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The legal regime of the joint-stock companies property

This article is devoted to the peculiarities of the legal regime of the joint-stock companies property. Today, the joint-stock company is one of the most common legal forms of legal entity. At the present stage of the development of Kazakhstan's economy business is the main form of non-state legal entities, one of the most common legal forms which are joint-stock companies. This article gives a definition of the structure and composition of joint stock companies in the current legislation of Kazakhstan.

Key words: joint-stock, a legal entity authorized capital property.

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Акционерлік қоғамдардың мүлкінің құқықтық режимі

Бұл мақала акционерлік қоғамдардың мүлкінің құқықтық режимінің ерекшеліктеріне арналған. Бүгінгі таңда АҚ заңды тұлғаның ең кең тараған ұйымдастырушылық-құқықтық нысандарының бірі болып саналады. Осы кезеңдегі Қазақстан Республикасының экономикасының дамуында кәсіпкерліктің негізгі нысаны болып ең кең тараған ұйымдастырушылық-құқықтық нысандардың бірі ретіндегі АҚ болып саналатын мемлекеттік емес заңды тұлғалар табылады. Бұл мақалада Қазақстанның қазіргі кезеңдегі заңнамасы бойынша АҚ мүлкінің құрылымы мен құрамын анықтауға арналған сұрақтар қарастырылады.

Түйін сөздер: акционерлік қоғам, заңды тұлға, жарғылық капитал, мүлік.

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Правовой режим имущества акционерных обществ

Настоящая статья посвящена особенностям правового режима имущества акционерных обществ. На сегодняшний день АО является одной из самых распространенных организационно-правовых форм юридического лица. На современном этапе развития экономики Республики Казахстан основной формой предпринимательства являются негосударственные юридические лица, одной из наиболее распространенных организационно-правовых форм которых являются АО. В этой статье будут рассмотрены вопросы, посвященные определению структуры и состава имущества АО по современному законодательству Казахстана.

Ключевые слова: акционерное общество, юридическое лицо, уставный капитал, имущество.

THE LEGAL REGIME OF THE JOINT-STOCK COMPANIES PROPERTY

At the present stage of development of economy of the Republic of Kazakhstan the main form of entrepreneurship is private legal entities, one of the most common legal forms which are joint-stock companies.

Under the clause 1 of the article 6 of the Constitution of the Republic of Kazakhstan state and private properties are conformed on equal terms [1]. According to the article 191 of the Civil Code of the Republic of Kazakhstan the legal body to whom property is allowed under the right of ownership is non-governmental. The property, created by the sale of shares and other securities, as well as produced and acquired by the Company in the course of its activities, belongs to it by right of ownership. Therefore, JSC is a private entity, and its property is private.

All the property of the legal body is divided to several constituents (funds) under which it will be understood as similar groups by economic characteristics of the objects that have a common purpose and obey the established legal regime for each of these groups [2, c. 44].

This rule is valid to the property as well. The property of the joint-stock companies is a complex issue, so classification of its constituents can be made in a various way. The joint-stock companies property framework consists of the authorized joint stock, which is the main fund. The authorized capital is formed by contribution of the participants/shareholders (paying up for stocks).

According to S. Shitkina, the authorized capital of JSC performs several functions: interim, guarantee and affirmative. The authorized capital is the starting material basis for the legal entity, i.e. makes it possible to start economic activity.

The second function – guarantee that is the share capital is to defend the interests of JSC creditors. The third function – affirmative, that is the establishment of obligations relations between joint-stock company and its shareholders [3].

According to T. Kashanina and E. Sudarkov marking down the following functions of the authorized capital: a) start-up function; b) guarantee function; c) the function of determining the share of participation of each shareholder in the society [4]. It is necessary to disclose in details the last function. As it is known, the authorized capital summarizes from the selling of shares. The ratio of amounts of

prices of shares held by one person, to the amount of capital determines the amount and the position of the shareholder in the society [4, c. 60].

Going along with before-mentioned scientists, we can mark that this function is one of the main because the legal status in the society of the shareholder depends on the amount of shares owned.

Any authorized capital is formed through the sale of shares, respectively, it is not just their total nominal value, and divided into shares of equal value of the share. In this regard, we share the view of S. Mogilev, who believes that «the presence of the authorized capital divided into a certain number of shares – a constitutive feature of JSC» [5].

