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*Author's manuscript*



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**BANKRUPTCY TRANSFORMATION OF SUBSOIL USER'S LEGAL  
STATUS**

Specialization:

5.1.3. Private law (civil) sciences

**Abstract**

of the dissertation for the degree of Candidate of Legal Sciences  
(Ph.D. in Law)

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**Research Relevance and Significance.** The relevance of studying the status of subsoil users in bankruptcy proceedings stems from the need to comprehensively address inter-sectoral legal issues arising from the interaction of bankruptcy law and natural resources law. When companies in the mineral and raw materials complex face bankruptcy, the legal status of the subsoil user undergoes transformation, requiring adaptation of existing legal mechanisms for regulating subsoil use to the goals and objectives of the bankruptcy process.

The problem becomes particularly significant given the strategic importance of mineral and raw material resources and the necessity of their rational use and redistribution in favor of more efficient economic entities.

In the field under study, a complex of interconnected problems has been identified that require scientific and practical resolution.

Law enforcement problems stem from difficulties in reconciling the specific nature of subsoil users' activities with the general provisions of bankruptcy legislation, as well as from the shortage of uniform judicial practice in cases concerning the bankruptcy of subsoil users.

Regulatory and legal problems consist of the absence of special legal regulation of bankruptcy procedures for subsoil users, as well as insufficient development of issues related to preservation of the productive capacity of a subsoil user when selling its property complex.

Procedural problems manifest themselves in the uncertainty of criteria for forming the bankruptcy estate of a subsoil user, difficulties in determining conditions for the sale of a property complex that includes subsoil use objects, and the absence of clear algorithms for the transfer of subsoil use rights within bankruptcy procedures.

The study of the transformation of subsoil use relations in bankruptcy procedures of companies in the mineral and raw materials complex—the principal subjects of subsoil use—represents a systematic approach to resolving existing legal problems and creates a theoretical foundation for optimizing legal regulation in this field.



### **State of the Literature Review.**

The interdisciplinary nature of Research required the study of scientific works relating to various branches of law – civil and natural resources.

Specific issues of bankruptcy law related to the topic of the dissertation are covered by the works of B. S. Brusko, V. V. Vitryansky, S. A. Karelina, K. B. Korayev, A. A. Pakharukov, V. F. Popondopulo, M. V. Telyukina, I. V. Frolov, V. A. Khimchev, and T. P. Shishimareva.

Since the early 2000s, a wide range of scientific works has been published addressing legal problems of subsoil use, which in the present dissertation served as the basis for studying general theoretical aspects of the legal status of subsoil users and the legal regime of their property, including works by L. M. Allanina, D. V. Vasilevskaya, M. V. Dudikov, V. V. Levochko, V. D. Melgunov, K. I. Naletov, S. A. Sosna, and D. V. Khaustov.

General theoretical issues of bankruptcy procedure in foreign jurisdictions are covered using the works of foreign authors: Brown D., Don F., Countryman V., Morin L., Mosselaer R.V.

Issues of legal regulation of mineral extraction in foreign countries are presented in the works of such authors as: Aladeitan L., Affolder N.A., Olawuyi D., Tarrant J.

The work also utilized the results of dissertation research by Budalin E.P., Vasilchenko D.D., Elizarova M.V., Zamanova R.D., Matveeva E.N., Savostyanova A.G., Sapozhnikov A.V.

**The Research Objective** is to obtain new scientific knowledge about the transformation of relations of various sectoral affiliations in bankruptcy proceedings using subsoil use relations as an example; to construct a legal model of competitive transformation of subsoil use relations that reflects the mechanism of interaction between bankruptcy legislation and subsoil legislation in bankruptcy proceedings involving a subsoil user.

The following **tasks** serve to achieve this objective:



1) to systematize the principal characteristics of the legal status of subsoil users and identify key aspects of the transformation of the general civil status of a subsoil user into a bankruptcy status;

2) to identify, analyze, and characterize aspects of the transformative impact of bankruptcy law on subsoil use relations;

3) to develop a system of special features allowing for the initiation of bankruptcy proceedings against a subsoil user and recognition of such user as bankrupt;

4) to identify peculiarities of individual bankruptcy procedures involving a debtor-subsoil user;

5) to determine the procedure for bankruptcy sale of various types of property of a debtor-subsoil user and develop criteria for forming the property complex of a debtor-subsoil user;

6) to identify peculiarities of the transfer of subsoil use rights at individual stages of the bankruptcy process; to determine deficiencies and contradictions in existing legal regulation of the transfer of subsoil use rights under the Bankruptcy Law; to propose amendments to legislation;

7) to conduct a comparative legal analysis of mechanisms of bankruptcy transformation of subsoil use relations in foreign legal systems based on contractual models of subsoil development.

