of individual bankruptcy, takes a step against standard law principles such as a freedom of contract. But this doesn't gives us right to say that bankruptcy law is also an exception from non-bankruptcy law. Bankruptcy law is based on non-bankruptcy law and respects non-bankruptcy rights. [90]However Bankruptcy law has influence and alters non-bankruptcy law only in the case when it is necessary for the procedures of the latter one. In other words, it can be said that generally in bankruptcy procedure non-bankruptcy law provisions is used; when bankruptcy law do not sets out some needed provisions and there is a gap. And non-bankruptcy law helps to fill this gap by expanding its scope and having filled these by particular non-bankruptcy provision. This situation occurs, for example, when when a fresh start is provided to flesh-and-blood individuals. In the case *Butner v. United states* [91] supreme court held that:

> "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law. Property interest are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such

[89] Elijah M. Alper, Opportunistic Informal Bankruptcy: How BAPCA May Fail to Make Wealthy Debtors Pay Up, Columbia Law Review, Vol. 107, No.8 (Dec., 2007) p.1914
[90] See Douglas. G. Baird, Supra note p.35
[91] Butner v. Unites States, 440 U.S. 48, 55 (1979).

interest should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding". [92]

2.2. Chapter 7

Discharge of individuals is regulated by Chapter 7 of the US bankruptcy code.[93] Also corporations are eligible to apply for Chapter 7 but only after if they failed to reorganize under Chapter 11.[94] Under Chapter 7 insurance companies and entities, like railroads are excluded [95] as they are determined by different systems and bankruptcy code provides particular procedures for them. [96]Individual debtors can commence a case on their own initiative [97]and also there may be involuntary cases.[98] Debtors seeking filing under Chapter 7 are demanded to give up all their non-exempt assets if they want to receive advantages considered by this chapter, more precisely immediate discharge and fresh start. Filing for bankruptcy procedures automatically reinforces the so called "automatic stay". The main aim of this principle is to stop creditors from collection of their debts.[99] It can be said that automatic stay plays a role of an injunction for creditors in debt collecting efforts and harassment. Those individuals, who file under Chapter 7 and qualify all eligibility requirements, receive an immediate discharge of their debts. This discharge also provides protection for debtor's present or assembled

[92] As Quoted in the elements of Bankruptcy, .5 Douglas G. Baird
[93] Us code of bankruptcy – online link
[94] 11 U.S.C §1112 (b); see Douglas G. Baird, supra note ,p18
[95] 11 U.S.C. 109.
[96] See Douglas G. Baird, supra note ,p.36
[97] 11 U.S.C 301 see Douglas G. Baird, supra note ,p 36, see also Charles J. Tabb& Ralph Brubaker p. 482
[98] 11.U.S.C 303 Douglas G.Baird, elements of bankruptcy, foundation press, 2010 ,p.36; Charles J. Tabb& Ralph Brubaker, supra note 70, p. 482
[99] See Richard M. Hynes , supra note 83, p. 128

future earnings from a creditors sequestration acts once debtor files for bankruptcy.[100] In addition, exempt assets are protected from the creditor's demands.[101] Debtors filing for chapter 7 discharge must also take into consideration the matters related to timing, in the sense that only those debts can and will be discharged, which were accumulated before filing for bankruptcy.[102] Individuals will not receive discharge for the debts, which will be occurred after filing and acquiring Chapter 7 discharge. The fresh start operates and is relevant only to the debtor's pre-bankruptcy debts. After receiving fresh start debtors become usual part of the society, return back to his/her life. Subsequently, debtors again have to face the responsibility for the payment of its own debts if any will be occurred in the future. [103]

There is several eligibility criteria's, which are mandatory preconditions and should be satisfied before filing Chapter 7 proceeding in order to receive a discharge. Of course both b business organizations and individuals are eligible to file for chapter 7 proceedings but only individual debtors are entitled to receive discharge of their debts.[104] It should be noted that there are still several grounds for denial of discharge. So, under US Bankruptcy Code not every consumer can receive a discharge because of its own misconduct linked to the bankruptcy case.[105] First ground for denial of discharge is fraud- "The debtor who acts with the purpose of actual fraud, transfers and conceals property within one year of the filing of the petition will not

[100] Ibid
[101] See Michelle J.White, supra note 10, p. 20; see also Thomas H. Jackson, supra note 22,p. 1396-1397; see also Barry E. Adler, Douglas G.Baird, Thomas H, Jackson, supra note 4, p.559.
[102] See Charles J. Tabb & Ralph Brubaker , supra note 70,p.482.
[103] Ibid.
[104] See Douglas G. Baird, supra note ,p. 17-18,36; see also Charles J. Tabb & Ralph Brubaker, supra note 70, p.482-483, 500; see also 11 U.S.C § 727(a) 11 U.S.C § 727.
[105] See Charles J. Tabb & Ralph Brubaker, supra note 70,p.483.

receive discharge". [106] "Unjustified failure to keep books and records is also ground of denial of discharge".[107] Keeping books and records, helps to comprehend why a debtor went bankrupt. Besides keeping proper books and records makes sure that debtor has disclosed all the property which he/she owned. And the disclosure itself integrates trust between the parties.[108] However those debtors who fail to maintain proper books and records still can receive discharge if their failure will be justified, [109]like in *In re Cox* [110] case. Typically debtors appearing in financial trouble are honest individuals but unfortunate, who fail to make sufficient financial records. Unexceptionally, courts don't suspend on debtors who are bad at making records and use this as a denial ground of discharge and fresh start. [111]If the individual debtor was discharged under chapter 12 or 13 he/ she should have to wait for six years before again filing for chapter 7 discharge.[112] Final restriction for denial of discharge is that debtor applying once more for chapter 7, there should be eight years passed from the previously received discharge and fresh start policy.[113] This restriction plays a protection role from abusive acts, which can take place. Debtor should ensure that each creditor is notified on the bankruptcy and has sufficient time for filing of a proof of claim; otherwise it will be a reason for denial of discharge.[114]

Under chapter 7 not all debts can be discharged, there are debts, which are excluded from discharge.[115] These debts can be classified in two categories: firstly, when the debtor acted

[106] 11 U.S.C 727 (a)(2), see Douglas G.Baird, supra note pg37, see also Charles J. Tabb & Ralph Brubaker, supra note 70,p. 500.
[107]11 U.S.C 727(a)(3) , Ibid.
[108] Ibid
[109]see Charles J. Tabb & Ralph Brubaker, supra note 70,p.500 ; see also Douglas G. Baird, supra note .p.37
[110] Landsdowne v. Cox (IN re Cox) 41 F.3d 1294 (9th Cir.1994)
[111]See Douglas G.Baird, supra note ,p.37
[112]11 USC 727(a)(9); see also Charles J. Tabb & Ralph Brubaker, supra note 70, p.500
[113] 11 USC 727 (a)(8),
[114] 11 U.S.C 523 (a)(8).
[115] 11 U.S.C 523,

unlawful and against bankruptcy law while creating the debt [116] (e.g.., fraud, intended to harm someone, embezzlement). Secondly, debts which are excepted from discharge are thought to have a particular importance, such as alimony, taxes and child support [117]

