PERIODICA
Journal of Modern Philosophy, Social Sciences and Humanities
ISSN NO:2720-4030 Volume 53 April, 2026

Procedure for Concluding an Amicable Agreement in Insolvency Proceedings

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ABSTRACT

This article examines the legal nature, substance, and practical significance of the procedure for concluding an amicable agreement in insolvency proceedings through a comparative legal approach. The study analyzes the key features of the amicable agreement institution as provided in Article 161 of the legislation of the Republic of Uzbekistan, including decision-making by the meeting of creditors, the consent of secured creditors, the participation of third parties, judicial approval, and the binding force of the agreement. At the same time, corresponding legal mechanisms in the legislation of Russia, Germany, the United States, and the United Kingdom are comparatively analyzed, demonstrating that the Uzbek model mainly belongs to the procedural compromise model, whereas in foreign legal systems this institution has evolved into a comprehensive restructuring instrument. The article advances proposals for improving Uzbek legislation, including the classification of creditors into groups, the judicial assessment of dissenting creditors’ interests on the basis of the “no worse off” principle, the strengthening of the court’s active role, and the balancing of secured creditors’ veto power. The author concludes that the amicable agreement should be developed not merely as a tool for terminating insolvency proceedings, but as a full-fledged rehabilitative mechanism aimed at restoring solvency.

ARTICLE INFO

Received: 20th March 2026
Accepted: 14th April, 2026

KEYWORDS:

Insolvency, amicable agreement, bankruptcy, meeting of creditors, secured creditor, judicial approval, restructuring, insolvency plan, cramdown, cross-class cramdown, rehabilitation, comparative legal analysis.

The institution of an amicable agreement in insolvency proceedings serves as an alternative and effective mechanism for resolving disputes between the debtor and creditors through judicial procedures. On the one hand, this institution contributes to preserving the debtor’s economic activity and restoring its solvency; on the other hand, it is aimed at satisfying creditors’ claims to the greatest possible extent. In this regard, unlike classical bankruptcy procedures, an amicable agreement represents not compulsory liquidation, but a restructuring mechanism based on mutual consent.

In the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 “On Insolvency,” (Chapter 12, Article 161), the procedure for concluding an amicable agreement is clearly and comprehensively regulated, defining the range of participating subjects, the decision-making mechanism, judicial supervision, and the conditions for the agreement’s entry into legal force. In particular, the possibility of concluding an amicable agreement at any stage of the proceedings demonstrates its procedural flexibility. This, in turn, allows insolvency proceedings to be viewed not merely as a rigid liquidation procedure, but as a dynamic mechanism aimed at restoring economic relations.

At the same time, the fact that decisions are adopted through the meeting of creditors, that the consent of secured creditors is required, and that the participation of third parties is permitted demonstrates the multi-subject and complex legal nature of this institution. In particular, the approval of the amicable agreement by the court, its binding legal force, and the prohibition of unilateral refusal to perform it ensure legal certainty and guarantee mechanisms within these relations.

In this regard, the procedure for concluding an amicable agreement закреплено in Article 161 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency" corresponds to the general trend developed in international insolvency law. That is, insolvency proceedings are no longer viewed solely as a liquidation mechanism, but rather as a legal process aimed at achieving creditors' consent, ensuring judicial supervision, and facilitating economic recovery. This approach is reflected, in various legal forms, in the legislation of Russia, Germany, the United States, and the United Kingdom.

First of all, the legislation of the Russian Federation represents one of the systems most closely aligned with the Uzbek model. According to Article 150 of the Federal Law "On Insolvency (Bankruptcy)," the debtor, конкурсные кредиторы, and authorized bodies have the right to conclude a settlement agreement at any stage of the bankruptcy proceedings[1]. Such a decision is adopted by the meeting of creditors by a majority of votes included in the register, and if there are secured creditors, the decision is deemed adopted only if all of them consent[2]. Furthermore, Article 156 requires that the settlement agreement must define the procedure and сроки исполнения monetary obligations of the debtor, while Article 157 permits the participation of third parties provided that the rights and legitimate interests of creditors are not violated. Under Article 159, a settlement agreement approved by the arbitrazh court serves as the basis for terminating the bankruptcy proceedings. These provisions indicate that Article 161 of Uzbek legislation is substantively close to the Russian model, as it is likewise built upon the decision of the creditors' meeting, the consent of secured creditors, the participation of third parties, and judicial approval.

