



ISSUES ON THE DEVELOPMENT OF COLLISION METHOD OF LEGAL REGULATION OF FOREIGN LEGAL ENTITIES' LIQUIDATION IN UZBEKISTAN

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Article history:	Abstract:
Received: September 11 th 2022 Accepted: October 11 th 2022 Published: November 20 th 2022	The liquidation of enterprises in general is considered by a complex process, which is accompanied by the emergence of other significant legal relations between the State and the legal person. Moreover, the complication in the form of a foreign element causes the need for a structured collision-legal regulation both at the national and international levels. This article reveals the elements and specifics of the liquidation of foreign legal entities in the Republic of Uzbekistan and identifies a number of proposals to improve the conflict of laws regulation in the legislation. The author considers the opinions of jurists, provides statistics, as well as reveals foreign practice. The study conducted by the author in this work emphasizes the importance of applying precise mechanisms with regard to the procedures at the time of liquidation of a foreign legal entity, as well as after its termination. In conclusion, the author considers it advisable to make amendments to some provisions in the legislation related to this issue.

Keywords: Conflict of laws, liquidation of a foreign legal entity, legal relationship with a foreign element, civil law, legal system, private law.

It is known that any legal entity, based on the goals and objectives of its activities, organizes its activities in accordance with the legislation of a particular state. In this case, to pay taxes, customs and other fees, establish its activities, obtain a license, permit and other conditions, it is registered as a legal entity on the territory of a particular state and acquires the status of a legal entity.

International private law requires the settlement of conflict of laws in connection with the expiration of the existence of a legal entity, the achievement of the purpose for which it was created, or its liquidation for other purposes. In this case, the termination of applicable conflict ligaments regarding the operation of right mechanisms requires a separate study.

It should be noted that disputes related to the liquidation of a legal entity are considered in court, by economic courts. In this regard, the issue of participation of foreign persons in the conflict-of-law regulation of the liquidation of foreign legal entities in Uzbekistan is of particular importance.

As a rule, foreign organizations, international organizations and foreign citizens, stateless persons engaged in entrepreneurial activities participate in this process as a party. [1] According to K. Avezov, from a

substantive point of view, when distinguishing a separate group of disputes, it is desirable to have a separate procedural procedure for their consideration in court. This is also the case in the legislation of a number of foreign states. When resolving disputes related to these relations, it is especially important from a procedural and legal point of view to identify the parties involved in them, determine their rights and obligations, and ensure the interests of a group of persons involved in these relations. [2]

In our opinion, in an environment where Uzbekistan is becoming more open to the world, and the investment climate is becoming more attractive, the conflict regulation of the liquidation of legal entities requires compliance with generally accepted standards and rules. However, this does not mean representing the interests of another state in the development of national conflict rules. Perhaps the presence of generally accepted conflict of laws rules in national legislation will become an important factor in the formation of a special incentive, confidence in these relations with the participation of a foreign element.

The current development serves to ensure mutual benefit and balance in the development and implementation of existing legal norms at the international level and, from an objective point of view,



calls not to ignore the requirements of the development of society. Failure to respond to this call will hinder social development to some extent. Consequently, conflict rules that do not meet modern requirements negatively affect economic, social, and political processes.

In 2014-2019, the economic courts of the Republic of Uzbekistan considered a considerable number of cases on the liquidation of legal entities (joint ventures with foreign investments and foreign enterprises). In 2014, 23 cases were considered and 23 cases were satisfied; in 2015, 24 cases were considered and 23 cases were satisfied; in 2016, 23 cases were considered and 21 cases were satisfied; cases, 12 satisfied and 8 rejected, 14 cases considered and 14 cases satisfied in 2018, 12 cases considered and 12 cases satisfied in 2019. [3]

In a complex relationship with a foreign element, the emergence of litigation over a joint venture with foreign investment and the liquidation of a foreign enterprise is mainly due to the need to protect the law. Failure to reach a mutual agreement encourages the parties to resolve the dispute in court. This requires confidence that the regulatory mechanism is stable and can always perform the function of law enforcement. However, the current jurisprudence shows that there are various controversial cases in this regard.

