

Technical comments

to the Draft Law on Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening the Protection of Employees' Claims for Payment of Wage Arrears in Case of Insolvency of Employer [posted](#) by the Ministry of Economy of Ukraine for discussion on 28.08.2021

Background and disclaimer

The comments therein have been prepared with a view to supporting the process of social dialogue on labour law reform in Ukraine. They represent technical expert opinions only and are provided without prejudice to any official comments that may be made by the Office on the final drafts or by the ILO bodies responsible for supervising compliance of Ukrainian labour legislation with international labour standards. The present Technical Note does not constitute an endorsement by the International Labour Office of the opinions expressed therein.

ILO technical support in the drafting process of labour legislation seeks to increase the involvement of its primary beneficiaries – employers and workers – throughout the process of labour law reform. This reflects the core ILO principles of social dialogue and tripartism. It also expresses the letter and spirit of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Ukraine. Paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152) also emphasizes the importance of consultations in relation to ‘the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations’.

In addition, some of the comments below are made in light of non-ratified ILO standards, as well as Recommendations. These particular comments are provided on the understanding that, in the present context, such standards are referred to not as binding

instruments, but as a useful point of reference. ILO standards are adopted by a qualified majority of delegates attending the International Labour Conference; hence their content represents internationally accepted good practice, recommended by the ILO.

The current technical support is being provided in the framework of the technical cooperation project “Rights at Work: Improving Ukraine’s Compliance with Key International Labour Standards” funded by the Canadian government¹ and implemented by the ILO.

No.	The provisions of current national legislation	The provisions of draft Law	The provisions of ILO conventions and recommendations	Discrepancies and gaps identified in draft Law
<u>Code on Bankruptcy Procedures of Ukraine (CBP)</u>				
1.	<p>Article 1. Definition of terms</p> <p>...</p> <p>creditor – a legal or natural person, as well as the controlling body authorized in accordance with the Tax Code of Ukraine to take measures to ensure repayment of tax debt and arrears of payment of a single contribution to the obligatory state social insurance within its powers, and other state bodies that have monetary obligations to the debtor; secured creditors – creditors whose claims against the debtor or another person are secured by the debtor's property; unsecured creditors – creditors on claims against the debtor, which arose</p>	<p>Article 1. Definition of terms</p> <p>...</p> <p>creditor – a legal or natural person, as well as the controlling body authorized in accordance with the Tax Code of Ukraine to take measures to ensure repayment of tax debt and arrears of payment of a single contribution to the obligatory state social insurance within its powers, and other state bodies that have monetary obligations to the debtor; secured creditors – creditors whose claims against the debtor or another person are secured by the debtor's property, as well as the central executive body, which implements the state policy on</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 1 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. Under the Paragraph 4 of Regulations on the State Labour Service, approved by Resolution of the Cabinet of Ministers of Ukraine No. 96, of 11.02.2015, the State Labour Service is the central executive body that implements the state policy on supervision and control over compliance with labour legislation.</p> <p>It should be noted that current edition of the</p>

¹ The views and opinions, expressed in this technical note, do not necessarily reflect the official policy or position of Canadian Government.

	<p>before the opening of bankruptcy proceedings and the implementation of which is not secured by the pledge of the debtor's property; current creditors – creditors on claims against the debtor, which arose after the opening of bankruptcy proceedings;</p> <p>...</p>	<p>supervision and control over compliance with labour legislation; unsecured creditors – creditors on claims against the debtor, which arose before the opening of bankruptcy proceedings and the implementation of which is not secured by the pledge of the debtor's property; current creditors – creditors on claims against the debtor, which arose after the opening of bankruptcy proceedings;</p> <p>...</p>		<p>Regulations on the State Labour Service of Ukraine does not specify in its provisions the mandate of the Service to exercise provided for by draft Law powers during the rehabilitation/bankruptcy procedures of employer.</p>
<p>2.</p>	<p>Article 12. Rights and obligations of an insolvency manager</p> <p>...</p> <p>2. The insolvency manager is obliged:</p> <p>...</p> <p>7) carry out measures to ensure the protection of state secret information in accordance with the requirements established by law;</p>	<p>Article 12. Rights and obligations of an insolvency manager</p> <p>...</p> <p>2. The insolvency manager is obliged:</p> <p>...</p> <p>7) carry out measures to ensure the protection of state secret information in accordance with the requirements established by law;</p> <p>7-1) provide the central executive body implementing state policy on supervision and control over compliance with labour legislation, an extract from the register of creditors indicating: creditors who are entitled to payments in accordance with the Article 34-1 of the Law on Wages; data on the amount of repaid claims of such creditors;</p>	<p>Ukraine has ratified: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (has accepted the obligations of Part II).</p> <p><i>There are no comments from CEACR on this issue.</i></p> <p>In accordance with the Article 12 of C173, the workers' claims shall include at least: (a) the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment; (b) the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than</p>	<p>1. Proposed amendments to the Article 12 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The amounts owed to creditors (in the case of this provision unpaid workers) is based on Article 34-1 of the Law on Wages in the Ukraine. Articles 1, 2, 3 and 34-1 of the Law on Wages define wages and include some other forms of compensation. While it may be true that the proposed language is not in contradiction with Article 12 of ILO Convention No. 173 it is a bit unclear if it covers provisions such as holiday pay and other paid absences (included in Article 12 of C.</p>

