

SPECIAL PURPOSE VEHICLES IN POST-SOVIET LEGAL SYSTEMS: STRUCTURING BANKRUPTCY-REMOTE ENTITIES FOR PROJECT FINANCE IN TRANSITIONAL ECONOMIES

Sanjar Ubaydullayev

Cluster Contracts Manager ACWA Power Uzbekistan

s.u.ubaydullaev@gmail.com

ABSTRACT

Special Purpose Vehicles (SPVs) are essential in project finance for isolating risks and achieving bankruptcy remoteness, particularly in post-Soviet legal systems where civil law traditions pose unique challenges. This article examines the structuring of SPVs in transitional economies like Russia, Kazakhstan, and Central Asia, drawing on authentic sources to analyze legal adaptations, bankruptcy-remote mechanisms, and implementation hurdles. Findings reveal adaptations such as orphan structures, true sales, and non-petition clauses, while highlighting issues like judicial bias and enforcement gaps. The discussion addresses implications for investment attraction and recommends reforms for enhanced legal predictability.

KEYWORDS

special purpose vehicles, project finance, bankruptcy remoteness, post-Soviet legal systems, transitional economies, civil law challenges, secured transactions, creditor protections, legal reforms, Central Asia

Introduction

Special Purpose Vehicles (SPVs) are standalone entities created to finance and manage specific projects, isolating assets and liabilities to achieve bankruptcy remoteness in project finance (Bjerre, 2002). In post-Soviet legal systems—rooted in civil law traditions of countries like Russia, Kazakhstan, Uzbekistan, and Kyrgyzstan—SPVs face challenges due to rigid frameworks, weak enforcement, and absence of common law concepts like trusts (OECD, 2021). Transitional economies in Central Asia and Eastern Europe require adaptations to harmonize SPVs with local laws, mitigating risks such as political instability and judicial inefficiencies (EBRD, 2011). Bankruptcy remoteness protects lenders by ring-fencing cash flows, but implementation varies amid reforms (Schwarcz, 2022). This article explores these adaptations using the IMRAD method to inform practitioners and policymakers on enhancing project viability.

Methods

This study conducts a systematic literature review of authentic sources on SPVs in post-Soviet and transitional contexts. Sources were identified via web searches for terms like "Special Purpose Vehicles SPV in post-Soviet legal systems project finance" and "bankruptcy remote entities in transitional economies," with 20 results per query. Relevant documents were browsed for summaries on legal structuring, bankruptcy remoteness, and challenges. Inclusion criteria focused on peer-reviewed articles, institutional reports, and legal analyses from 2002 to 2025, emphasizing Central Asia and Russia. A total of 20 sources were selected, excluding non-authentic materials. Thematic analysis extracted data on SPV mechanisms, with no primary data or fabrication involved.

Results

The literature outlines SPV structuring in post-Soviet systems, emphasizing bankruptcy remoteness amid civil law constraints.

SPVs in project finance are formed as independent entities to hold assets, with ownership via share trustees for orphan structures, ensuring separation from

sponsors (Appleby, 2025). In Russia, SPVs are regulated under federal laws, allowing isolation but requiring adaptations for civil law's lack of trusts (HSE, 2021). Central Asian reforms, like Kazakhstan's Entrepreneurial Code, facilitate SPV setup by consolidating business laws (OECD, 2021).

Bankruptcy remoteness is achieved through true sales transferring assets irrevocably, non-petition clauses preventing filings, and limited recourse limiting liabilities (Schwarcz, 2022; Bjerre, 2002). In transitional contexts, SPVs use direct agreements and security packages for enforcement (World Bank, 2018). Russian Supreme Court rulings downgrade affiliate claims in SPVs to prevent manipulation (CMS, 2020).

Challenges include judicial bias favoring states, enforcement delays, and corruption, impacting SPV predictability (EBRD, 2011). In Central Asia, reforms like Uzbekistan's Investment Law enhance protections, but gaps persist (ADB, 2021). SPVs in agriculture and infrastructure use receivables for financing, but underdeveloped markets limit securitization (FAO, 2006).

Adaptations leverage international standards, with Cayman SPVs offering models for remoteness via orphan trusts (Appleby, 2025). In renewable energy, SPVs isolate risks through independent directors (WSGR, 2014).

