

**A Critical Investigation into the Impact of Social Capital on Workforce Productivity (Case Study: Niksan Refrigerator Firm in Saveh, Iran)
Study of Bankruptcy in Iran and International Business Law**

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Abstract

Today, the effect of foreign trade is questionable undevelopment or instability of countries economy; therefore being aware of the accepted principles of international trade law, particularly in the areas of bankruptcy and observing its rules is helpful. So happens that the main branch of the company that is bankrupted is located in another country. In Iran law, there is not significant text for fixing the problems caused by the international bankruptcy, and judicial procedures based on the general principles of private international law is not in a position to solve the problems. Here in order to get familiar with the solutions applicable in bankruptcy system, the theory and practice of legal scholars in other countries are discussed.

Keyword: Bankruptcy, International, Business Law, Law.

Introduction

But describing the word trader or trading company and a choice between two rules, namely France (which is the seat of the verifier court), and the law governing the legal status of trader or commercial enterprise in mentioned countries will be difficult.

If a foreign merchant is not known as trader in France, but the foreign law is used to describe the trader, in such case the French creditor would be affected. On the other hand, in some countries like Netherlands, the concept of merchant is perished. So referring to foreign law will not be possible to determine whether he is a merchant. So to avoid disadvantages and for conflict resolution, the law of verifier court is enforced. [1]

If issuing the adjudication enforcement is asked by the France competent court, the French courts can reject the enforcement of this order, citing the fact that the person is not merchant, because non-merchant is subject to insolvency or de confidor and this legal structure is established base on French law. [2]

To solve the conflict of rules in the latter case, some believe that law of where the sentence is enforced (the French law) in should be applied. Others say that we should consider that which country the commercial activity is located and this situation should be considered. Now if a person has no business in France, but he has properties there, in this case, issuing the sentence for adjudication of foreign businessman is not against the public order in perspective of the French court, but in terms of French creditors who are in an equal condition, it will be a fair solution. [3]

German law – Article 1 order 10 February 1877 states: "All property owned by the bankrupt whose owner is the person (the person going bankrupt) at the start of lawsuit of bankruptcy proceedings will be necessarily subject to bankruptcy procedure.» It is noted that in the German Law, the provisions of bankruptcy unlike Iran and France law, including merchant and non-merchant.

In German law, debtor inability to pay debts which is responsible is the main condition for proceeding bankruptcy lawsuit. In other words, the debtor's positive assets are less than the present debt. On the other hand, stopping to pay the debts can be considered symmetric on the inability to pay the debt by owed. [4]

B. bankruptcy prohibition on intervention in property and his property rights

1. In Iran Law- Article 418 of Iran Commercial Code provides: "Bankrupted merchant is prohibited to intervene in all his property, even what may be profited during bankruptcy from the sentencing date. In all the mandates and the bankrupt financial rights which use is effective in paying his debt, Special bailiff is bankrupted legal deputy and has the right to use powers and rights instead of him." Thus, the adjudication is issued by a competent court of Iran, bankrupt merchant or business enterprise is prohibited to intervene in all his property, including the financial rights and interests, properties shall be benefited

from after the announcement of the bankruptcy. Finally, the special bailiff according to Commercial Law and Administration of refining bankruptcy affairs before the law of bailiff Administration and bankruptcy affairs adopted on 16 July, 1939, in all powers and rights of bankrupt financial rights which use is effective in paying the debts is the legal deputy of the bankrupt, and can use the powers and rights instead of him. [5]

2. In French law - legal acts performed by the bankrupt after the adjudication of bankruptcy and in suspicious period, towards the creditors is null and void, in this case Article 15 of the French Commercial Law 13 July 1967 that the bankrupt is prohibited to intervene in his property states: property settlement sentence from the date of issuance expropriate the debtor to intervene in his property even what may be earn during the settlement. Debtor rights and pursuits related to his property at the time of settlement are performed by administrator. [6]
3. United States of America, England, Canada Law. In these countries after the bankruptcy adjudication, bankrupt property will be transferred to a trust or "property complex". Trust is literally meant: confidence and reliance and in legal term consists of a commitment by which someone, for example "A" is responsible to administrate the property of "B" in favor of the third party known as "C".[7]
4. German law - from the date of bankruptcy adjudication, objective right will be provide for creditor in assets of bankrupt. As can be seen, the difference among the law of various countries make the acceptance of integration system and generality of bankruptcy law difficult and territorial theory and multiplicity of bankruptcy regulations, in regulating leniency contract and accepting the principle of competency for the court which the main center of company or main commercial institute is located in and the consideration and determination of the substantive conditions creates barriers. To avoid the disadvantages, intermediate theory has been proposed based on the subject of bankruptcy (movable and immovable property) and their legal effects of their (objective and debt right).[8]

