



The content, concept and procedural aspects of the institution of reorganization as a legal category

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ABSTRACT

This article analyzes the methods of reorganization and the improvement of legislation governing the relationship with their application, the substantive problems in the application and implementation of the principles, methods and forms of reorganization. As well as the fact that the judicial (compulsory) liquidation of legal entities is carried out on the grounds directly provided by law, the peculiarity of the compulsory liquidation of legal entities, which is not the will of the legal entity, but in accordance with or in accordance with the legislation non-compliance is analyzed. It also takes into account the compliance of the activities of the legal entity with the principles of honesty, reasonableness and fairness.

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Yuridik kategoriya sifatida qayta tashkil etish institutining mazmuni, tushunchasi va protsessual jihatlarini

Kalit so'zlar:

qayta tashkil etish,
qayta tashkil etish instituti,
yuridik shaxslar,
qayta tashkil etish
tushunchasi,
yuridik shaxslarni tugatish.

ANNOTATSIYA

Ushbu maqolada qayta tashkil etish usullari va ularni qo'llash bilan bog'liq munosabatlarni tartibga soluvchi qonunchilikni takomillashtirish, qayta tashkil etish tamoyillari va shakllarini qo'llash va amalga oshirishdagi dolzarb muammolar tahlil qilinadi. Shuningdek, yuridik shaxslarni sud tartibida (majburiy) tugatishning qonun hujjatlarida to'g'ridan to'g'ri nazarda tutilgan asoslar bo'yicha amalga oshirilishi, yuridik shaxslarni majburiy tugatishning o'ziga xos xususiyatlari, ularning qonun hujjatlarida belgilangan tartibda amalga oshirilishi ham tahlil qilinadi.

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Содержание, понятие и процессуальные аспекты института реорганизации как правовой категории

АННОТАЦИЯ

Ключевые слова:

реорганизация,
институт реорганизации,
юридические лица,
понятие реорганизации,
ликвидация юридических
лиц.

В данной статье анализируются способы реорганизации и совершенствования законодательства, регулирующего отношения с их применением, также проанализированы существенные проблемы применения и реализации принципов, способов и форм реорганизации. Проанализировано то, что судебная (принудительная) ликвидация юридических лиц осуществляется по основаниям, прямо предусмотренным законом, что особенность принудительной ликвидации юридических лиц, которая является не волеизъявлением юридического лица, а в соответствии с законодательством. Также учитывается соответствие деятельности юридического лица принципам честности, разумности и справедливости.

The transition to a market economy and the adoption of new laws in this regard have significantly expanded the scope of the rights of legal entities. The wide range of opportunities provided to legal entities (participation in domestic and foreign trade of the country) has been developed and strengthened in accordance with the transition period. These measures have created real opportunities for legal entities of the Republic of Uzbekistan to engage in foreign economic activity. At the same time, foreign entities, especially foreign investors, have the opportunity to mutually beneficial cooperation with domestic businesses.

Indeed, the liberalization of economic activity and its legal provision is of particular national importance today. At the same time, in the current situation, it is necessary to improve the position of legal entities in foreign economic relations (law in the regulation of this or that area), the legal framework for their participation.

The creation of a new legislative system in the country has led to a radically new look at the institution of reorganization of corporate law and their abolition, one of the most important institutions for civil law.

Citizens, legal entities and the state, which are the subjects of civil law, have their own characteristics as subjects of law. Such specificity was manifested, firstly, in the differences in the civil rights and legal capacity of citizens, the state and legal entities, and secondly, in the status of recognition of individuals as legal entities and their abolition as subjects.

It should be noted that while citizens and the state are created directly and indirectly as subjects of civil law, legal entities are created as subjects of law on the basis of the will of these two subjects. This is because legal entities are participants in various legal relations in different areas of law, established in the prescribed manner, operating on the basis of the charter or charter, having their own account, formalized in accordance with the established requirements [1].

While the termination of legal entities is voluntary and compulsory, voluntary termination is carried out without trial. In this case, the liquidation case is not considered in court, but the legal entity that made the decision to liquidate the legal entity is carried out in agreement with the state authorities and in compliance with certain formalities at the request of the founders or the body of the legal entity.

Civil law refers to the legislation governing the activities of each legal entity, although the procedure for voluntary liquidation of legal entities refers to cases of extrajudicial (voluntary) liquidation.

In the event of a voluntary liquidation of a legal entity, the liquidation process begins, as a rule, with a decision by the owners, founders and the body of the legal entity to reorganize or liquidate. For example, the process of liquidation of a joint-stock company begins with the adoption of an appropriate decision at the general meeting of the company, since the reorganization should not have adverse consequences for creditors.

The procedure for making a decision on reorganization differs depending on the type of legal entity. However, the decision to reorganize is taken by different persons depending on the form of reorganization. While the general meeting is the body authorized to reorganize according to the articles of association of the company, the founders of the companies become members of the company after its creation and have more votes at the general meeting. In this case, the decision of the general meeting is, in other words, the will of the founders [2].

According to J. Yuldashev, among the subjects of civil law there is a notion of emergence only in legal entities, because such a notion does not apply to citizens and the state, who are the subjects of civil law. Citizens and the state exist spontaneously as subjects. Although the state of subjectivity in citizens arises after they are born, the term “basis of formation” of citizens has no logical basis [3].

This idea can be directly applied to the concept of “reorganization” of corporate law. Since it is impossible to apply the concept of reorganization to citizens and the state as a subject, it is logical to “reorganize” them as a subject, given that legal entities are formed on the basis of the will of other subjects. It should also be noted that the simple logical rule is that “creation” ends in “cancellation”.

