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PECULIARITIES OF SUBJECT COMPOSITION OF LEGAL RELATIONS OF BANKS INSOLVENCY



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Actual and problematic issues of legal relationships subjects, including branch relationships, were the sphere of interests of many scientists dealing with the state and law theory and branch juridical sciences. However, the above mentioned issues need further general theoretical and branch research, as legal relationships subjects are the primary or basic element of legal relationships. However, the issues of subject matter of legal relationships of banks insolvency were studied in some scientific works [1-3]. These scientific works dealt not only with the peculiarities of subject matter, but with some derivative or connected with them issues, particularly with the issue of concept definition. The concept definition of “subject of insolvency law”, “subject of legal relationships of banks insolvency”, “participant of legal relationships of banks insolvency” is very important in terms of the study of other problematic issues of the theory and practice of the legal relationships of banks insolvency. These concepts have different meanings, although they coincide in many respects. Insufficient coverage in financial and legal literature of special scientific approaches



to the exposure of subject matter of these legal relationships needs not only more precise definition of this category but the research of different aspects of its manifestation.

Legal relationships of banks insolvency – are relationships governed by the norms of law between the National Bank of Ukraine, the Physical Subjects' Deposit Guarantee Fund and insolvent bank concerning the implementation and termination of temporary administration, that is the withdrawal of an insolvent bank from the market using legal means within the procedure of temporary administration or its liquidation as a result of recognizing it insolvent.

Different general theoretical approaches to the definition of the "subject of legal relationships" have influences on branch juridical sciences, including financial-legal one. This situation creates certain difficulties in the application not only of this concept but in related to it, which are sometimes used as synonyms. The distinguishing of the existing definitions will allow reaching the terminological unity. However, it does not mean solving the problem of terminology as it comes to the system of definitions and elements correlation of this system. The exact definition of the content of each interrelated concepts is necessary not only for the compliance of theoretical constructions but for legislative and law-enforcement activity. Analyzing the diversity of views concerning concepts correlation Khalфина paid attention to the necessity to bring them into a certain system [4, c. 116-118], and this is relevant in present conditions.

In the law theory there are two approaches to the correlation of concepts "subject of law" and "subject of legal relationships". According to the first approach these concepts are considered to be equivalent, but the supporters of the other approach draw attention to their differentiation. According to Kharytonova, the concept "subject of law" has the highest level of abstraction among listed concepts. Therewith "law" is interpreted as the constituent of the civilization, an objective category which comprises all the aggregate of norms of general effect and rules of behavior, which exist in certain society, which is an objective category giving rise to specification – "subject of objective law". In this interpretation subjects of law are individuals who have legal personality. Thus we can come to the logical conclusion that "subject of the objective law has the potential ability to enter into legal relations, that is why this subject has an objective law and corresponding ability, sometimes called "legal capacity", but it can be described more precisely with the help of broader category – "legal personality" [5, c. 92].

Since the subjects of legal relationships can be individuals with legal personality, the concepts "subject of law" and "legal personality" coincide in principle. To become the subject of legal relationships the individual must pass two stages of juridical qualities empowerment. Firstly, to be the subject of insolvency law as a potential subject of legal relationships of banks insolvency because of this empowerment. Secondly, to gain additional qualities of juridical nature in certain juridically important situation – the ability to realize subjective rights and obligations, that determines legal bonds and interrelation between subjects.



The subjects of legal relationships of banks insolvency are individualized or specific law subjects of insolvency that act as corresponding legal personality in legal relationships and a power “implementator“. Despite the existence of common features and relationship between the subject of insolvency law and the subject of bank insolvency legal relations, they cannot be deemed as equivalent.

The subject of insolvency law, empowered with legal opportunity to enter into legal relationships of banks insolvency, transforms this opportunity into legal reality and gain a new quality – the subject of legal relationships. Legal opportunity (legal personality) is inseparably connected with legal reality (legal relationships), being its “product” and development consequence. Legal opportunity characterizes the status of the legal reality – legal relationships of banks insolvency in their development; it is an intermediate between existing reality (legal relations) and its future status. Legal personality as an abstract legal opportunity has certain probability of realization and under certain conditions it is transformed into this reality in consequence of its implementation by subjects. On the other hand, abstract legal opportunity in the absence of conditions can disappear, but at the same time under relevant preconditions (legal norms) and grounds of its implementation (juridical facts) it is transformed into legal reality. The development of legal relationships transforms abstract legal opportunity (legal personality) into concrete legal reality (legal relationships) which changes it, thereupon the subject of law of banks insolvency is transformed into the subject of legal relations of banks insolvency, simultaneously being the subject of law.

In the vast majority of scientific papers investigating subjects of legal relationships, the concept “subject of legal relationships” and “participant of legal relationships” are used as identical, but they need to be distinguished. The participant of legal relationships of banks insolvency is individualized specific person who realizes own powers by own actions, entering into legal relationship on behalf of state body (institution) or juridical person of the private law subject or entity in its own right.

Relationships of temporary bank administration are complex with primary, derivative and final legal relationships. The purpose of primary relationships is to create a construction on the basis of which all other derivative banking legal relationships are developed. The main legal relationship in the system of complex legal relationship is that one without which a complex one cannot arise, therefore, the arising and development of derivative legal relationships cannot be conducted. This legal relationships looks like the basis for arising of complex ones and ensures its further development.

In case of violating legislation, normative acts of the National Bank of Ukraine, its requirements or conducting risk activity that threaten the interests of depositors or other creditors of the bank, the National Bank of Ukraine has the right to apply sanctions, particularly to transfer bank to the category of insolvent ones. Not later than the day following the decision of transferring bank to the category of insolvent, the National Bank of Ukraine informs the Physical Subjects’ Deposit Guarantee Fund about its decision in order to take measures. The consecutive change takes place in this segment of legal relationships: tort banking legal rela-



tionships – proceeding legal relationships in case of banking misdeed - legal relationships of banking-legal responsibility - legal relationships of temporary administration. The peculiarity of legal relationships of banks insolvency is the fact that the National Bank of Ukraine is the subject in both basic and final legal relationships. In the last one it makes the decision on the withdrawal of bank's license and bank's liquidation at the suggestion of the Physical Subjects' Deposit Guarantee Fund and it is, on the one hand, the final legal relationship of temporary administration; on the other hand – it is the basic one in the system of complex legal relationships of the liquidation of insolvent bank. Taking into consideration all above mentioned we can say that an authorized subject of legal relationships of banks insolvency is the National Bank of Ukraine in primary and final legal relationships, and the Physical Subjects' Deposit Guarantee Fund in derivative legal relationships.

Thus, the subjects of legal relationships of temporary administration of banks is the National Bank of Ukraine, the Physical Subjects' Deposit Guarantee Fund, the State Commission on Regulation of Financial Services, the National Commission on Securities and Stock Market, banks, depositors and other bank creditors, investors and others. In legal relationships of banks insolvency a depositor as the subject of these relationships can be only natural person (including natural person-entrepreneur), who entered into a deposit contract, banking account contract or possesses registered deposit certificate. Juridical or legal persons with documentary confirmed claims to the bank concerning its property liability acquire the status of creditors of the insolvent bank. The investor as the subject of these legal relationships can be the person who expressed an intention and provided the Physical Subjects' Deposit Guarantee Fund with written commitment to purchase the shares of the insolvent bank or transition bank in the process of the insolvent banks' withdrawal from the market.



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