		<p>types and amounts of claims to be compensated in case of insolvency of the employer;</p> <p>the amount of three average salaries of the creditor for the twelve months preceding the month in which the bankruptcy case was initiated or the employment contract was terminated in case of dismissal of the employee before the initiation of the this case;</p> <p>...</p>	<p>six months, prior to the insolvency or prior to the termination of the employment; (c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment; (d) severance pay due to workers upon termination of their employment.</p>	<p>173). This will depend on the definitions applied in this context by the Ministry and the Courts (but perhaps could be made a bit clearer for workers and employers). Consideration might also be extended to Paragraphs 3 and 9 of ILO Recommendation No. 180 which lists a variety of forms of compensation that may also need to be addressed.</p>
3.	<p>Article 41. Moratorium on satisfaction of creditors' claims</p> <p>5. The moratorium on the satisfaction of creditors' claims does not apply to the claims of current creditors, the payment of wages and insurance contributions accrued on these amounts for compulsory state pension and other social insurance, compensation for harm caused to the health and life of citizens, payment of royalties, alimony, as well as claims on executive documents of a non-property nature, obliging the debtor to perform certain actions or refrain from their commission.</p>	<p>Article 41. Moratorium on satisfaction of creditors' claims</p> <p>5. The moratorium on the satisfaction of creditors' claims does not apply to the claims of current creditors, the payment of wages and insurance contributions accrued on these amounts for compulsory state pension and other social insurance, compensation for harm caused to the health and life of citizens, payment of royalties, alimony, as well as claims on executive documents of a non-property nature, obliging the debtor to perform certain actions or refrain from their commission, claims of the central executive body implementing state policy on supervision and control over compliance with labour legislation.</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>Proposed amendments to the Article 41 of CBP do not contradict the provisions of ILO instruments.</p>

<p>4.</p>	<p>Article 44. Entering procedure for disposing of the debtor's property</p> <p>...</p> <p>3. The property manager is obliged:</p> <p>...</p> <p>provide the state registrar in electronic form through the portal of electronic services of legal entities, natural persons – entrepreneurs and public formations with the information necessary for maintaining the Unified State Register of Legal Entities, Natural Persons – Entrepreneurs and Public Formations, in the manner prescribed by the state body for bankruptcy;</p>	<p>Article 44. Entering procedure for disposing of the debtor's property</p> <p>...</p> <p>3. The property manager is obliged:</p> <p>...</p> <p>provide the state registrar in electronic form through the portal of electronic services of legal entities, natural persons – entrepreneurs and public formations with the information necessary for maintaining the Unified State Register of Legal Entities, Natural Persons – Entrepreneurs and Public Formations, in the manner prescribed by the state body for bankruptcy;</p> <p>within one month from the date of the court ruling on the initiation of bankruptcy proceedings and the introduction of the procedure for disposing of property provide the central executive body implementing state policy on supervision and control over compliance with labour legislation, an extract from the register of creditors indicating:</p> <p>creditors who are entitled to payments in accordance with the Article 34-1 of the Law on Wages;</p> <p>data on the amount of repaid claims of such creditors;</p>	<p>There are no ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 44 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The aim of the amendments, among other things, is to ensure that formal documentation is prepared and presented by the creditor for the amounts being claimed. It is unclear if the personal accounts relate to worker claims and whether they have to provide certified copies of the accounts for which they are claiming. It may be that there is a need to also include legal extracts from the accounts of the debtor (employer) in this context, as workers may not have certified copies of these accounts. Alternatively, recent copies of pay slips listing compensation that had been paid prior to the initiation of the insolvency proceedings by the employer might satisfy this requirement. If this is the case, the draft legislation might also clarify this point.</p>
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		<p>types and amounts of claims to be compensated in case of insolvency of the employer;</p> <p>the amount of three average salaries of the creditor for the twelve months preceding the month in which the bankruptcy case was initiated or the employment contract was terminated in case of dismissal of the employee before the initiation of the this case.</p> <p>Certified copies of personal accounts of such creditors are attached to the extract.</p>		
5.	<p>Article 45. Identification of creditors and persons who wish to participate in the rehabilitation of the debtor</p> <p>...</p> <p>4. For creditors whose claims have been filed after the deadline for their submission, all actions taken in the lawsuit are binding in the same way as they are binding on creditors whose claims have been filed within the prescribed time limit.</p> <p>Creditors' claims filed after the expiration of the time period established for their submission shall be satisfied in the order of priority established by this Code.</p>	<p>Article 45. Identification of creditors and persons who wish to participate in the rehabilitation of the debtor</p> <p>...</p> <p>4. For creditors whose claims have been filed after the deadline for their submission, all actions taken in the lawsuit are binding in the same way as they are binding on creditors whose claims have been filed within the prescribed time limit.</p> <p>Creditors' claims filed after the expiration of the time period established for their submission shall be satisfied in the order of priority established by this Code, except for the requirements of the central executive body implementing state</p>	There are no ratified conventions on this issue.	Proposed amendments to the Article 45 of CBP do not contradict the provisions of ILO instruments.