2.2.1. Fresh start

In Marrama v. Citizens Bank of Mass the Supreme Court stated that "the principle purpose of the Bankruptcy code is to provide debtors in Bankruptcy with a fresh start."[118] The clause "fresh start" cannot be found into the Bankruptcy Code. The notion of fresh start is connected with the bankruptcy discharge, which is the characteristic feature of modern bankruptcy. The fresh start consists of three basic components: discharge, protection of exempt assets and prohibition of discrimination against the debtor. Main reason why bankruptcy is attractive for debtors is discharge of their debts. Discharge operates as in injunction and prohibits collection efforts of debtor's assets to the creditors. [119] Individual debtor who will obtain discharge will be relived from his/her debts. However US bankruptcy code provides certain limitations of discharge. Firstly not everyone is eligible to receive a discharge. Secondly discharge relives debtors only from personal liability on the debts and thirdly not all debts are dischargeable. [120] The filing for bankruptcy triggers an automatic stay, which is a self-executive and serves as an injunction, as it prohibits creditors to collect assets of the debtor.[121]

[116] Douglas G.Baird, supra note ,pg.47
[117] Ibid; See also Charles J. Tabb & Ralph Brubaker, supra note 70,p.511; \
[118] Marrama v. Citizens Bank of Mass., 549 U.S. 365,367 (2007), as cited in David G.Epstein, Bruce A.Markell,Steve H.Nichles & Lawrence ponoroff BANKRUPCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES P.37
[119] Section 524 (a) U.S.C ' David G. Epstein p.38
[120] David G. Epstein p 38-39
[121] See Douglas G.Boshkoff, Fresh Start, False Start, or Head Start, 70 Ind.L.J. 549 (1996), p.549; see also Rafael efrat, supra note 17,p..82 ; see also Douglas G.Baird, elements of bankruptcy, foundation press, 2010 pg. 194

Reasons why debtors are attracted with the bankruptcy proceeding is the discharge of the debts. Discharge releases debtors from the past debts as well as protects them from any further claims. After discharge debtors have chance to start new financial life. Section 707 (b) of the US Bankruptcy code allows the bankruptcy judge to deny debtors a fresh start if the fresh start would work an abuse of the bankruptcy process. Individuals who want to discharge their debts and be able to use fresh start policy should disclose all their assets.

The essence of the exemptions is to protect certain property and income of individuals from creditor's collection activity. Individual creditors are to keep the exempt property despite of the fact that certain creditors may not be paid at all. The statute qualifies and lists the exempt property. Every state in the US has its exemption statutes identifying properties which can be retained by the individual debtors. Exemption property includes tangible (e.g. automobiles, home furnishing) as well as intangible property (e.g. life insurance, certain payment rights such as public assistance disability payments and most important the debtors home. Another advantage of the exempted property is that it can't be reached by the creditors not only during the proceeding but also after the case as well.[122]

Filing for the bankruptcy automatically creates an "estate", which is subject of bankruptcy administration. The possession of the estate is in the hands of the trustee, who collects and sells property of the estate and distributes proceeds from these sales to the creditors.[123] Property of the estate includes all existing property of the debtor, one in which he/she has an interest.[124]

[122] David. G Epstein, Bruce A. Markell, Steve H.Nickles & Lawrence Ponoroff- Bankruptcy Dealing with Financial Failure for Individuals and Businesses.
[123] Ibid
[124] 11 U.S.C 541 (a)

2.2.2. Means Test

In order to prevent substantial abuse of creditors US congress provided for the dismissal of chapter 7 hearings enacting so called -Means Test. The main reason providing the Means Test was complaints about debtors who are in the situation to pay the debts but rather debtors were seeking Chapter 7 relief while they could be expected and were in the situation to pay a substantial portion of their debts in chapter 13 payment plan - this was considered as an abuse of creditors. From the starting points the courts had the power to determine if abuse took place or not. But debates started to take place, because some of the debtors were alleging courts finding abuse in many cases in and not carefully considering the legitimate needs of debtors and their families. So there was a need to reform the consumer bankruptcy system. They initiated the method of determining the presence or absence of excessive extra income would no longer be left to the courts. Instead the law itself would dictate and set a framework of standardized rules to be applied to the debtor's income, and through calculation it would be revealed whether or not the debtor reasonably had the financial means to propose a reasonable payment plan to creditors. This new approach was called the "Means Test". The aim of this law was to direct more individual debtors away from Chapter 7 immediate discharge into Chapter 13 payment plans.

After this amendment the instant discharge under Chapter 7 is available to debtors, who demonstrate that their total income falls below a certain threshold or that their allowable expenses reduce their net disposable income below a certain threshold. [125]

Another function of the Means Test is to distinguish the honest but unfortunate flesh-and-blood debtors who need a fresh start from those who can repay their debts or whose use of

[125] See Jason J. Kilborn, supra note 41, p.

chapter 7 would be abusive. [126]An individual who is hopelessly in debt should be able to file a chapter 7 bankruptcy petition, give up nonexempt assets and receive a discharge from the debts.

For most of individual debtors chapter 7 cases end up by giving honest but unfortunate debtor a discharge and are able to enjoy future income free of claims.[127] Individual debtors who owe creditors more than they can pay to them are given choices to give all their assets, except nonexempt property that they own to their creditors and immediately receive discharge freeing them for any further personal liability to creditors. Or alternatively they can keep their assets but agree to live on a strict budget and pay all of their future income in excess of this strict budget to your creditors for the next five years. If they choose this way at the end of the five years they will receive a discharge.

After 2005 amendments to the bankruptcy code individual debtors whose debts are primarily consumer debts must pass the means test in order to be eligible to obtain relief under chapter 7 of the bankruptcy code.

Under chapter 7 persons are generally eligible if their average monthly income for the previous six months is less than the median income for a household same size in their country. If they make more than the median household and don't have special special exceptions then they won't be eligible under chapter 7 and can only file under chapter 13. "Current monthly income is the debtor's average monthly income over the six month period before the bankruptcy filing, excluding social security income. Then this CMI (current monthly income) multiplied 12 is compared with the median annual income for the debtors state. If the debtor's income is less than the median annual income, the debtor passes the Means Test and is eligible for relief under chapter 7. If however debtor's income is above the medial annual income, the test continues,

[126] U.S.C 707 (b); see also Douglas G. Baird, supra note ,p 17
[127] U.S.C 727, 541 future income of individual doesn't become property of the estate

becomes more complicated and will ultimately depend on the determination of the debtor's disposable income. Disposable income is calculated by various allowable expenses from the debtors' CMI. Some of these deductions are based on the debtor's actual expenses, but more are determined by the reference to standards established by the Internal Revenue Service to ascertain a taxpayer's ability to repay taxes. These include allowances for things like housing, food, clothing, transportation, health care, etc. After the debtors' disposable income is calculated based on expenses deducted from CMI the court will determine how much a debtor can pay towards her debt during the next five years (the typical life of chapter 13 plan) multiplying disposable income by 60 that amount is then tested again with the formula established by the more than a little confusing language of section 707 (b)(2)(A)(i)." [128]

2.3 Chapter 13

US Bankruptcy code proposes another procedure for middle-class and above individual debtors, who weren't eligible to pass the means test but still, are willing to receive discharge. Chapter 13 offers individual debtors adjustment of their debts under the repayment plan. This chapter is specifically for individual debtors with monthly fixed income, whose aim is to keep their assets.[129] The commencement of a case takes place when a debtor voluntarily files a chapter 13 petition. Under chapter 13 an individual debtor should propose and perform so called a "plan for repayment"[130], which is characteristic part of this chapter, in contrast to chapter 7. The advantage of this chapter is that debtors can keep all their assets, by proposing a repayment plan, under which debtors will pay part of their debts from their future income from three to five

