

УДК 339.727.22:330.341.1  
JEL Classification: F23, K2, M48

## THE PROBLEM OF MOVEMENT OF CAPITAL FOR TRANSNATIONAL CORPORATIONS

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*The article refers to the problem of movement of capital for transnational corporations. The author mainly analyses the problem, by emphasizing the absence of single legal regulative mechanism for legal status of transnational corporations, which consequently brings to problem of capital movement for them, by taking into account the nature of their actions.*

**Keywords:** *institutional changes, development of economy, transnational corporations, single monetary system, movement of capital, EU directives, legal regulation, legal status, member states, and characteristic feature.*

**Introduction.** Gradual process of economic development and the institutional changes, leading the development of economy, brought necessity of formation of new economical unit. Legal persons came to private circulation to form equal participation for citizens and groups. Currently it is impossible even to try to imagine public and private sphere of social life without direct participation of different formations created by group of people. Article 50 of Civil Code of RA defined legal persons as: «A legal person is an organization that has separate property in ownership and that is liable for its obligations with this property and that may, in its own name, acquire and exercise property and personal non-property rights, bear duties, and be a plaintiff and defendant in court. A legal person must have an independent balance sheet. In connection with participation in the formation of the property of a legal person, its founders (or participants) have or do not have rights under the law of obligations with respect to this legal person. Legal persons with respect to which their founders (or participants) have rights under the law of obligations include: business partnerships and companies, and also cooperatives. Legal persons with respect to which their founders do not have rights under the law of obligations include: societal amalgamations, funds, and unions of legal persons.

**Analyses of recent researches and publications.** The gradual changes in production process during 20-th century, development trends and other key processes eventually clarified the main conceptual approach towards the role of legal persons in international private relations. To tell the truth, the processes had their immediate impact in all spheres of public life, but mostly reflected on the internationalization of the economic and legal aspects, changing both qualitative and quantitative contents of inter-economic relations. Actually the processes brought necessity to form new economical unit, named transnational corporations. Transnational corporations in private relations were presented as legal entities, which both by themselves and in cooperation with the other subjects were able to be involved in commercial activities. In global economic conditions and competitive economical sphere, the transnational corporations came to be the most effective units as legal entities. It gives a different ethnicity or legal persons to centralize their capital and by joint management coordinate their actions and take greater benefits [1]. By its nature the transnational corporation directly moderates the relationships between trade and industrial ties, manifested as legal entities, aimed to provide free movement of capital from one state to another. The definition of transnational corporations, constitutes, that they are some kind of legal entities, which, by their activities, are using both national and international legal systems and by typical approach to them, define centralized decision-making, providing active economic activities. One of the most characteristic features of transnational corporations is the fact, that by their nature they have centralized management system, but are conditionally independent structural units.

The business practice uses the following main ways of control for the founder company, over subsidiary company [2]:

- substantial size in authorized capital;
- full availability of necessary resources;
- the information system;
- availability of special control mechanisms;
- other informal mechanisms.

The transnational corporations, as types of legal entities, by their management system, are acting in different legal system, having the same aim, business activities, for getting profit. This aim is identically understood both in doctrinal literature sources, and by the analysis of legal regulative mechanisms.

The transnational corporations, together with their representative offices and branches in different countries, carry out the following activities [3]:

- by entering other countries' economic framework, they affect on legal customs and influence on creating flexible emergency mechanisms;

– by taking activities in different countries, they include not only economic, but also human resources and intellectual potential;

– carry out an industrial activities, for the purpose of engaging not only cheap labor, raw materials, but also production technologies.

Activities carried out by transnational corporations, as we have seen, is fully accompanied by a shift in economic resources, and the issue of giving equal opportunity for every country comes to be one of the main vital and crucial things. During the implementation of transnational activities, one of the most important issues comes to be the problem of movement of capital, is gets particular importance in few aspects: First, as it was mentioned above, the role of transnational corporations comes to cooperation in various countries, and, besides, here we are dealing with not only the establishment of separate branches or representative offices, but also with problem of providing material base for carrying out their activities. Legislation, also defines representative offices and branches as following: According to article 61 of Civil Code of Armenia «A representative office is a separate subdivision of a legal person located outside the place where the legal person is located which represents the interests of the legal person and conducts their protection. A branch is a separate subdivision of a legal person located outside the place of location of the legal person and conducting all its functions or part of them, including the function of representation. Representative offices and branches are not legal persons, and they act on the basis of statutes approved by the legal person. The heads of representative offices and branches are appointed by the legal person and act on the basis of a power of attorney from it. Representative offices and branches must be indicated in the charter of the legal person that has created them». The definition, which is detailed given in legislation, also refers to the logic, that if there is transnational corporation, there must be representative offices and branches, and, therefore, inevitable we will have to stand over the problem of capital movement, without which it comes to be almost impossible and not effective to act as transnational corporation. As presented, by their nature, transnational corporations are able to influence on the social and economic level of country they are acting, and, besides, the founder has basic control and management mechanisms over the representative office and branches. Moreover, it is very important to note the fact, that control can be manifested in different ways in different circumstances, depending on the economic, social or even historical development of the state. Taking into account the characteristic features of transnational corporations, the scope of their activities, the key issue comes to be the legal character and exact legal status, which is under direct dependence of adoption of relevant international legal instruments. The doctrinal literature also refers to the key issue, directly depending the problem from the clarification of legal status of transnational