		policy on supervision and control over compliance with labour legislation.		
6.	<p>Article 51. Debtor rehabilitation plan</p> <p>...</p> <p>2. Measures to reestablishing debtor solvency, containing a rehabilitation plan, may include:</p> <p>...</p> <p>obtaining a loan to pay severance pay to employees of the debtor, who are dismissed in accordance with the rehabilitation plan, which is reimbursed in accordance with the requirements of this Code on an extraordinary basis through the sale of the debtor's property;</p> <p>...</p> <p>4. If the reorganization plan provides for the dismissal of workers whose labour cannot be used during its implementation, the reorganization manager must submit relevant information to the primary trade union organization prior to the proposed dismissal, as well as consult with the trade unions on measures to prevent the release, increase the number of dismissed workers to minimal or mitigate the consequences of dismissal.</p>	<p>Article 51. Debtor rehabilitation plan</p> <p>...</p> <p>2. Measures to restore the debtor's solvency, containing a recovery plan, may include:</p> <p>...</p> <p>obtaining a loan to pay all amounts due to employees of the debtor in accordance with labour legislation, including those, who are dismissed in accordance with the rehabilitation plan, which is reimbursed in accordance with the requirements of this Code on an extraordinary basis through the sale of the debtor's property;</p> <p>...</p> <p>4. If the reorganization plan provides for the dismissal of workers whose labour cannot be used during its implementation, the reorganization manager must submit relevant information to the primary trade union organization prior to the proposed dismissal, as well as consult with the trade unions on measures to prevent the release, increase the number of dismissed workers to minimal or mitigate the consequences of dismissal. Severance pay and</p>	There are no ratified conventions on this issue.	<p>1. Proposed amendments to the Article 51 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. Developers in the draft Article 51 CBP propose to replace the term “severance pay” with the term – “all amounts due to the debtor's employees in accordance with labour legislation”.</p> <p>These amendments should be considered positively, because the first category – severance pay, is much narrower than the second. So, severance pay is only the additional payment that the employer makes when an employee is dismissed in the cases and amounts provided for in the Article 44 of Labour Code and by agreement of the parties.</p>

	<p>Severance pay in this case is paid at the expense of the debtor or funds from the sale of the debtor's property, or a loan received for this purpose.</p> <p>...</p> <p>5. The debtor's rehabilitation plan must provide for the repayment of creditors' claims, taking into account the order established by this Code, if the creditors themselves have not approved the decision to worsen the conditions of their class.</p>	<p>other amounts due to employees in accordance with labour legislation, in this case are paid at the expense of the debtor or funds from the sale of the debtor's property, or a loan received for this purpose.</p> <p>...</p> <p>5. The debtor's rehabilitation plan must provide for the repayment of creditors' claims, taking into account the order established by this Code, if the creditors themselves have not approved the decision to worsen the conditions of their class.</p> <p>The class of claims for wage arrears, as well as the claims of the central executive body, which implements the state policy on supervision and control over compliance with labour legislation, cannot be worsened.</p>		
7.	<p>Article 61. The liquidator's powers</p> <p>1. The liquidator shall exercise the following powers from the date of his appointment:</p> <p>...</p> <p>has the right to receive a loan to pay severance pay to employees dismissed as a result of liquidation of a bankrupt, which is reimbursed in accordance with this Code out of the funds received from the sale of bankrupt property;</p>	<p>Article 61. The liquidator's powers</p> <p>1. The liquidator shall exercise the following powers from the date of his appointment:</p> <p>...</p> <p>has the right to receive a loan to pay all amounts due to employees in accordance with labour legislation, including those dismissed as a result of liquidation of a bankrupt, which is reimbursed in accordance with this</p>	<p>There are no ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 61 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The commentary to this Article is reflected in the commentary to the Article 51 of CBP.</p>

	<p>from the date of recognition of the debtor bankrupt and opening of liquidation procedure, notify the bankrupt employees about the dismissal and carry out it in accordance with the labour legislation of Ukraine. Payment of severance pay to dismissed employees of the bankrupt is made by the liquidator primarily at the expense of funds received from the sale of property of the bankrupt, or a loan obtained for this purpose;</p>	<p>Code out of the funds received from the sale of bankrupt property;</p> <p>from the date of recognition of the debtor bankrupt and opening of liquidation procedure, notify the bankrupt employees about the dismissal and carry out it in accordance with the labour legislation of Ukraine. Payment of all amounts due to dismissed employees of the bankrupt in accordance with labour legislation, is made by the liquidator primarily at the expense of funds received from the sale of property of the bankrupt, or a loan obtained for this purpose;</p>		
8.	<p>Article 66. Dismissal of the debtor's employees. Benefits and compensation for dismissed employees</p> <p>...</p> <p>2. The severance pay to the dismissed employees of the debtor is paid by the insolvency manager in the manner and amount established by the legislation on labour and employment of the population.</p>	<p>Article 66. Dismissal of the debtor's employees. Benefits and compensation for dismissed employees</p> <p>...</p> <p>2. Amounts due to the dismissed employees of the debtor in accordance with labour legislation is paid by the insolvency manager in the manner and amount established by the legislation on labour and employment of the population.</p>	There are no ratified conventions on this issue.	<p>1. Proposed amendments to the Article 66 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The commentary to this Article is reflected in the commentary to the Article 51 of CBP.</p>
9.	<p>Article 114. Insolvency manager in cases of bankruptcy of a natural person</p> <p>...</p>	<p>Article 114. Insolvency manager in cases of bankruptcy of a natural person</p> <p>...</p>	Ukraine has ratified: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (has	The Book Fourth "Restoring the solvency of a natural person" (Articles 113-137) of CBP does not specify in its provisions the specifics of satisfying the claims of

