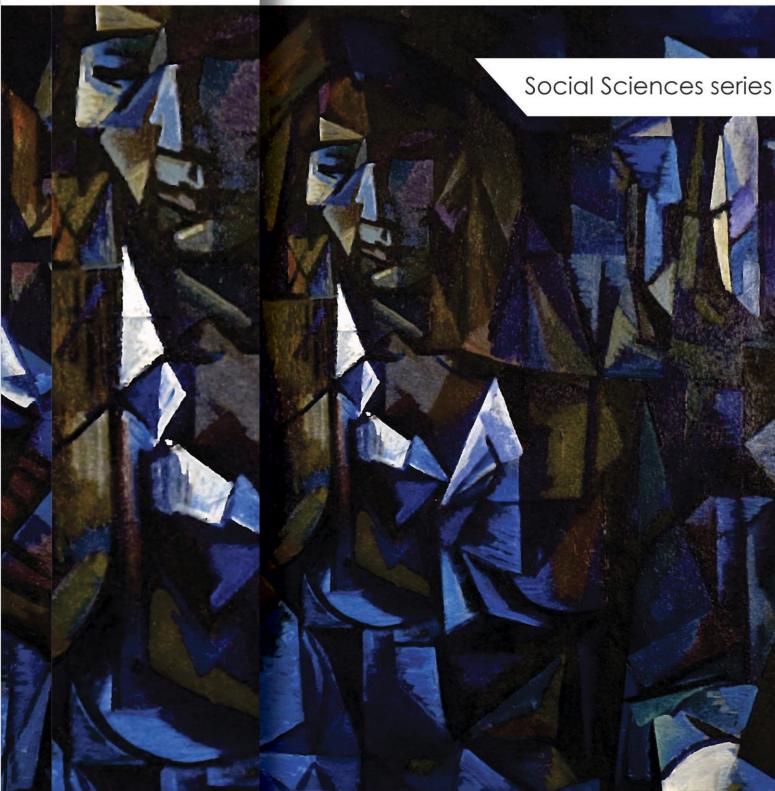
INTERNATIONAL SCIENCE REVIEWS

AIU





www.aiu.kz

ISSN: 2707-4962



International Science Reviews Social Sciences series

Published since 2020

No. 4 (2) / 2021

Nur-Sultan

EDITOR-IN-CHIEF: Doctor of Historical Sciences, Professor Shaikhutdinov M.Y.

DEPUTY EDITOR-IN-CHIEF

Doctor of Jurisprudence, Professor Amandykova S.K.

EDITORIAL BOARD:

Irsaliyev S. A.	-	Candidate of Agricultural Sciences, President AIU, (Kazakhstan)							
Sarsenbay N. A.	-	Candidate of Economic Sciences, (Kazakhstan)							
Somzhurek B.Zh.	-	Candidate of Historical Sciences, Professor (Kazakhstan)							
Amandykova S.K.	-	Doctor of Jurisprudence, Professor (Kazakhstan)							
Kazhyken M. Z.	-	Doctor of Economic Sciences, (Kazakhstan)							
Toxanova A.N.	-	Doctor of Economic Sciences, (Kazakhstan)							
Akhmadiyeva	-	Candidate of Pedagogical Sciences, Associate professor							
Zh.K.		(Kazakhstan)							
Laumulin M. T.	-	Doctor of Political Sciences, (Kazakhstan)							
Orlova O.S.	-	Doctor of Pedagogical Sciences, Professor (Russia)							
Jacek Zaleśny	-	Doctor of Jurisprudence, Professor (Poland)							
Francisco Javier	-	Dr. hab., Professor (Spain)							
Diaz Revorio									
László Károly	-	PhD (The Netherlands)							
Marácz									
Verbitskiy A.A.	-	Doctor of Pedagogy, Academician of the Russian Academy of Education (Russia)							

Editorial address: 8, Kabanbay Batyr avenue, of.316, Nur-Sultan, Kazakhstan, 010000 Tel.: (7172) 24-18-52 (ext. 316) E-mail: social-sciences@aiu.kz

International Science Reviews Social Sciences series

Owner: Astana International University Periodicity: quarterly Circulation: 500 copies

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

МАЗМҰНЫ

Секция ҚҰҚЫҚ

КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚ

Акопян Л.А.

САЙЛАУ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ.....11

АЗАМАТТЫҚ ҚҰҚЫҚ

Больбат П.Н.

Анферова О.А.

Перепадя О.А.