corporations. The problem, considers serious solution and is under direct dependence on accepting single legal-regulative mechanism, which, by its' nature will have influence on problem solution of legal status and capital movement of transnational corporation.

**Previously unsettled problem constituent.** The unique approach to transnational corporations comes from the fact, that, by their nature of actions, they actually promote international relations, not taking into account the fact, that they have different legal systems as ethnicity and place of business [4, pp. 27-28]. The problem of exact legal status of transnational corporations, in legal doctrine and practice is in direct influence from the fact of absence of comprehensive regulatory mechanism. It seemed, that the “Convention on transnational Corporations”, adopted in 1998, which actually came to follow the CIS 1994 Convention on “Industrial, commercial, credit, insurance development creation” actually was able to solve the problems. However, it could solve only part of the problem concerning the legal status of Corporations. Essentially, the solution of the problem of legal status of transnational corporations, could be found only in adoption of comprehensive legal act, which would in details describe the ways of solution of the issue. The specification of legal status of transnational corporations, meets different approaches in legal literature. From the one hand, it comes to be of greatest importance the adoption of legal act, which would regulate legally all the questions, concerning the issue, from the other hand, the legal doctrine also presents new way: «Transnational law» as separate branch of study, which would define transnational corporations as specially characterized unit with all its' few questions and answers to them.

The problem of freedom of movement of capital comes to be one of vital issues and essential elements for the proper functioning of large European market. The liberalization of payments transactions is a vital component of freedom of movement of capital, and consequently the liberalization of markets, which by its means aims to develop transnational corporations. While summing up the practice and doctrine, it can be clearly seen, that the EU directives had the aim to set up rules to regulate the free movement of capital. While it would be honest to mention, that though the EU and its' member states are very well represented, but the problem of developing countries still remains the same. So, in this issue, the legal regulative mechanisms of EU market come to be essential. The problem for developing countries in accordance with the doctrinal sources can be solved, only by means of internationalization of payments, which will consequently bring to solution of capital movement. However, the way for solution of the problem still remains one: the member states- developing countries have to address their problem to several governments and EU institutions to influence the European position [5]. By the end of 1988, the EU directives already insured full

liberalization of capital movement [6]. Under this directive, all restrictions on capital movement between persons of member states were actually solved. Monetary and quasi-monetary system regulations were also established. On the basis of the Directive, the financial market has been completely liberalized. European business and individuals took access to the full range of options available in member states as regards banking services mortgage loans, security and insurance. Another essential Directive, 2007/64 removed and harmonized the frame of payment services in the EU, including the conditions of information as well as the rights and obligations of parties. By removing the existing legal obstacles, the pan-European payment system was created. The steps, which were done with the help of directives, consequently had their reflection on the freedom of capital movement for transnational corporations as well, because they had their direct reflection on the process in a whole.

**Main purpose of the article.** The main purpose of the article comes to be analyzing the characteristic features of transnational corporations and by its means and with the help of discussions, emphasize the importance of adoption of single legal regulative mechanism in order to regulate the capital movement problem for transnational corporations. As the practice shows, though there is unique approach towards the problem of transnational corporations, but one of the main problems still remains unsolved.

By their nature transnational corporations deal with more than one country with their different legal regulative mechanisms and even legal systems. In this respect, the existence of single legal regulative mechanism comes to be of greatest importance. With the help of analysis of the problem and the main regulations, by scientifically grounded recommendations and through a comprehensive analysis and comparisons existing in doctrinal literature, we tried to show the importance of the problem and the urgent necessity of its' regulation. Though, as it was previously mentioned, the Directives tried to regulate the problem, it still remains partially unsolved for non-member-states, and the global trend leading the world economic processes, still took under emphasize the problem of clarifying the legal status of transnational corporations, by legally accepted document. In our opinion, the problem remains actual, until the single legal regulative mechanism is accepted to regulate and emphasize the legal character of transnational corporations and to clarify and make exactness to the format of protection of private property.

