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THEORETICAL AND PRACTICAL PROBLEMS OF VOLUNTARY REORGANIZATION OF SUBJECTS OF CORPORATE LAW

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Abstract. *This article presents a comprehensive analysis of the theoretical and practical issues involved in the voluntary reorganization of corporate entities. The study covers the legal nature of reorganization forms (mergers, acquisitions, divisions, spinoffs, and transformations), the procedures for their implementation, and legislative gaps in this area. Guarantees for the reliable protection of the rights and legitimate interests of creditors, shareholders (participants), and investors during the reorganization process are also examined. The article concludes with scientific and practical proposals and recommendations for improving corporate legislation and eliminating practical inconsistencies.*

Keywords: reorganization, addition, division, separation, legal entity, transfer act, division balance

KORPORATIV HUQUQ SUBYEKTLARINI IXTIYORIY USULDA QAYTA TASHKIL ETISHNING NAZARIY VA AMALIY MUAMMOLARI

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Ma'muriy va moliya huquqi sho'basi o'qituvchisi

Annotatsiya. *Ushbu maqolada korporativ huquq subyektlarini ixtiyoriy usulda qayta tashkil etish jarayonining nazariy va amaliy muammolari atroflicha tahlil qilindi. Tadqiqotda qayta tashkil etish shakllari (qo'shib yuborish, qo'shib olish, bo'lish, ajratib chiqarish va qayta tuzish)ning huquqiy tabiati, ularni amalga oshirish tartibi hamda sohada mavjud bo'lgan qonunchilikdagi bo'shliqlar yoritildi. Shuningdek, ixtiyoriy qayta tashkil etish bosqichida kreditorlar, aksiyadorlar (ishtirokchilar) va investorlarning huquq hamda qonuniy manfaatlarini ishonchli himoya qilish kafolatlari ko'rib chiqildi. Maqola yakunida korporativ qonunchilikni takomillashtirish va amaliyotdagi ziddiyatlarni bartaraf etishga qaratilgan ilmiy-amaliy taklif hamda tavsiyalar ilgari surildi.*

Kalit so'zlar: qayta tashkil etish, qo'shib yuborish, ajratish, ajratib chiqarish, yuridik shaxs, topshirish dalolatnomasi, ajratish balansi

ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ ПРОБЛЕМЫ ДОБРОВОЛЬНОЙ РЕОРГАНИЗАЦИИ СУБЪЕКТОВ КОРПОРАТИВНОГО ПРАВА

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Аннотация. В статье проводится комплексный анализ теоретических и практических проблем добровольной реорганизации субъектов корпоративного права. Исследуются правовая природа форм реорганизации (слияние, присоединение, разделение, выделение и преобразование), порядок их осуществления, а также существующие пробелы законодательного регулирования в данной сфере. Особое внимание уделяется гарантиям надлежащей защиты прав и законных интересов кредиторов, акционеров (участников) и инвесторов в процессе реорганизации. По результатам исследования сформулированы научно-практические предложения и рекомендации, направленные на совершенствование корпоративного законодательства и устранение противоречий, возникающих в правоприменительной практике.

Ключевые слова: реорганизация, присоединение, разделение, выделение, юридическое лицо, передаточный акт, разделительный баланс

Introduction

While legal entities can be liquidated both voluntarily and involuntarily, voluntary liquidation occurs without a court decision. In this case, the liquidation is not adjudicated in court, but is carried out through an agreement with government agencies and certain formalization actions at the request of the legal entity's founders or the authorized body that decided to liquidate it.

The Civil Code, while clarifying cases of extrajudicial (voluntary) liquidation of legal entities, relegates the procedure for voluntary liquidation to the legislative acts regulating the activities of each legal entity.

In the case of voluntary liquidation of a legal entity, the liquidation process typically begins with a decision by the owners, founders, or the legal entity's body to reorganize or liquidate. For example, the liquidation process for joint-stock companies begins with the adoption of a corresponding resolution at a general meeting of the company, since liquidation should not entail adverse consequences for creditors (Rakhmankulov & Gulyamov, 2004).

The procedure for making a decision on reorganization varies depending on the type of legal entity. Moreover, the decision on reorganization is made by different persons depending on the type of reorganization. In addition to the general meeting being the body authorized to conduct the reorganization according to the company's charter, founders in companies have more votes when joining the company after its incorporation and at the general meeting. In this regard, the decision of the general meeting, in other words, is the free will of the founders.