КОРПОРАТИВТІК ҚҰҚЫҚТАРДЫ ҚОРҒАУ: БІРҚАТАР МӘСЕЛЕЛЕРІ..38

Станкевич Г.В., Вильгоненко И.М.

ЗАҢДЫ ТҰЛҒАЛАРДЫҢ КЕЙБІР САНАТТАРЫНЫҢ ТӨЛЕМ ҚАБІЛЕТСІЗДІГІН ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ЕРЕКШЕЛІКТЕРІ......43

ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ

Бабаян Р.А.

ЖАС ІЗДЕНУШІЛЕР

Байболова М.Б.

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ПАНДЕМИЯ КЕЗЕҢІНДЕ
ПАЙДАЛАНЫЛАТЫН КЕЙБІР ҰҒЫМДАРДЫ ЗАҢНАМАЛЫҚ
АЙҚЫНДАУ ТУРАЛЫ МӘСЕЛЕ ТУРАЛЫ
Корабаева Ж.С.
МЕДИАЦИЯ АДАМ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ ИННОВАЦИЯЛЫҚ
НЫСАНЫ РЕТІНДЕ
Үдербай С.С.
ЖӘБІРЛЕНУШІЛЕРГЕ ӨТЕМАҚЫ ӨНДІРУДІ МӘЖБҮРЛЕП ОРЫНДАТУ
МӘСЕЛЕЛЕРІ
Бекишева М.О.
КӘМЕЛЕТКЕ ТОЛМАҒАНДАРҒА ЖЫНЫСТЫҚ ЗОРЛЫҚ-ЗОМБЫЛЫҚ
ЖАСАҒАНЫ ҮШІН ҚОСЫМША ЖАЗА РЕТІНДЕ АТА-АНА

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

СОДЕРЖАНИЕ

Секция ПРАВО

КОНСТИТУЦИОННОЕ ПРАВО

Акопян Л.А.

НЕКОТОРЫЕ ПРОБЛЕМЫ ЗАЩИТЫ ИЗБИРАТЕЛЬНЫХ ПРАВ......11

ГРАЖДАНСКОЕ ПРАВО

Больбат П.Н.

Анферова О.А.

Перепадя О.А.

Станкевич Г.В., Вильгоненко И.М.

ОСОБЕННОСТИ	mmbobor		РЕГУЛИРОВАНИЯ
НЕСОСТОЯТЕЛЬНОСТИ	ОТДЕЛЬНЫХ	КАТЕГОРИЙ	ЮРИДИЧЕСКИХ
ЛИЦ			

МЕЖДУНАРОДНОЕ ПРАВО

Бабаян Р.А.

МОЛОДЫЕ УЧЕНЫЕ

Байболова М.Б.

К ВОПРОСУ О ЗАКОНОДАТЕЛЬНОМ ОПРЕДЕЛЕНИИ НЕКОТОРЫХ
ПОНЯТИЙ, ИСПОЛЬЗУЕМЫХ В ПЕРИОД ПАНДЕМИИ В РЕСПУБЛИКЕ
KA3AXCTAH

<u>Корабаева Ж.С.</u>

МЕДИАЦИЯ	КАК	ИННОВАЦИОННАЯ	ΦΟΡΜΑ	ЗАЩИТЫ	ПРАВ
ЧЕЛОВЕКА				•••••••••••••••••	66

<u>Үдербай С.С.</u>

ВОПРОСЫ	ПРИНУДИТЕЛЬНОГО	ИСПОЛНЕНИЯ	КОМПЕНСАЦИИ
ΠΟΤΕΡΠΕΒΙ	ШИМ		71

Бекишева М.О.

ЛИШЕНИЕ	РОДІ	ИТЕЛЬСКИХ	ПРАВ	КАК	ДО	ПО	ЛНИТЕЛ	ЬНОЕ
НАКАЗАНИЕ	3A	ПОЛОВЫЕ	ПОСЯГА	ТЕЛЬСТВ	А	В	ОТНОШІ	ЕНИИ
НЕСОВЕРШЕІ	ННОЈ	ІЕТНИХ			•••••	•••••		78

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

CONTENT

Section LAW

CONSTITUTIONAL LAW

Hakobyan L.O. SOME PROBLEMS OF ELECTORAL RIGHTS PROTECTION......11

CIVIL LAW

Bolbat P.N.

THE HISTORY	OF THE	FORMATION	OF THE	INSTITUTE OF	CIVIL
REPRESENTATI	ON				21

Anferova O.A.

Perepadya O.A.