According to A. Shukrullaev, reorganization is a situation that creates a relationship of legal succession, as a result of which the legal form of the legal entity is canceled or otherwise structural changes are made. It should be noted that the phrase “structural change” has no legal meaning. After all, “structural change” is logically understood as the reorganization of the bodies of legal entities or the transformation of these bodies or the legal entity as a structure, while the legal entity operates as a legal entity. However, while the term “content” in the term “structural change” covers the bodies of a legal entity, its activities, type of legal entity and other concepts, as a result of “structural change” a legal entity can change only the type of activity and system of bodies without cancellation. This is not a abolition of the legal entity, but a change in its activities as a specific legal entity. A. Shukrullaev emphasizes the need to pay special attention to the parties involved in the reorganization of a legal entity. In his opinion, two reorganized entities, namely “internal” (covering only the founders (founders)) of the reorganized entity (separation or spin-off) and “external”, which determines the relationship of the reorganized legal entity with other entities (addition, addition). shipping and modification) there is a certain regulatory process. Such legal regulation can also be expressed in the form of “compulsory legal relations of legal entities”, which reflects the legal status of the subjects involved in the reorganization of legal entities [4].

Of course, legal relations between the subjects of the reorganization process of a legal entity become “obligatory” after the decision on reorganization is made, and the subject of reorganization has no right to refuse such relations. Only after the completion of the reorganization, in the absence of claims against him, the relations of the reorganized person with other participants in the reorganization cease.

After the decision is made, the founders' body or legal entity takes the actions provided by law. The procedure for voluntary termination of a legal entity differs from both methods of termination. In this regard, first of all, we will consider the procedure for voluntary reorganization of a legal entity [5].

The annulment of the reorganization of the subjects of corporate law is a legal fact by its nature. It is as a result of "cancellation" that civil rights and obligations arise, change or become invalid. When analyzing the annulment of legal entities as a specific type of legal facts, it is necessary to pay attention to a number of cases. First, as a result of the "liquidation" of legal entities, a civil legal relationship may be established or terminated. When a legal entity is reorganized, an inheritance relationship arises, and when a legal entity is liquidated, all rights and obligations related to the legal entity are terminated. Second, the termination of a legal entity has a certain legal effect as a legal action. This legal consequence is always the product of human will. Third, given that the methods of liquidation of legal entities are different, they can be included in the types of legal fact "legal action and legal document", "administrative document and agreement". The liquidation of a legal entity as a legal act is reflected in the actions of the founders or team of the legal entity in connection with the reorganization of the legal entity (merger, division, etc.). The decision of the relevant state body on the liquidation of the legal entity is a legal document.

When thinking about the concept of reorganization of corporate law, it should be noted that neither the legislation nor the legal literature defines this concept [6]. It was emphasized that only termination can be done through reorganization and termination. In most cases, it is considered impractical to define the concept of reorganization of subjects of corporate law or to give a scientific-legal interpretation of this term. However, it is important to clarify the scientific and theoretical content of the concept of "reorganization" of the subjects of corporate law and to create a definition of this concept and to improve the legislation in this area. In this sense, the concept of reorganization of corporate law can be scientifically defined as follows: reorganization of subjects of corporate law means the reorganization of a legal entity as a subject of civil law through reorganization and liquidation, taking into account the claims of creditors and on the basis of legal succession.

While the reorganization of the subjects of corporate law always means the liquidation of the subject, in some cases it is important as a basis for the emergence of a new entity. This is exactly the case in the first method of reorganization of corporate law entities. Although the entity created in the event of liquidation of a legal entity through reorganization is recognized as the successor of the previous legal entity, it is considered an entirely new legal entity. There are two main methods of liquidation of legal entities: the results of reorganization and liquidation. Termination (mention of the name in legal relations with indication of successors), "at the termination of which there is a complete" departure "from the" scene "of legal relations and another" non-mention "in legal relations.

It is known that the theory of civil law specifies the following ways of formation of legal entities:

- the order of issue of the order (order);
- application procedure;
- procedure for issuing permits.

In case of reorganization of a legal entity, depending on whether the reorganization is carried out voluntarily or compulsorily, it is possible to determine in what way the newly formed legal entity was formed. If a legal entity is voluntarily reorganized, it can be considered that the newly formed legal entity was created in the order of application. Because in this case, the expression of the founder's desire to reorganize the legal entity means that a new legal entity has been created, and the state registration body will have to register the new legal entity.

When a legal entity is reorganized in a mandatory court order, a new legal entity is created in the order of obtaining a permit for the formation of legal entities. In this case, the reorganization of a legal entity in accordance with the requirements of Article 49 of the Civil Code requires the permission of the competent state body, such as the procedure for obtaining a legal entity, and only then the registering authority can register a new legal entity.

It should be noted that the reorganization of legal entities is not a way to create legal entities. Although a new legal entity is created when a legal entity is reorganized, this situation always leads to the liquidation of one legal entity and is considered as a primary condition in the reorganization process. Although reorganization serves as a specific legal fact for the formation of a new legal entity, it is not considered as a method of formation of a legal entity, because the term formation of a legal entity applies to the formation of new entities [7].

Concerning the essence and content of the concept of annulment of legal entities, it can be concluded that the term “annulment” has a legal meaning, the implementation of which has a certain legal effect, a specific type of legal fact that affects the determination of the status of civil law. After all, as a legal fact, “annulment” is carried out by actions permitted by law, and always leads to the annulment of civil rights and duties (in other words, subjectivity).

In our opinion, the term “reorganization of corporate law” is both a theoretical concept and a practical one. In this regard, it would be expedient to include in the Civil Code and civil legislation the term “reorganization of corporate law” and an article of the same name in the Civil Code.

The above considerations determine that the reorganization and liquidation of a legal entity is specific to a single legal institution and that they regulate the relationship in which they are closely related.

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