Main part

A. Shukrullaev emphasizes the need to pay special attention to the parties involved in the reorganization of a legal entity. In his opinion, there is a unified legal process regulating two types of organizational reorganization: "internal" (division or separation), which applies only to the founders of the reorganized organization, and "external" (merger, acquisition, and transformation), which determines the relations of the reorganized organization with other entities. Such legal regulation can be expressed in the form of "obligatory-legal relations

of legal entities,” describing the legal status of entities participating in reorganization (Otakhanov, 2003).

Naturally, legal relations between the parties involved in the reorganization of a legal entity become binding after the decision to reorganize, and a party to the reorganization has no right to unilaterally renounce such relations. Only after the reorganization is completed—provided there are no outstanding claims—does a party terminate its relations with the other participating entities.

After the decision is made, the founders or authorized bodies of the legal entity perform the actions established by law. The procedure for voluntary liquidation differs from that of reorganization. Therefore, we will first consider the procedure for the voluntary reorganization of a legal entity.

After the decision to reorganize a legal entity is made, the founders or governing bodies notify known creditors in writing. The Civil Code does not stipulate the exact start and end dates of the notification period during reorganization. Such periods are determined by the statutory activities of each legal entity and are specified in the special legislation governing them. For example, in accordance with Article 92, Part 6 of the Law “On Joint-Stock Companies and Guarantees of Shareholders’ Rights,” a company is obliged to notify its creditors in writing no later than thirty days after the decision on reorganization is made.

Responsibility for notifying creditors rests directly with the entity making the decision, as the Civil Code does not establish explicit rules regarding the procedure for notifying creditors. These rules are also established in special legislative acts. Article 60 of the Law “On Limited and Additional Liability Companies” stipulates that a company is obligated to notify all known creditors in writing from the date of the decision to reorganize. In the case of reorganization through merger or acquisition, notification must occur no later than thirty days from the date of the decision by the last company participating in the merger or acquisition, along with publishing a notice in the media. In this case, the company’s creditors have the right to demand in writing the early termination or fulfillment of the company’s relevant obligations and compensation for damages within thirty days from the date of receiving the notice or within thirty days from the publication date.

After the reorganization decision is announced, creditors have the right to demand the cancellation or early fulfillment of obligations that led to the legal entity’s insolvency, as well as compensation for damages. The law establishes specific time limits for such creditor claims.

The next step in corporate reorganization is the preparation of a distribution balance sheet or a transfer document. One of these two documents is prepared depending on the form of reorganization. A transfer document is prepared during a merger, acquisition, or transformation, while a distribution balance sheet is prepared during a division or spin-off.

Civil law establishes general provisions regarding the transfer document, but does not specify detailed rules for its preparation or the precise information it must contain.

The procedure for transferring assets during reorganization is similar to the procedure for transferring a business during its sale. When the ownership of a business changes—whether as a legal entity or as a property complex—a transfer deed is drawn up. The importance of a transfer deed when executing a business sale agreement is that, from the moment the buyer signs it, the business is considered transferred, and from that moment, the risk of accidental loss of property passes from the seller to the buyer (Rakhmankulov & Zokirov, 1999).

In this regard, I.V. Eliseev expresses a positive opinion. In his view, an enterprise is a complex asset system consisting of numerous elements. It is not always possible to actually

transfer these elements to the buyer's ownership physically, nor is it possible to transfer all assets at once. Therefore, the law establishes a special procedure, which is considered a symbolic way of transferring assets (Sergeev et al., 1997).

Indeed, a merger agreement is also a type of civil law contract. The existence of this category of contract is still widely discussed in legal literature.

In this case, the procedure for merging legal entities varies depending on each entity's legal status, capacity, charter, and regulations. However, the Civil Code establishes one general rule regarding mergers—the rule of universal succession. According to this rule, when legal entities merge, the rights and obligations of each are transferred to the newly created legal entity in accordance with the transfer document.

Another method of restructuring (sometimes categorized alongside liquidation processes) is acquisition. Although the Civil Code does not fully define the concept, acquisition has been analyzed in legal literature. According to some scholars, an acquisition is a special case of consolidation in which one legal entity merges into another. In this case, while the acquired entity is dissolved, the acquiring entity maintains its existence and merely expands its scope or changes its activities (Tumakov, 2009).

