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RESEARCH ARTICLE

LEGAL REGULATION OF CROSS-BORDER BANKRUPTCY OF LEGAL ENTITIES

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Abstract

The last decade has been marked by the rapid development of International private law within the framework of globalization and unification of norms. Therefore, in the international community, the issue of interethnic application and harmonization of rules and norms for individual emerging legal relations becomes acute. This article examines the issue of legal regulation of cross-border bankruptcy of legal entities. In particular, the author provides a number of statistics and analytical data from a number of countries (developed and developing) in order to substantiate the point of view on this issue.Moreover, the author examines foreign law enforcement practice and the legal framework on bankruptcy and insolvency of legal entities. Considering the bankruptcy procedure, the author comes to the conclusion that this issue has not been sufficiently studied both from a theoretical point of view and from a practical one. Within the framework of this study, sufficient arguments are made to accelerate the resolution of conflicts in International private law. As a result, the author gives some conclusions and suggestions applicable both in the Republic of Uzbekistan and in other states.

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Introduction:-

Nowadays the rapidly developing relations between the countries are strengthening. The acceleration of such processes creates new relations in the international arena, opens up the need for their legal regulation, the development of their theoretical basis. One of such relationships is cross-border bankruptcy.

Until now, civil scientists have not resolved the issue of interpreting the category of cross-border bankruptcy as an institution of international private law that regulates civil relations complicated by a foreign element.

The legislation of the Republic of Uzbekistan does not contain the concept of "cross-border bankruptcy"[1]. It should be noted that in almost all countries of the world, many enterprises, especially newly created ones, go bankrupt. According to British researchers, about 70-80% of new businesses stop working after two years for specific reasons. Such high rates are mainly in European countries. According to the statistics, an average of 4994 enterprises were

[1]Among other CIS member states, only the national legislation of Georgia and Moldova addresses the issue of cross-border bankruptcy. Georgia's bankruptcy law has a separate chapter on the issue.

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declared bankrupt in Austria, 7086 in Belgium, 41903 in Great Britain, 1616 in Hungary, 21220 in Germany, 3899 in Norway, 3300 in Poland, 2621 in Denmark, 12585 in France and 5286 in Germany.[2]

As of 9 months of 2014, the Tashkent City Economic Court of the Republic of Uzbekistan declared bankrupt 219 business entities, and by the end of 9 months of 2015, 325 business entities were declared bankrupt, which is 106 more than previous year[3].

The fact that the problematic nature of this category of legal relations is reflected both in the doctrinal and in the normative documents regulating this area is the basis for the conclusion that this concept is still relevant and actual today. At the same time, the absence of a final decision on these issues does not allow its supporters to form a definite position. Such incompleteness is not accidental, the main thing is that the problem of incompleteness of assumptions is still in the process of developing a regulatory mechanism by lawyers that best suits its nature and is easily applicable in practice in international relations. In general, procedural science pays great attention to the problem of international bankruptcy settlement. This topic was also mentioned as one of the most important at the XIII World Congress on Procedural Law, held in 2007 in Salvador da Baia (Brazil). [4]

The main goal of concluding international treaties in this area is to ensure the equality of creditors and debtors in relations related to the recognition of the bankruptcy of one state organization on the territory of another state. This is due to the fact that the principle of respect for the equality and independence of each state is observed when concluding international treaties.[5]

It should be noted that Article 3 of the European Convention "On Certain International Aspects of Bankruptcy"[6] provides that bankruptcy proceedings must be initiated by a court or competent authority, have legal force in the member states where bankruptcy proceedings were initiated, and not contradict public right.

The above convention reflects the desire of the member states to simplify the bankruptcy process, the application of the territorial principle and, most importantly, a uniform approach to the interpretation of legal norms in this area. However, in the process of bankruptcy between non-party states, its regulation does not pay due attention to the protection of creditors' rights.

In fact, although the situation in question is generally not recognized in foreign doctrine, it is recognized that the concept of “cross-border insolvency” has been adopted. In this area, in particular, the concepts of multinational bankruptcy are used multinational bankruptcy[7],international insolvency[8], global insolvency[9],transnational bankruptcy. Although the terms apply to the situation are different, they usually refer to bankruptcy complicated by the foreign element. Typically, the category of foreign element includes foreign creditors and the debtor's property located abroad. In addition to the process of complicating bankruptcy relations with a foreign element, M.M. Boguslavsky noted that "bankruptcy proceedings are initiated against one person in several states" and "bankruptcy court decisions must be enforced outside the country in which the decision was made."[10]