INTERNATIONAL LAW

Babayan R.A.

YOUNG RESEARCHES

Baybolova M.B.

ON THE ISSUE OF LEGISLATIVE DEFINITION OF SOME CONCEPTS USED DURING THE PANDEMIC IN THE REPUBLIC OF KAZAKHSTAN...58

Korabayeva Zh.S.

Uderbay S.S.

ISSUES OF ENFORCEMENT OF COMPENSATION TO VICTIMS......71

Bekysheva M.O.

FEATURES OF LEGAL REGULATION OF INSOLVENCY OF CERTAIN CATEGORIES OF LEGAL ENTITIES

G.V.Stankevich¹, I.M.Vilgonenko²

¹Associate Professor, Doctor of Political Sciences,

Candidate of Law, Professor of the Department of Civil Law and Process of PSU, Pyatigorsk stankevichg@rambler.ru

²Associate Professor, Candidate of Law, Associate Professor of the Department of Civil Law and Process of PSU, Pyatigorsk

vil-irina-m@yandex.ru

Abstract: The article analyzes the features of insolvency (bankruptcy) procedures applied to certain categories of debtors - legal entities (city-forming and strategic enterprises, developer organizations, credit organizations, peasant farming), describes the measures used in the framework of judicial procedures for their liquidation and debt collection; the practice of arbitration courts of the Russian Federation is analyzed, the powers of the arbitration manager in conducting bankruptcy proceedings in relation to these economic entities are disclosed, problems arising in this case are identified and ways of solving them are proposed.

Keywords: insolvency, bankruptcy, legal entity, arbitration manager, city-forming enterprise, agricultural organization, credit organization, developer organization, strategic enterprises

The financial insolvency of any legal entity is associated with its failure to fulfill monetary obligations in the required time and in the proper amount. There is a direct need to regulate and improve the legislation on the insolvency of enterprises in respect of which the application of a special regime is provided. Previously, this problem was solved by the continued existence of such enterprises and farms at the expense of state funding, which negatively affected the economy as a whole. The need to create a special regime for individual debtors is influenced, first of all, by the type of activity of a legal entity, as well as its economic significance. The full list of a separate category of debtors - legal entities is reflected in Chapter IX of the Federal Law "On Insolvency (Bankruptcy)" and includes legal norms in relation to: urban planning, agricultural, financial, credit organizations, features of bankruptcy of strategic enterprises, developers and subjects of natural monopolies.

A special place among a separate category of debtor legal entities is occupied by city-forming organizations, the number of which is at least 25% of the working stratum of the society of this locality, according to the legislation on insolvency (bankruptcy). To confirm the status of this organization, as well as the availability of an appropriate number of employees, the debtor must independently provide evidence to the

arbitration court. The peculiarity of the bankruptcy of this category of debtors is due to the socially significant role of city-forming organizations, since they provide employment for most of the able-bodied population of a particular locality, which in turn helps to form a significant share of the local budget.

Together with the city-forming organizations, the law allocates organizations whose number of employees exceeds 5,000 people. Such organizations are not city-forming organizations, but the same rules that are established for city-forming organizations apply to them.

The peculiarities of the judicial stage of the bankruptcy procedures of cityforming organizations are due to minimizing the negative consequences in the event of liquidation of the debtor. This, in particular, dictated the expansion of the composition of persons involved in the insolvency of the city-forming organization and the involvement of the local government. A local self-government body, being a person participating in the bankruptcy case of a city-forming organization, has the right to perform procedural actions in the bankruptcy arbitration process.

Bankruptcy procedures applied to city-forming enterprises have specific features. A feature of the bankruptcy of city-forming organizations is the possibility of introducing external management under surety. A surety for the debtor's obligations may be given by the Russian Federation, a subject of the Russian Federation or a municipal entity represented by their authorized bodies. It should be noted that the guarantee must be accompanied by documents confirming the inclusion of obligations under the guarantee in the relevant budget on the date of the guarantee.

The legislation provides for the sale of the enterprise as a single property complex, with the introduction of the application of the external management procedure to the debtor. This state of affairs helps to avoid liquidation of the debtor, while satisfying the interests of creditors and not affecting the social factor reflected in the preservation of jobs.

Another feature provided for the sale of the property of a city-forming organization is the fact that when an enterprise is declared bankrupt, it is put up for sale as a property complex. However, after it is revealed that the sale of the enterprise in this form did not take place, the law says that it is possible to sell the property of the city-forming organization in parts.