<p>2. The insolvency manager in the bankruptcy case of a natural person is obliged:</p> <p>...</p> <p>2) participate in the development of plan for restructuring debts of the debtor, ensure its consideration by the meeting of creditors and submission for approval to the Commercial Court;</p>	<p>2. The insolvency manager in the bankruptcy case of a natural person is obliged:</p> <p>...</p> <p>2) participate in the development of plan for restructuring debts of the debtor, ensure its consideration by the meeting of creditors and submission for approval to the Commercial Court;</p> <p>2-1) provide the central executive body implementing state policy on supervision and control over compliance with labour legislation, an extract from the register of creditors indicating:</p> <p>creditors who are entitled to payments in accordance with the Article 34-1 of the Law on Wages;</p> <p>data on the amount of repaid claims of such creditors;</p> <p>types and amounts of claims to be compensated in case of insolvency of the employer;</p> <p>the amount of three average salaries of the creditor for the twelve months preceding the month in which the bankruptcy case was initiated or the employment contract was terminated in case of dismissal of the employee before the initiation of this case;</p> <p>...</p>	<p><i>accepted the obligations of Part II).</i></p> <p><i>There are no comments from CEACR on this issue.</i></p> <p>In accordance with the Article 4 (1) of C173, this Convention, with particular exceptions, shall apply to all employees and to all branches of economic activity.</p> <p>Under the Paragraph 7 of Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), the protection of workers' claims by a guarantee institution should have as wide a coverage as possible.</p>	<p>creditors of the debtor – natural person for the payment of wage arrears.</p> <p>Therefore, the proposed amendments to the relevant Articles of the Book Fourth of CBP regarding the satisfaction of creditors' claims for payment of wage arrears should be considered positive.</p>
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<p>10.</p>	<p>Article 121. Moratorium on satisfaction of creditors' claims</p> <p>...</p> <p>3. The moratorium does not apply to:</p> <p>1) compensation for harm caused by injury, other damage to health or death of an individual;</p> <p>2) payment and recovery of alimony;</p> <p>3) fulfillment of requirements for enforcement documents of a non-property nature, obliging the debtor to perform certain actions or refrain from performing them;</p> <p>4) satisfaction of creditors' claims in the debtor's debt restructuring procedure in accordance with the approved plan and in the debtor's debt repayment procedure in accordance with this Code.</p>	<p>Article 121. Moratorium on satisfaction of creditors' claims</p> <p>...</p> <p>3. The moratorium does not apply to:</p> <p>1) compensation for harm caused by injury, other damage to health or death of an individual;</p> <p>2) payment and recovery of alimony;</p> <p>3) fulfillment of requirements for enforcement documents of a non-property nature, obliging the debtor to perform certain actions or refrain from performing them;</p> <p>4) satisfaction of creditors' claims in the debtor's debt restructuring procedure in accordance with the approved plan and in the debtor's debt repayment procedure in accordance with this Code.</p> <p>5) satisfaction of claims of the central executive body that implements state policy on supervision and control over compliance with labour legislation;</p> <p>6) satisfaction of creditors' claims for payment of wage arrears.</p>	<p>Ukraine has ratified: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (has accepted the obligations of Part II).</p> <p><i>There are no comments from CEACR on this issue.</i></p> <p>In accordance with Paragraph 3 of Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), the protection afforded by a privilege should cover the following claims: (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during a prescribed period prior to the insolvency or prior to termination of the employment. This period should be fixed by national laws or regulations and should not be less than 12 months; (b) holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year; (c) amounts due in respect of other types of paid absence, end-of-year and other bonuses provided for by national laws or regulations, collective agreements or</p>	<p>1. The commentary to this Article is reflected in the commentary to the Article 114 of CBP.</p> <p>2. Perhaps this should also include “other amounts” as well. Wage arrears are important, but it is also important to ensure payment of any other compensation owed to workers. See Paragraphs 3 and 9 of ILO Recommendation No. 180.</p>
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			<p>individual contracts of employment, relating to a prescribed period, which should not be less than 12 months, prior to the insolvency or prior to the termination of the employment; (d) payments due in lieu of notice of termination of employment; (e) severance pay, compensation for unfair dismissal and other payments due to workers upon termination of their employment; (f) compensation payable directly by the employer in respect of occupational accidents and diseases.</p> <p>Under the Paragraph 9 of <u>Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180)</u>, the guarantee should cover the following claims: (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during a prescribed period, which should not be less than three months, prior to the insolvency or prior to the termination of the employment; (b) holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding</p>	
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			<p>year; (c) end-of-year and other bonuses provided for by national laws or regulations, collective agreements or individual contracts of employment, relating to a prescribed period, which should not be less than 12 months, prior to the insolvency or prior to the termination of the employment; (d) amounts due in respect of other types of paid absence relating to a prescribed period, which should not be less than three months, prior to the insolvency or prior to the termination of the employment; (e) payments due in lieu of notice of termination of employment; (f) severance pay, compensation for unfair dismissal and other payments due to workers upon termination of their employment; (g) compensation payable directly by the employer in respect of occupational accidents and diseases.</p>	
11.	<p>Article 125. Debts not subject to restructuring</p> <p>1. The debtor's debts on the payment of alimony, compensation for harm caused by injury, other damage to health or death of an individual, on the payment of a single contribution to compulsory state social insurance and payment of</p>	<p>Article 125. Debts not subject to restructuring</p> <p>1. The wage arrears claims, debtor's debts on the payment of alimony, compensation for harm caused by injury, other damage to health or death of an individual, on the payment of a single contribution to compulsory state social insurance</p>	<p>Information on ratified conventions is contained in the commentary to the Article 114 of CBP.</p>	<p>1. Proposed amendments to the Article 125 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The commentary to this Article is reflected in the commentary to the Article 114 of CBP.</p>

