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ANALYSIS OF PROBLEMS THAT ARE FACED BY FOREIGN LEGAL ENTITIES IN RUSSIAN FEDERATION

Аннотация: в статье проанализировано современное правовое положение иностранных юридических лиц на территории Российской Федерации. Были рассмотрены общие положения, значение и критерии определения национальности юридического лица, государственной принадлежности юридических лиц, а также понятие личного закона и личного статута. Установлено влияние личного закона юридического лица на правовой статус. Особое внимание уделено рассмотрению правовых основ деятельности иностранных юридических лиц в Российской Федерации и связанными с ними проблемам.

Ключевые слова: иностранное юридическое лицо, государственная принадлежность, применимое право, коллизионное право, принцип национального режима, недвижимость иностранных юридических лиц.

Abstract: the article has analyzed current legal status of foreign legal entities in the territory of the Russian Federation. The authors described general provisions, the value and criteria for determining the nationality of legal entities, nationality of legal entities and the concept of the personal law or personal Statute. They also showed the effect of the personal law of a legal entity on legal status. Special attention was paid to the consideration of the legal basis of foreign legal entities in the Russian Federation and in connection with their problems.

Keywords: *foreign legal entity, state affiliation, applicable laws, conflict of laws, national treatment principle, property of foreign legal entities.*

Currently, the appearance of foreign corporations in the state, it is not an innovation. In most countries of the world for they are created with opposite conditions for such legal entities, such as the following conditions, to determine the goodwill of the State, and of course has a positive impact on the economy. According to recent demographics that have been recorded it has been noted that Investments to Russia are decreasing and thus influenced and still influencing the fluctuations of the Russian Economy from the year 2014 till now. Recent analysis shows that investments to Russia has decreased during the past 2 to 3 years and this might be a problem that has been influenced by the numerous restrictions that were placed on international or foreign businessmen who wish to possess land, buildings and so forth.

This has been a factor affecting foreign businessmen and has led to some of them fleeing from Russia to other countries that have favourable working and better business terms for instance New Zealand, Singapore, UAE among others.

Problems of the legal status of foreign legal entities arise in all countries who focus their policy on attracting foreign investments and permitting foreigners in to their markets. Often there are problems associated with the regulation of foreign investments mostly in the sphere of activities of foreign legal entities in the economic life of States.

The reform of the domestic system of economy has led to a substantial increase in the movements of capital, goods, and services through the state border of the Russian Federation. This entailed transitions from simple structures of economic subjects, mainly including the state-owned enterprises which are too complex, consisting of economic societies and partnerships, including foreign partners, which requires their careful consideration. The relevance of the researched problems relates to:

First, the variety of organizational forms of foreign legal entities and the personal law of each of them, recognizing the appropriate legal form as a subject of rights.

Secondly, the presence of different bases of recognition as the personal law of foreign legal entities law of a state depending on the recognition by the Russian Fed-

eration doctrine of the international Treaty (incorporation, place of business main activities, location of management body).

Thirdly, the discrepancy between the only legislated in the Russian Federation doctrine of incorporation, on the other hand, permitted to practice in the litigation and conclusion of international agreements by the doctrines of domicile and place of business of a foreign person to determine the personal law of a legal entity.

Fourthly, the limit set by the government in various economic spheres.

Fifth, the lack of clear legal regulation of status of foreign persons, covering all the known cases of the application of conflict rules to the legal relations with foreign legal entities and States, leading commercial activities.

Legal entity – legal entities whose property separated from property of its creators (founders, participants) participants of the civil, international private law relations. Their legal position is defined as the domestic law of individual States and created on the basis of the constituent documents of the legal person, and, in some cases, international regulatory agreements.

Legal entity created on the territory of a particular state. However, their activities are not limited to the territory of that state and could spread to other countries. The implementation of such activities determines:

- firstly, the recognition of the legal personalities of foreign legal entities and;
- secondly, the admission for the implementation of economic activity on the territory of that state and the conditions for such activities.

The legal personality of foreign legal entities are usually recognized on the basis of bilateral treaties.

The admission of foreign legal entities in economic activities of the state are decided by the law of that state. In most countries the legal entities must comply with certain rules and conditions established by the national legislation.

