EURASIAN JOURNAL OF ACADEMIC RESEARCH
Innovative Academy Research Support Center
UIF = 8.1 | SJIF = 5.685 www.in-academy.uz

FEATURES OF IMPROVING THE REORGANIZATION OF CORPORATE LAW ENTITIES IN THE REPUBLIC OF UZBEKISTAN

Rakhmonov Otabek
Lecturer of Administrative and Financial Law Department,
Tashkent State University of Law E-mail: otabekrakhmon@tsul.uz
https://www.doi.org/10.37547/ejar-v03-i02-p4-163

ARTICLE INFO

Received: 17th February 2023
Accepted: 26th February 2023
Online: 27th February 2023

KEY WORDS

Reorganization, concept of reorganization, liquidation of legal entities, legal entity, merger, division, separation, consolidation.

ABSTRACT

In the article the author with a scientific analysis reveals the concept of reorganization of corporate law subjects, its specific features. In the article, the legal regulation of relations related to the reorganization and cancellation of corporate law subjects is analyzed scientifically, theoretically, and practically based on the national legislation of the Republic of Uzbekistan.

Also, in this article, taking into account the specific aspects of the reorganization of corporate law subjects and based on the above factors, the forms of reorganization of corporate law subjects and their activity are analyzed.

The nature of the reforms carried out in the Republic of Uzbekistan implies a transition from the model of planned management that has existed for many years to free market relations based on equality of ownership forms, free movement of goods, works and services, initiative of participants in economic relations. New economic conditions have paved the way for the legislator to change the legal modification of the institution of legal entities. Along with the problems of regulating the economic activities of legal entities, effective enforcement of property rights, their property liability, legal regulation of the reorganization of legal entities has become an urgent and necessary economic turnover today.

Law enforcement practice and legal research of scientists show that today the process of reorganization of legal entities has a number of legal loopholes and practical incidents in accordance with the current legislation [1], as well as problems related to unregulated aspects of the fact of reorganization and contradictions in legislation. These circumstances do not allow the reorganization of legal entities exclusively by civil law means and require that the reorganized legal entity coordinate its actions on reorganization with the Ministry of Justice, authorities, tax Committee, antimonopoly authorities, etc. This, in turn, may lead to the fact that both the mandatory stages of reorganization and the stages not regulated by law will be applied during the initial informal settlement. It is noted in the legal literature that such informal transactions are carried out in order to eliminate various administrative barriers in the process of reorganization (for example, refusal to register an additional issue of shares of the reorganized company in the form of accession) [2].

In law enforcement practice during the reorganization of legal entities, however, there are cases when the same norm is interpreted differently by the law enforcement body, the reorganized legal entity and the economic court [3].

It is in the “modern format” that the institute of reorganization of legal entities can be recognized as a relatively new institution of civil law of the Republic of Uzbekistan. Prior to the adoption of the new Civil Code of the Republic of Uzbekistan [4] (hereinafter - the Civil Code), there was no differentiated (differentiated) regulation of the reorganization and liquidation of the activities of legal entities. the legislative norms provided that the reorganized legal entities did not ensure the protection of all creditors' rights and expressed only the absolute predominance of the interests of state bodies. It should be noted that even at the current stage, the legislation on the reorganization of legal entities cannot be considered sufficiently improved.

The law enforcement and judicial practice of a number of CIS states, the foundations of whose legislative system stem from codified model documents close to the legislation of the Republic of Uzbekistan, shows that the legal regulation of mandatory reorganization of legal entities is considered insufficient due to the following circumstances: the absence of a clear list of objects of succession, the procedure for registration of succession, simultaneous reorganization. the possibility of using several methods, determining the composition of the founders of a newly formed legal entity, the possibility of recognizing the reorganization as invalid, etc. In the conditions of reorganization, there are frequent cases of unacceptable regulation of creditors' rights by legislation [5], determination of guarantees against the state that is their tax creditor, which leads to bankruptcy of the reorganized legal entities.

As a general rule, compulsory reorganization will consist of actions aimed at developing competition by dividing an economic entity – a legal entity that occupies a dominant position and constantly carries out monopolistic activities, in accordance with the situation established by the antimonopoly authorities [6].

The acquisition of a new content and meaning of civil law relations in a market economy, the emergence of ways to implement the rights and obligations of civil law subjects that meet the requirements of a market economy, and the formation of a new legislative framework for regulating contractual relations between citizens and legal entities have led to the improvement and development of a number of civil law institutions based on new rules. In the legal regulation of new relations arising in economic life, the institute of “reorganization of subjects of corporate law” is of great importance, as well as other institutions of civil law.

