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ENSURING CREDITOR INTERESTS IN THE REORGANIZATION OF COMMERCIAL LEGAL ENTITIES

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Abstract

This article examines the legal mechanisms aimed at ensuring creditor interests in the process of reorganization of commercial legal entities. Corporate reorganization — including mergers, acquisitions, divisions, transformations, and spin-offs — often entails the transfer of assets, liabilities, and contractual obligations, thereby directly affecting the legal position of creditors. The study analyzes the doctrinal foundations and statutory guarantees designed to protect creditors against the risk of asset dissipation, fraudulent conveyance, and improper succession of obligations.

Particular attention is given to mandatory notification requirements, the right to demand early performance or termination of obligations, security mechanisms, subsidiary and joint liability, and judicial remedies available to creditors. The article also evaluates the principle of universal succession and its implications for the continuity of liabilities in corporate restructuring. Comparative legal approaches and international best practices are considered to identify existing gaps and propose measures to strengthen creditor protection within the corporate reorganization framework.

The research concludes that effective protection of creditor interests requires a balanced regulatory model that harmonizes freedom of entrepreneurial activity with safeguards against abuse of corporate form, ensuring legal certainty, transparency, and fairness in reorganization procedures..

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Keywords: Creditor protection, corporate reorganization, commercial legal entities, universal succession, subsidiary liability, joint liability, asset transfer, early performance of obligations, security of claims, corporate restructuring, legal safeguards, judicial protection, notification requirement, protection of legitimate interests.

Introduction

A legal entity is an entity operating on the basis of separate property and liable for its obligations with respect to that property. Consequently, the purpose of creating a legal entity is to make the founder liable for obligations only within the limits of that property. Of course, the goals of creating a legal entity may vary (generating greater income by pooling capital, achieving economic efficiency by concentrating labor, etc.). However, from a legal perspective, the very act of creating another legal entity is considered a means of covering its personal liability. This means protecting against possible negative consequences in the future by participating in legal relations not directly in one's own name, but under a fictitious name. In this case, liability for any potential liability will lie not with the founder themselves, but with the fictitious entity they created.
Analyzing this issue, N. Imomov makes the following remarks: “The creation of a legal entity is a way of transferring property into a separate regime, through which, for example, a citizen can divide all of his property into several parts and participate in civil transactions using various forms” [1].
According to H. Rakhmonkulov, a legal entity is not a person; it does not possess a body typical of a human being, but, despite this, it is properly recognized as a person, artificially equated with “natural persons,” who are subjects of civil law and possess this quality, thereby providing it with the opportunity to participate in legal relations [2].
In accordance with these provisions, it should be noted that the rights acquired and accepted by a legal entity during its participation in legal relations have legal consequences not for the founders and participants, but directly for the entity itself. Therefore, during its reorganization, the question of the fate of the legal entity's obligations arises.

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The association of people into specific communities and actions on behalf of these communities has its roots in the history of civilized nations. In ancient Rome, there were religious associations (solidates et collegia) and professional associations of artisans (fabrorum et pistorum), which could conclude various civil-law agreements and contracts in their own names. The laws of the Twelfth Table also stipulate that such associations, communities, and communities, as legal entities, must have their own charter or regulations in accordance with Roman law [3].

H. Rakhmankulov stated that the new code gives the court broad powers in resolving this issue. For example, if a legal entity is not reorganized within the specified period, the court appoints an administrator of the legal entity at the request of the competent authority, and instructs him to perform this task [4].

In this case, the decision of the founders on the reorganization of the legal entity will be primary. After all, the consent obtained from the competent state bodies, during the reorganization of commercial legal entities is carried out after the decision of the founders. At the same time, the forced reorganization of legal entities is carried out mainly for the purpose of limiting monopolistic activity in the commodity market. After all, the state organizes mandatory reorganization in order to ensure social protection and the protection of the rights and interests of citizens. In this case, a "monopoly legal entity" is often chosen for division or allocation, thereby creating competition instead of a single, powerful and, most importantly, monopolistic organization in the relevant area and thereby acting in accordance with the interests of consumers. two or more legal entities are created. Consequently, the presence of monopolistic activity in the sphere of trade and services, even partially, causes great harm to the interests of consumers, the development of competition, which is the main condition for the existence of markets, direct supplies of goods to consumers. . artificially hinders its achievement [5].

The emergence of the institution of reorganization is linked to the development of civil law in Europe. Of the forms of reorganization known in modern civil law, mergers and acquisitions were historically the first to emerge. Consequently, these forms are inextricably linked, and some legislation considers acquisition to be a form of merger [6]. In German law, mergers were

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first regulated by the Commercial Code of 1861. This code provided for mergers as a form of amalgamation. Before the adoption of the Commercial Code in Prussia in 1897, several mergers of railway companies were carried out by royal decree. The Prussian Commercial Code of 1897 significantly expanded the scope of mergers, permitting their implementation with prior liquidation, and this document also defined the concept of merger for the first time in relation to the acquiring company, so that mergers in the context of this document are associated with an increase in share capital. Special sections of the Commercial Code of 1897 deal with the future existence of the acquired company if the proposed merger does not take place and the revocation of the decision to transfer assets. The Italian Commercial Code of 1865 does not contain any special provisions on the merger of joint-stock companies. The draft Code of 1872 introduced articles regulating the institution of mergers differently from the legislation of other countries at the time. These codes provide for both forms of merger: merger with a newly formed company and amalgamation. In the matter of mergers, the Commercial Codes of Romania, Portugal, San Salvador, Mexico, and Japan follow Italian law and provide for both forms of merger.

