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SIGNS OF A LEGAL ENTITY AMONG CHANGES IN LEGISLATIVE STRUCTURES

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Abstract

The article outlines the author's approach to determining the signs of a legal entity. Under the signs of a legal entity the main features, inherent in the relevant organization, are understood. Their presence implies the possible recognition of the relevant organization as a legal entity and, as a result, the possibility of participation in civil circulation as a subject of law. Despite the fact that the category of signs of a legal entity is well-known in the theory of civil law, a change in civil law makes it possible to characterize their content in a new way. Moreover, the emergence of new organizational and legal forms of legal entities also affects the meaningful features of the signs. The relevance of the article is due to a change in legislative approaches to the definition of a legal entity, which could not but influence the content side of its signs. One should also take into account the recent absence of studies directly devoted to the signs of a legal entity.

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1. Introduction

A legal entity is an organization that has separate property and is responsible for it under its obligations, can acquire and exercise civil rights and bear civil obligations on its own behalf, be a plaintiff and defendant in court (paragraph 1 of article 48 of the Civil Code of the Russian Federation).

It should be noted that the corresponding wording has undergone changes in connection with the general reform of civil law. In this case, the relevant changes are associated with the adoption of Federal Law of May 5, 2014 No. 99-FZ “On Amending Chapter 4 of Part One of the Civil Code of the Russian Federation and on the Recognition of Certain Provisions of Legislative Acts of the Russian Federation” This law can be considered landmark in terms of the general legal regulation of the activities of legal entities. In particular, the approaches that were expressed in the legal doctrine at one time were fixed in it. So, the changes touched upon the issues of the legal entity’s appearance in civil circulation, the features of its liability for obligations, the specificity of its name, creation and termination, etc. (Ryzhenkov, 2015).

The changes made, in our opinion, are more consistent with the nature of the legal entity as a subject of civil law. This we will show in relation to the description of the signs of legal entities. In this case, the features of individual organizational and legal forms of legal entities will be taken into account.

2. Problem Statement

Traditionally, in the literature, on the basis of the analysis of legislative acts, four main signs of legal entities are distinguished.

The first sign is organizational unity. It assumes that the legal entity has an appropriate structure that allows it to appear in civil circulation as a single unified organization. The essence of this feature is also manifested in the fact that the will and interests of the founders (participants) of a legal entity are refracted into the will of a legal entity. This is achieved through the system of bodies of a legal entity, which form its will. Outside the legal entity its will is implemented by will-forming bodies (sole executive bodies, persons acting on behalf of the legal entity without a power of attorney).

3. Research Questions

The manifestation of this feature largely depends on the legal form of the legal entity. It is most pronounced in business companies, especially in such a variety as a joint-stock company.

Thus, the following elements are included in the content of the sign of organizational unity: will and expression of will; formal expression of internal unity in the constituent documents of a legal entity; bodies forming the internal structure of the organization; forms of individualization of a legal entity, which are its external manifestation (Sukhanov, 2005).

4. Purpose of the Study

The next sign of a legal entity is its property separation. Sometimes, characterizing this feature, they say that a legal entity has separate property. Moreover, the new definition of a legal entity directly

mentions this sign. Earlier, it was said that a legal entity can possess property on the basis of ownership, economic and operational management. Thus, only property rights were listed. In the literature on this issue, it was rightly noted that a particular legal entity may not have property at all on any proprietary right. E.g., the property base can be reduced only to a bank account and leased property (Sukhanov, 2005). In this regard, the previous definition of the legal entity was internally contradictory. At the same time, even now no one can deny that the property may belong to a legal entity on any proprietary right. That said, most legal entities are owners of property assigned to them. For organizations with the status of a legal entity, this sign is key in the practical dimension. It is the organization's presence of a property base that allows realizing the goals for which it was created. This is especially pronounced for legal entities that are engaged in entrepreneurial activity - commercial organizations. That is why the legislator, regulating the activities of commercial organizations, establishes certain requirements for their property component (Rubeko, 2016). Moreover, the detailing of the relevant requirements depends on the specific legal form of a commercial organization. The most detailed and stringent requirements for the formation of the property base are presented for joint-stock companies - especially public ones, as well as for unitary enterprises based on the right of economic management. At the same time, only general requirements are established for business partnerships with respect to this issue. It is assumed that their detailing is possible in the memorandum of association concluded by participants in business partnerships (Zbaratskaia, 2003). Differences in approaches seem correct and can be explained by differences in the legal nature of various commercial organizations. Joint-stock companies are organizations that are created for registration of capital. Moreover, as a rule, their participants are not in any relationship with each other, as well as with society itself. Therefore, it is important here to consolidate legal norms that would formalize relations related to contributions to the authorized capital, as well as other property funds. With respect to unitary enterprises, the existence of such norms can be explained by the legal status of their founders, which are public law entities. In this case, on the one hand we are talking about certain guarantees for creditors of such organizations, and, on the other hand, the need to protect the interests of public owners themselves from possible abuse in the formation of the property base of enterprises. On the contrary, business partnerships are associations of persons who bear subsidiary liability for the debts of the partnership itself. Therefore, in this case, there is no need to establish strict requirements for the formation of the property base of such organizations.