Thus, the conduct of insolvency procedures of city-forming organizations is closely related to their socio-economic importance.

With regard to the insolvency of agricultural organizations, the legislator has established features that apply to legal entities whose type of activity is related to the

production / processing of agricultural products, the proceeds from the sale of which is at least 50% of the total amount of revenue. Only the presence of these factors makes it possible to apply to legal entities legislative provisions concerning the specifics of bankruptcy procedures in relation to agricultural organizations of any organizational and legal form.

Thus, the legislator has severely limited the range of agricultural organizations that can be declared bankrupt.

The specifics of the activities of agricultural organizations are due to seasonal conditions, which the legislator certainly takes into account when regulating it. Meanwhile, a number of measures are being taken to prevent the bankruptcy of the organization, due to their economic significance. It is possible to apply measures to restructure the debts of agricultural producers, with the aim of financial recovery of the debtor. This series of measures is regulated by the Federal Law "On Financial Rehabilitation of Agricultural Producers" [1].

We draw attention to the fact that liquidation procedures are applied to agricultural organizations that have no prospects for further development. The peculiarity of financial recovery and external management of an agricultural organization is that the legislator does not give clearly defined deadlines for which these procedures are introduced. Procedures are introduced before the end of the relevant period of agricultural work, taking into account the time required for the sale of manufactured products. However, it is established that the term of the external management procedure cannot exceed three months from the date of its introduction.

We emphasize the peculiarity of the sale of property and property rights of agricultural organizations during the application of the external management procedure. First of all, there is the obligation of the arbitration manager to put up for sale the enterprise as a single property complex at the first auction. However, in the absence of such a sale, the debtor's property is sold in a single lot. Persons engaged in the production, processing of agricultural products and owning a land plot adjacent to the debtor's land plot have a preferential right to acquire the debtor's property.

Thus, the arbitration manager conducts an independent assessment of the value of the property, offering the person who has the pre-emptive right to purchase to purchase this property at the estimated value.

Considering the bankruptcy of financial organizations, we can say that the Insolvency Law provides an exhaustive list of organizations related to such. An interesting remark is the fact that the circle of financial organizations to which the norms of the above law apply is much narrower than the circle of financial organizations specified in Federal Law No. 135-FZ of 26.07.2006 "On Protection of Competition"[2]. The Insolvency Law contains not only general rules on the specifics of bankruptcy of financial organizations, but also regulates the specifics of the activities of certain categories of debtors - insurance organizations, microfinance companies, etc.

It should be noted that Russian legislation provides for the application of measures to prevent the bankruptcy of financial organizations, most of which relate to financial recovery measures. A special place among these measures is the appointment of a temporary administration for the management of a financial institution, for a period of three months to six months. The tasks of the interim administration should include the control and application of measures to prevent the bankruptcy of financial organizations, the elimination of the grounds for suspension or restriction of the license of a financial organization, as well as the termination of the manifestation of any crisis phenomena in the debtor.

As for the specifics of the bankruptcy proceedings of insurance organizations, the legislator determines them by the specifics of the legal status of these organizations, as well as by maintaining the stability of the insurance market. The policyholder's interest is to provide insurance protection on the terms stipulated by the contract. According to the current legislation, the insolvency of an insurance company is the basis for its recognition by the court as bankrupt.

It is appropriate to pay attention to the fact that the actual replacement of the financial recovery procedure is the prevention of bankruptcy of an insurance company, which is the result of the recovery process of a commercial organization achieved by restoring its solvency. Of all financial organizations, only insurance organizations revocation of the license to carry out insurance activities is the basis for the application of measures to prevent bankruptcy [3: 51].

Thus, when identifying the grounds provided for by the legislation in the field of insolvency (bankruptcy), insurance organizations are responsible for the timely implementation of measures related to the prevention of bankruptcy. Insurance organizations satisfy creditors' claims in a different manner in comparison with other legal entities

Bankruptcy of credit institutions is still quite common. As of March 1, 2021, a decision was made to open bankruptcy proceedings against 338 credit institutions[4].

Regulation of relations related to the bankruptcy of credit institutions has a special specificity due to the special legal capacity of such organizations, which allows them to perform banking operations and transactions, at the same time prohibiting them from engaging in production, trade and insurance activities.

Relative to other categories of debtors, the term of insolvency of credit institutions is shorter and is 14 days. This is due to the aim of minimizing the obvious negative impact on the activities of the organization's counterparties.