**The Research Object** comprises public relations arising from the insolvency (bankruptcy) of subsoil users.

**The Research Subject** comprises normative legal acts applicable to relations of insolvency of subsoil users, law enforcement practice, and similar acts of foreign legal systems; Russian and foreign doctrinal literature devoted to legal problems of subsoil use and insolvency relations.

**The Theoretical Basis** of the research comprises scientific studies devoted to problems of civil law and legal regulation of subsoil use.



Individual problems of bankruptcy of subsoil users were studied using works published by V.V. Vitryansky, A.A. Dubinchin, K.B. Koraev, D.O. Osmanova, V.F. Popondopulo, M.V. Telyukina, V.N. Tkachev, and V.A. Khimchev.

The legal regime of objects of civil rights belonging to a debtor-subsoil user was considered relying on works by V.A. Belov, S.A. Stepanov, and A.S. Yakovlev.

The problem of the legal nature of subsoil use rights and the legal status of subsoil users is presented using works by D.V. Vasilevskaya, D.V. Melgunov, A.I. Perchik, and D.V. Khaustov.

The question of the transfer of subsoil use rights in bankruptcy proceedings was researched using works by M.V. Dudikov, D.L. Nikishin, B.D. Petrosenko, R.N. Salieva, A.V. Sapozhnikov, I.N. Sidorov, and A.G. Snegirev.

The peculiarities of the legal regime of individual property objects of subsoil users in bankruptcy proceedings were considered relying on works by V.B. Agafonov, P.P. Goncharov, V.Yu. Zaychenko, R.D. Zamanov, V.V. Levochko, R.A. Proshchalygin, R.O. Shamordin, and S.O. Shapovalov.

Special features of bankruptcy of subsoil users were developed taking into account scientific works by S.B. Nikishichev, S.P. Reshetnyak, V.A. Sadovsky, and A.A. Tverdov.

Issues of legal regulation of mineral extraction in foreign countries were studied using works by foreign authors: Banks N., Kirsten B., Crommelin M., Christopher G., Lowe J. S., Omorogbe Y., Smith E. E., Fitzgerald A.

**The Methodological Basis** of the research includes dialectical and systemic methods for analyzing the interrelation of civil, insolvency law and subsoil use legislation; logical methods (analysis, synthesis, generalization, induction) for identifying the specifics of subsoil users and adapting legal norms to bankruptcy practice; comparative legal method for examining foreign experience in bankruptcy transformation of subsoil use relations; observation and forecasting methods for assessing law enforcement practice and prospects for legislative regulation.

**The Research Basis** comprises legal acts on insolvency and legislation on mineral extraction of the Russian Federation, Great Britain, the United States,



Canada, Australia, South Africa, Kazakhstan, and materials of Russian and foreign judicial practice.

**The validity and reliability of the Research Results** were achieved through a wide range of sources, selected based on the study's purpose and objectives, as well as the applied scientific methods. The research findings were presented for discussion at scientific conferences, published in peer-reviewed journals, and discussed at the Department of Civil Law and Procedure at the Institute of Law and National Security of the M.M. Speransky Law School of the Russian Presidential Academy of National Economy and Public Administration (RANEPA). Objective reviews of the work were obtained.

**Scientific Novelty of the Research.** Problems of the interaction of private law norms with public legal regulation of subsoil use in the context of bankruptcy procedures remain insufficiently developed in Russian legal doctrine. The work draws attention to the inter-sectoral nature of insolvency relations of subsoil users and develops the theory of transformative impact of bankruptcy procedures on legal relations involving a special group of business participants—subsoil users—by constructing a theoretical model of legal regulation of bankruptcy of subsoil users that accounts for the peculiarities of the mineral and raw materials complex.

The dissertation has contributed the following new scientific results in the field of private law: the theory of transformation of legal relations in bankruptcy proceedings has been developed as applied to subsoil users; a theoretical model of legal regulation of bankruptcy of subsoil users has been constructed that accounts for the peculiarities of the mineral and raw materials complex and reflects the inter-sectoral nature of insolvency relations of subsoil users; a concept for forming the property complex of a subsoil user has been developed; a model for the transfer of subsoil use rights in bankruptcy proceedings has been proposed; special features of bankruptcy of subsoil users have been formulated.

