

THE CRIMINALIZATION OF INTENTIONAL BANKRUPTCY: A COMPARATIVE STUDY

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Abstract. This study examines the legal frameworks governing intentional bankruptcy across different jurisdictions, analyzing the rationale, enforcement mechanisms, and penalties associated with fraudulent insolvency. The paper explores how various legal systems define and penalize bankruptcy fraud and the implications of criminalizing such financial misconduct. **Keywords:** Bankruptcy fraud, Insolvency law, Fraudulent bankruptcy, Financial misconduct, Creditor protection, Debt concealment, Corporate fraud, Legal frameworks, Cross-border insolvency, Regulatory enforcement, Criminal liability, White-collar crime, Forensic accounting, Economic rehabilitation.

Intentional bankruptcy, also known as fraudulent bankruptcy, occurs when an individual or corporation deliberately manipulates financial records, conceals assets, or engages in other deceptive practices to avoid paying creditors. While bankruptcy laws aim to provide debt relief and economic rehabilitation, fraudulent misuse of these laws undermines financial integrity and creditor confidence. This paper provides a comparative analysis of how different jurisdictions approach the criminalization of intentional bankruptcy.

Bankruptcy is a legal situation resulting from the inability of an individual or legal entity to fulfil its financial obligations. In other words, if the debtor's liabilities exceed his assets or cannot pay his debts on time, he can be declared bankrupt.

Bankruptcy is often settled out of court and the debtor's assets are distributed among creditors or the debtor's finances can be restored through reorganisation. The concept of bankruptcy has existed since ancient times and has developed in different forms in different countries. For example, in Roman law, if the debtor could not fulfil his obligations, his property could be confiscated by the creditors or even the debtor himself could be sold into slavery.

In Italy, the concept of bankruptcy comes from the term "banca rotta", which means "broken bench". At that time, the bench of a merchant with financial problems was demolished. The first bankruptcy laws were passed, creating a system that allowed debtors to recover financially rather than punish them. Currently, in many countries, the bankruptcy process is regulated by law, and its main goal is to balance the interests of the debtor and creditors. Bankruptcy is an important element of the economy, and it is considered a means of restoring the financial condition of businesses and individuals or improving the health of the economic system.

In the U.S., fraudulent bankruptcy is a federal crime under 18 U.S.C. § 157. The law criminalizes fraudulent acts committed in connection with a bankruptcy filing, including falsification of documents, concealment of assets, and false statements. Penalties may include fines and imprisonment for up to five years. The U.S. also employs the Bankruptcy Abuse



Prevention and Consumer Protection Act (BAPCPA) of 2005, which tightened regulations to prevent abusive filings.

The crime of willfully causing insolvency (bankruptcy) is regulated by various laws. There is liability for Bankruptcy Fraud and Financial Fraud. Bankruptcy proceedings are governed by the U.S. Bankruptcy Code (11 U.S.C.). A person or company can intentionally cause bankruptcy by falsifying or concealing documents, intentionally misrepresenting existing assets, attempting to defraud the court or creditors, or illegally transferring or extinguishing debts. If a person or company violates these provisions, 18 U.S.C. § 157 (Bankruptcy Fraud) is punishable by up to 20 years in prison or a fine. In addition, willful bankruptcy can include federal crimes such as concealing liability for debt and filing false financial statements. If the owner of the company falsifies financial statements and declares bankruptcy, but hid the money - a crime is committed. If the management artificially puts the company into debt and then transfers the assets to third parties, this is also fraud. In the US, it is a felony to knowingly arrange bankruptcy or fraudulently induce insolvency. Offenders can be punished with large fines or long prison terms.

In the United Kingdom, The Insolvency Act 1986 governs bankruptcy proceedings in the UK. Under this Act, fraudulent trading (Section 213) and misconduct in bankruptcy (Section 352) are criminal offences. Individuals found guilty of intentionally defrauding creditors may face fines, disqualification from directorship, or imprisonment. The UK has also developed Director Disqualification Orders (DDOs) to prevent individuals responsible for fraudulent bankruptcies from managing companies in the future.