In England, mergers of joint-stock companies were first regulated by the 1862 Act, which granted companies the right to transfer all or part of their assets to another company for any consideration, specifically shares. Unlike continental law, the 1862 Act did not require a complete alienation of assets for mergers, did not exclude liquidation, and did not establish the principle of general succession. For the first time, the term "reorganization" was used in legislation as a transformation of a previous company by transferring the assets of a new company in exchange for shares. In addition to general laws governing joint-stock companies, mergers are also provided for by a number of special laws. In English practice, both forms of merger are valid: merger and merger with a newly formed company. In the United States in the 1860s, common law and individual state corporation laws applied to the mergers of public companies. However, common law only provides for a company's right to merge with another company in cases provided for in its charter or the relevant state law. The law distinguishes two forms of merger: merger with a start-up company and acquisition. In practice, merger with a start-up company is more common [7].

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In essence, an extradition agreement is one of the civil law contracts. The existence of contracts of this category can be found in legal literature even now. At the same time, the procedure for adding legal entities is different for each type of legal entity depending on the legal status, legal capacity and legal capacity of this legal entity, its general and specific features, charter and provisions. However, the Civil Code establishes one general rule for legal entities regarding acquisition - the rule of succession upon acquisition. According to it, when transferring legal entities, the rights and obligations of each of them are transferred to the newly created legal entity in accordance with the transfer document.

According to some scholars, a merger is the addition of another entity to the structure of an existing enterprise, in which the existence of the merged enterprise ceases [8].

I.B. Zakirov stated that when a legal entity is merged, its rights and obligations are transferred to the acquiring legal entity, and the merged legal entity ceases its independent activities [9].

According to A. Shukrullaev, the form of reorganization is the acquisition of one or several legal entities by another through the transfer of all rights and obligations [10].

According to S.S. Gulyamov, during a merger, one legal entity, while maintaining its existence, acquires another legal entity that has ceased its activities, and such a situation requires registration with the relevant authorities [11].

The division of corporate law entities, like other methods of reorganization, can be carried out by state bodies and courts in accordance with the decision of the founders or bodies of the legal entity, provided for by the constituent documents, or in cases provided for by legal documents.

Usually, no explanation is required as to why the "formation" occurs. However, the division of a legal entity is carried out for the purpose of expanding activities and avoiding large taxes, as well as as a result of the mutual distribution of assets of the legal entity by participants and founders.

Decree No. PF-4301 of the President of the Republic of Uzbekistan dated April 18, 2011, "On Measures to Ensure Compliance with Legislation on Farm

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Reorganization and Optimization of Their Land Areas", established that farm reorganization must be resolved in court through lawsuits filed by local authorities or other authorized bodies. It was determined that when filing lawsuits, farmers' contractual obligations should be analyzed and fulfilled on this basis. The following circumstances may serve as grounds for filing a lawsuit:

1) gross violation of the lease agreement, failure to use the leased land for its intended purpose;
2) violation of specialization, cultivation of crops other than those specified in the contract;
3) irrational use of arable land, yield below the cadastral value of the regular land area for three years;
4) improper fulfillment of contract terms for three years, delivery of products in quantities less than specified;
5) inefficiency of operations, low profitability, inability to carry out necessary calculations in a timely and regular manner.

The termination of a legal entity's activities is a legal fact with its own consequences. Termination of a legal entity as such means that it will no longer function. Inaction affects the rights and interests of many individuals. Although the decision to operate or not operate as a legal entity is made on the basis of the legal entity's free will and free will, it leads to a conflict of rights and interests between the founders, participants, and creditors of the legal entity. This conflict raises the question of the fate of the rights of interested parties and their future protection. In the two types of legal entity termination—reorganization and liquidation—this issue is resolved differently, depending on their legal consequences. While during liquidation, the rights and claims of creditors and other interested parties (participants, shareholders, partners) are directed toward the assets of the liquidated legal entity, during reorganization, their claims are directed directly toward the legal successor or the legal entity being reorganized until the reorganization is completed. Thus, assessing the impact of legal entity reorganization on civil obligations in effect prior to the reorganization and the legal assessment of the termination or continuation of civil obligations as a result

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of reorganization, if reorganization is a method of liquidating a legal entity, is considered one of the challenges of modern civilizing thought.

Liquidation of a legal entity affects the validity of its legal relations with creditors. This effect is also due to the fact that the debtor–a legal entity in a legally binding relationship with the creditor—is liquidated and replaced by another entity—the legal successor of the reorganized legal entity. This creates the risk of non-fulfillment of the creditor's rights and interests and the replacement of the debtor in the obligation without the creditor's consent. As a result of the reorganization, the creditor will have to continue economic relations with another entity instead of the entity with which it entered into an agreement and introduced it into civil circulation. Thus, liquidation simultaneously raises the issue of the exercise of the rights of a legal entity and, most importantly, the fulfillment of its obligations.

In conclusion, it should be noted that it is necessary to improve legislative documents on the reorganization of a legal entity based on the objectives set out in the Concept for Improving the Civil Legislation of the Republic of Uzbekistan, approved by Decree of the President of the Republic of Uzbekistan No. PF-5464 dated April 5, 2019, as well as the further development of the procedure and principles of reorganization, as well as guarantees for the protection of creditors' rights.

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