	<p>other compulsory payments to compulsory state social insurance are not subject to restructuring.</p> <p>...</p> <p>3. The plan for restructuring debts of the debtor is approved by the Commercial Court only after the debtor's debts have been fully repaid with regard to alimony, compensation for harm caused by injury, other damage to health or death of an individual, on the payment of a single contribution for compulsory state social insurance and other compulsory payments for compulsory state social insurance, if such a debt exists.</p>	<p>and payment of other compulsory payments to compulsory state social insurance are not subject to restructuring.</p> <p>...</p> <p>3. The plan for restructuring debts of the debtor is approved by the Commercial Court only after the debtor's debts have been fully repaid with regard to wage arrears, alimony, compensation for harm caused by injury, other damage to health or death of an individual, on the payment of a single contribution for compulsory state social insurance and other compulsory payments for compulsory state social insurance, if such a debt exists.</p>		
12.	<p>Article 126. Approval of the plan for restructuring debts of the debtor</p> <p>...</p> <p>8. The Commercial Court issues a ruling on the refusal to approve the plan for restructuring debts of the debtor in the insolvency case if:</p> <p>...</p> <p>5) the debtor has not repaid debts for the payment of alimony, compensation for harm caused by injury, other damage to health or death of an individual, payment of insurance contributions for compulsory state pension and other</p>	<p>Article 126. Approval of the plan for restructuring debts of the debtor</p> <p>...</p> <p>8. The Commercial Court issues a ruling on the refusal to approve the plan for restructuring debts of the debtor in the insolvency case if:</p> <p>...</p> <p>5) the debtor has not repaid debts for the payment of wage arrears, alimony, compensation for harm caused by injury, other damage to health or death of an individual, payment of insurance contributions for compulsory state pension and other social insurance before the start</p>	<p>Information on ratified conventions is contained in the commentary to the Article 114 of CBP.</p>	<p>1. Proposed amendments to the Article 126 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The commentary to this Article is reflected in the commentary to the Article 114 of CBP.</p>

	social insurance before the start of the debtor's debt restructuring plan;	of the debtor's debt restructuring plan;		
13.	<p>Article 133. Procedure for satisfying creditors' claims</p> <p>...</p> <p>4. Creditors' claims included in the register of creditors' claims are satisfied in the following order:</p> <p>1) first of all, claims are satisfied against the debtor for the payment of alimony, compensation for harm caused by injury, other damage to health or death of an individual, payment of insurance contributions for compulsory state pension and other social insurance;</p> <p>...</p> <p>7. Claims to the debtor for the payment of alimony, compensation for damage caused by injury, other damage to health or death of an individual, for the payment of insurance premiums for compulsory state pension and other social insurance, as well as other personal claims that were not satisfied or</p>	<p>Article 133. Procedure for satisfying creditors' claims</p> <p>...</p> <p>4. Creditors' claims included in the register of creditors' claims are satisfied in the following order:</p> <p>1) first of all the following are satisfied: claims for the payment of wage arrears to working and dismissed employees of the bankrupt; claims of the central executive body implementing state policy on supervision and control over compliance with labour legislation; claims against the debtor for the payment of alimony, compensation for harm caused by injury, other damage to health or death of an individual, payment of insurance contributions for compulsory state pension and other social insurance;</p> <p>...</p> <p>7. Claims to the debtor for the payment of wage arrears, alimony, compensation for damage caused by injury, other damage to health or death of an individual, for the payment of insurance premiums for compulsory state pension and other social insurance, as well as other personal claims that were not</p>	<p>Information on ratified conventions is contained in the commentary to the Article 114 of CBP.</p>	<p>1. Proposed amendments to the Article 133 of CBP do not contradict the provisions of ILO instruments.</p> <p>2. The commentary to this Article is reflected in the commentary to the Articles 114 and 121 of CBP.</p>