**Propositions (Conclusions) Submitted for Defense Possessing Scientific Novelty.**



1. The substantive peculiarities of the legal status of subsoil users allow for establishing special legal regulation of bankruptcy procedures for this category of debtors. The legal status of subsoil users is determined by factors different from those determining the legal status of other subjects of civil law, namely, the order of legal regulation and the peculiarities of production activities.

The distinctive characteristics of subsoil users' activities include:

- regulation in accordance with the requirements of subsoil legislation, the conditions of a subsoil use license, and technical-project documentation that determine the spatial boundaries of the subsoil plot, the volume of mineral raw material extraction, timeframes, types of subsoil use, etc.;
- the probabilistic nature of achieving positive results from activities, conditioned by natural-climatic and mining-technical factors;
- high cost intensity and lengthy duration of deposit development.

These peculiarities predetermine special features of bankruptcy of subsoil users, the specificity of forming the bankruptcy estate, peculiarities of the sale of debtor's property, and the transfer of subsoil use rights in bankruptcy proceedings.

*The position submitted for defense corresponds to paragraphs 6 and 13 of the scientific specialty passport 5.1.3. "Private Law (Civil Sciences)".*

2. Bankruptcy transformation of subsoil use relations represents a comprehensive transformation of the legal status of a subsoil user and the procedure for conducting activities related to the development of a subsoil plot, arising as a result of the introduction of bankruptcy procedures and expressed in changes to the procedure for the realization of the debtor's rights and obligations, as well as the emergence of a special legal regime for its property, aimed at ensuring a balance between satisfaction of creditors' claims and preservation of the functioning production of the debtor-subsoil user.

The transformation of subsoil use relations in bankruptcy proceedings consists of the following aspects:

- Classification of the property of a debtor-subsoil user according to the criterion of connection with subsoil use rights:



property with a mandatory regime for sale as part of the property complex of a debtor-subsoil user;

property with a discretionary regime for sale, allowing for alienation both as part of the property complex of a debtor-subsoil user and as independent objects of civil rights.

The proposed classification is aimed at forming the property complex of the debtor, the composition of which ensures the preservation of the functioning enterprise during the process of sale of the debtor's property and upon transfer of subsoil use rights. The identification of property that may be sold outside the property complex contributes to effective increase in the debtor's bankruptcy estate.

- The possibility of sale of property of a subsoil user only through closed competitive bidding;
- The possibility of participation in bidding for the sale of property of a subsoil user exclusively by persons satisfying the requirements imposed on applicants for the grant of subsoil use rights;
- The sale of unsold property of a subsoil user during bankruptcy is excluded if such property is connected with the subsoil plot or with the process of its exploitation.

*The position submitted for defense corresponds to paragraphs 6 and 13 of the scientific specialty passport 5.1.3. "Private Law (Civil Sciences)".*

3. Legal regulation of insolvency (bankruptcy) procedures for users of subsoil plots on the continental shelf of the Russian Federation requires the establishment of a special legal regime, which is conditioned by:

- first, elevated risks of causing harm to the marine environment if the technological process of mineral extraction on offshore deposits is interrupted or disrupted, which requires ensuring continuous technical maintenance of extraction platforms and wells under conditions of bankruptcy of a subsoil user;
- second, the necessity of uninterrupted extraction of hydrocarbons from continental shelf deposits;



- third, the limited circle of economic entities possessing the technological and financial capabilities for conducting activities on the continental shelf, which makes the application of traditional competitive procedures for the sale of bankrupt's property ineffective.

In connection with this, it is proposed to:

Establish mandatory participation of the authorized federal executive body in the field of subsoil use in bankruptcy proceedings involving a subsoil user on the continental shelf, with the grant to it of the right to file petitions for the introduction of bankruptcy procedures ensuring the preservation of the production activities of the debtor.

Provide for the right of the bankruptcy trustee to engage on a contractual basis specialized organizations to perform the functions of a technical manager of the property complex of a subsoil user on the continental shelf, with the imposition on them of obligations to maintain the technological process and ensure industrial and environmental safety at the deposit. The candidacy of the technical manager must be agreed upon with the authorized federal executive body in the field of subsoil use, and his authority and remuneration must be approved by the court.

Additional legal mechanisms for legal regulation of bankruptcy of subsoil users on continental shelf subsoil plots may include:

- preferential right of the state to acquire the debtor's property;
- forced reorganization of the debtor, for example, in the form of merger with a functioning subsoil user on the continental shelf.

*The position submitted for defense corresponds to paragraphs 6 and 13 of the passport of scientific specialty 5.1.3. "Private Law (Civil) Sciences."*

4. Based on the unique characteristics of subsoil users related to the cyclical nature of extraction work and the deferred nature of revenue receipt within a calendar year, it is asserted that there is a necessity for legislative establishment of special criteria for assessing bankruptcy features as applied to this category of debtors.