[128] See David. G Epstein, Bruce A. Markell, Steve H.Nickles & Lawrence Ponoroff, supra note 118, p.238.
[129] See Michelle J. White, supra note 10, p..210.
[130] 11. U.S.C §1322,

years period.[131] A debtor who performs the plan, discharge will be granted. However, unsecured creditors should receive same amount of money as in the chapter 7 proceedings. Chapter 13 proceedings are especially attractive for those individuals who have monthly incomes but cannot protect their assets with existing exemption laws.[132] However this doesn't mean that a debtor doesn't give up anything for its debts, on the contrary debtor will lose his/her future earnings to repay acquired debts. [133] In other words, debtors', future earning will be used to cover existing debts and satisfy creditor's claims. The repayment plan should be confirmed by the bankruptcy judge and there is nothing that creditors can do to stop a debtor filing repayment plan under chapter 13[134]. But the plan needs the approval of the secured creditors.[135] However, the trustee or the unsecured creditor can object the repayment plan if he/she isn't paid in full and the debtors all disposable income will be used to pay to them. [136] This kind of objections from the side of creditor is quite rare, because court appearance is expensive and they generally don't have sufficient financial sources.[137] Furthermore in chapter 13 most of the debts are being discharged compared to chapter 7 if the debtor performs the repayment plan. The only debts, which aren't been discharged are debts for alimony and support,[138] students loans[139], Dui related debts[140] and for restitution or a criminal fine included in a sentence on the debtor's criminal conviction.[141] The purpose of this broader discharge options is to persuade debtors to choose filing under

[131] See Michelle J. White, supra note 10, p.210; see also Elijah M. Alper, supra note 84 p.1914
[132] See Elijah M. Alper, supra note 84, p.1913-1914
[133] See Barry . E . Adler, Douglas G. Baird, Thomas H. Jackson, supra note 43, p.621
[134] See Michelle J. White, supra note 81, p.210.
[135] 11 USC §1325
[136] 11 USC §1325 (b)(1)(B)
[137] See Michelle J. White, supra note 81, p 691
[138]11. U.S.C §523(a)(5),§1328(a)(2)
[139] 11. U.S.C §§523 (a)(8),1328(a)(2)
[140] 11. U.S.C §§523(a)(9),1328(a)(2)
[141] 11. U.S.C §1328(a)(3), see §523 (a)(7)

chapter 13[142] instead of chapter 7. Chapter 13 expanded eligibility for relief for individual consumer debtors (wage-earners) to any individual debtor with regular annual income and hence is considered as a "superdischarge"[143]. Likewise an unemployed or retired person can also file for chapter 13 if he or she has a regular source of income. However there is some restriction for eligibility under chapter 13. Debtors who owe on the date of filing of the petition, unsecured debts of less than $250,000 and secured debts less than $750,000 may be a debtor under Chapter 13.[144] The debtor must be an individual with regular income and have debts below the threshold set in section 109(e). The limits of these debts force many individual debtors, who have too much property to lose in chapter 7. Chapter 13 gives a helping hand to working individual debtors who have fixed incomes, couples with limited financial affairs and small business enterprises[145]. To say in other words, under chapter 13 are eligible those debtors who are able to pay their debts. They prefer to keep their existing assets and have burden of pays by their debts during years instead of losing everything, receiving instant discharge and starting new life from zero.

The repayment plan should qualify certain requirements.[146] A debtor should provide to trustee future incomes, as it is necessary to execute the repayment plan. If the plan categorizes classes of claims, each claim should be treated equally. All priority claims should be paid in full, unless holder of such claim agrees on different terms. There also exists a time limit on the repayment plan. The plan may not provide repayment plan for periods that are longer than 3 years, unless the court for cause approves a longer period, but the court may not approve a period

[142] See Charles J. tabb & Ralph Brubaker , supra note 70, p.511.
[143] Ibid; See also Douglas G. Baird supra note , p. 49;
[144] 11. U.S.C §109(e)
[145] See Douglas G.Baird, supra note ,p.50
[146] 11. U.S.C 1322 (a)

longer than 5 year.[147] So, the time period of repayment plan ranges from 3 to 5 years. One more point which should be noted is that creditors should be treated and receive same amount of outstanding payment, which they would have received under Chapter 7 proceedings. This gives creditors warrants that their condition will not be deteriorated. [148]

Under certain circumstances debtors who are unable to complete plan payments may still qualify a special hardship discharge and receive a partial discharge. Court may dismiss or convert proceeding in chapter 7, on the basis of non-fulfillment of the repayment plan and for the request of the interested party.[149]

Furthermore debtors owing home mortgages are expected to file under this chapter. Chapter 13 prevents creditors to take possession of mortgages. Advantage of this chapter for home mortgages is that it enables debtor to alter, make adjustments and negotiate some things with its creditors.[150]

2.4 Differences Between Chapter 13 and Chapter 7

Basic difference between chapter 7 and chapter 13 is related to the property of the debtor. Under chapter 7 debtors' non-exempt property is sold in order to repay creditors, but they receive an immediate discharge and start their financial life from a new page. While in chapter 13 debtor remains its property. Instead of selling non-exempt property debtor offers a repayment plan and his/ her future income is used to cover its debts during 3-5 years time period. To clarify, chapter 7 offers individuals instant discharge, in less time and is less expensive, compared to chapter 13, but under this chapter allows debtors to keep its assets, which can be decisive for a lot of debtors

[147] 11. U.S.C 1322 (d)(1)(2)
[148] See Douglas G.Baird, supra note ,p.50-51
[149] 11. U.S.C 1307 (c)
[150] See Douglas G.Baird, supra note ,p.54

if they have a large amount of non-exempt property. Taking into account the existence of bankruptcy stigma, some debtors may choose to file under chapter 13 repayment plan and may feel that there is less shame [151], rather than filing for the chapter 7 "straight liquidation" proceeding. Generally, chapter 13 is preferred over chapter 7 when debtors want to pay all their debts and are able to do so, a debtor has a property, which can be lost under chapter 7 and tries to remain this property, this debtor would fit the eligibility requirements of chapter 7 (e.g. "Means Test" or he/ she already received discharge within 8 year), certain debts will not be discharged under chapter 7, while under chapter 13 it can be discharged. Sometimes debtors choose chapter 13 over chapter 7 because it's better for them, as I mentioned above, regardless of the impact on their creditors. Until 1984 the choice was entirely up to the debtor. That year Congress amended section 707, which gave the court - power to dismiss a chapter 7 case that was found as a substantial abuse. Also, in 2005 congress adopted the Means Test as a better way to shift debtors into chapter 13.[152]

To conclude United States individual bankruptcy law mostly pays attention and takes into consideration debtors. It is the most debtor friendly law. The main goal of it is to ensure well being of debtors and help them become again part of society without any burdens of debt. It ensures for "honest but unfortunate debtors "discharge and fresh start policy, which releases them partially or as a whole form their incurring debts.

[151] David. G Epstein, Bruce A. Markell, Steve H.Nickles & Lawrence Ponoroff- Bankruptcy Dealing with Financial Failure for Individuals and Businesses. P.238
[152] Ibid.