In accordance with clause 5 of part 1 of article 25 of the Economic Procedure Code of the Republic of Uzbekistan, article 30 of this Code provides that cases on corporate disputes (except for labor disputes) refer to the economic court. The claim does not contain requirements (dispute resolution), such as the inclusion of the founder in the list of participants, the restoration of illegally liquidated LLCs (Code of Economic Procedure or the Civil Code of the Republic of Uzbekistan). Such material and legal claims are not considered in courts. According to clause 1 of part 1 of article 110 of the Economic Procedural Code of the Republic of Uzbekistan, economic proceedings are terminated due to the fact that if the dispute does not apply to the court, the court terminates the proceedings. [4]

There is some ambiguity in the above solution. First of all, the question of whether succession is allowed upon liquidation of a foreign legal entity remains open. It is practically impossible to satisfy a claim for the restoration of a legal entity after its official liquidation, that is, removal from the state register. Because after the abolition of the subject of law, it is impossible to "resurrect" it again. In addition, the legislature requires not only the formation of a legal entity, but also the ability to exercise certain rights and obligations, property liability, independent participation in legal relations between the parties to the case. No

information is provided on many of the facts that can be established in terms of the existence of legal entities in the succession.

If you pay attention to the experience of foreign countries in this area, then this is a legal entity carrying out economic activities, the definition of its legal status implies special requirements.

Italy has accumulated some experience in private international legal regulation. The title of Law No. 218 of 1995 used the title "Reform of the Italian system of private international law". In this law, legal entities are understood as "societies, companies and other legal entities". The main goal is the relative stabilization of international civil and trade relations. [5]

The Swiss Federal Law of 18 December 1987 on private international law uses the term "company". In article 150 of this law, for the purposes of the law, a company is any association of persons and any established property complex. [6]

Typically, legal entities involved in relationships with a foreign element are directly related to investments. Foreign investments on the territory of the Republic of Uzbekistan mean the recognition of all types of material and intangible benefits and rights to them, including intellectual property rights, as well as any income from foreign investments made by foreign investors in business objects and other types of activities not prohibited by law (Article 12 Law of the Republic of Uzbekistan "On foreign economic activity").

According to M.L. Vardanyan, "a foreign legal entity is an established and registered organization, the legal capacity of which is determined by the legislation of a foreign state." [7]

According to Yu.I. Eremin, "if the permanent executive body of a foreign legal entity or its main place of business is located on the territory of the Russian Federation, Russian law may be applied when determining its personal law." [8]

In our opinion, the lack of a single concept of a foreign legal entity, the application of different criteria in determining its personal law and applicable law, in determining its belonging to a particular state leads to misunderstandings. This problem is exacerbated by the termination of the activities of a legal entity with foreign participation. This is due to the fact that the termination of a legal entity is often associated with various misunderstandings and disputes.

At the same time, Article 3 of the Law of the Republic of Uzbekistan "On Investments and Investment Activities" does not provide for "international organizations that are subjects of public international law as foreign investors". When viewed from the point of view of the legal sphere, investment activity is directly related to both the public and private



spheres of law. In this case, one cannot ignore the fact that the main instrument of regulation depends on the contract between the parties and its decisive force.

Civil law does not define a foreign legal entity. However, according to Article 1175 of the Civil Code of the Republic of Uzbekistan, the law of the country in which a legal entity is established is its personal law. By this, the legislature means a conflict of interest with the place of incorporation of a legal entity.

In France and Greece, a foreign company is not recognized as a corporation if its administrative center is located in another country. A company that adheres to the principle of registration in Germany is not recognized as a company, if the governing bodies of this company are located in a country where the principle of administrative center applies, then this company adheres to the principle of registration. However, if the country in which the company has its headquarters adheres to the registration principle, then the company is recognized. Companies from Portugal, Luxembourg and Belgium are recognized only if their administrative centers are located in one of these countries. Mandatory local laws (including mandatory localization of foreign legal entities) may apply to the activities of such companies. [9]

Article 3 of the Law of the Republic of Uzbekistan "On investments and investment activities" states that legal entities established and operating in accordance with the law, any other companies, organizations or associations, foreign citizens and stateless persons permanently residing outside the Republic of Uzbekistan are included in the concept foreign investor. [10]

The legislator does not indicate in which country the law determines the legal capacity of a foreign investor, the legal status of an economic entity acting as a permanent establishment. The Civil Code of the Republic of Uzbekistan, on the other hand, defines all companies, organizations or associations as legal entities. This leads to uncertainty about the existence or non-existence of the status of a legal entity. For example, a permanent establishment exists in tax law as a subject of tax law, but this taxpayer status does not give it the status of a legal entity. This is due to the fact that such a subject is not known in civil law.