At the same time, German legislation regulates this institution in a broader manner than the traditional "amicable agreement," namely through the mechanism of the insolvency plan (*Insolvenzplan*). According to §217 of the German Insolvency Code (InsO), the insolvency plan may restructure the rights of secured creditors with separate satisfaction rights, ordinary insolvency creditors, the realization and distribution of assets, the continuation of proceedings, and even the debtor's liability after the conclusion of the proceedings[3]. Pursuant to §218, the plan may be submitted to the court either by the insolvency administrator or by the debtor. Furthermore, §222 requires the division of participants into separate groups based on their legal status; thus, creditors' interests are protected not through a single collective vote, but through classification according to their legal position. The most significant feature lies in §245, which allows certain groups to be deemed as having consented even if they have not reached the required majority, provided that they are not placed in a worse position than they would be without the plan and that they participate in the economic value in a reasonable manner. According to §254, once the plan is approved and the court decision enters into legal force, it becomes binding on all parties. Consequently, the German model is considerably more advanced than the Uzbek approach, as it is aimed not merely at formalizing an agreement, but at ensuring a binding balance of interests among different creditor groups through judicial intervention[4].

A similar, though even more complex, restructuring mechanism exists in U.S. law. Under 11 U.S.C. §1129 of the United States Bankruptcy Code, a Chapter 11 plan must comply with statutory requirements, be proposed in good faith, and be accepted by each class of claims or interests, or at least not discriminate against them. However, §1129(b) introduces the "cramdown" mechanism, allowing the court to confirm a plan even

[1] Kostin A. A. Recognition and enforcement of foreign judgments in bankruptcy and insolvency matters under Russian law //Journal of Private International Law. – 2025. – Т. 21. – №. 1. – P. 185-209.
[2] Kilborn J. J. (Not) following the Leader in the Newest Personal Insolvency Laws in Uzbekistan and Kazakhstan //J. Int'l & Comp. L. – 2023. – Т. 10. – P. 243.
[3] Petrov T. Harmonising Restructuring Law in Europe: A Comparative Analysis of the Legislative Impact of the Proposed Restructuring Directive on Insolvency Law in the UK and Germany //Anglo-Ger. LJ. – 2017. – Т. 3. – P. 129.
[4] Köndgen J. Rehabilitation and Insolvency: The German Approach //Banks and Remedies. – Informa Law from Routledge, 2021. – P. 319-340.

if certain classes reject it, provided that it does not result in "unfair discrimination" and is "fair and equitable"[5]. In particular, with respect to secured creditors, the law requires the preservation of lien rights, deferred payments ensuring the present value of claims, or the provision of the "indubitable equivalent." This approach significantly differs from Article 161 of Uzbek legislation, which requires unanimous consent of secured creditors. In contrast, the U.S. model allows the court to bind dissenting creditor classes based on principles of fairness, thereby combining creditor autonomy with an active judicial role in facilitating economic rehabilitation[6].

In the law of the United Kingdom, this issue has developed along two main lines. The first is the Company Voluntary Arrangement (CVA) under the Insolvency Act 1986, which represents a consensual arrangement between a company and its creditors. Under this framework, creditors may approve a proposed arrangement with or without modifications; however, any proposal affecting the rights of secured creditors cannot be approved without their consent, which is similar to the requirement found in Uzbek law. At the same time, once a voluntary arrangement comes into force, affected parties have the right to challenge it before the court on the grounds of unfair prejudice or material irregularity[7]. The second, more recent development is the restructuring plan under Part 26A of the Companies Act 2006, which introduced the "cross-class cramdown" mechanism. This allows the court to impose a restructuring plan on dissenting classes of creditors or members, provided that certain fairness conditions are satisfied. As noted in official explanations, this mechanism is specifically designed to bind "dissenting classes of creditors or members" to the plan. Thus, UK law, like German and U.S. law, demonstrates a shift from a purely consensual agreement model toward a more court-driven restructuring framework that actively ensures a balance of interests among stakeholders.

Comparative analysis demonstrates that Article 161 of Uzbek legislation primarily belongs to the continental-formal model of amicable settlement. Under this approach, the right to conclude an amicable agreement may be exercised at any stage of the proceedings; the decision is adopted through the meeting of creditors; the consent of secured creditors is established as a separate mandatory condition; the participation of third parties is permitted; and the agreement enters into force only after court approval. In this respect, the structure of Article 161 follows almost the same legal logic as the Russian model. However, the experience of Germany, the United States, and the United Kingdom shows that modern restructuring law no longer relies solely on formal voting by creditors' meetings. Instead, it increasingly depends on the classification of creditors into separate classes, judicial scrutiny of the interests of dissenting classes, and confirmation of the plan on the basis of the principle that even a dissenting class should not be placed in a worse position than it would have been without the plan[8].