	repaid in part in the procedure of satisfaction of creditors' claims, may be declared after the end of the proceedings on the insolvency of an individual in the manner prescribed by civil law.	satisfied or repaid in part in the procedure of satisfaction of creditors' claims, may be declared after the end of the proceedings on the insolvency of an individual in the manner prescribed by civil law.		
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14.	—	<p>Article 34-1. Compensation to employees in case of insolvency of the employer</p> <p>All amounts due to employees in accordance with labour legislation are subject to compensation.</p> <p>Employees (creditors) whose claims are included in the register of creditors' claims in accordance with the Code on Bankruptcy Procedures of Ukraine are entitled to compensation.</p> <p>The amount of compensation may not exceed three average monthly salaries of the employee for the twelve months preceding the month in which the bankruptcy case was initiated or the employment contract was terminated in case of dismissal of the employee before initiating the specified case, in this regard the maximum amount of compensation may not exceed twelve minimum wages as of January 1 of the corresponding year.</p>	<p>Ukraine has ratified: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (has accepted the obligations of Part II).</p> <p>In Observations (CEACR), adopted 2019-2020, the Committee notes that section 64 of the 2018 Code of Bankruptcy Procedure provides that workers' claims arising out of the employment relationship shall be protected by a privilege and shall be satisfied on a first priority basis. Noting that section 2 (4) of the Code of Bankruptcy Procedure excludes state-owned enterprises from its application, the Committee requests the Government to clarify how workers' claims are protected in the case of state-owned enterprises.</p> <p>Under the Article 9 of C173, the payment of workers' claims</p>	<p>1. Proposed edition of the Article 34-1 of the Law on Wages do not contradict the provisions of ILO instruments.</p> <p>2. While there is normally a limit on the amount that a wage guarantee fund can pay, the situation in the Ukraine at the moment is unique. In many quasi-public organizations, some workers have not been paid in very long periods of time. The proposal might not fully address all of the compensation claims of some of these workers, whose claims go beyond 12 months. Perhaps an addendum or supplement could be added to the law to address the initial claims. This might also be done in administrative rules governing the use of the guarantee fund. It would</p>
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		<p>To receive compensation in case of insolvency of the employer, the employee applies to the central executive body that implements the state policy on supervision and control over compliance with labour legislation, its territorial bodies within three months after the inclusion of the debtor's claims in the register of creditors' claims.</p> <p>The procedure for compensation in case of insolvency of the employer is established by the Cabinet of Ministers of Ukraine.</p> <p>Compensation, defined in part one of this Article, is paid to the employee by the central executive body that implements the state policy on supervision and control over compliance with labour legislation, its territorial bodies which have the right of recourse to the debtor.</p> <p>Other amounts of monetary claims of the employee, exceeding the maximum amount of compensation specified in part three of this Article, shall be satisfied in the order provided by the Code on Bankruptcy Procedures of Ukraine for claims for payment of wage arrears to employees and dismissed employees of the bankrupt.</p>	<p>against their employer arising out of their employment shall be guaranteed through a guarantee institution when payment cannot be made by the employer because of insolvency.</p> <p>In accordance with Paragraph 8 of Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), guarantee institutions might operate according to the following principles: (a) they should be administratively, financially and legally independent of the employer; (b) employers should contribute to financing these institutions, unless this is fully covered by the public authorities; (c) they should assume their obligations vis-à-vis protected workers irrespective of whether any obligation the employer may have of contributing to their financing has been met; (d) they should assume a subsidiary responsibility for the liabilities of insolvent employers in respect of claims protected by the guarantee and should, by way of subrogation, be able to act in place of the workers to whom they have made payments; (e) the funds managed by guarantee</p>	<p>allow the fund to go beyond the 12 months in the first case for cases filed before 2022. It could then stipulate those cases filed after 2023 would be governed by the maximum 12-month rule. This could provide a sense of proper closure for affected Ukrainian parties in short and medium term as well as begin to build greater trust in the fund for the longer term.</p> <p>3. In accordance with the Article 2 (4) of CBP, bankruptcy proceedings of debtors – public enterprise for operational management of public property and budgetary institutions, as well as the rehabilitation of such debtors before the opening of bankruptcy proceedings are not allowed.</p> <p>Under the Article 76 (1) of Commercial Code of Ukraine, public enterprise for operational management of public property are created in sectors of the economy in which: the law allows only state-owned enterprises to carry out economic activities; the main (more than fifty percent) consumer of</p>
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		<p>Funds aimed at paying compensation in case of insolvency of the employer are repaid by the debtor in the manner prescribed by law governing proceedings to restore the debtor's solvency, for secured creditors.</p>	<p>institutions, other than those from general revenues, may only be used for the purpose for which they were collected.</p> <p>The Article 13 (1) of C173 provides that claims protected by a guarantee institution may be limited to a prescribed amount, which shall not be below a socially acceptable level.</p> <p>The Paragraph 10 of Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) states that where the amount of the claim protected by means of a guarantee institution is limited, in order that this amount should not fall below a socially acceptable level, it should take into account variables such as the minimum wage, the part of the wage which is unattachable, the wage on which social security contributions are based or the average wage in industry.</p> <p>In accordance with Paragraph 11 of Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), workers or their representatives should receive timely information and be consulted with regard to insolvency proceedings which</p>	<p>products (works, services) is the state; under economic conditions, free competition of producers or consumers is impossible; privatization of property complexes of state enterprises is prohibited by law; medical services are provided to the population. In accordance with the Article 77 (7) of the Code, public enterprise for operational management of public property is liable for its obligations only in funds at its disposal. In case of insufficiency of these funds, the State, represented by the body in whose sphere of management the enterprise belongs, bears full subsidiary responsibility for the obligations of the state enterprise.</p> <p>Under the Article 2 of BC, budgetary institutions are state authorities, local government bodies, as well as organizations created by them in accordance with the established procedure, which are fully supported by the state or local budget.</p>
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			have been opened and to which the workers' claims pertain.	<p>4. Part 5 of the draft Article 34-1 of the Law on Wages states that “the procedure for compensation in case of insolvency of the employer is established by the Cabinet of Ministers of Ukraine”. In turn, the draft of this legal act was not submitted by the developers to analyze its compliance with the provisions of the ILO conventions and recommendations.</p> <p>5. Despite the presence of certain provisions in the CBP (Articles 1, 34, 48, etc.), a clear provision should be included to this draft Article to ensure that worker representatives are informed and consulted on insolvency proceedings that have been initiated.</p>
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Law on the Collection and Accounting of a Single Contribution for Compulsory State Social Insurance