Chapter Three - Individual Insolvency Law in Germany

Before enactment of German insolvency law Germans were facing a lot of problems related to the debts. Growth of the consumer credit and easier availability of taking credits led ledtowards incredible growth of debt. However, Germans constantly acquired debts and loans for household items and for other luxury items. But mostly Germans took additional loans to cover already existing debts on time. This was leading the individuals towards unfinished cycle of "chain indebtedness".[153] Especially the deregulation of consumer credit market exacerbated existing situation, already existing debts doubled and there was no way out from this situation for individual debtors. Existing insolvency laws couldn't satisfy the requirements and challenges of the public[154]. In Germany before enactment of German Insolvency Act there were two laws related to debt relief- *Konkursordnung*[155]and *Vergleichsordnung*.[156] The aim of *Konkursordnung*was to collect assets, seize and distribute between its creditors, rather than giving a helping hand to debtors and relief from their debts. And *Vergleichsordnung* helped debtors to stay away from the strict requirements of the latter one and promoted creditors and debtors to renegotiate.[157] At a glance one may think that doors in Germany for individual debtors were fully opened, but that was not the case. Individual debtors faced several obstacles filing under these laws and couldn't gain any profit. [158]Under both laws it

[153] Jason J.Kilborn, The Innovative German Approach to Consumer Debt Relief Revolutionary Changes in German Law, and Surprising Lessons for the United States, 24 Nw.L.Int'l & Bus.257 (2003-2004) p.261
[154] Robert Anderson Consumer Bankruptcy in Europe: Different Paths for Debtors and Creditors, EUI Working Papers LAW No.2011/09, p.21.
[155] In English translated as "Forced Auction Act". It was in force from 1877 till 1999; see Jason J.KIlborn, supra note 150, p.262
[156] In English – "Agreement Act". it was passed in 1935. see Jason J.KIlborn, supra note 150, p.262
[157] see Jason J.KIlborn, supra note 150, p.262
[158] Ibid.

was possible to enter into court-imposed settlement agreements and settle with creditors to pay less than the remaining debt depending on repayment plan, but it needed consent from the majority of creditors, and nearly all cases went against interest of debtors, which was unfavorable for them instead of being beneficial. As a prerequisite of filing debtors should have enough assets to defray costs of the bankruptcy proceedings[159]. So, these laws were concentrating to give more assistance to creditors to enforce their claims and restricted accessibility to the insolvency law for individual debtors rather than releasing honest but unfortunate debtors and created a "modern debtor's prison".[160] So, practically individuals had no possibility to find relief from their debts and start a new life.

Starting from 1980s till 1999s individual debtors' rights were restricted, in the sense that they weren't capable to obtain discharge of their debts. In 1999 German Insolvency Act was enacted as a solution for existed growth of consumer credit. 1999 Insolvency Act in real gave individual debtors possibility to take a benefit of discharge and fresh start policy and free themselves from the remaining debts for the first time through this many years.[161] Furthermore, amendments were made to offer protection to individual debtors and promote consumers to return to their activities, which would be beneficial for economy of the country.[162]

Today's German Insolvency Act considers discharge of residual debts for natural person.[163] Commencement of discharge begins with filing for discharge [164]of residual debt by

[159] Ibid,p.263; see also Susanne Braun, German Insolvency Act: Special Provisions of Consumer Insolvency Proceedings and the Dischrage of Residual Debts, German Law Journal No.1 (2006), p.61
[160] See Jason J.KIlborn, supra note 150, p.264
[161] See Robert Anderson, supra note 151, p.21; see also see Jason J.KIlborn, supra note 150, p.270
[162] See Susanne Braun, supra note156, p.66.
[163] German insolvency statute https://www.gesetze-im-internet.de/englisch_zpo/
[164] See Susanne Braun, supra note156, p.66; see also germancoode 287

individual debtors and ends with the court decision, which either will grant discharge of residual debts or deny it. [165] A prerequisite for opening insolvency proceeding should be the insolvency of the individual itself, which will be regarded as an illiquid and unable to pay his/her outstanding debts. [166] But over indebtedness of individual person is excluded from requirements of opening insolvency proceeding, it is only considered as a prerequisite for opening insolvency proceeding for legal persons. [167]The characteristic feature of German insolvency law is that individual debtors have to be worthy of and deserve the discharge, that is why often German insolvency is regarded as an "earned fresh start".[168] This means that individuals need to undergo several stages in order to obtain a discharge. Generally, there are three stages[169]. Firstly, the obligatory requirement for debtors and creditors is to try to achieve an out of court settlement before filing for bankruptcy proceedings. During these out-of-court negotiations debtors must be given assistance of a suitable person, which can be lawyer or debt counselor.[170] If they won't be able to negotiate, which can occur quite often because even one creditor's denial is enough for failure[171], a lawyer or debt counselor should certify failure of their settlement.[172] Then second stage takes place at which court itself tries again to achieve agreement between the parties.[173] If majority of the creditors agrees to the

[165] See Susanne Braun, supra note156, p.66, see also german code 305 https://www.gesetze-im-internet.de/englisch_zpo/
[166] German code section 17
[167] German code section , 19, see also See Susanne Braun, supra note156, p.62
[168] See Robert Anderson, supra note 151, p 21.
[169] Ibid.
[170]See Jason J.Kilborn, supra note 150 p. 273
[171] Ibid. p.275-276
[172] See Robert Anderson, supra note 151, p 21
[173] Ibid; see also See Jason J.Kilborn, supra note 150 p. 276

plan but dissent still be against, the court may force them to agree on the plan[174], however dissenting creditors' economic situation shouldn't get worse rather than if the case continued till the liquidation and during the 6 years. .[175] If the judge wont it be able to reach consensus between the parties and creditors again refuse a repayment plan, then the "simplified liquidation proceeding" will begin. However, similarly to the United States this isn't functional, because generally debtors do not have any assets to liquidate. [176] In case of commencement of the liquidation proceedings the court will appoint a trustee, whom will transfer all non-exempted assets, including monthly earnings of a debtor that will be turned over to the trustee. Later, the trustee will sell all seized property and distribute existing money to the creditors.[177] Under German law household items, if they are essential for debtor's lifestyle and everyday activity or is related to his/her job is exempted from the seizure. However, if these item turn out to be luxurious will be replaced by by another item, whose value will be much less but will offer same service as the luxurious one.[178] As a counterpart of seizing and distributing all non-exempted assets debtor should show so called "good-behavior" for a six -year period of time. This means that a should do ones' best ones'best to find suitable job and pay on time part of its monthly income to his/her creditors.[179] The purpose of demanding "good behavior" from debtors was to protect courts form abusive petitions and provide discharge only to those debtors, who honestly wanted to

[174]Ibid.
[175] Ibid.
[176]Ibid. p.278
[177]Ibid.
[178]Ibid. p265
[179]Ibid p. 273, 272, 279-280; See Robert Anderson, supra note 151, p 21; see also German code section 295, Section 291 &287. https://www.gesetze-im-internet.de/englisch_zpo/

receive discharge and even could accept to give up their garnishable earnings in order later to be relieved form their overburdened debts.[180] Discharge will be granted after these six years and debtors will be releasing from the remaining debts, if there won't be any grounds for denial.[181]

Furthermore, under German Insolvency Act not all debts are allowed to be discharged. German Insolvency Act lists several debts, which are excluded from discharge, such as tort actions, any kind of fines, incidental legal consequences of a criminal or administrative offence, which binds the debtor to pay, costs of insolvency proceedings.[182]

Comparing German and United States existing discharge laws, there can be easily seen differences between these two laws. German law did not share the US law approach towards individuals which was oriented on debtors and was much more debtor friendly than German one. [183] On the contrary under German Insolvency Act it is much more difficult to obtain a discharge in contrast to US Bankruptcy law. [184] In Germany individual debtors have to earn discharge and be worth for it. While in US honest but unfortunate debtors can obtain discharge much more easily. Furthermore, main goal of German insolvency law is to promote out of court settlement before filing for discharge and encourage individuals to negotiate.[185]

[180] See Jason J.Kilborn, supra note 150, p.281
[181] Ibid p.279-280; see also German code section 296
[182] German Code Section 39 (1)no.3 &302 https://www.gesetze-im-internet.de/englisch_zpo/
[183] See Jason J.Kilborn, supra note 150, p.281
[184] See Robert Anderson, supra note 151, p.21
[185] Ibid; see also Jason J.Kilborn, supra note 150, p.273.