Some experts emphasize that reorganization may be carried out by relevant government agencies for the purpose of limiting monopolistic activity (Gutnikov, 2014). J. Yuldashev (2004) argues that entities making the decision to merge or consolidate must seek prior consent from the antimonopoly authority. In addition, each participating economic entity must provide information on its primary activities, product market share, and consent to participate.

The division of corporate entities, like other methods of reorganization, may be carried out by founders as stipulated in constituent documents, or by government agencies and courts in cases provided by law.

Generally, no special grounds for division are required by statute. Divisions are often carried out to expand activities, optimize tax structures, or divide assets among participants and founders.

H. Rakhmankulov (1997) stated that civil legislation grants courts broad powers in resolving this issue. For example, if a legal entity is not reorganized within a specified judicial period, the court appoints an administrator upon request of a competent authority and instructs them to execute the division.

According to some scholars, an acquisition involves joining an entity to an existing enterprise, whereupon the independent existence of the acquired enterprise ceases (Mitus, 2010).

I. Zakirov (2009) stated that upon acquisition, the rights and obligations of the merged entity are transferred to the acquiring entity, and the former ceases its independent legal existence.

According to A. Shukrullaev (1999), this form of reorganization represents the absorption of one or several legal entities by another through full transfer of rights and obligations.

According to S.S. Gulyamov (2004), during an acquisition, one legal entity maintains its existence while absorbing another that ceases its operations, requiring formal amendment registration with relevant authorities.

Analyzing this issue, N. Imomov (2017) notes: "The creation of a legal entity is a method of placing property under a separate legal regime, through which a citizen or entity can divide assets into several parts and participate in civil transactions through various organizational forms."

Rules regarding division during reorganization are detailed in special acts such as the Law “On Joint-Stock Companies and Protection of Shareholders’ Rights” and the Law “On Limited and Additional Liability Companies.”

When reorganizing legal entities, a transfer document or a distribution balance sheet must always be prepared. Although each organizational form has specific procedural rules, the Civil Code establishes overarching principles for both. A distribution balance sheet is prepared in cases of division and spin-off, while a transfer document is prepared in cases of merger, acquisition, or transformation.

According to S. Gulyamov, the following sequential stages apply to reorganization by merger:

1. Concluding a merger agreement between participating parties;
2. Approving the decision to reorganize, the merger agreement, and the transfer document at general meetings of shareholders for each participating company;
3. Approving the charter of the newly formed company and electing its supervisory board at a joint general meeting;
4. Registering the combined securities issue and submitting a final issuance report (Rakhmankulov & Gulyamov, 2004).

In accordance with this view, the transfer document is prepared by the founders or governing body of the reorganized legal entity and approved by them prior to submission.

In our opinion, the transfer document should contain a comprehensive inventory of assets, liabilities, creditor details, active agreements, accounting records, employment documentation, and internal resolutions, explicitly clarifying legal succession. Legal succession is thereby settled by agreement between the reorganizing entities.

In the event of division or spin-off, the rights and obligations of the reorganized legal entity are distributed among newly formed entities. The formalizing instrument for this division remains the distribution balance sheet (Bratus, 1984).

Conclusion

In conclusion, the distribution balance sheet and the transfer document perform an essential role in ensuring legal succession during the reorganization of a legal entity. Both documents determine the transfer of the reorganized entity’s rights and obligations, including obligations that may be disputed, and establish which successor entity assumes responsibility toward particular creditors and debtors. Their approval by the founders, participants, or the competent body that adopted the decision on reorganization confirms their formal legal significance within the reorganization procedure.

The distribution balance sheet is particularly important in cases of division and spin-off. In the event of division, the rights and obligations of the reorganized legal entity are transferred to the newly created legal entities, whereas in the case of a spin-off, the relevant rights and obligations are allocated to each newly formed entity. Thus, the distribution balance sheet provides the legal basis for identifying the scope of succession applicable to each successor entity and for determining the continuation of existing legal relationships after reorganization.

The transfer document and distribution balance sheet also have procedural importance, since they must be submitted together with the constituent documents for the state registration of newly established legal entities or for the registration of amendments to the constituent documents of existing entities. Accordingly, the formalization of legal succession is closely connected with the state registration procedure.

The moment at which reorganization is considered completed likewise depends on its particular form. As a general rule, except in cases of reorganization through acquisition, a legal entity is regarded as reorganized from the moment of state registration of the newly created legal entities. Where a legal entity is merged into another legal entity, the reorganization is considered completed from the moment an entry concerning the termination of the merged entity's activities is made in the Unified State Register of Legal Entities.

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