Legal status is also determined by trading contracts and maybe based on the principle of most favored nation or national treatment principle. In private international law, in regards with legal entities applies the concept of the personal law or personal Statute of a legal entity (*lex societatis*).

Without a definition of nationality (under the nationality of a legal person should understand his belonging to a particular state) of a legal entity cannot be established whether the national treatment is contained in bilateral treaties or in legal assistance, agreements on trade-economic cooperation, on encouragement and mutual protection of investments in force for Russia against a large number of States.

Personal law is determined by the internal organization of the legal entity, the form, sphere of activity and legal capacity, the obligatory contribution of founders and other participants, seed capital and its form, the rights and obligations of founders and members, the composition and competence of the governing bodies of the legal entity, etc.;

Whether the Association of individual legal entities or not, it is decided primarily on the basis of his nationality. For example, the law of the UK and the USA General partnership (partnership) is not a legal entity, and according to the laws of France, Japan, Russia has that status with all the ensuing consequences. The nationality of the legal entity gives an idea about the extent of the rights which it may have.

The doctrine of private international law of most of the countries are recognized in a way that legal entities are subjects to national laws, i.e. the laws of the States to which they belong.

The main content of discussion here is to establish a criteria that would allow to determine the nationality of Legal entities. The personal law of a legal entity is the law of the country where the legal entity is established. If you look at the Review of the court of Arbitration in the resolution of disputes with participation of foreign persons it can be seen that there is no indication by the parties and which law will govern their relationship it is decided by the court. Personal law established Russian legal entities with foreign participation with the law, irregardless of the size of the share participation of foreign capital. However, in cases when you need to protect primarily the interests of the domestic economy, domestic producers and impose certain restrictions on foreign legal entities assimilated Russian legal entities, the shares of foreign capital exceeding 50%. This approach of determining the actual affiliation of a legal entity that manifested primarily in the legislation of land, the legislation of

banks, insurance activities, as well as in some other areas. Currently, all major role in determining the nationality of legal persons playing the judiciary. Moreover, the judicial practice often resorted in the use of several criterias. This means that in the same state depending on circumstances may apply one or another principle that creates difficulties for legal entities.

Foreign legal and physical persons have the right to carry out economic activities in the territory of the Russian Federation through the creation of enterprises and opening of their branches, and by other actions not prohibited but must be applicable to the law. In this case, the legislation of the Russian Federation establishes restrictions and control over their activities. The main limitation of rights of foreign legal entities established by the Federal law, concern the possibility of limiting the right of land ownership and the inability to have the right on agricultural land, and restrictions in insurance and banking, TV [10] etc.

By analyzing the characteristics of civil law regulations of real estate transactions, complicated by a foreign element, first of all it is necessary to appeal to the Supreme law of Russia – the Constitution [2].

In accordance with paragraph 3 of article 62 of the Constitution of the Russian Federation, adopted on 12 December 1993, and article 4 of the Federal law of 25 July 2002 №115-FZ «On legal status of foreign citizens in the Russian Federation [9]» foreign citizens and people without citizenship use in the Russian Federation the rights and bear duties equally with citizens of the Russian Federation, except for cases established by the Federal law or international Treaty of the Russian Federation.

Thus, in 1993 the last century has been defined by foreign individuals having the right to participate in civil turnover of real estate as citizens of the Russian Federation. In the development of this provision in paragraph 1 of article 2 of the Civil code of the Russian Federation (GK of the Russian Federation), the legislator determined that the rules established by civil legislation of the Russian Federation shall apply to relations involving foreign citizens and individuals without citizenship, but with the participation of foreign legal entities unless otherwise provided by Federal law. On 9 July 1999, it adopted Federal law №160-FZ «On foreign investments in the Russian

Federation [7]» according to which the legal regime of activity of foreign investors cannot be less favorable, legal regime of activity of a Russian investor, with the exception of cases stipulated by the law.

The analysis of these normative legal acts allows to come to the unequivocal conclusion: on the territory of the Russian Federation foreign persons limitation established for investments in real estate.