When determining the insufficiency of property of a subsoil user, the duration of delay in performance of a monetary obligation should constitute 8 months with a debt amount of 3 million rubles.

When assessing the insolvency of a subsoil user, the court must consider:

- the stage of the extraction work cycle at the time of consideration of the case;
- the presence of approved mineral reserves and their economic valuation;
- the volume of extraction work performed in the current production cycle;
- the substantiation of the forecast of receipt of monetary funds after completion of the current extraction cycle and sale of extracted raw materials.

Legislative establishment of these criteria is necessary to prevent bankruptcy of economically viable subsoil users whose temporary insolvency is conditioned by the technological peculiarities of extraction activities rather than actual inability to perform obligations.

*The position submitted for defense corresponds to paragraph 6 of the scientific specialty passport 5.1.3. "Private Law (Civil Sciences)."*

5. The sale of property objects of a debtor-subsoil user is carried out taking into account the following peculiarities:

- Rights to interpreted geological information relating to the subsoil plot provided for use by the debtor are sold as part of the property complex as property without which further exploitation of the subsoil plot is impossible; rights to interpreted geological information not relating to the subsoil plot in use by the debtor are sold as separate property within the timeframe allowing the subsoil user to determine the conditions for use of the geological information.

- Extracted minerals having the legal status of extracted resources are sold as separate property.

- Waste from mining production possesses a dynamic legal regime. If at the moment of recognition of the subsoil user as bankrupt the waste represents movable property, competitive sale is conducted in the manner provided for the sale of separate property; if mining waste is integrated into the natural environment, its value is taken into account when conducting competitive sale of subsoil use rights.



- Unsold property of a subsoil user connected with the subsoil plot provided for use transfers to state ownership, ensuring unobstructed further use of the subsoil plot.

*The provision submitted for defense corresponds to paragraph 6 of the scientific specialty passport 5.1.3. "Private Law (Civil) Sciences."*

6. Judicial practice demonstrates the absence of a uniform approach to determining the composition of property necessary for the transfer of subsoil use rights in bankruptcy: some courts permit the alienation of individual assets, while others require the transfer of a property complex ensuring the continuation of subsoil use.

The author substantiates the position according to which the condition for the transfer of subsoil use rights in bankruptcy proceedings is the acquisition by the purchaser of the property complex of the subsoil user, forming an aggregate of property meeting the criteria of connection with the subsoil plot or with its exploitation.

In the absence of property forming a property complex of a bankrupt subsoil user, the subsoil use right itself becomes the independent object of sale.

*The position submitted for defense corresponds to paragraphs 6 and 13 of the scientific specialty passport 5.1.3. "Private Law (Civil) Sciences."*

7. It is substantiated that in the context of bankruptcy proceedings, the property of a subsoil user is subject to consolidation into a property complex. The property complex of a subsoil user represents an aggregate of objects necessary for maintaining the functioning of the debtor's enterprise and for the transfer of subsoil use rights to a new subsoil user. The legal regime of the property complex of a subsoil user considers the inseparable connection of property with subsoil and land, as well as the specificity of the mineral and raw materials complex, which conditions the necessity for its sale in bankruptcy procedures exclusively as a single indivisible object, excluding the possibility of its fragmentation into separate elements. The structure and composition of the property complex of a subsoil user is determined by a number of aspects:



- inseparable connection of property with subsoil or land;
- location of property within the boundaries of the subsoil plot;
- the circle of potential acquirers interested in the use of the property of the subsoil user;
- technological and economic connection of objects included in the property complex.

*The position submitted for defense corresponds to paragraphs 6 and 13 of the passport of scientific specialty 5.1.3. "Private Law (Civil) Sciences."*

8. The system of measures for restoration of solvency of a subsoil user in bankruptcy proceedings includes legal mechanisms of:

- sale of the property complex of the subsoil user, representing the alienation of material and immaterial assets functionally connected with the conduct of activities related to subsoil use;
- sale of subsoil use rights, implying the transfer of such rights to third parties when it is impossible for the subsoil user to continue activities related to subsoil exploitation.

At the same time, a change in the profile of activities of the subsoil user cannot be considered as a measure for restoration of solvency due to the impossibility of changing the intended purpose of the debtor's production objects without disruption of technological processes.

*The provision submitted for defense corresponds to paragraphs 6 and 13 of the scientific specialty passport 5.1.3. "Private Law (Civil) Sciences."*

Based on the results of the research, a draft section of the Law "On Insolvency (Bankruptcy)" has been developed, devoted to the peculiarities of bankruptcy of subsoil users (Appendix A to the Dissertation).