In Germany criminalizes fraudulent bankruptcy under Section 283 of the German Criminal Code (Strafgesetzbuch, StGB). It penalizes debtors who intentionally conceal assets, destroy financial records, or conduct transactions that disadvantage creditors. Penalties include imprisonment of up to five years or fines. Germany also integrates insolvency law provisions with criminal law to ensure strict enforcement against fraudulent activities.

In France addresses intentional bankruptcy under Article L654-2 of the Commercial Code, which criminalizes fraudulent bankruptcy (banqueroute frauduleuse). Offenders may face severe penalties, including imprisonment for up to five years and substantial fines. The legal framework also imposes professional bans on convicted individuals, preventing them from engaging in business activities for specified periods.

In China, fraudulent bankruptcy is regulated under the Criminal Law of the People's Republic of China, specifically in Articles 162 and 163. The law criminalizes acts such as asset concealment and falsification of financial reports during bankruptcy. Convictions can result in imprisonment ranging from three to seven years, along with financial penalties. China has increasingly emphasized enforcement to curb fraudulent business practices.

If we analyze on the basis of the above-mentioned information, the following general and similar aspects can be found.

- Most jurisdictions criminalize intentional bankruptcy under specific statutes, often within commercial or criminal codes.

- Typical offenses include asset concealment, fraudulent financial reporting, and preferential treatment of creditors.



- Penalties generally include fines, imprisonment, and professional bans. Also, these analyses show many differences in them.
- Severity of Punishments: While the U.S. and China impose strict imprisonment terms, some European nations may emphasize fines and professional disqualifications.
- Preventive Measures: The UK's use of Director Disqualification Orders is a unique preventive tool not universally adopted.
- Enforcement and Prosecution Rates: Some jurisdictions, like Germany, integrate insolvency and criminal law more effectively, leading to stricter enforcement.

What is involuntary bankruptcy? Intentional bankruptcy is when a person or organization induces bankruptcy by artificially worsening their financial situation to hide their assets, engage in illegal transactions, or intentionally avoid creditors. This is an illegal act and is a criminal offence in most countries. The main forms of intentional bankruptcy can be several. They are as follows:

1. Hiding or transferring property, that is, the debtor tries to hide his assets from creditors by transferring them to close relatives or trusted persons. 2.

By creating false debts, he creates artificial debt and creates false obligations to creditors. 3.

An entity may deliberately reduce assets, that is, a company or individual deliberately worsens its financial condition by selling its assets at a low price or entering into harmful contracts.

4. The debtor manipulates the legal procedures and tries to obtain illegal benefits from the bankruptcy process. Criminalization of Intentional Bankruptcy In many countries, intentional bankruptcy is considered an economic crime and may be subject to the following measures: Administrative liability - fine or other economic penalties. Civil Liability – Bankruptcy is reviewed and the interests of creditors are protected. Criminal liability – Intentional bankruptcy is considered a serious economic crime, punishable by imprisonment, confiscation of property, or other severe penalties.

Intentional bankruptcy in the legislation of Uzbekistan is defined as a situation that causes the Criminal Code of the Republic of Uzbekistan and other economic laws to bring responsibility for intentional bankruptcy.

If an entrepreneur or the head of an organization deliberately loses his assets or declares bankruptcy by deceiving creditors, he may be held administratively or criminally liable. Because willful bankruptcy is a criminal offence, intentionally defaulting on financial obligations or concealing assets is prohibited by law.