15.	<p>Article 1. Definition of terms</p> <p>1. In this Law, the following terms are used in such a meaning:</p> <p>...</p> <p>2) single contribution to the compulsory state social insurance (hereinafter – the single contribution) is a consolidated insurance</p>	<p>Article 1. Definition of terms</p> <p>1. In this Law, the following terms are used in such a meaning:</p> <p>...</p> <p>2) single contribution to the compulsory state social insurance (hereinafter – the single contribution) is a consolidated insurance</p>	There are no provisions for ratified conventions on this issue.	Proposed amendments to the Article 1 of the Law do not contradict the provisions of ILO instruments.
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	<p>contribution, the collection of which is carried out in the system of obligatory state social insurance on a mandatory basis and on a regular basis in order to ensure protection, in cases provided by law, the rights of insured persons to receive insurance benefits (services) under the current types of compulsory state social insurance;</p> <p>...</p>	<p>contribution, the collection of which is carried out in the system of obligatory state social insurance on a mandatory basis and on a regular basis in order to ensure protection, in cases provided by law, the rights of insured persons to receive insurance benefits (services) under the current types of compulsory state social insurance and compensation in accordance with the Article 34-1 of the Law on Wages;</p> <p>...</p> <p>13) compensation – amounts due to employees in accordance with labour legislation in case of insolvency of the employer, the payment of which is carried out by the central executive body implementing the state policy on supervision and control over compliance with labour legislation, in the manner prescribed by law;</p>		
16.	<p>Article 8. The amount of the single contribution and the proportions of its distribution by types of compulsory state social insurance</p> <p>1. The amount of the single contribution for each category of payers defined by this Law and the proportions of its distribution by types of compulsory state social insurance are set taking into account</p>	<p>Article 8. The amount of the single contribution and the proportions of its distribution by types of compulsory state social insurance</p> <p>1. The amount of the single contribution for each category of payers defined by this Law and the proportions of its distribution by types of compulsory state social insurance are set taking into account</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>Proposed amendments to the Article 8 of the Law do not contradict the provisions of ILO instruments.</p>

<p>that they must provide insured persons with insurance benefits and social services provided by the legislation on compulsory state social insurance; financing of measures aimed at prevention of insurance cases; creation of a reserve of funds to ensure insurance payments and the provision of social services to insured persons; covering administrative costs to ensure the functioning of the system of compulsory state social insurance.</p> <p>...</p> <p>3. Funds received from the payment of a single contribution and the application of financial sanctions in accordance with this Law may not be credited to the State Budget of Ukraine, budgets of other levels and used for purposes not provided by the legislation on compulsory state social insurance.</p> <p>...</p> <p>28. If necessary, the central executive authorities, ensuring the formation of state policy in the spheres of labour relations and employment of the population, social protection of the population, at the suggestion of the central executive authority, which ensures the</p>	<p>that they must provide insured persons with insurance benefits and social services provided by the legislation on compulsory state social insurance; financing of measures aimed at prevention of insurance cases; creation of a reserve of funds to ensure insurance payments and the provision of social services to insured persons; covering administrative costs to ensure the functioning of the system of compulsory state social insurance, as well as the implementation of compensation.</p> <p>...</p> <p>3. Funds received from the payment of a single contribution and the application of financial sanctions in accordance with this Law may not be credited to the State Budget of Ukraine, except for the part directed to the implementation of compensation, budgets of other levels and used for purposes not provided by the legislation on compulsory state social insurance.</p> <p>...</p> <p>28. If necessary, the central executive authorities, ensuring the formation of state policy in the spheres of labour relations and employment of the population, social protection of the population, at the suggestion of the central executive authority, which ensures the</p>		
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<p>formation and implementation of the state financial policy, the boards of the respective compulsory state social insurance funds shall submit the changes in the size of the single contribution agreed with the parties to the social dialogue for submission to the Parliament of Ukraine and the proportion of distribution by types of compulsory state social insurance for their approval by the Cabinet of Ministers of Ukraine.</p> <p>The calculation of the distribution of the single contribution by types of compulsory state social insurance is carried out on the basis of reporting on the calculation of the single contribution based on the results of the previous year.</p>	<p>formation and implementation of the state financial policy, the central executive body implementing state policy on supervision and control over the observance of labour legislation, the boards of the respective compulsory state social insurance funds shall submit the changes in the size of the single contribution agreed with the parties to the social dialogue for submission to the Parliament of Ukraine and the proportion of distribution by types of compulsory state social insurance and for implementation of compensation for their approval by the Cabinet of Ministers of Ukraine.</p> <p>The calculation of the distribution of the single contribution by types of compulsory state social insurance and for implementation of compensation is carried out on the basis of reporting on the calculation of the single contribution based on the results of the previous year.</p>		
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II. Draft Law on Amendments to the Budget Code of Ukraine

[Posted](#) by the Ministry of Economy of Ukraine for discussion on 28.08.2021

No.	The provisions of current national legislation	The provisions of draft Law	The provisions of ILO conventions and recommendations	Discrepancies and gaps identified in draft Law
<u>Budget Code of Ukraine (BC)</u>				
1.	<p>Article 29. The composition of revenues of the State Budget of Ukraine</p> <p>...</p> <p>2. The revenues of the general fund of the State Budget of Ukraine (taking into account the features specified in Paragraph 1 of the Article 67-1 (2) of this Code) include:</p> <p>...</p> <p>23) funds from sanctions (fines, penalties, etc.) that are applied in accordance with the law (except for the fines specified in Paragraphs 6-3, 6-4 and 13-5 of Part 3 of this Article, Paragraphs 37-39 of the Article 64 (1), Paragraph 13 of the Article 64-1 (1) and Paragraphs 26 and 27 of the Article 66 (1) of this Code);</p> <p>...</p> <p>3. The sources for the formation of a special fund of the State Budget of Ukraine in terms of income (taking into account the peculiarities</p>	<p>Article 29. The composition of revenues of the State Budget of Ukraine</p> <p>...</p> <p>2. The revenues of the general fund of the State Budget of Ukraine (taking into account the features specified in Paragraph 1 of the Article 67-1 (2) of this Code) include:</p> <p>...</p> <p>23) funds from sanctions (fines, penalties, etc.) that are applied in accordance with the law (except for the fines specified in Paragraphs 6-3, 6-4, 6-6 and 13-5 of Part 3 of this Article, Paragraphs 37-39 of the Article 64 (1), Paragraph 13 of the Article 64-1 (1) and Paragraphs 26 and 27 of the Article 66 (1) of this Code);</p> <p>...</p> <p>3. The sources for the formation of a special fund of the State Budget of Ukraine in terms of income (taking into account the peculiarities</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 29 of BC do not contradict the provisions of ILO instruments.</p> <p>2. In the proposed edition of the Article 29 (3) of BC, the developers use the title of the legal act – “Code of Laws of Ukraine on Labour”, which requires replacement by the official title – “Code of Labour Laws of Ukraine”.</p>