Chapter Four - Individual Bankruptcy in UK

For the sake of understanding individual bankruptcy existing present day in England, it is essential to have a general overview of the historical development of it. The Earliest legislation, which is said to be a founding statute of bankruptcy of individual persons, is acknowledged to be – "An act against such persons as do make bankrupts".[186] Afterwards in 1542 first Bankruptcy Act was enacted. The objective of this act was to deal with debtors, who run away from their debts and obligations towards their creditors. This act gave creditors right to seize and sale debtor's property and then share collected sum between them. On the basis of these act two major principles of English law was given a rise. First one is - creditor's joint collectivity and another one is- equal distribution of debtor's estate with one another. Another regulation was enacted in 1571 – The Fraudulent Conveyances Act[187], which purpose was protection from the fraudulent conveyances and The Bankrupts Act, [188] enlarged the scope for bankruptcy for individuals.[189] However not everyone was eligible to file under this Bankruptcy Act. Besides insolvent merchants couldn't voluntarily engage in bankruptcy proceedings and adjudicated as a bankrupt. Moreover the stigma was attached to insolvent debtors and the honest but unfortunate debtors were deprived right to receive a discharge and start a new life, free from burdens. The provisions related to discharge was drafted in the act of Anne. [190] However this law still

[186] Statute 1542 (34 and 35 Hen. 8, c.4) see also Ian F.Fletcher, The Law of Insolvency, 4th edition, 2009 p.8, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7675&context=penn_law_review p.14
[187] The Fraudulent Conveyances Act, 1571, (13 Eliz.1, v.5)
[188] The Bankrupts Act 1571, (13 Eliz.1, c.7).
[189] See Ian F.Fletcher, supra note 188, p.9
[190] Act of 1705 (4& 5 Anne, c4) s.8, the law of histoy and culuture p.37 https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1076&context=iclr, p.18 https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7675&context=penn_law_review

needed a lot of changes, because it couldn't provide appropriate features of honest and unfortunate debtors to be divided from dishonest debtors.

The basis of today's existing law was developed specifically from the 19th century. More precisely in 1883 the Bankruptcy Act codified law of personal insolvency. Afterwards most important reforms, which reflected existing insolvency law was made in 1985-86 and 2002. In 1985 Insolvency act was enacted, however to compose it as unified regulation some modifications needed to be done. Therefore in 1986 Insolvency Act came into force.

In 2002 parliament passed an Insolvency Act and Enterprise Act, which corrected existing deficiency related to business rescue by companies and individuals voluntarily arrangements. [191]Government tried to overcome existing stigma by this amendments and make society acknowledge that they had a right to fail. Likewise one of the objectives of these amendments was to incentivize entrepreneur's activities and create an advantageous base for their development[192]. While individual debtors, in case of failure would become free from most of their obligations. [193]

Another point should be made on the EC Regulation on Insolvency Proceeding, which also came into force in 2002. "All insolvency proceedings which fall under the scope of this agreement and which involve a debtor whose centre of main interests is located within any of the European Union member states are subject to the rules of jurisdiction, recognition and enforcement contained within the provisions of the Regulation."[194]

[191] p.6 the working papers footnote 17- it came into force on 1 april 2004
[192] Rafel Efratr global trends in consumer bankruptcy. P100
[193] Paul B Lewis Personal Bankruptcy p.40
[194] Ian F. Fletcher,: The Law of Insolvency, published by Sweet & Maxwell, forth editon 2009

In England insolvency of the debtor and its inability to meet his/her obligations is determined by two tests- "balance-sheet" and "cash-flow" tests. In case of "balance- sheet test, consequently to debtors existing debt and assets, if debts will exceed the assets, there exists possibility to discharge all existing debts. As for "cash-flow" test there exists evidence of debtors inability to pay debts.

It is essential to determine who is eligible under the Insolvency Act to be declared as a bankrupt. In England there exists certain statute's, which figures out eligibility criteria's for debtors and also the debt. If the conditions are met bankruptcy petition would be presented in the court. Debtor, creditor and other qualified person can [195] represent such bankruptcy petition. Afterwards there is a formal hearing of the filed petition to check the case and consequent to this, court will make a decision to engage an insolvency practitioner, who will examine practicability of accomplishing a voluntary arrangement instead of adjudication, or court will compose a bankruptcy order, which is regarded as a commencement of the bankruptcy of individual persons. Hence individual debtors acquire status of "bankrupt, until the time he/she won't receive discharge or the bankruptcy petition itself is nullified. Bankruptcy order turns official receiver into the receiver who manages bankrupt's estate. Official receiver can also play a role of trustee unless there isn't appointed a trustee among the insolvency practitioners, belonging to private sector by the creditors. [196]Money collected by the trustee will be distributed among the bankrupt's creditors, which is called "dividends" and those debts which will be recovered is called "provable" debts. [197]

[195] Creditos petition is eligible if debtors owes debt at least 750 £., pg101. See also Gstanley joslin p.697, 975
[196]Ian F. Fletcher,: The Law of Insolvency, published by Sweet & Maxwell, forth editon 2009 p.23 Individual Voluntary Arrangemnts fA 'Fresh start'for Sakaried Cosnumer Debtors in, p.6 the working papers
[197] Ian F. Fletcher,: The Law of Insolvency, published by Sweet & Maxwell, forth editon 2009

If individual debtors want to receive discharge and benefit from the bankruptcy proceedings, they should waive all their non-exempt property, including their houses. Existing policy allows them to keep only such assets which are for very basic necessities. [198]

Discharge under the English law is an automatic process, which can be granted after one year from the beginning of the bankruptcy. [199] But there exists certain exceptions under which debtor may be discharged in less than one year. This is a case when debtors isn't able to perform his/hers duties in the meanwhile of the bankruptcy process. In such circumstances the official receiver or the trustee has a right to address the court and attain an automatic discharge. However creditors have ability to extend the one year period of discharge, if debtors fail to accomplish their duties. [200]

English law offers individual debtors another opportunity to overcome from their debts, which is an individual voluntary arrangement (IVA).[201] IVAs are concluded among creditors and debtor, having a binding effect. IVA's give an individual debtor opportunity to avoid bankruptcy proceedings and receive relief form his/her debts, by introducing debt repayment plan and enforcing it. So IVA's work as a debt repayment plan, afterwards providing discharge of certain debts. [202]

[198] Individual Voluntary Arrangemnts fA 'Fresh start'for Sakaried Cosnumer Debtors in England and wales. P20, see also Gstanley joslin p.686,
[199] Ian F. Fletcher,: The Law of Insolvency, published by Sweet & Maxwell, forth editon 2009p.39
[200] Ibid p. 9-13
[201] P.5 Functional and political Economy in the comartive study of consumer insolvency: an Unfinished story from England and wales , https://www.kluwerlawonline.com/document.php?id=BULA2016012&PHPSESSID=ge9m4i3g504ubn4vjlo01mnam7 p.71
[202] Individual Voluntary Arrangemnts fA 'Fresh start'for Sakaried Cosnumer Debtors in England and wales p.6-7. For more imfomrtaion p.25

Chapter Five - Existing Individual Bankruptcy Law Georgia

Georgian legislation, namely the Law on Insolvency Proceedings[203], do not envisage the insolvency of a natural person, including adjustment of debts of an individual with regular income. Generally, in the process of insolvency proceedings a debtor may be a legal entity, partnership or individual entrepreneur, in respect of an individual entrepreneur, the legislation does not fit for such a person.[204]According to the Georgian legislation, individual entrepreneur is a natural person that represents an entrepreneurial entity. Therefore, the insolvency of an individual entrepreneur does not constitute/mean the insolvency of individuals in general.[205] Similar regulations under the Georgian law can be found here in relation to the US Chapter 13.