Such restrictions established by the Land code of the Russian Federation (LC RF) in accordance with article 15 of which foreign citizens, persons without citizenship and foreign legal persons may not possess the right of ownership to land plots located on border territories, the list of which is established by the President of the Russian Federation in accordance to the Federal law on the State border of the Russian Federation and other established, especially the territories of the Russian Federation in accordance with Federal laws. To such territories in the legislation of the land for agricultural purposes, relating to the agricultural lands. Foreign citizens, foreign legal entities, stateless persons and legal persons in the authorized (share) capital of which the share of foreign citizens, foreign legal entities, stateless persons constitutes more than 50 percent, can possess the land plots, from lands of agricultural purpose only on lease. However, agricultural land non-agricultural land not restricted in circulation and can be the object of transactions involving foreign entities.

Also representatives of foreign entities and other interested parties in the territory of the Russian Federation should know that in accordance with paragraph 5 of article 28 of the land code of the Russian Federation foreign citizens, persons without citizenship and foreign legal entities the land plots granted to the property only for a fee in the amount set LC of the Russian Federation.

In addition to the legal regulation of the rights of foreign individuals on real property, the legislator has focused on regulations of contractual relations arising in conclusion of transactions of the subject of which is immovable property situated in the territory of the Russian Federation. In this regard, taking a decision on the transaction with real estate, one of the parties is a foreign entity, representatives of parties should know about the contractual relationship. The legislation of the Russian Feder-

ation contains a number of provisions that reflect the peculiarity of the contractual regulation of real estate transactions, complicated by a foreign element. Thus, in accordance with article 1209 of the civil code [4] the form of the transaction in respect of immovable property is subject to the law of the country where the property is located, and in respect of real property which is included in the state register of the Russian Federation – Russian law. In accordance with article 1205 of the civil code the content of the right of ownership and other rights in REM in immovable property, their exercise and protection are determined by the law of the country where the property is located.

Thus, if the transaction is subject to real property located in the territory of the Russian Federation and included into the state register of the Russian Federation, such transaction is subject to legal regulation legislation of the Russian Federation, regardless of the agreements reached by the parties and once the parties do their transaction and other arrangements, such arrangements in force the requirements of article 422 of the civil code are null and void. If between the parties in real estate transactions, complicated by a foreign element, there is a dispute, the subject of which is immovable property or right to it, under article 248 of the Arbitration procedure code [6] of the Russian Federation resolution of such dispute falls within the exclusive competence of state commercial courts of the Russian Federation at the place of location of such real property [11].

Overall foreign investments to Russian commercial real estate over the past 10 years have reached \$15.9 billion. The biggest players in the Russian market of commercial real estate are the American investment fund Morgan Stanley, company Hines, Swiss fund Eastern Property Holdings, and Austrian investment company Immofinanz.

According to estimated, that in 2016 foreign investments to Russian commercial real estate were expected to drop six percentage points against the previous year. They were estimated to account for 14 percent (\$370 million) of the total sum of investments in the market (\$2.6 billion).

Foreign investments in Russian commercial real estate had steadily increased since the early-2000s. During the crisis in 2009, investments hit a record low of \$480 million but soon recovered.

However, since 2014, outlooks for the market have been downgraded to due political and economic difficulties, an article in the Russian daily newspaper Kommersant read [13].

By implementing this the Russian government was mainly focusing on bringing profits to the country not foreigners taking all the profits. The restrictions are for the empowerment of the Russian Economy since it was deteriorating thus resulting in the famous Yukos Case [12].

Studying national legislation, you can see that the problems are given to us in the beginning can not be solved. Some norms of the national legislation on the contrary-even create new disputes resolved only by the court. This results in conflicts of norms, that declines foreign interests in the Russian economy. We assume in order to resolve contentious issues it is necessary for:

- the adoption of the Federal law governing the legal status of foreign legal entities;
- to simplify the registration procedure of real estate and accreditation of representative offices and branches of foreign legal persons;
- not to restrict the rights of foreign legal entities to establish rights of land ownership, and in the border territories to permit it to generate business together with the citizens of the Russian Federation under the control of the municipality;- MS such restrictions to open the way for foreign legal entities and other sectors of the economy. Thus gradually you can create a new free economic country.

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