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BASIC APPROACHES TO THE REORGANIZATION OF A LEGAL ENTITY IN THE SCIENCE OF LEGISLATION AND CIVIL LAW

Omirbaeva Aygul Kengesbayovna
A 2nd-year student in the field of Jurisprudence at the
Faculty of Agricultural Mechanization and Water Management of the
Karakalpak Institute of Agriculture and Agrotechnologies.

Abstract: This article presents the main views on the issue of reorganization of legal entities in the field of legislation and civil law, as well as the opinions of scholars on this matter. At the same time, the main theoretical ideas and examples on this issue are given.

Keywords: reorganization, legal entity, society, institution, code, legal framework, theory

The necessity of legal regulation of certain social relations, the emergence of new legal constructions in law aimed at ensuring the realization of the specific needs of society at the appropriate stage of its development is determined, first of all, by economic factors. "The economy is the primary subject of regulation, the primary cause of the emergence of law." The correctness of this statement can be seen in the example of the development of some provisions on legal entities. It is impossible not to agree with the conclusion that the very emergence of the institution of a legal entity is "related to the complexity of the social organization of society, the development of economic relations, and, as a result, the development of public consciousness." These are, first and foremost, the state, the state treasury, city communities, etc.

Their legal capacity is separated from the legal capacity of the persons belonging to them. At the same time, the term "legal entity" was not used at the very beginning[2]. The further theoretical and practical development of the institution of a legal entity was linked to the "expansion of underground commodity production in feudal society and the emergence of capitalism," but this institution gained its most active application from the mid-19th century, which was undoubtedly linked to the implementation of economic processes in society. In the 20th century, the importance of the institution of a legal entity increased as a result of infrastructure complexity and the internationalization of entrepreneurial activity, the expansion of state intervention in the economy, and the emergence of new information technologies[4].

The legal consolidation of certain organizational and legal forms of legal entities also depended on economic reasons. For example, the active creation of joint-stock companies was primarily associated with the development of capitalism, which required capital concentration and the attraction of large sums of money from third parties. K. Marx's famous statements best illustrate this situation. He argued that "the world would still be without railways if saving were to be expected to bring individual capitals to an amount that would allow for the construction of railways. On the contrary, centralization through joint-stock companies has done this in a single field."[5] The economic requirements of the society served as the basis for the legislative consolidation of the possibility of establishing such societies at this historical stage.

With the emergence of a social subject of law—a legal entity—the issue of the procedure for terminating its activities also arose. This procedure was constantly activated. At a certain stage of the historical development of society, the need arose to establish a new form of liquidation of a legal entity that allows for the provision of legal succession regarding the subject's rights and obligations. This situation was primarily caused by economic conditions.

The need for capital concentration served as the basis for the emergence of two forms of mergers (mergers and acquisitions in the modern sense). Capital concentration could be expressed not only through the creation of associations and the consolidation of founders' funds, but also through the merger of several existing entities or the merger of one entity into another.

Thus, we can agree with M.I. Kulagin's conclusion that "the reorganization of legal entities is one of the legal forms reflecting the process of centralization of production and capital in the economies of bourgeois states" [6]. He identified three forms of capital consolidation. In the first case, companies within a single sector of the economy merge (horizontal merger), while in the second, firms engaged in complementary activities merge (vertical merger). The third form of capital concentration is associated with the acquisition or merger of companies operating in completely different sectors of the economy. The emergence of this form was caused by the need to diversify the economic activities of large companies.

Subsequently, economic processes required the fragmentation of existing companies and the prevention of monopolies in certain sectors of the economy, which led to the emergence of splitting and separation, which are specific forms of reorganization. All the above circumstances served as the basis for the legal regulation of the process of reorganization of legal entities in regulatory documents.

The issue of reorganizing legal entities was first provided for in the Civil Code of the Uzbek SSR of 1964. This code established the procedure for the liquidation of legal entities in various forms and changes in their legal status, including reorganization (merger, division, spin-off, reorganization).

Thus, although the regulatory framework for the institution of reorganization appeared in 1964, it was independently and fully enshrined in the 1996 Civil Code.

The characteristics of reorganization are not reflected in the Labor Code of the Republic of Uzbekistan. Article 49 of the Civil Code of the Republic of Uzbekistan refers to only five forms of reorganization: merger, accession, division, spin-off, and transformation. Traditionally, in domestic legal literature, the concept of reorganization of a legal entity was defined earlier, and currently, the liquidation of a legal entity (sometimes occurring without the termination of work (services) and property) is determined by the transfer of its rights and obligations to another legal entity—a successor [7]. In this case, the concept of reorganization, along with liquidation, is considered one of the forms of liquidation of a legal entity.

It should be noted that in the legislation of our country and in the theory of civil law, the distinction between various forms of liquidation of legal entities was made gradually, as the need arose to understand their existence and the legal characteristics of each form. In the works of pre-revolutionary civilists, no boundary was drawn between the various forms of liquidation of legal entities depending on the resulting consequences. In almost all cases, liquidation is limited only to the liquidation of a legal entity.