Thus, the grounds for declaring a credit institution bankrupt have been tightened at the legislative level in order to ensure socio-economic stability [5: 35].

Recognition of a credit institution as bankrupt cannot be achieved, even if there is a debt over the established period. This is justified by the peculiarity of the initiation of insolvency proceedings of this type of organization. An application for recognition of a credit institution as bankrupt can be accepted only after the fact of revocation of the license for banking operations. The license is revoked by the Bank of Russia either on its initiative or with the application of the relevant persons. The license revocation condition minimizes the abuse of the rights of both parties to the bankruptcy proceedings.

Thus, revocation of the license is not a sign of bankruptcy of a credit institution, but only a consequence of its detection, as well as recognition of insolvency by the court, which is a procedural condition for issuing a judicial act on bankruptcy of the debtor [6: 165].

Due to the fact that there is a ban on making any transactions after the revocation of a license from a credit institution, health bankruptcy procedures for this type of organization are not introduced. However, such measures to prevent bankruptcy as financial rehabilitation, the appointment of a temporary administration for the management of a credit institution, as well as its reorganization, which is carried out in the form of accession and merger, according to the regulations of the Bank of Russia, can be implemented. With regard to financial recovery, it helps a credit institution to return to a level of capital at which the organization calmly fulfills its economic standards. The Bank of Russia is responsible for the appointment of the interim administration, imposing on it the obligation to exercise the powers of the executive bodies of the bank.

Russian legislation provides for certain specifics of the procedure for satisfying creditors' claims by a credit institution. Out of turn, only current obligations are satisfied, which is defined by Article 855 of the Civil Code of the Russian Federation. The bankruptcy trustee, after settlements with creditors of the first stage, is obliged to publish information on the course of bankruptcy proceedings at least once every three months. In accordance with the Provisions of the Bank of Russia, the bankruptcy trustee draws up an interim liquidation balance sheet after closing the register of creditors' claims. Due to the low level of satisfaction of creditors' claims and the untimely application of measures to prevent the bankruptcy of credit institutions, the number of

revocations of banking licenses for this type of financial organizations continues to grow.

It is impossible not to note the growing trend of liquidation of strategic organizations, due to their insolvency. The list of strategic enterprises and organizations to which the stipulated bankruptcy rules apply is approved by the Government of the Russian Federation and is subject to mandatory publication [7: 91]. To prevent the bankruptcy of strategic organizations, the Government of the Russian Federation has developed a set of special measures to prevent insolvency in order to competently eliminate the factors leading to bankruptcy [8].

The problem of conducting bankruptcy procedures of strategic organizations is connected with the need to increase the protection of the debtor, since the sale of his property, as well as the liquidation of the organization leads to a diminution of state sovereignty and a weakening of the protection of public interests. In this regard, the state has the pre-emptive right to purchase the property complex of such an enterprise, and bankruptcy creditors do not have the right to participate in the auction at all.

It follows from this that the importance of strategic organizations is great, accordingly, the application of measures to prevent their insolvency should not violate the basic principles of legal regulation of civil relations, because, as E.A. Sukhanov noted, non-compliance with the rules of civil turnover turns these entities into very dangerous counterparties [9: 11].

Attention should also be paid to the institution of bankruptcy of developers, because the issue of protecting the rights of citizens who have invested their money in the purchase of housing is relevant to this day, and the problem of regulating the specifics of bankruptcy of developers leaves social tension in large segments of the population.

The legislator understands the insolvency of developers as their inability to satisfy the demands of construction participants on the transfer of residential premises, non-residential premises, as well as funds, in full and from the moment the debtor is declared bankrupt by the arbitration court. The conditions presented above follow from the specifics of these legal relations.

The developer's insolvency cases have significant features, one of which is the allocation of a new type of creditors - participants in construction. They make a property (monetary) contribution to the financing of the construction of facilities, which allows them to demand the fulfillment of obligations for the transfer of residential premises from the developer. Since for the bankruptcy provision of the developer, we

are already talking about the stage of bankruptcy, the developer, due to insufficient funds, is unable to fulfill his obligations to the construction participant [10: 19].

It should be noted that when bankruptcy proceedings are introduced in relation to the debtor - developer, such bankruptcy procedures as supervision and financial rehabilitation are not applied. However, the Arbitration Procedural Code of the Russian Federation provides for the application of interim measures at the request of a person involved in the insolvency of the developer.

The listed features of bankruptcy of legal entities mainly provide legal protection of the rights and interests of debtors, and in the case of insolvency of financial organizations and developers – creditors, due to the socio-economic significance of the bankruptcy of such organizations.