According to L. Sobina, “cross-border insolvency (bankruptcy) is an institution of bankruptcy between a creditor, a debtor and an asset, regulated by the norms of international private law, which is subject to the jurisdiction of

[2] http://homes.line.ru/wolk/crisis/bankrot3.html
[3] http://oxs.uz/
[4] Anufrieva L.P. International private law: In t. T. 3. M., 2001.
[5] Private international law. Textbook for higher education institutions // H.R.Rahmonkulov et al. / Under the general editorship of H.B.Boboev, M.Kh.Rustamboev, O.Okyulov, A.R.Rakhmanov. - T.: World of Economics and Law, 2002. p. 27
[6] https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/136
[7] Berger Marc A. Currency Issues in Multinational BusinessReorganizations // Brooklyn Journal of International Law. 1995. Vol. 20.
[8] SobinaL.Yu. Recognition of foreign bankruptcy in international law. – M.: Status, 2012.
[9] Westbrook Jay Lawrence. Choice of Avoidance Law in GlobalInsolvencies // Brooklyn Journal of International Law. 1991. Vol. 17.
[10] Boguslavsky M. Private International Law: Textbook. M., 2005.

different states.[11] In general, as in other situations, the sphere of international private law includes relations that are legal relations of the legal order of different states[12].

Cross-border bankruptcy is expressed in legal relations of two or more states: (1) if a foreign creditor was involved in the bankruptcy of the debtor, (2) if the debtor's property is located in another state or is objectively related to the recognition of the debtor as bankrupt in two or more states, there is an urgent need to regulate legal relations with the general rules and norms of private international law. All this requires the consolidation of the legislative framework and legal principles for regulating cross-border bankruptcy in national legislation, taking into account the positive international experience.

The creation of concepts aimed at the further development of economic liberalization and improvement of legislation in this area as a result of the analysis of the theory and practice of foreign regulation of cross-border bankruptcy relations is one of the urgent tasks.

The opinion of A.B. Letina is very reasonable, therefore, we find it important to study this point of view. In particular, in her opinion, "bankruptcy legislation has its own complexity, including both substantive and procedural law, which means that it is impossible to make an unambiguous conclusion about its belonging to one or another area of law"[13]."A complex object called bankruptcy can be considered as an institution of the legal system, as a complex institution of legislation, as a system of interaction of legal entities with the management system, as a system of the bankruptcy process"[14].

According to L.P. Anufrieva, "the phenomenon of cross-border bankruptcy is an independent institution of international private law, which has substantive and procedural features (the institution of a "special category"- sui generis)"[15].

From a substantive point of view, a legal relationship in bankruptcy is a relationship associated with the sequential collection in accordance with the current regulatory legal acts of the property of a debtor who is not able to fully satisfy the creditors' claims for the debtor's monetary obligations and (or) fulfill his obligations for mandatory payments on the initiated bankruptcy case.[16]

From a procedural and legal point of view, legal relations associated with bankruptcy must be regulated not only materially, but also procedurally. Procedural and legal facts (acceptance by the economic court of an application for declaring the debtor bankrupt) are manifested only in procedural and legal form.[17]

Considered in this order, the system of regulating bankruptcy relations with the participation of a foreign element in practice is called "softened universality". Typically, they allow (for example) a separate (secondary) bankruptcy case against the debtor's divisions or property located abroad, in addition to the main bankruptcy case filed in the country where the head office is located. Thus, local clerical work will tend to assist the main clerical work. The intervention of the method of territoriality and universality at the national level occurs in the same way as at the international level. A mixed view of cross-border bankruptcy regulation is clearly reflected in the US cross-border bankruptcy law. Another example from international sources is the EU Bankruptcy Regulation No. 1346/2000[18].

[11]SobinaL.Yu. Recognition of foreign bankruptcy in international law. –M.: Status, 2012, p. 12.
[12]Foreign practice of anti-crisis management: textbook. manual / ed. prof. Ryakhovskaya. - M.: Master: INFRA-M, 2010.S. 99.
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According to laws of foreign countries, if a person cannot fulfill his debt obligations and this is confirmed by a court, the situation is called insolvency. [12] The legal expression for the term "insolvency" varies from country to country and has no generally accepted meaning. By default, the amount of debt can be set in different ways. In SCF, France and the United States, the suspension of payments by the debtor is evidence of insolvency. In English law, insolvency is confirmed when the debtor commits one of the specified actions. In the Netherlands, insolvency means that an enterprise cannot satisfy the claims of the creditors, which in France is considered insolvency, while in Italy this is due to the insolvency of the debtor for a certain period of time. The terms "insolvency" and "bankruptcy" were used synonymously in Russia.