**The theoretical significance** of the research consists in expanding scientific understanding of the procedure for implementing bankruptcy proceedings involving a special category of debtors—subsoil users. The research has an inter-sectoral character and is aimed at studying the interrelation of insolvency relations and subsoil use relations.



**The practical significance** of the work is determined by a comprehensive study of domestic and foreign practice in applying bankruptcy norms to relations regulated by subsoil use legislation. In identifying practical problems and formulating law enforcement solutions, the principal criterion for the appropriateness of proposed adjustments was the preservation of the debtor's functioning enterprise and the continuation of activities related to subsoil exploitation. The work also contains a critical analysis of existing legal norms and proposals for improving bankruptcy legislation.

The results of the research may be used in research and educational activities, as well as in the improvement of legislation.

### **Approbation of the Research Results.**

The work was discussed at the Department of Civil Law and Procedure of the M.M. Speransky Faculty of Law, Institute of Law and National Security, RANEPa, and was recommended for defense.

The conclusions formulated in the dissertation were presented at scientific and practical conferences, including:

- International Scientific and Practical Conference "Sixth Above Readings" on "Protecting the Rights of the State and Economic Entities (Entrepreneurial) Activity in the Works of T.E. Above" (November 18, 2024, Institute of State and Law, Russian Academy of Sciences). Topic of the report: "Signs of Bankruptcy of Subsoil Users";

- IX International Scientific and Practical Conference of Students, Postgraduates, and Young Scientists "Speransky Readings" (November 22, 2023, RANEPa). Topic of the report: "Obligations to Compensate for Environmental Damage and Land Restoration in a Subsoil User Bankruptcy Case";

- III International Scientific and Practical Forum "State Security and Human Well-Being: New Strategies and Challenges" (December 7-9, 2023, RANEPa);



Topic of the report: "The Legal Fate of the Right to Use Subsoil in Bankruptcy Cases."

- X International Scientific and Practical Conference "Value Foundations of Russian Legal Culture," dedicated to the memory of Professor, Corresponding Member of the Russian Academy of Sciences Gennady Vasilyevich Maltsev (X Maltsev Readings) (April 25, 2023). Topic of the report: "Characteristics of the Private Subsoil Ownership Model";

- International Scientific and Educational Forum "The Role of Law and Economics in Ensuring National Security: New Strategies and Challenges." (December 7–9, 2022) Topic: "Trends in the Development of Global Subsoil Legislation as a Challenge to the National Security of Sovereign States";

- II International Scientific and Practical Postgraduate Conference in Memory of V.F. Yakovlev "Intersectoral Approach in Science: Economics. Law. Court" (December 2, 2022). Topic: "Models of Subsoil Ownership in Russia and Foreign Countries."

### **List of Author's Publications.**

Scientific articles in peer-reviewed scientific journals and publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation for publication of the principal scientific results of a dissertation for the degree of Candidate of Legal Sciences:

1. Tretyakova, E. P. Obligations to restore disturbed lands, liquidate and preserve mine workings in the bankruptcy case of a subsoil user / E. P. Tretyakova // Law and Management. - 2024. - No. 1. - Pp. 113-108 (0.49 p.s.).

2. Tretyakova, E. P. Property Complex of a Subsoil User in a Bankruptcy Case / E. P. Tretyakova // Law and Economics. - 2024. - No. 9 (439). - Pp. 51-56 (0.69 p.s.).



3. Tretyakova, E. P. Contractual Constructions of the Right to Use Subsoil Resources in Bankruptcy Cases / E. P. Tretyakova // Legislation. - 2024. - No. 8. - P. 70-75 (0.52 p. s.).

4. Tretyakova, E. P. Legal Status of a Subsoil User as a Special Participant in Entrepreneurial Activity / E. P. Tretyakova // Energy Policy. - 2023. - No. 3 (181). - P. 76-88 (0.74 p.s.).

5. Tretyakova, E. P. The Right to Use Subsoil Resources in the Bankruptcy Estate of a Debtor-Subsoil User / E. P. Tretyakova // Law and Economics. - 2023. - No. 10. - P. 23-29 (0.81 p. s.).

#### **Structure of the Dissertation Research.**

The dissertation includes an introduction, three chapters and eight sections, a conclusion, a list of sources used, including scientific works, dissertation research, normative legal acts and materials of judicial practice, and an appendix containing a draft section of the Law "On Insolvency (Bankruptcy)" devoted to the peculiarities of bankruptcy of subsoil users.