The essence of the JSC is seen in the fact that «to issue shares in order to attract capital,» [6], but now, in contrast to the old law of the authorized capital is not determined by the number of «authorized shares», but corresponds to the fact what company got in fact by contributions of shareholders.

There is a turning point in the direction of the prevailing principle in Europe solid authorized capital as property measures, at least, company creditors can rely on [7]. In this context, then it is necessary to mention that the minimum size of the authorized capital was significantly raised, namely 50 000 – fold amount of the official monthly calculation index, Article 10 of the JSC Law. According N. Maximova «increase in share capital is the main goal – to capitalize JSC and force them to raise capital through the issuance of shares in the free market» [8].

The real principle of making contribution of capital, this principle means that the «amount should really be at the disposal of company as specified authorized capital» [7, c. 47].

On this point we agree with A. Dzholdasbekov who writes: «the initial commitments of the shareholders are encumbered in the authorized capital. The law comes from the fact that before the founders of the company will have the right to involve other people's money as capital, they must first prove that they have their own money to generate the initial capital of the company. In the future, the concept of authorized capital does not make sense.

There are definitions «authorized shares», «issued shares», «share in the total number of issued shares» and «paid authorized capital, which is the arithmetic determination of the number of outstanding shares at the offering price. The main thing for the company is the number of authorized shares, i.e. the number of shares that the Company can make manipulations in order to attract further capital» [9].

The principle of capital preservation is closely linked to the principle of the authorized capital. In accordance with the purpose of protecting the interests of creditors of the company, payments to shareholders in excess of the amount received as a result of economic profit activities may be carried out only under certain preconditions.

Distributions to shareholders are prohibited at a negative amount of equity capital or if the amount of equity capital of the company will become negative because of the accrual of dividends on its shares. A similar problem arises in the capital preservation event of purchase of own shares by the company. The authors of the Law found that in a such situation, the rights of creditors may also be at risk, and therefore established in Articles 26, 28 of the JSC Law, the restriction tied to equity of the company. The same problem will be faced with a pledge of shares by the company [6]. However, in this paragraph the preservation of capital resolved even weaker. In addition, the question remains open, as the acquisition of own shares will be reflected on the balance sheet.

It should be noted that JSC Law, there is no provision for the establishment of reserves, whether it was referring to the lack of usability, or to give less importance to the protection of creditors, it is unknown. According to the opinion presented here, the duty of creating the reserve provisions for part of the profit up to the «filling» under the considered volume is a rational measure to strengthen the protection of creditors [10].

According to Art. 21 of the JSC Law in return for shares of the Company may be made by cash, property rights (including the right to intellectual property) and other assets. Payment for the shares by securities is allowed only if the value is determined on the organized securities market.

That is, as a contribution to the share capital (payment for shares) may be any transferable property, i.e. not only withdrawn from the civil circulation, but also alienated, including property rights, as «the main criterion for the admissibility of certain contributions in the authorized capital is their ability to increase the amount of the legal entity assets» [11].

Mostly payment of shares is carried out in cash. Under current law monetary unit and legal tender in the Republic of Kazakhstan is Tenge. However, the calculations are not prohibited in the foreign currency, terms and conditions are determined by the Law on currency regulation. This raises the question of whether the shares may be paid in

foreign currency, and what are the requirements in this case? It is also not clear how it will fix the minimum amount of authorized share capital, if it is all or partly generated in money. In the case of that payment is not made in cash shares, but in other property, so the assessment of such properties held by the appraiser at its current market price.

It is not clear by what criteria the final price is displayed. After all, in practice there may be situations when paying stocks can be made property with a high degree of physical or mental deterioration.

That is, at the time of evaluation, it has a cost, and at the time of the actual application is much

cheaper or devalued. Therefore, we believe that it is necessary in law to establish the period of validity of the property assessment, if the assessment and the actual application do not match.

As a result, it should be noted that the associate property has a complex composition and structure which, at first, have a different order of vesting, and secondly, a different order of the transactions, and, thirdly, the different functions in the protection of creditor rights.

In this regard, the improvement of the current legislation governing the activities of the JSC, it is necessary for the further successful economic development of our country's economy.

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