When initiating a bankruptcy case, the courts should be guided by the concept of "bankruptcy (economic insolvency)", enshrined in Article 3 of the Law of the Republic of Uzbekistan "On Bankruptcy", and the general rules disclosing its features. According to Article 3 of the Law, "bankruptcy (economic insolvency) is an inability of the debtor recognized by the economic court to fully satisfy the creditors' claims for monetary obligations and (or) fulfill obligations for mandatory payments; Bankruptcy is a court confirmation of the debtor's absolute insolvency"[19].

As a result of the declaration of bankruptcy, the economic activity of the insolvent enterprise is terminated by a court decision and the legal entity is liquidated as a subject of law. Thus, bankruptcy is the final limit, which clearly defines the termination of business activities. Of all the grounds for the termination of a legal entity, bankruptcy is one of the most stringent measures and therefore requires special legal regulation.

The general features of the legislation of developed foreign countries on bankruptcy are determined by the fact that it is based on the principle of preserving (reorganizing) and reorganizing other enterprises according to the criteria of economic assessment. In addition, the legislation should encourage any additional investment to support insolvent but promising businesses, provided that the claims of all creditors gradually increase the required level of repayment.

Cost curves, such as the loss of investment opportunities or the overinvestment of a bankrupt business, are an indicator of the effectiveness of foreign bankruptcy laws. Profitable investment opportunities can be lost due to conflicts between different shareholders and lenders. For example, in the UK External Governance Code, new financing does not take precedence over existing requirements without the consent of the lenders. This situation can reduce the acquisition of new instruments needed to continue doing business. In contrast, overinvestment may be required under Chapter 11 bankruptcy procedures because the debtor may receive new funding (borrowing) with the highest priority and spend assets acting on behalf of the shareholders because the shareholders do not bear the costs of losses and benefit from a high rate of return[20].

The results of the analysis showed that there is no standard for solving bankruptcy problems and that each state has its own views and characteristics in this regard. However, at the same time, many examples from foreign experience have shown that it is possible to creatively approach the improvement of the legislation of the Republic of Uzbekistan.

In the national legislation of different countries, there are significant differences in the definition of the law applicable to cross-border bankruptcy (in bankruptcy cases related to the management and consolidation of the debtor's property in two or more countries), and in practice there are serious difficulties associated with considering cases in this area.Also, some authors points that in Special economic zones could be different applicable law to cross-border bankruptcy[21].

In foreign countries, in particular in the USA, Great Britain, Germany, France, Italy and the European Union, the legal regulation of cross-border bankruptcy is highly organized and, to a certain extent, its regulatory framework has

[19]Shukurullaev A., Sidiqov A. Features of bankruptcy case law. // Bulletin of the Supreme Economic Court. 2011. - №10. - pp. 50-51

[20]Roe M. Bankruptcy and Corporate Reorganization // Foundation Press, 2000. p. 464.

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been created. Scientists from these countries have paid special attention to a comprehensive study of the problems associated with cross-border bankruptcy[22].

At the same time, special attention should be paid to the comprehensive protection of the rights of the subjects of cross-border bankruptcy (debtors and creditors) operating in the country in a market economy, the definition of the rights and obligations of the parties, and the elimination of the problem of cross-border bankruptcy.

In this problematic situation, joining a number of international agreements will facilitate the simplification and transparency of the bankruptcy procedure, increase the efficiency of the consolidation of the debtor's property and ensure the creditor's claims by distributing the consolidated property of the debtor, which, in turn, will increase mutual trust between states and contribute to the development of international trade. The signing of such documents will increase the interest of foreign creditors in investing in the manufacturing sector, financial institutions and institutions of the Republic of Uzbekistan, as well as improve the investment climate in the country.

Based on the analysis of the current legislation in the field of legal regulation of cross-border bankruptcy, we believe that in order to improve law enforcement practice, it is necessary to take the following measures outlined below:
- creation of the theory and concept of legal regulation of cross-border bankruptcy in Uzbekistan;
- study of international documents aimed at regulating cross-border bankruptcy relations and implementation in the legislation of the Republic of Uzbekistan;
- scientific and theoretical analysis of the role of subjects of cross-border bankruptcy and legal relations between them;
- analysis of the legislation governing cross-border bankruptcy relations, and filling legal gaps in it;
- development of the basis for the unification and influence of the norms of private international law on conflict issues in the process of international cooperation in resolving cross-border bankruptcy;
- scientific - theoretical analysis of the role of the institution of cross-border bankruptcy in the system of international private legal relations, etc.

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