Recognition of the Law of the Republic of Uzbekistan "On Investments and Investment Activities" as the law applicable to legal entities that are in complex relations with a foreign element, the lack of definition of the legal status of foreign organizations that are not legal entities, creates contradictions in the regulation of the liquidation of legal entities.

In our opinion, Article 3 of the Law of the Republic of Uzbekistan "On investments and investment activities" should define the concept of "foreign investors" in the following edition:

"Foreign investors are a foreign legal entity, which is determined by the legislation of the country, the legislation of the Republic of Uzbekistan, as well as a foreign legal entity of the Republic of Uzbekistan, as well as an exclusive legal entity of the Republic of Uzbekistan; A foreign citizen who is determined by the legislation of civil law, which is determined by the legislation of civil laws itself and is a foreign citizen who can carry out investment activities on the territory of the Republic of Uzbekistan. Viable civil law and communication is determined by the legislation on the territory of the Republic of Uzbekistan, non-citizenship of the Republic of Uzbekistan, which can carry out investment activities on the territory of the Republic of Uzbekistan; International organizations that can carry out investment activities on the territory of the Republic of Uzbekistan in accordance with the international treaty of the Republic of Uzbekistan; foreign states, administrative or territorial bodies of foreign states.

In accordance with the Decree of the President of the Republic of Uzbekistan dated August 1, 2018 "On measures to radically improve the investment climate in the Republic of Uzbekistan" [11] PF-5495, the minimum authorized capital of enterprises with foreign capital was reduced from 600 million to 400 million soums. [12]

In law enforcement practice, there are different interpretations of normative documents that have different legal force. For example, according to the law, the minimum authorized capital of a JSC is 400 thousand US dollars, and in legal documents it was first set at 600 million soums, and then it was decided to reduce it to 400 million soums. According to the Law of the Republic of Uzbekistan dated March 20, 2019 "On amendments and additions to certain legislative acts of the Republic of Uzbekistan in connection with the adoption of additional measures to improve the business environment in the country", legal entities (LLC, JSC, Family, etc.), that the minimum size authorized fund (authorized capital) may be specified in the license requirements. [13] Annex 11 to the Regulation on the procedure for state registration of business entities, approved by the Cabinet of Ministers of the Republic of Uzbekistan dated February 9, 2017 No. 66, requires that the minimum authorized capital of enterprises with foreign investment be at least 600 million soums.

It should be noted that Article 1175 of the Civil Code of the Republic of Uzbekistan provides that the law of the country in which a legal entity is established is the applicable law for that legal entity. Article 1177 of the Civil Code of the Republic of Uzbekistan establishes that foreign legal entities carry out entrepreneurial and other activities regulated by the civil legislation of the Republic of Uzbekistan, unless



otherwise provided by the legislation of the Republic of Uzbekistan for foreign legal entities.

In this case, if the question arises of recognizing a foreign organization as a legal entity, it should be interpreted from the point of view of compliance with the requirements of Article 39 of the Civil Code of the Republic of Uzbekistan. Comparatively, according to Article 1187 of the Civil Code of the Russian Federation, if such an organization is not known in national law and cannot be applied on the basis of national law, then foreign law may apply.

It should be noted that the issue of determining the nationality of a legal entity does not arise in isolation and is usually directly related to other problems, and attempts are being made to resolve this issue by determining the nationality of a legal entity. For example, if French law provides for a privilege that applies only to the French, then it will be necessary to determine whether the French own a certain foreign legal entity (for example, a company) operating in France. This, in turn, solves the problem of applying benefits to a specific legal entity.