This procedure was introduced to ensure economic stability and protect the rights of creditors. This crime can be committed under the influence of various factors. First of all, the desire for financial gain. In many cases, intentional bankruptcy is motivated by the desire for financial gain. A company or individual declares bankruptcy to avoid obligations to its creditors. Some businesses or individuals attempt to obtain insurance payments or government financial assistance by faking bankruptcy. An entrepreneur can plan to bankrupt his old company, get rid of liabilities and start a new business. Secondly, hiding or transferring assets. In some cases, company owners or managers plan bankruptcy and transfer their assets to third parties (friends, relatives or fake companies). In this way, they aim to avoid the claims of creditors, to preserve property in illegal ways, and then to regain control of the assets. Thirdly, Internal and external pressures. Sometimes intentional bankruptcy is caused by external or internal pressure. Some entrepreneurs or company leaders choose illegal ways instead of managing it honestly, even if they are in a



difficult economic situation. In some cases, bankruptcy planning can be part of fraud schemes. Fourthly, Bad management and planned loss. A company's executives may suffer losses due to poor investment or management decisions, ultimately leading to deliberate bankruptcy. Some entrepreneurs use risky strategies and face huge losses and try to hide this situation with bankruptcy. Fifth, the commission of a crime and the concealment of traces. Sometimes intentional bankruptcy is used to conceal traces of fraud or other economic crimes. The main reasons for the crime of intentional bankruptcy are factors such as economic interest, concealment of assets, external pressure, mismanagement and fraud. This crime violates the rights of creditors and can lead to economic chaos. Therefore, many countries have established strict criminal measures for willful bankruptcy. Intentional bankruptcy and financial fraud cases have been committed in several large companies internationally. We can cite some famous ones as an example. In particular, in 2001, one of the largest energy companies in the USA, Enron Corporation, committed the crime of intentionally causing bankruptcy by falsifying financial statements to create insolvency. Company managers hid real profits and losses and provided false information to investors. Before the bankruptcy, the company deliberately concealed its assets and conducted harmful financial transactions. In 2001, a \$63 billion bankruptcy was announced. As a result, CEO Jeffrey Skilling and CFO Andrew Fastow were convicted and sentenced to long prison terms. After the Enron case, the Sarbanes-Oxley Act (2002) was adopted in the USA.

In 2003, the above situation happened at Parmalat, a large Italian manufacturing company. It became known that the company's debts of \$14 billion were hidden. The leaders of the company pretended to have non-existent money in various accounts. As a result, CEO Calisto Tanzi was convicted and sentenced to 18 years in prison.

Also, a similar situation happened at Lehman Brothers, one of the largest US investment banks. Before the 2008 financial crisis, the company used a financial trick known as REPO 105 - that is, it temporarily hides its losses and inflates its assets. The bank went bankrupt with a debt of 600 billion dollars. After the collapse of Lehman Brothers, the global financial crisis began. Several financial regulations have been revised.

In 2009, Satyam, one of India's largest IT companies, was accused of falsifying financial statements and fraudulently overstating its assets and income. Investors lost billions of dollars when the true financial situation of the company was disclosed this year. As a result, the founder of the company, B. Ramalinga Raju, was imprisoned. After that, corporate governance regulations were tightened in India.

In addition, in 2020, a major German payment company, Wirecard, committed financial fraud by submitting false documents. It was found that \$2 billion was missing from the company's balance sheet. Company executives misled investors by hiding assets and creating false returns. As a result, Wirecard CEO Marcus Braun was arrested. The company completely collapsed and declared bankruptcy.

In conclusion, intentional bankruptcy and financial fraud can have major economic consequences. Such cases indicate the need to strengthen financial regulations, tighten bankruptcy laws, and strengthen corporate governance. The criminalization of intentional bankruptcy serves as a deterrent against financial fraud, ensuring economic stability and creditor protection. While legal approaches vary across jurisdictions, there is a growing trend toward harmonization through international cooperation and



technology-driven enforcement. Future legal reforms should focus on enhancing transparency and strengthening cross-border enforcement mechanisms to address the challenges of fraudulent bankruptcy effectively.

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