Literature

- 1. Federal Law No. 83 -FZ of 09.07.2002 (ed. of 21.07.2014) "On financial rehabilitation of agricultural producers" // SZ RF. 2002. No. 28. St. 2787.
- Federal Law No. 135-FZ of 26.07.2006 "On Protection of Competition" (ed. of 17.02.2021) // Collection of Legislation of the Russian Federation. - 2006. - No. 31. -St. 3434.
- 3. Petrov D.A. Prevention of bankruptcy of insurance organizations // Information and analytical journal "Arbitration disputes". 2020. No. 1. pp. 49-61.
- 4. Information on the conduct of liquidation activities in credit institutions with revoked licenses for banking operations (not excluded from the Unified State Register of Legal Entities) as of March 1, 2021. URL: https://cbr.ru/banking_sector/likvidbase / (accessed: 10/22/2021).
- 5. Lauts E.B. Legislation on bankruptcy of credit institutions: the concept and correlation with banking legislation // Banking law. 2018. No. 4. P. 34 41.
- 6. Tolmachev A. I. Signs of bankruptcy of credit organizations // Russian law journal. 2019. No. 2. , Pp. 164 172.
- 7. Ivanov S. P., Fellow D. N., Barannikov A. L. Insolvency (bankruptcy) of legal entities and individuals: a tutorial. M.: Justice, 2018. 200 p.
- 8. Decree of the Government of the Russian Federation No. 301 dated 05/22/2006 (ed. dated 12/25/2014) "On the implementation of measures to prevent the bankruptcy of strategic enterprises and organizations, as well as organizations of the military-industrial complex" // SZ RF. 2006. No. 22. St. 2333.
- 9. Sukhanov E.A. On civil legal personality of state legal entities // Journal of Russian Law. 2018. No. 1. pp. 5-15.
- 10. Kuznetsov A.P. Bankruptcy of a developer: theory and practice of protecting the rights of citizens participating in construction. M.: Statute, 2015. 96 p.

ЗАҢДЫ ТҰЛҒАЛАРДЫҢ КЕЙБІР САНАТТАРЫНЫҢ ТӨЛЕМ ҚАБІЛЕТСІЗДІГІН ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ЕРЕКШЕЛІКТЕРІ

Түйін: Мақалада борышкерлердің жекелеген санаттарына – заңды тұлғаларға (стратегиялық кәсіпорындар, құрылыс салушы ұйым, несиелік ұйымдар, шаруа қожалықтары) қолданылатын төлем қабілетсіздігі (банкроттық) рәсімдерінің ерекшеліктері талданады. Сот тәртібімен қолданылатын шаралар сипатталады. Оларды жою және берешекті өндіріп алу үшін; Ресей Федерациясының арбитраждық соттарының тәжірибесі талданады, осы шаруашылық жүргізуші субъектілерге қатысты банкроттық рәсімдерін жүргізу кезінде банкроттықты басқарушының өкілеттіктері ашылады, осы жағдайда туындайтын мәселелер анықталды және оларды шешу жолдары ұсынылады.

Кілт сөздер: төлем қабілетсіздігі, банкроттық, заңды тұлға, банкроттықты басқарушы, қала құрушы кәсіпорын, ауыл шаруашылығы ұйымы, несие ұйымы, құрылыс салушы ұйым, стратегиялық кәсіпорындар.

ОСОБЕННОСТИ ПРАВОВОГО РЕГУЛИРОВАНИЯ НЕСОСТОЯТЕЛЬНОСТИ ОТДЕЛЬНЫХ КАТЕГОРИЙ ЮРИДИЧЕСКИХ ЛИЦ

Аннотация: В статье проанализированы особенности процедур несостоятельности (банкротства), применяемые к отдельным категориям должников – юридическим лицам (градообразующие и стратегические предприятия, организация-застройщик, кредитные организации, крестьянско-фермерское хозяйство), дана характеристика применяемых в рамках судебных процедур мерам по их ликвидации и взысканию долгов; проанализирована практика арбитражных судов РФ, раскрыты правомочия арбитражного управляющего при проведении процедур банкротства в отношении указанных хозяйствующих субъектов, выявлены возникающие при этом проблемы и предложены пути их решения.

Ключевые слова: несостоятельность, банкротство, юридическое лицо, арбитражный управляющий, градообразующие предприятие, сельскохозяйственное организация, кредитная организация, организация-застройщик, стратегические предприятия.