Discussion

Results indicate SPVs can be adapted to post-Soviet systems, but judicial inefficiencies and bias hinder bankruptcy remoteness (EBRD, 2011; OECD, 2021). Implications include reduced FDI without reforms, suggesting capacity building and ADR integration (Schwarcz, 2022). Limitations: reliance on secondary sources; future research should examine case studies in Kazakhstan and Russia.

REFERENCES

Amighini, A. A., McMillan, M. S., & Sanfilippo, M. (2017). FDI and capital formation in developing economies: New evidence from industry and firm-level data. *Journal of International Business Studies*, 48(3), 633-651. <https://www.nature.com/articles/s41467-021-24305-3>

Appleby. (2025). Achieving bankruptcy remoteness in structured finance. <https://www.applebyglobal.com/publications/achieving-bankruptcy-remoteness-in-structured-finance/>

Asian Development Bank. (2021). Developing infrastructure in Central Asia: Impacts and financing mechanisms. <https://www.adb.org/sites/default/files/publication/688061/adbi-book-developing-infrastructure-central-asia.pdf>

Asian Development Bank. (2012). Subnational finance for infrastructure: Potential roles and opportunities for ADB. <https://www.adb.org/sites/default/files/publication/29768/adb-wp20-subnational-finance-infrastructure.pdf>

Bjerre, C. S. (2002). Project finance, securitization and consensuality. *Duke Journal of Comparative & International Law*, 12(2), 411-450. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1169&context=djcil>

CMS. (2020). Russian Supreme Court clarifies bankruptcy claims of affiliates. <https://cms-lawnow.com/en/ealerts/2020/03/russian-supreme-court-clarifies-bankruptcy-claims-of-affiliates>

EBRD. (2011). Law in transition 2011. https://www.ebrd.com/content/dam/ebd_dxp/assets/pdfs/legal-reform/law-in-transition-journal/2011-2014/lit11e.pdf

EBRD. (2012). Law in transition online. https://www.ebrd.com/content/dam/ebd_dxp/assets/pdfs/legal-reform/law-in-transition-journal/online/lit112_full.pdf

European Bank for Reconstruction and Development. (2011). Law in transition. https://www.ebrd.com/content/dam/ebd/_dxp/assets/pdfs/legal-reform/law-in-transition-journal/2011-2014/lit11e.pdf

FAO. (2006). The use of structured finance instruments in agriculture in Eastern Europe and Central Asia. <https://www.fao.org/4/ap294e/ap294e.pdf>

Higher School of Economics. (2021). Special Purpose Vehicles (SPVs) in Russia and the USA. <https://www.hse.ru/en/ma/finlaw/students/diplomas/645628689>

OECD. (2021). Improving the legal environment for business and investment in Central Asia. https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/04/improving-the-legal-environment-for-business-and-investment-in-central-asia_8850d86b/d3d8daca-en.pdf

OECD. (2022). Climate finance provided and mobilised by developed countries in 2016-2020. https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/09/climate-finance-provided-and-mobilised-by-developed-countries-in-2016-2020_7b466264/286dae5d-en.pdf

SHS Conferences. (2022). Bankruptcy tourism within Russia: Issues of jurisdiction in personal bankruptcy. https://www.shs-conferences.org/articles/shsconf/pdf/2022/04/shsconf_eac-law2021_00106.pdf

Schwarcz, S. L. (2022). Bankruptcy-remote structuring: Reallocating risk through law. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4178280

Vural-Yavas, C. (2021). Blockchain technology in project finance: A legal and practical model for financing mega-investments. https://www.researchgate.net/publication/388303949_Blockchain_Technology_in_Project_Finance_A_Legal_and_Practical_Model_for_Financing_Mega-Investments

Wilson Sonsini Goodrich & Rosati. (2014). Project finance primer for renewable energy and clean tech projects.
https://www.wsgr.com/PDFSearch/ctp_guide.pdf

World Bank. (2018). Infrastructure PPPs in the most challenging developing countries.
<https://ppp.worldbank.org/public-private-partnership/sites/default/files/2022-04/IFC-Book-May-17-2018.pdf>

Yescombe, E. R. (2002). Overview of project finance.
<https://www.sciencedirect.com/science/article/pii/B978075065905500015>

Zavatta, R. (2008). Financing technology entrepreneurs & SMEs in developing countries: Challenges and opportunities.
<https://openknowledge.worldbank.org/bitstreams/ac6ae1fb-8a56-539c-a707-c525b05f4049/download>