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Types and Forms of Corporate Reorganization

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Annotation: In this article, taking into account the specific aspects of corporate reorganization and based on the above factors, the forms of reorganization of corporate law subjects and their activity are analyzed. Also, in the article the author with a scientific analysis reveals the concept of reorganization of corporate law subjects, its specific features.

Key words: reorganization, merger, division, separation, consolidation, transfer, recapitalization, identity Change.

Relationships related to the creation and liquidation of legal entities of corporate law are of great importance in a market economy. The reorganization of these subjects always creates a unique vital relevance. Because the termination of one legal entity and the creation of a new legal entity in its place or the decision on the future fate of property have always been important for each state. After all, depending on how these relationships are regulated in the country, one can determine the economic development of the state.

Corporate reorganization is one of the main ways to recognize them as invalid. Reorganization is carried out in order to solve the problem associated with the correct organization of the activities of business entities [1].

Although most authors argue that reorganization is a way of liquidating corporate entities, some argue that not all methods of reorganization are considered liquidation of corporate entities.

Most companies choose corporate reorganization when their attempts at getting venture capital have failed to increase their value. Some of the forms of corporate reorganization include the following:

Type A: Mergers and Consolidations

Type B: Acquisition with the intent of subsidizing the target company

Type C: Acquisition with the intent to liquidate the target company

Type D: Transfer

Type E: Recapitalization

Type F: Identity Change

Type G: Transfer [2]

Here it is necessary to clarify whose will is of primary importance in the reorganization of a legal entity: the will of the founders and the body of the legal entity or the authorized state body and the court. According to B. Ibratov and N.Sh. Said-Gazieva, the desire of the founders of the legal entity comes first [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].

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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].

When a corporate legal entity is reorganized, its rights and obligations are transferred to another legal entity. The procedure for the transfer of rights and obligations, issues of succession differ depending on the methods of reorganization of the legal entity. As a general rule, reorganization is carried out by decision of the founders of the legal entity, or more precisely voluntarily. However, in relation to commercial organizations, legal documents also provide for mandatory reorganization. Part 2 of Article 49 of the Civil Code of the Republic of Uzbekistan (hereinafter referred to as the Civil Code) strengthens the rules of compulsory alienation, according to which, in cases established by law, the division of a legal entity or one or more of its components, its reorganization in the form of separation of several legal entities is carried out by decision of authorized state bodies or by a court decision.

If the founders (participants) of a legal entity, the body they represent, or the body authorized to reorganize the legal entity by its constituent documents fail to reorganize the legal entity within the time period established by the decision of the competent state body. The court appoints an administrator of the legal entity and instructs him to reorganize this legal entity. From the moment of appointment of the manager, the powers to manage the affairs of the legal entity are transferred to him. The administrator acts in court on behalf of the legal entity, draws up a distribution balance sheet and submits it for consideration by the court together with the constituent documents arising as a result of the reorganization of the legal entity. Approval of these documents by the court is the basis for state registration of newly created legal entities.

In cases established by law, the reorganization of legal entities in the form of merger, accession or change can be carried out only with the consent of the competent state bodies.

Based on the above circumstances, the liquidation of legal entities by reorganization is often applied voluntarily based on the requirements of the market economy. However, state bodies may carry out mandatory reorganization of commercial legal entities in cases stipulated by law, taking into account the interests of consumers.

When reorganizing entities of corporate law, a transfer document and a distribution balance are always drawn up. If a specific procedure and specific rules for reorganization are determined for each entity, the Civil Code determines the general rules regarding the transfer document and the distribution balance. In this case, if a distribution balance is drawn up during division and allocation, a transfer document is drawn up when adding, acquiring and changing.

According to S.S. Gulyamov, the following steps must be taken to carry out reorganization in the form of annexation:

1. Conclusion of a transfer agreement with the transfer participants;
2. At the general meeting of shareholders of each company participating in the merger, a decision must be made on reorganization in the form of a merger, approval of the merger agreement and the transfer deed;
3. Approve the charter of the new company and elect the supervisory board at a joint general meeting of shareholders of the company participating in the merger;

4. Report on the results of state registration of the issue of securities and the issue of securities being combined during the merger [6].

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 [4]. 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.

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.

The next method of liquidation of legal entities during reorganization is merger. Although the Civil Code does not define the concept of acquisition, the concept of "acquisition" has been analyzed in detail in legal literature, and most scholars express almost the same opinion about acquisition. According to some scholars, annexation is a special case of annexation, in which one legal entity joins another. In this case, if the second legal entity becomes invalid, the first will only expand the scope of its activities or change the type of activity, while maintaining its existence. This situation was definitely expressed in the order determined by the content of the legal capacity of this legal entity [7].

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.

In conclusion, it should be noted that civil legislation on the reorganization of corporate law entities establishes only general rules. At the same time, the general principles of reorganization of legal entities are expressed in laws concerning individual types of legal entities. This can cause many difficulties and different approaches when implementing reorganization, which is a very complex process, when fully implementing this process.

In this regard, it is necessary to develop legal documents that fully regulate all circumstances characteristic of the reorganization process and to adopt the Regulation "On corporate reorganization".

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