Therefore, the need to develop a new definition of reorganization is currently relevant. To do this, it seems necessary to examine in detail some definitions existing in legal literature that differ from those traditionally used by civilists.

A number of authors define reorganization as a specific method of creating new legal entities and liquidating existing ones. In our view, such an approach appears to be the only correct approach to formulating the definition, primarily reflecting the processes occurring during the reorganization of legal entities. Later, we will show that such a conclusion is justified. The definition of reorganization proposed by V.A. Dozortsev deserves special attention.

He considered reorganization to be one of the forms of liquidation of legal entities, nevertheless, he emphasized that as a result of reorganization, not only the liquidation of legal entities, but also the emergence of legal succession of a legal entity, its legal entity changes to a certain extent.

Therefore, reorganization is understood as a change in the legal personality of a legal entity (including liquidation) resulting in the emergence of legal succession in another legal entity, where a universal set of all rights and obligations belonging to the legal entity arises rather than a singular one (some single rights and obligations) [8]. The works of A. Korovayko are devoted to studying the legal nature of reorganization, analyzing the concept and essence of the reorganization process, and revealing the characteristics of this legal phenomenon [9]. The problem of the legal nature of the institution of reorganization According to A. Korovayko, reorganization is a "legal fiction that mediates real economic processes."

The concept of "reorganization" is based on the transfer of property (or part thereof) from one person to another, and in general, even if the legislator did not come up with such a legal definition, this process can take the following form: the participants receive the property (assets) of the liquidated legal entity belonging to them and immediately transfer it in full to another legal entity.

In mergers, acquisitions, divisions, spin-offs, and transformations, it is not the founders (participants, members) or property of these legal entities that participate, but rather these subjects of civil law. Preparation for the creation of new legal entities as a result of reorganization or for joining (merger) an existing organization may take place in various sequences: first, the composition of the founders is determined, then the list of property to be transferred to the successor organization is established, and vice versa.

However, it is not these actions, but directly the processes of creation and (or) liquidation of legal entities that signify the essence of reorganization. If we explain reorganization as the transfer of property of a legal entity to another person, then it should be recognized that a legal entity is a specific property complex. Reorganization is understood as the transfer of participants from a reorganized legal entity to a newly created or existing organization, and in practice, the replacement of one legal entity by another occurs: instead of legal entities, it refers to their participants.

The issue of reorganization of legal entities requires different approaches from the perspective of legal theories. Below are the main legal and theoretical approaches applied to this institution:

1. The theory of legal succession - according to this theory, the reorganization of legal entities is carried out through the continuous transfer of rights and obligations to new subjects. The basic idea: even if the legal entity itself is liquidated, its legal "personality" continues. For example, new entities formed as a result of a merger or division continue their relations with the creditors of the previous legal entity.

2. The theory of the stability of subjective law - in this theoretical approach, even if legal entities are reorganized, the continuity of their economic and legal relations is preserved, that is, this process is considered as a change in the external form of the legal entity without change. This theory is particularly evident in the case of restructuring (transformation).

Theory of legal succession - according to this theory, the reorganization of a legal entity is not its liquidation, but the process of ensuring legal succession through the full or partial transfer of its rights and obligations to another legal entity (s). That is, reorganized legal entities continue all legal relations of the previous entity.

As a fundamental principle, legal succession is considered continuous and mandatory.

Reorganized organizations fulfill obligations to creditors and debtors of the previous entity on the same terms. As stipulated in the Civil Code, the distribution balance is drawn up on the basis of succession. Let's take a practical example: LLCs A and B are merged, forming a new "AB LLC." All contractual obligations of A and B pass to "AB" LLC. This was done on the basis of succession.

Regarding the theory of the stability of subjective law, according to this theory, the reorganization of a legal entity is not the termination of its existence as a subject of law, but only a change in its organizational form or structural composition. The subjective rights and responsibilities of a legal entity shall be preserved in their original form.

Regarding the specifics, this is particularly evident in the form of reorganization (transformation) (for example, when an LLC is transformed into an JSC). In this case, the legal entity is not liquidated, but only continues to operate in a new organizational and legal format. In such cases, a distribution balance is not required because succession occurs, not succession. This approach ensures that the legal "personality" of the legal entity remains unchanged

This approach is also found in European civil law doctrines. As a practical example, Nur-Savdo LLC will continue its activities by transforming into a joint-stock company. It continues to have all rights and obligations—this is the stability of subjective law.

In conclusion, the purpose of this article is to substantiate the theoretical and practical foundations of the institution of reorganization of legal entities, to study the process of development of legislative norms related to this institution, as well as to highlight the main approaches formed in the science of civil law. Analysis shows that the reorganization of legal entities is a complex legal process that includes such important issues as a legal phenomenon affecting only the internal structure of economic entities, the transfer of legal succession obligations, and the protection of creditors' interests.

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