From a scholarly perspective, these differences make it possible to define the legal nature of the amicable agreement more precisely. In Uzbek law, it is understood primarily as a procedural compromise between the debtor and creditors. By contrast, in German and U.S. law, it has evolved into a substantive instrument of reorganization. It is no longer limited to postponing or reducing existing obligations, but may also alter the legal status of participants, determine the treatment of secured claims, reshape aspects of corporate governance, and influence the debtor's future operational model. For this reason, foreign experience suggests that Article 161 could be improved in the future through such reforms as grouping creditors into classes, introducing separate class-based voting for secured creditors, and strengthening judicial review on the basis of the "no worse off" principle with respect to dissenting creditors. Such reforms would transform the amicable agreement from a mere tool for terminating proceedings into a fully-fledged rehabilitative instrument for restoring solvency.

[5] Tabb C. J. The history of the bankruptcy laws in the United States //Am. Bankr. Inst. L. Rev. – 1995. – T. 3. – P. 5.
[6] Gebbia-Pinetti K. M. Interpreting the Bankruptcy Code: An Empirical Study of the Supreme Court's Bankruptcy Decisions //Chap. L. Rev. – 2000. – T. 3. – P. 173.
[7] Dahlan N. H. M., Masurn A. Feasibility of Corporate Voluntary Arrangement ('CVA') in Solving Insolvency Issues in Abandoned Housing Projects: A Comparative Legal Analysis Between Malaysia and the United Kingdom //The Law Review. ISSN. – 1985. – T. 891.
[8] Walton P., Umfreville C., Jacobs L. A snapshot of company voluntary arrangements: Success, failure and proposals for reform //International Insolvency Review. – 2020. – T. 29. – №. 2. – P. 267-284.

On the basis of the foregoing analysis, it may be concluded that the institution of the amicable agreement in insolvency proceedings has emerged as a central rehabilitative element of modern bankruptcy law. Its essential purpose lies not in the compulsory liquidation of the debtor, but in the restoration of economic relations through a legally structured compromise with creditors.

First of all, it becomes clear that, under the legislation of the Republic of Uzbekistan, particularly Article 161 of the Law of the Republic of Uzbekistan No. ORQ-763 of April 12, 2022 "On Insolvency,", the amicable agreement is constructed according to the continental-formal model. Within this framework, the decisive role of the creditors' meeting, the requirement of unanimous consent from secured creditors, the mandatory nature of judicial approval, and the binding force of the agreement upon all participants are intended to ensure legal certainty and stability. This approach is consistent with the Russian legal system and reflects an understanding of the amicable agreement primarily as a procedural settlement.

Secondly, an analysis of the legislation of Germany, the United States, and the United Kingdom shows that in these jurisdictions this institution has developed much further and has evolved into a substantive legal mechanism of reorganization. In particular:

in German law, creditors are divided into groups, the interests of each group are protected separately, and in certain cases the court may confirm the plan on the basis of economic fairness even where there are dissenting votes;

in U.S. law, through the cramdown mechanism, the court is able to ensure a fair balance among classes of creditors and bind even dissenting creditors to the plan;

in the United Kingdom, alongside classical forms of arrangement, there is also a clear trend toward strengthening the court's active role through the cross-class cramdown mechanism.

A third important conclusion is that foreign experience treats creditor autonomy in bankruptcy proceedings not as absolute, but as an institution balanced by judicial supervision. In the Uzbek model, by contrast, the will of the creditors' meeting remains dominant, while the court mainly acts as a confirming authority. This may, in some cases, limit the possibility of implementing arrangements that are economically efficient but not supported by a certain portion of creditors.

Fourthly, although the requirement of unanimous consent of secured creditors under Article 161 strongly protects their rights, in practice it may complicate the reorganization process. In foreign law, instead of such a rigid requirement, criteria such as fair and equitable treatment or the no worse off principle are applied, thereby increasing the effectiveness of the restructuring process.

Fifth, and most importantly from a scholarly point of view, the legal nature of the amicable agreement institution appears to be developing between two distinct models:

the first is the procedural compromise model (Uzbekistan, Russia);

the second is the comprehensive reorganization model (Germany, the United States, and the United Kingdom).

From this perspective, the following academically grounded proposals may be advanced for improving Uzbek legislation:

to divide creditors into groups according to their legal status and introduce a separate voting mechanism for each group;

to provide for judicial assessment of the interests of dissenting creditors on the basis of the no worse off principle;

to strengthen the role of the court so that it functions not merely as a formal approving body, but also as an active evaluator of economic expediency;

to soften the absolute veto power of secured creditors and replace it with fair compensation mechanisms;

to develop the amicable agreement into a broader legal instrument of corporate and financial restructuring.

As a final conclusion, it may be stated that the effectiveness of the institution of the amicable agreement is determined not merely by its legal form, but also by its ability to ensure a fair balance of creditors' interests, the effective exercise of judicial supervision, and the promotion of economic recovery. In this regard, foreign experience demonstrates the need to deepen the mechanisms currently embodied in Article 161 Law of the

Republic of Uzbekistan No. ORQ-763 of April 12, 2022 “On Insolvency,” and to adapt them to the requirements of modern restructuring law.

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