What the word "insolvency" covers under the Georgian legislation approximately the same processes are incorporated into the term "bankruptcy" in the United States.

The Georgian Law complements the insolvency proceedings of individual entrepreneurs,[206] which is close to a self-employed physical person involved in business envisaged under the Chapter 13. However, the procedures are the same as to those of legal persons and do not envisage the release of residual taxes upon the Court's decision. In the reality of Georgia, awareness on the need of debt release institutions is very important, also to what extent to give a chance to an honest person for a fresh start. In case of bankruptcy, according to the law of Georgia, a legal person is automatically exempt from debts, since after the sale of property and allocation of funds to creditors a legal person is annulled. The debtor does not exist

[203] https://matsne.gov.ge/ka/document/view/23572?publication=27 law of Georgia on Insolvency Proceedings
[204]Law of Georgia on Insolvency Proceedings, Chapter 2.
https://matsne.gov.ge/ka/document/view/23572?publication=27
[205]Tax Codeof Georgia, Article 36 (2) and Law of Georgia on Entrepreneurs, Article 3 (2)
https://matsne.gov.ge/en/document/download/1043717/93/en/pdf- Tax code
https://matsne.gov.ge/en/document/download/28408/53/en/pdf- enterprenuers
[206] Law of Georgia on Insolvency Case, Article 2 (2) (a)

and therefore there is no demand. In case of individual entrepreneurs, the law and the practice of the court do not count on what happens after the bankruptcy.

At the time of rehabilitation, the law requires to pay one hundred percent of debts.[207] Practice has shown that this is impossible or is related to a longer period of time. An example of this may be the case of "Kolkhi insolvency case", [208] which began on July 17, 2012 and soon after the decision of the conciliatory board moved into the bankruptcy. Later, upon decision of the creditors, since 25 September 2013 the enterprise moved in to the rehabilitation regime. However, the debtor and creditors failed to make a plan, because it would take many years to meet the liabilities and it was not profitable for parties. Finally, on December 17, 2014, the case returned to bankruptcy proceedings. More than two years were spent in the attempt to save the debtor, but within the conditions of the current legislative demand it was still impossible. Another example is the case of Ltd "Jikia"[209] insolvency case, which started on January 28, 2011. Rehabilitation proceedings have started and on 10 February 2012 was approved a ten-year rehabilitation plan due to the fact that covering liabilities would require carrying out of voluminous rehabilitation works. Both examples indicate the inflexibility of the Georgian law. Long-term insolvency is not economically efficient for any party. If the law gives a person a chance to self-rehabilitation, it means that release of certain debts should be allowed to end the process in a reasonable timeframe.

The existing regulation aiming at meeting 100% liabilities will be more problematic than when it comes to rehabilitation of a natural persons because a debtor's permanent insolvency will

[207] Law of Georgia on Insolvency Case, Article 2 (2) (a),
[208] Ltd "Kolkhi" case https://matsne.gov.ge/ka/document/view/1705465?publication=0, https://matsne.gov.ge/ka/document/view/3028142?publication=0
[209] Ltd "Jikia" case , https://matsne.gov.ge/ka/document/view/1732462?publication=0

bring negative consequences for a debtor and his/her family, as well as to creditors and the public.

5.1 Prohibition mechanism in Georgia

According to the law of Georgia, after making an insolvency statement, all measures taken for compulsory execution against a debtor are suspended and it is no more allowed to start new measures. It is also prohibited to pay the debts taken before the start of proceedings, the payment of debts is suspended, also accrual/payment of interest, penalty and fines (including the tax).[210] Georgian regulation is quite scarce and does not include a wide range of actions that are prohibited by Chapter 13 and does not provide further regulation of exceptions. Regardless of this, putting the regulation into practice could perform the balance function if not the technical drawbacks of its use. This especially refers to the suspension of already commenced measures. According to the Georgian law, suspension only implies the compulsory execution action and does not say anything about actions of procedural provisions.[211] In addition, suspension does not come as a result – procedures are not set out in the law of the body, which performs compulsory execution and this is not also regulated by the court verdict.

Based on the compulsory execution proceedings and applied procedural provisions, the existence of debtors' records in the Debtor's Registry[212] and the Public Registry[213] excludes any disposal of property.

Georgian legislation in case of insolvency does not provide for the change in the registries. The measures used before the start of insolvency are actually in force and prevents the

[210] Law of Georgia on insolvency Proceedings, Article 21,2 (c))
[211] Civil Procedure Code of Georgia, chapter XXIII).
https://matsne.gov.ge/en/document/view/29962?publication=131
[212] Law of Georgia on Enforcement Proceedings, Chapter IV Prima)
https://matsne.gov.ge/ka/document/view/18442
[213] Law of Georgia on Public Registry, Chapter IV
https://matsne.gov.ge/ka/document/view/20560?publication=22

implementation of rehabilitation, because if the plan provides for a property leasing, it will be impossible due to the record in the registry. The gap also leads to an imbalance between the same categories of creditors in terms of equality. A creditor's statement is the basis for applying a measure. As there is no mechanism for its cancellation, the court cannot solve the problem by its initiative, finally, the author of the statement depends on the good will of a creditor to actually start suspension of the actions commenced or to liquidate the results caused by their existence, creditor gets in a favorable condition, as it happened in case of Ltd "Jikia" [214]– due to the mentioned gap, the negotiations among the author creditors of procedural provision from the side of rehabilitation manager and other creditors lasted more than a year to remove sequester and register the project.

5.2 Court authority according to the law of Georgia

According to the law of Georgia on Insolvency Proceedings, the court's involvement in proceedings is solely formal and can not influence the processes: the court verifies the formal basis only when it comes to the proceedings. The Court considers and recognizes creditors' requirements. The court appoints a third member of the conciliation board if the other two members cannot agree on it. A judge chairs creditors' meetings, whereby it has more a function of a notary or a moderator and does not take part in decision making.

This is how the role of the court can be described in terms of insolvency cases. The rest cases are directly regulated by the court or are decided by the board of creditors. Everything is even more complicated in practice, Georgian law leaves many issues without regulation, and the court often does not dare to interfere in the process and does not complement the gap.

[214] Ltd "Jikia" case , https://matsne.gov.ge/ka/document/view/1732462?publication=0

To increase the role and functions of the court in Georgia will have both supporters and adversaries. However, it should be noted that the legislative regulation is often inflexible and solving an individual issue will be more effective as a result of discussion of agile minds.

In addition, the issues that are within the competence of creditors at present could be better regulated by the court.This can be even more justified if taking into consideration the factor that the number of creditors can be big and may have different opinions, which makes it difficult to achieve a consensus. Herewith, we should not forget that there are no specialized courts in Georgia, which is reflected on the timing of case proceedings - bankruptcy proceedings on the case of "Dariali" [215] started on June 15, 2013, the last meeting of the creditors was held on 19 February 2014, while by the law the term of bankruptcy proceedings shall not exceed 225 days.[216] Thus, in case of introduction of the insolvency process for natural persons and expansion of the court authority, should be also raised an issue for creation of specialized courts.

5.3 Early-stage regulations and practice in Georgian reality

In Georgian legislation, there may be a number of norms and procedures that represent early-stage regulations for insolvency proceedings of natural persons in terms of debt adjustment and release from them.

5.3.1 Restructuring of Bank Loans

Taking consumer loan from a bank is a normal phenomenon for modern people and a large share of natural persons' insolvency comes from this sector. However, in most cases a customer can not define one's capabilities and result in problems a bank's obligation.