In general, each state, in order to protect them, tries to provide certain privileges and preferences to itself, that is, to legal entities belonging to this state. The question of whether a particular person is a legal person is also determined by his personal law. For example, under French law of 24 June 1966 a general company is a legal entity, while under British law a partnership is not a legal entity. In German commercial law, a general or limited partnership is not a legal entity, although it has certain similar rights. [14].

Determining the citizenship of a legal entity is also important for determining its recognition as a legal entity in the territory of another state, the procedure for its liquidation. Therefore, the personal law of a legal entity is in the jurisdiction of both public law (eg tax, customs law) and private law. The solution to this problem is directly related to the settlement of the conflict.

In our opinion, the criterion of incorporation is particularly effective in the current situation, because it is characterized by its clarity and stability. At the same time, it fully protects the interests of the founders, to a lesser extent ensuring the interests of the country in whose territory the legal entity is located or operates. Thus, it partially contributes to the circumvention of the law, which is a destabilizing factor in modern international private law relations. The solution to this problem, in our opinion, involves the widespread use of the principle of application of the imperative norms of the state in which the governing bodies of a legal entity are created in accordance with the legislation of another state.

Article 56 of the Law of the Republic of Uzbekistan "On investments and investment activities"

states that "assets of enterprises with foreign investments are taxed in the event of liquidation of these enterprises. The rest of the property is distributed among the participants of the enterprise with foreign investments in proportion to their share in the property of the enterprise, unless otherwise provided by the constituent documents. [15]

The absence of the norms of the personal law of a legal entity in the Civil Code directly creates problems in the liquidation and reorganization of a legal entity. In our opinion, it is advisable to include in Article 1175 of the Civil Code the second part of the following content:

"On the basis of the personal law of a legal entity, it is determined:

- legal entity status;
- organizational and legal form of a legal entity;
- requirements for the name of a legal entity;
- creation, reorganization and liquidation of a legal entity, including the establishment of succession;
- the content of legal capacity of a legal entity;
- the acquisition of civil rights and the assumption of civil obligations by a legal entity;
- internal relations, including relations between participants in a legal entity;
- a legal entity may be liable for its obligations;
- the question of the liability of its founders (participants) for the obligations of a legal entity.

If a legal entity established abroad carries out its economic activities mainly on the territory of the Republic of Uzbekistan, has the right to give it mandatory instructions or otherwise determine its actions, the personal law of such a legal entity shall apply in the Republic of Uzbekistan. at the discretion or choice of the creditor."

Article 1177 of the Civil Code of the Republic of Uzbekistan does not contain a rule on the personal law of an organization that does not have the status of a legal entity in accordance with foreign legislation. The new edition of the Tax Code of the Republic of Uzbekistan provides for an organization that is not provided for by the Civil Code of the Republic of Uzbekistan. According to Article 36 of the Tax Code of the Republic of Uzbekistan, for the purposes of this Code, the place where a foreign legal entity carries out economic activities in the Republic of Uzbekistan in whole or in part is recognized as a permanent establishment of a foreign legal entity in the Republic of Uzbekistan. [16]

Although the above rule provides for tax liabilities for a structure not provided for in the Civil Code, it does not establish the personal law of a foreign organization that is not a legal entity in accordance with foreign law. If the rule of Article 1191 of the Civil Code, that is, the law on the agreement on the establishment of a legal entity with foreign



participation, for example, the law of Germany, applies to the country of establishment of a legal entity, then this rule applies only to a legal entity with foreign participation (for example, JSC, LLC, companies with limited liability).

A permanent establishment (ordinary company, secret company, etc.) provided for in Article 36 of the Tax Code of the Republic of Uzbekistan is exempt from Article 1191 of the Civil Code. Legal entities of the Republic of Uzbekistan include both business entities and commercial companies. In such cases, the legal entity can be considered both in the narrow and in the broad sense.

In our opinion, it is advisable to supplement article 11771 of the Civil Code of the Republic of Uzbekistan in the following wording:

"Section 11771. Personal law of a foreign organization that is not a legal entity under foreign law

The personal law of a foreign organization that is not a legal entity under foreign law is the law of the country in which the organization is established. If the legislation of Uzbekistan applies to the activities of this organization, the provisions of this Code shall apply, unless otherwise provided by law.

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