5. Research Methods

Separation of property of a legal entity is manifested in its delimitation from the property of other legal entities. This applies especially to such entities as founders (participants) of a legal entity. In relation to this situation, we can say that, as a rule, the founders do not have proprietary rights with respect to the property of the legal entity, and, conversely, the legal entity does not have any rights with respect to the property of the founders. In the literature, such isolation sometimes is characterized as an economic one (Krasavchikov, 1985), which seems not quite right. The use of such a term can create the illusion that the corresponding attribute has a non-legal nature.

6. Findings

Property separation has internal and external aspects. The first is manifested in the reflection of the property of a legal entity in the accounting balance. The external aspect is manifested in the opening of settlement and other accounts by a legal entity, the issuance of certificates for real estate, etc.

The third sign of a legal entity is independent property liability, which is directly related to property isolation. This is understandable, if the organization has property that is separate from other persons, then it must be accountable to them for its obligations. At the same time, given the presence of legal entities with different legal status, which implies different relationships between the legal entity and its founders (participants), the legislator differently sets the rules on their liability. For example, some legal forms of legal entities suggest the possibility of bringing founders (participants) to their additional (subsidiary) liability. Usually this is typical for those organizations in which participants are given more opportunities to influence their work. Such legal entities include, for example, business partnerships, unitary enterprises, institutions, etc.

This sign finds its highest manifestation in business companies. They have a rule that a legal entity is not responsible for the obligations of its participants, and vice versa, participants are not responsible for the obligations of the organization itself.

It should also be borne in mind that liability for the actions of a legal entity can be brought to its bodies. The relevant provisions and previously existing in relation to certain types of legal entities are now formulated as general. Thus, they apply to all legal entities, taking into account the peculiarities, established by special provisions (Krasavchikov, 1985).

And finally, another feature of a legal entity is its participation in civil circulation on its own behalf. Due to the fact that there are many legal entities, the need arises for their individualization in order to delimit them from each other in civil circulation. For this, the legislation provides for the need for legal entities to have a name (Article 54 of the Civil Code of the Russian Federation). For commercial organizations, the law provides for a company name. Given its possible commercial value, the relevant relations are regulated by legislation on intellectual activity (Chapter 76 of the Civil Code of the Russian Federation). The purpose of such regulation is to provide exclusive rights to a company name in order to prevent violation of the property interests of a commercial organization. As for non-profit organizations, their right to a name is not protected by intellectual property standards.

An important manifestation of this feature is the ability of a legal entity to act as a plaintiff and defendant in court. In the procedural aspect, this is manifested in the fact that it is the organization itself, and not its bodies or founders (participants), that are indicated in the statement of claim as plaintiffs or defendants.

7. Conclusion

Thus, the presence of all the signs makes it possible for the organization to act as an independent organizationally isolated subject of law. Due to the fact that the corresponding signs are not equally graphically manifested in various types of legal entities, some scholars talk about their conditionality, a certain incompleteness (Shchennikova, 2005).

At the same time, the following should be taken into account. Signs of the legal entity have a different legal nature and focus. And, if some are of a prerequisite (property separation) nature, others (organizational unity, independent responsibility) characterize the very nature of the legal entity, without which the very existence of such entities is difficult to imagine.

Russian civil law, however, like the laws of developed foreign countries, provides for a fairly large number of different legal forms. Such diversity is a consequence of the peculiarities of various legal relations that take shape within a legal entity between it and its participants, as well as between participants. In this regard, it should be noted that the content of signs in relation to certain types of legal entities can be different.

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