[215] "Ltd Dariali case" №2/7448-12) https://matsne.gov.ge/ka/document/view/1675815?publication=0 https://www.matsne.gov.ge/ka/document/view/3943505?publication=0
[216] Law of Georgia on Insolvency Proceedings, Article 5 Prima.

According to the latest trends, credits are increasing in consumer sector and the burden of debt service is very high in certain part of the population, which can contain big threats. At the same time, in a low income country, like Georgia, there is nothing surprising and uncomfortable that part of the population could have a problem in terms of debt service and address credit institutions for loan restructuring.[217]

The same is confirmed by the statistics of Tbilisi City Court, which shows that in 2012 out of 1913 cases 561 cases of the court were under the line of obligatory law, while in 2013 out of 2398 cases 2393 referred to the banking service.[218] In many cases restructuring of problem loans is done by the credit institutions operating in Georgia. The procedure is regulated by the contractual law and may include reduction of penalties and accrued interest and creation of a new schedule of payment. Restructuring of a loan depends on lender's will.

5.3.2 Debt adjustment through the court settlement

Civil procedure proceeding recognizes the disposability principle, which also includes the right of parties at any stage to end the case by settlement.[219] Settlement is quite a positive mechanism in the proceedings. It allows the Court to call on the parties to negotiate, emphasizing on the positive side of settlement according to this rule and the savings of time and finances it may bring. Parties may often prefer to come to a compromise in order to speed up the settlement of a case.

[217] https://www.nbg.gov.ge/index.php?m=340&newsid=2461.
[218] http://tcc.gov.ge/index.php?m=534&newsid=179)
[219] Law of Georgia on Enforcement proceedings, Article 3.

5.3.3 Debt Adjustment towards the circumstances altered by the contract adaptation

If the circumstances, which became the basis for forming a contract has clearly changed after concluding the contract or the parties would never have formed such a contract or would form with different content, in order to take into consideration of these changes, Georgian Civil Code provides for the requirement for a contract adaptation to the changed circumstances. If one party does not agree, considering particular circumstances, the other side of the contract cannot be demanded strict adherence to contractual terms.This is a clear attempt to settle the relationship between the debtor and the creditor. However, in case parties fail to agree or it is impossible to make adjustment, then the party whose interest was breached can reject the contract.

5.3.4 Exemption from debts due to the expiration of limitation period

According to the legislation of Georgia after expiry of limitation period shall be revoked to lay claim and the debtor is automatically exempt from the obligation. However, it takes even more time than this is needed in case of insolvency.

5.3.5 Exemption from debt on the basis of termination of enforcement

In order to execute the judicial decision entered into force,except for general limitation, which is 10 years, the maximum term of enforcement proceedings is 10 years. This is preceded by the terms of limitation to lay claim and court proceeding timeframe. In economic terms, it is a long period of time for both parties and it may take a big part of a debtor's life to enforce the judicial decision and free from debt.

None of the above listed regulations envisage the economic goal of civil relations through giving a new chance to an honest debtor.

5.4. Suggestions for Georgian Bankruptcy law

In Georgian economic profile of the World Bank's annual Ease of Doing Business Survey it is noted that a sound insolvency system operates on the filter principle ensuring the survival of economically profitable companies and the movement of resources of non-profitable companies.[220] The study of Chapter 13 has revealed such important issues of the insolvency lawlike determining the conscientiousness of a debtor, protection of a debtor and his/her property, debt adjustment and write off limits, court authority. The approaches related to the mentioned issues are not properly regulated by the legislation of Georgia, it cannot be introduced also by the court practice. First of all, this breaches the unity of the insolvency law system and prevents getting of desired result. Compared to the United States, Georgia is considerably young capitalist country. In general establishment of insolvency procedures has started only since 1996. However, Aspiration of the country towards the development puts on the agenda the necessity of the reform in this field. This especially refers to the introduction of the insolvency and debt adjustment for honest natural persons, which will support the stability of civil turnover.

As it was discussed above, procedures for individual debtors bankruptcy are dispersed in different regulations and unified system for individual debtors doesn't exists. Moreover individual debtors don't have any possibility to obtain discharge of their debts. Georgian legislation in some sense has followed to the United States Chapter 13 procedures. So I would suggest to Georgia to implement legislation based on US bankruptcy code. Firstly, because US bankruptcy code suggests several options for individual debtors and it's upon debtors to choose under which chapter they will file. I think that giving opportunity to take decision by their own is

[220] Economy Profile for Georgia p.73 http://www.doingbusiness.org/data/exploreeconomies/georgia/~/media/giawb/doing%20business/documents/profiles/country/GEO.pdf?ver=2.

crucial for Georgian individual debtors. Debtors know better what is good for them- receiving an immediate discharge or to pay part of their debts and preserve their property. So as the US bankruptcy code has Chapter 7- immediate discharge and Chapter 13- debt adjustment plan, should be introduced in Georgia. From my point of view there are several reasons for such changes. One is that as history revealed creditors in early ages dissatisfied that majority of debtors received discharge and debtors made discharge abusive. So those individuals who can pay part of their debts, should pay while those one who can't should receive an immediate discharge. Every individual should be allowed to file for bankruptcy and have a chance of obtaining discharge. However filing the bankruptcy procedure should be voluntary, because in Georgia there already exists a lot of means which creditors can use as a debt collecting tools. The most significant point should be disclosure. Debtors should know that if they want to receive discharge of their debts, they should disclose all relevant information. If any information related to the bankruptcy proceedings won't be disclosed, it should be a ground for denial discharge and debtors should become liable for non-disclosure.

There should be introduced an out of court settlement as a pre-requisite of filing bankruptcy petition. This will reduce numbers of filings and will be beneficial for creditors as well as for debtors. Also means test should be introduced in Georgia and the scope of discharge, exempt property should be determined on the basis of US bankruptcy Law.

Conclusion

Individual Bankruptcy law has been introduced in a lot of countries and nowadays Georgia is in need for individual bankruptcy. The aim of this thesis was to introduce most developed individual bankruptcy systems and point out advantages and disadvantages of each system, which can be taken into account while drafting a new bankruptcy code for Georgia and introducing new regulations.

Based on the history I tried to show why there was need for bankruptcy generally, how bankruptcy law effects on the economy of the country and demonstrated that stigma still attaches the bankruptcy law and plays a huge role even today.

Enacting new Individual bankruptcy law will not solve all the problems, but as time will pass more and more people will be relieved form their debts, rehabilitate and start a new life which will be beneficial as well for Georgia's economy which will lead to further development of the country.