**Basic material with substantiation of the result of the research.** Besides holding the promise of economic growth for local and national governments, transnational corporations also exert power over political entities once they are established, through their control over technical and intellectual property. Because of their size, transnational corporations can also have a significant impact on government policy through the threat of market withdrawal. Transnational corporations play an important role in the world

economy through the process of economic globalization; in other words, the increasing economic interdependence of national economies across the world through a rapid increase in cross-border movement of goods, services, technology and capital. Transnational corporations have played a leading role in this globalization, establishing multiple links between the economies of various countries. Using capital from developed countries, they establish factories and plants in developing countries, where they can access raw materials and labor more cheaply. The finished products are then shipped back to wealthy countries where there is a consumer market. These multiple links lead to an increasing economic integration between various economies, movement of capital through more than one country, resulting in the emergence of a global marketplace or a single world market.

Those who view this phenomenon positively cite the evidence of per capita GDP growth, decrease in poverty, and a narrowing gap between rich and poor nations. Proponents of economic globalization argue that the economic benefits are widely shared between different parts of society, discounting critics who point to rising inequality between the rich and poor within nations who have joined the global market. Finally, there is evidence that the gap has narrowed between rich and poor countries, which is often touted as a positive benefit of economic globalization.

But it must be mentioned, that not all observers of economic globalization have a positive evaluation. As discussed above, transnational corporations exert powerful influence over local and national governments, often prompting them to enact policies that benefit business, rather than protecting the rights of local people. Thus, economic globalization in the form of TNCs can lead to exploitation of the local labor force, funneling of important resources away from the country itself into foreign exports, and overall dependency of developing countries upon wealthy countries. In addition to the uneven distribution of benefits that often occurs, critics also point to the ways that resources are diverted from the local population into foreign exports. Finally, economic globalization may result in unequal economic relations of dependency between developing and developed countries. Instead of acting independently on behalf of the people in the country, governments of developing countries may act more in the interests of TNCs and of other nations on whom they rely on for aid. They may feel that without these forms of economic connection, their country cannot survive. All these key problems come from the lack of exact legal regulation of the issue, which comes to be the most important thing in global trends of economical globalization and development. Different essential legal and economical sources, by analyzing the issue, come to the problem facing lack of legal regulation, legal regulative mechanism gap, which is the most essential question for nowadays.

**Conclusions and directions of feather researches.** Essentially, transnational law comes to be a synthesized environment, where the collision of public and private disciplines can be clearly seen. However, it could be honest to say, that question arises: what would eventually be the mandatory legal standard in this case? However, in our opinion, no matter how dispositive can transnational law be and no matter how scientific sources try to characterize it as a special legal environment, the question is, that the problem of clarification of the definition of legal status of transnational corporations, even not taking into account the problem of the behavioral regulative norms of the subjects, can be seen only in adoption of special legal document, which would regulate all the questions of this new legal entity from the very beginning, set separate legal regulations for transnational corporations' capital movement system and try to solve all the problems in the capital movement process which would provide basis to ensure proper functioning for transnational corporations acting in different legal systems.

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**ПРОБЛЕМА ДВИЖЕНИЯ КАПИТАЛА В РАМКАХ  
ТРАНСНАЦИОНАЛЬНЫХ КОРПОРАЦИЙ**

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*В статье рассматривается проблема передвижения капитала в рамках транснациональных корпораций. Автор анализирует проблему, подчеркивая отсутствие единого правового регулятивного механизма, который урегулировал бы правовой статус транснациональных корпораций, и, следовательно, внес бы проблему движения капитала в рамки закона, принимая во внимание характерные черты транснациональных корпорации.*

**Ключевые слова:** *институциональные изменения, развитие экономики, транснациональные корпорации, единая денежная система, движение капитала, директивы ЕС, правовое регулирование, правовой статус, государства-члены, характерная черта.*

**ПРОБЛЕМА РУХУ КАПІТАЛУ В РАМКАХ  
ТРАНСНАЦІОНАЛЬНИХ КОРПОРАЦІЙ**

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*У статті розглядається проблема руху капіталу в рамках транснаціональних корпораций. Автор аналізує проблему, підкреслюючи відсутність єдиного правового регулятивного механізму, що врегулював би правовий статус транснаціональних корпораций, і, отже, вніс би проблему руху капіталу в рамки закону, беручи до уваги характерні риси транснаціональних корпораций.*

**Ключові слова:** *інституціональні зміни, розвиток економіки, транснаціональні корпораций, єдина грошова система, рух капіталу, директиви ЄС, правове регулювання, правовий статус, держави-члени, характерна риса.*