Conflict of Laws

Article 412 of the Commercial Code of Iran provides: "The merchant insolvency or commercial company is caused by the cessation of payoff the funds who is responsible for..." Describing each of these concepts in terms of the laws of different countries vary and are inconsistent. According to Article 1 of the Commercial Code of Iran, "trader is someone whose regular job is commercial transactions».

According to Article 2 of the law if someone uses one of the acts set out in Article one as his typical job is considered as merchant. Iranian lawmaker recognizes most of commercial companies as commercial according to their form. Identification of the concepts of applying business (inherent or professional– subjective or form – functional)is essential to define the trader or trading company and eventually determination of law system.

Nowadays, the tendency is that the scope of business law goes beyond the professionals as traders or commercial companies and to be extended to non-trade companies and also ordinary people. Considering this evolution, people private life or business will find a very close relationship and Commercial law gradually lose its professional property and becomes the law of acts or transactions.

Based on these developments, the reform (part one of Article 412 of Iran Commercial Code) is proposed as follows:

"Bankruptcy of merchant, business enterprise, any legal person of private law, even non-traders, or any other non-trader person whose activity position is commercial, economic or profitable, is obtained due to the inability to pay debts who are responsible for.
"Waver: The legal entity, private law of non-merchant and non-merchant individual is determined in accordance with regulations of the Ministry of Justice». Amendment of mentioned Article will coordinate Iran Bankruptcy in this part with the law of most of countries. Furthermore, the concept of paying off the debt has a rough concept and apparently knows the non-payment of single debt fulfill sufficient, while the merchant or commercial company may stop paying its debt temporarily due to unexpected problems, or on the contrary, the parties apparently attempt to present themselves as validated. To resolve this problem, in the proposed Article failure to pay is replaced with top to pay the debt. But to solve other issues, conflict of bankruptcy regulations and enforcement of sentences of foreign courts in Iran, we can attempt to regulate diplomatic contracts. [5]

Results

Bankruptcy laws in various countries are often regulated to provide security for commercial transactions, the correct distribution of the bankrupt's property among creditors and ultimately improving bankrupt situation. Realization of this goal in the civil rights is possible, but in the international context, acceptance of any theories can create problems, because in theory of unity and generality, property of bankrupt merchant will be fairly divided among creditors, but stakeholders, especially small creditors may need to travel long and expensive distance. On the other hand the exchange rate differences across different countries cause harm to creditors, for example German creditor has a claim of the French branch in Germany, if according to the unity and universality theory, all the bankrupt's assets is settled in France (main center), the German creditor will receive his claims in French franc, it is possible that money value fall during the payment of debt due to inflation or other factors becomes more than Germany, in this case, the German creditor is affected. This is obvious that this will have an undesirable result in terms of insecurity and lack of credibility because those who draw up contract with merchants consider the property of the institute or the branch of contract conclusion and principally have less information about the trader's property in other countries. Territorial theories and plurality of bankruptcy do not have the disadvantages and development of Iranian court competency to inspect the lawsuits of foreign traders and companies bankruptcy is reasonable and consistent with international trade custom. But in this theory, the equality among creditors in different countries is not observed. As a result, as mentioned above, countries today are trying to adjust diplomatic rules to establish a coordinating relationship between the problems of conflict of laws

bankruptcy, especially foreign sentences in their country. Amendment of Iran trade law and revision in it and providing legal texts concerning territorial competent jurisdiction to deal with bankruptcy and settlement of the bankrupt property and, also regulating leniency contract and if possible and interest of regulating diplomatic contracts with trade parties will help the stability and security of Iran trade with foreign countries.

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