Bibliography

Laws

1. 11 United States Code- Bankruptcy
2. German Insolvency Code of 5 October 1994 (BGBI. [Federal Law Gazette] I p. 2866), last amended under Art. 2 G dates 21 October 2011 (Federal Law Gazette I p. 2082)
3. England Insolvency Statute
4. LAW OF GEORGIA ON ENTREPRNUERS
5. LAW OF GEORGIA TAX CODE OF GEORGIA
6. LAW OF GEORGIA ON INSOLVENCY PROCEEDINGS
7. CIVIL PROCEDURE CODE OF GEORGIA
8. LAW OF GEORGIA ON ENFORCEMENT PROCEEDINGS
9. LAW OF GEROGIA ON THE PUBLIC REGISTRY

Books

1. Baird, Douglas G.: THE ELEMENTS OF BANKURPTCY; Fifth Edition, NEW YORK< NEW YORK, THE FOUNDATION PRESS, Inc.2010; 270p
2. Tabb, Charles Jordan, Brubaker Ralph.: BANKRUOTCY LAW: PRINCIPLES, POLICIES, AND PRACTISE; Cincinnati, Ohio : Anderson Publishing Co., 2003.; 686 p
3. Kilbron, Jason J.: COMPARATIVE CONSUMER BANKRUPTCY; Durham, North Carolina; Carolina Academic Press, 2007; 114 p
4. Adler, Barry E., Baird, Douglas G., Jackson, Thomas H.: BANKRUPTCY: CASES, PROBLEMS AND MATERIALS; New York, New York Foundation Press; Fourth Edition, 2007; 797 p
5. McCORMACK Gerard. KEAY ANDREW, BROWN SARAH.: EUROPEAN INSOLVENCY LAW: Reform and Harmonization , Edward Ekgar Publishing , Inc, 2017, p. 461
6. Epstein G. David, Markell A. Bruce, Nickles H. Steve & Ponoroff Lawrence,: BANKRUPCTY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDULAS AND BUSINESSES, West Academic Publishing, 2016 , fourth edition p. 593

7. Jackson H. Thomas,; THE Logic and Limits of Bankruptcy Law;, Beard books, Washington, D.C 2001, p.283

8. White J. James,: BANKRUPTCY AND CREDITORS RIGHTS, West publishing Co, 1986 p. 809

9. Fletcher F. Ian,: The Law of Insolvency, published by Sweet & Maxwell, forth editon 2009, p 1071

Articles

1. Tabb, Charles Jordan: *Lessons from the Globalization of Consumer Bankruptcy;* University of Illinois College of Law, Law and Economics Working Papers, 2005 paper 29

2. Levinthal, Louis Edward: *The Early History of Bankruptcy Law*; University of Pennsylvania Law Review and American Law Register, Vol.66, No. 5/6 (APR., 1918), pp.223-250

3. Baird, Douglas G.: *A World Without Bankruptcy* ; law and Contemporary Problems, 1987 Vol.50 No. 2pp. 173-193

4. Czarnetzky, John M.: *The Individual and Failure: A Theory Of the Bankruptcy Discharge*; Arizona State Law Journal Summer, 2000; 32 Ariz. St.L.J.393

5. Sousa, Michael D.: *The Principle of Consumer Utility- A contemporary Theory of the Bankruptcy Discharge,* Kansas Law Review 2010. Vol. 58

6. Jackson, Thomas H. – *Fresh-start policy in Bankruptcy Law;* Harvard Law Review, Vol.98, No.7 (May, 1985), pp. 1393-1448

7. Howard, Margaret: *A Theory of Discharge in Consumer Bankruptcy;* Ohio State Law Journal 1987; 48 Ohio St. L.J. 1047

8. Tabb, Charles Jordan: *The Scope of the Fresh Start in Bankruptcy: Collateral Conversions and the Discharge ability Debate, George Washington Law Review, November, 1990 59 Geo. Wash. L. Rev. 56*

9. Efrat, Rafael: *The Evolution of Bankruptcy Stigma;* Theoretical Inquiries in Law. Volume 7, Issue 2, pp 365-393, 377-378

10. Adam Feibelman, Consumer Bankruptcy as A Development Policy, 39 Seton Hall L. Rev. 63 (2009)

11. Adam Feibelman, Defining the Social Insuarance Function of Bankruptcy, 13 Am. Bankr. Inst. L. Rev. 129 (2005)

12. Barry Adler et al, Regulating Consumer Bankruptcy: Theoretical Inquiry, 29 Jour. Of Legal studies, 585 (2000)

13. Charles J. Tabb, *The Historical Evolution of Bankruptcy Discharge, 65 Am. Bankr. L. J, 325 (1991)*

14. Douglas J Baird, *A World Without Bankruptcy, 50 Law and Contemporary Problems 173(1987)*

15. Elijah M. Alper, *opportunistic Informal Bankruptcy: How BAPCPA May Fail to Make Wealthy Debtors pay up, 107 Columbia Law Review, 1908 (2007).*

16. G. Stanley Joslin , *The Philosophy In Bankruptcy: A Re-Examination , 17 U. Fla. L. Rev.189 (1964-1965)*

17. Irving A. Breitwoitz, New developments in Consumer Bankruptcy: Chapter 7 Dismissal on the Basis of Substantial Abuse, 59 Am. Bankr.L.J.327(1985)

18. Jason J. Kilborn, The Innovative German Approach to Consumer Debt Relief: Revolutionary Changes in German Law, and Surprising Lessons for the United States 24 Nw. J. Int'l L. & Bus.257 (2003/4)

19. John Armour& Douglas Cumming, *Bankruptcy Law and Entrepreneurship, Law Working Papers 105/2008*

20. John C. McCoid II, *Discharge: The Most Important Development in Bankruptcy History, 70 Am. Bankr.L.J. 163 91996)*

21. John C. McCoid, II, The Origins of Voluntary Bankruptcy, 5 Bankr. Dev. J. 361 (1988)

22. Joseph Satorious, *Strike or Dismiss: Interpretation of the BAPCPA 109(h) Credit Counseling Requirement, 75 Fordham L. Rev. 2231 (2007), pp. 2233-2234*

23. Margaret Howard, *A Theory of Discharge in consumer Bankruptcy, 48 Ohio St.L. J. 1047 (1987)*

24. Michelle J. White, Economic Analysis of Corporate and Personal Bankruptcy, NBER Working Paper Series, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=779946 or https://www.nber.org/papers/w11536

25. Michelle J. White, *Why It Pays to File for Bankruptcy: A Critical Lok at the Incentives Under U.S. Personal Bankruptcy Law and a Proposal for Change. 65 U. Vhi. L. Rev. 685 (1998)*

26. Michelle J. White, Why don't More Household File for Bankurptcy, *Journal of Law, 14 Economics7 Organization, 205 (1998)*

27. Nathalie Martin, Common Law Bankruptcy Systems: Similarities and Differences, 11 Am. Bankr. Inst. L. Rev. 367 (2003)

28. Rafael Efrat, *Global Trends in Personal Bankruptcy, 76 Am. Bankr. L, J, 81 (2002)*

29. Rafael Efrat, *The Evolution of Bankruptcy Stigma, 7 Theoriical Inq. L. 365 (2006)*

30. Rendleman, Douglas R., *Bankruptcy Revision: Proceure and Process, 53 N. C.L. Rev 1109 (1974-1975)*

31. Rendleman, Douglas R., The Bankruptcy Discharge: Towards A Fresher Satrt, 58 N.C.L. Rev. 723 (1979-1980)

32. Richard M. Hynes, *Why (consumer) Bankrupcy? 56 Ala. L.Rev 121 (2004-2005)*

33. Seung-Gyun Lee & Mike W. Peng, *BANkruptcy Law and entrepreneurship Development: A real Option Perspective, 32 Academy of Managemnt Review 257 (2007)*

34. Thomas H. Jackson, *The Fresh Styart Policy in Bankruptcy Law, 98 Harv. L. Rev., 1393 (1985)*

35. Todd J Zywick, An Economic Analysis of consumer Bankrupcty Crisis, 99 Northwestern University Law Review, 1463 (2005)

36. Susanne Braun, *German Insolvency Act: Special Provisions of Conusmer iNsolvency Proceedings and the Dischsrge of Residual Debts, & Germn l.J. 59 (2006), pp.65-66, available at* https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56b86f44c6fc08b5d1733dd3/1454927684257/GLJ_Vol_07_No_01_Braun.pdf last visited 12 April 2019

37. Wei Fan & Michelle J. White, *Personal Bankruptcy and The Level of Entrepreneurial Activity, 46 Journal of Law and Economics, 545 (2003),*