	<p>specified in Paragraph 1 of the Article 67-1 (2) of this Code) are:</p> <p>...</p>	<p>specified in Paragraph 1 of the Article 67-1 (2) of this Code) are:</p> <p>...</p> <p>6-6) proceeds from financial sanctions for violation of labour legislation provided for in Article 265 of the Code of Laws of Ukraine on Labour;</p>		
2.	<p>Article 30. Composition of expenditures and crediting of the State Budget of Ukraine</p> <p>...</p> <p>4. Funds received in the special fund of the State Budget of Ukraine in accordance with the relevant paragraphs of Article 15 (3), Article 29 (3) and part three of this Article of this Code shall be directed to:</p> <p>...</p>	<p>Article 30. Composition of expenditures and crediting of the State Budget of Ukraine</p> <p>...</p> <p>4. Funds received in the special fund of the State Budget of Ukraine in accordance with the relevant paragraphs of Article 15 (3), Article 29 (3) and part three of this Article of this Code shall be directed to:</p> <p>...</p> <p>24) repayment of wage arrears to employees by a legal entity or natural person, including a natural person – an entrepreneur, in respect of which bankruptcy proceedings have been opened (at the expense of the sources specified in Paragraph 6-6 of Article 29 (3) of this Code);</p>	There are no provisions for ratified conventions on this issue.	Proposed amendments to the Article 30 of BC do not contradict the provisions of ILO instruments.

III. Draft Law of Ukraine on Amendments to the Law on Ratification of the ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)

Posted by the Ministry of Economy of Ukraine for discussion on 28.08.2021

No.	The provisions of current national legislation	The provisions of draft Law	The provisions of ILO conventions and recommendations	Discrepancies and gaps identified in draft Law
<u>The Law on Ratification of the ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)</u>				
1.	<p>Ratify Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), adopted at the 79th Session of the General Conference of the International Labour Organization on 23 June 1992 (attached), with the following declaration:</p> <p>“Ukraine undertakes obligations under Part II of this Convention, which provide for the protection of workers' claims by means of a privilege”.</p>	<p>Ratify Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), adopted at the 79th Session of the General Conference of the International Labour Organization on 23 June 1992 (attached), with the following declaration:</p> <p>“Ukraine undertakes obligations under Part II and Part III of this Convention, which provide for the protection of workers' claims by means of a privilege and protection of workers' claims by a guarantee institution”.</p>	<p>Ukraine has ratified: <u>Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)</u> (<i>has accepted the obligations of Part II</i>).</p> <p>In <u>Direct Request</u> (CEACR), adopted 2009, the Committee notes the Government's indication that the acceptance of obligations of Part III of the Convention is currently under consideration by the Government and the social partners. The Government explains that since 45 per cent of all wage arrears concern bankrupt enterprises, it has instructed the competent ministries and the social partners to examine the possibility of setting up a guarantee fund for the payment of wages in the event of the employer's insolvency. The Government adds that the Ministry of Labour is in the</p>	<p>Proposed amendments to the Law do not contradict the provisions of ILO instruments.</p>

			<p>process of drawing up new draft legislation on the protection of workers' financial claims in the event of the insolvency of their employer. The Committee accordingly requests the Government to keep the Office informed of all future developments concerning the extension of acceptance of the Convention to Part III.</p> <p>In Direct Request (CEACR), adopted 2012, the Committee notes the Government's indication that it is actively considering the acceptance of the obligations of Part III of the Convention referring to protection of workers' claims by a guarantee institution, and to this end, it has prepared draft legislation on the protection of the financial claims of workers in the event of the employer's bankruptcy which provides for the establishment of a Labour Payment Guarantee Fund. The Government also indicates that while the establishment of the fund has not yet been made possible due to the current deficit situation, a working group has been set up to prepare proposals for the creation of such a wage guarantee fund and also</p>	
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			<p>international experience is being used, mainly through conferences, to formulate mechanisms for the protection of financial claims of workers in the event of the employer's bankruptcy. The Committee welcomes these developments and requests the Government to keep the Office informed of any progress made in this matter.</p> <p>Under the Article 3 (1) (2) of C173, a ILO member which ratifies this Convention shall accept either the obligations of Part II, providing for the protection of workers' claims by means of a privilege, or the obligations of Part III, providing for the protection of workers' claims by a guarantee institution, or the obligations of both Parts. A Member which has initially accepted only Part II or only Part III of this Convention may thereafter, by a declaration communicated to the Director-General of the International Labour Office, extend its acceptance to the other Part.</p>	
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