

Секция «44.5 Актуальные вопросы права Англии и США (на английском языке)»

## Problems of Texas two-step bankruptcy

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American bankruptcy law provides individuals and legal entities with broad alternative options for resolving crises. A debtor can choose either liquidation proceedings (Chapter 7), sacrificing their assets in exchange for a complete discharge of debts and preservation of future income, or reorganization proceedings (Chapter 11), retaining assets but repaying obligations from future earnings. A case can be initiated by the debtor themselves (without needing to prove signs of bankruptcy) or by creditors (under certain conditions). An important procedural guarantee is the court's introduction of a protective regime and the appointment of a trustee to protect assets, as well as the implementation of an "automatic stay," which blocks individual creditor lawsuits [n1].

The Texas Two-Step Bankruptcy represents a corporate strategy for restructuring obligations, based on Texas state corporate law provisions regarding divisional mergers and the subsequent use of Chapter 11 proceedings of the U.S. Bankruptcy Code [n3].

The regulatory basis for this strategy lies in the provisions of Texas corporate law concerning divisional mergers (Merger) (sec. 1.002. (55) Texas Business Organization Code), while the bankruptcy stage itself is implemented within the framework of federal regulation established by the U.S. Bankruptcy Code. In practice, this mechanism has been applied by large corporations in mass tort cases, particularly in the context of lawsuits related to asbestos or pharmaceutical products.

Executing this strategy requires two distinct, sequential legal actions. The first action involves a complex corporate restructuring to legally separate assets from liabilities. The second action utilizes a federal bankruptcy court to enforce a final resolution of all tort claims.

This coordination allows the core business to continue operating without the threat of catastrophic judgments [n4].

The Texas Two-Step fundamentally differs in that it is not the historical operating business that goes bankrupt, but an artificially created structure to which liabilities were previously transferred. Economically, the corporate group may maintain high solvency, but formally the debtor becomes financially insolvent. This raises discussions regarding abuse of rights and good faith filing, as the procedure is used not to save a genuinely insolvent business, but to centralize and limit liability for mass tort claims.

A classic example of the Texas Two-Step application is the Johnson & Johnson (hereinafter - J&J) case concerning claims of harm from talc-containing products. In 2021, the company employed a two-step bankruptcy strategy: the parent corporation created a subsidiary, to which liabilities from mass tort claims for health damage were transferred, and then the subsidiary, burdened with these liabilities, filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. As a result, the U.S. Bankruptcy Court for the District of New Jersey rejected J&J's argument, noting that the subsidiary, LTL Management, was created solely to seek Chapter 11 protection but had no legitimate need to do so. The court noted that only a debtor experiencing financial distress can seek to initiate bankruptcy proceedings [n5].

There is no direct equivalent of the Texas Two-Step concept in the Russian Federation. According to Federal Law No. 127 – Federal law “On Insolvency (Bankruptcy)” dated October 26, 2002, one of the rehabilitation mechanisms in bankruptcy is the procedure of substituting the debtor’s assets. However, the regulatory framework for this measure has several gaps, which contributes to the development of various forms of abuse by unscrupulous bankruptcy participants who use asset substitution for unlawful purposes [n2].

Thus, the Texas Two-Step model is a controversial financial procedure employed by large companies to cleanse their business reputation. Its main goal is to isolate valuable operating assets from litigation risk. The Texas Two-Step model can only be introduced into Russian legislation through a combination of corporate law and bankruptcy regulation, but this would require strengthening judicial oversight and further ensuring the protection of creditors’ interests, thereby maintaining a balance between innovation in restructuring and the principle of good faith.

### Источники и литература

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