Directly through this institution, the certainty in the civil turnover between the subjects is determined, the necessary situation in the institutions of property and obligation law in the relationship of the participants in the civil relationship is the moment of the beginning of the action, the exercise of subjective rights, the terms of the relationship between the debtor and the creditor, the moment of the claim of their right, the time of the end of the subjectivity of the right.

Having conducted a scientific and theoretical analysis of legislative acts regulating relations related to the liquidation of legal entities, the author considers it necessary to adopt the Law of the Republic of Uzbekistan “On Reorganization and liquidation of corporate law entities”, based on the disparity of legislation in this area.

In our opinion, this Law prescribes the concept of reorganization of legal entities, methods of reorganization, reorganization process and rules for its implementation, distribution balance and transfer act, creditors' rights and their guarantees, protection of creditors' interests, succession, grounds for liquidation of legal entities, procedure, decision on liquidation, liquidation commission and other regulatory legal acts. its activities, the procedure for satisfying creditors' claims, the interim liquidation balance sheet and the liquidation balance sheet, issues such as satisfaction of the creditor's claims in the liquidation of a legal entity, should find their expression.

Legal entities demand to pay attention to a number of aspects and features when applying two types of invalidity in practice. When reorganizing legal entities, the following circumstances will be important:

a) two or more legal entities participate in all methods of reorganization, and as a result of such participation, one of them is liquidated;

b) the rights and obligations of the liquidated entity are transferred to another entity in the relations of reorganization on the basis of universal succession;

c) all claims for the obligations of a legal entity liquidated as a result of reorganization are made to its legal successor. In this case, the legal successor does not have the right to refuse to fulfill the obligation. If the liquidation is carried out by referral as a single legal entity, then who will be the legal successor should be determined by an appropriate agreement or decision of the owner.

g) reorganization is always important as a mutual and pre-trial method of cancellation. Reorganization (merger, acquisition, division, separation, modification) of a legal entity may be carried out in accordance with the decision of its founders (participants) or the body of the legal entity represented in the constituent documents, respectively.

Having dwelt on the essence and content of the concept of invalidity of legal entities, it can be concluded that the term “invalidity” is a special kind of legal fact having a legal content, the implementation of which generates a certain legal outcome, influences the establishment of the status of a subject of civil law. After all, “annulment”, like a legal fact, is carried out through actions permitted by law, and always leads to the annulment of civil rights and obligations (in other words, subjectivity).

It should be noted that when a legal entity is liquidated through reorganization, the issue of succession is not always resolved. Regardless of which form of reorganization is applied, a new legal entity arises or the legal status of a legal entity changes. At the same time, reorganization, unlike the liquidation of legal entities, is always a method carried out for the purpose of effective use of property owned by the founder or owner, the development of their own commercial activities. The fact that in a market economy legal entities are allowed to improve their activities through reorganization is one of the fundamental principles of civil law based on dispositivity, freedom and initiative.

References:

1. Gulyamov S.S. Some problems of regulation of the processes of reorganization of joint-stock companies in Uzbekistan // Review of legislation of Uzbekistan. - 2004. - No. 4. – pp. 13-16.; Kudryavtseva E.I. Problems of succession in the reorganization of a legal entity and the

need to adopt the Law "On the reorganization of legal entities" // Review of legislation of Uzbekistan. - 2004. - No. 4. – pp.16-19. and others.
2. Bakulina E.V. Improvement of legal regulation of reorganization of business companies: Abstract. diss. ...Candidate of Legal Sciences. – M., 2004. – p.3.
3. Only during the period from 2006 to 2008, the Supreme Economic Court of the Republic of Uzbekistan canceled more than 300 decisions of lower courts on the reorganization of business entities in violation of the norms of bankruptcy legislation. http://www.economical-court.uz.
4. Shukurullaev A. Legal bases of reorganization of agricultural enterprises // economy and law.- 1999.-No. 6.- B. 46-48.; The same. The concept of reorganization of a legal entity and ways of its implementation // economy and law. – 2001. – No. 5. – B. 43-48.
5. Tarasov I.T. The doctrine of joint–stock companies. – M.: Statute, 2000. - 34-36.; Sultonova T.I. Abuse by economic entities of a dominant position in the commodity market in the Republic of Tajikistan: issues of theory and legislation: Abstract.diss...candidate of Legal Sciences. – Bishkek, 2007. – p.18.
6. Barinov N.A., Kozlova M.Yu. Forced reorganization of legal entities under antimonopoly legislation // Laws of Russia (Experience. Analysis. Practice.). – 2006. - № 3. – P. 16.