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**Enterprise as an object
of civil law**

In the paper considered the legal position of enterprise which is a special object of civil circulation. In the study conducted a legal analysis of the elements characterizing the enterprise. The term «enterprise» as an object of civil rights, was comparatively analyzed. Emphasized the practical problems associated with the enterprise as the property complex in the civil circulation. Concretized the content of the enterprise as the property complex, and considered proposals to improve these problems.

Key words: enterprise as the property complex, complex, enterprise relations.

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**Кәсіпорын азаматтық
құқықтың объектісі ретінде**

Мақалада азаматтық айналымның ерекше объектісі болып табылатын кәсіпорынның құқықтық жағдайы зерттелді. Зерттеу барысында кәсіпорынды сипаттаушы элементтерге құқықтық талдау жүргізілді. Азаматтық құқықтың объектісі ретінде «кәсіпорын» ұғымы салыстырмалы талданды. Азаматтық айналымдағы мүліктік кешен түріндегі кәсіпорынға байланысты тәжірибелік мәселелерге ерекше назар аударылды. Мүліктік кешен түріндегі кәсіпорынның құрамы нақтыланып, сондай-ақ, осы мәселелерді барынша жетілдіру үшін ұсыныстар қарастырылды.

Түйін сөздер: мүліктік кешен түріндегі кәсіпорын, кешен, кәсіпкерлік қатынастар.

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**Предприятие как объект
гражданских прав**

В статье изучено правовое положение предприятия, которое является особым объектом гражданского оборота. При изучении был проведен правовой анализ элементов, характеризующих предприятие. Понятие «предприятие» как объект гражданского права было сравнительно проанализировано. Подчеркивались практические проблемы, связанные с предприятием, как имущественным комплексом в гражданском обороте. Конкретизировалось содержание предприятия как имущественного комплекса, а также были рассмотрены предложения для совершенствования данных проблем.

Ключевые слова: предприятие как имущественный комплекс, комплекс, предпринимательские отношения.

ENTERPRISE AS AN OBJECT OF CIVIL LAW

Today the term «enterprise» is used in various acts of legislation. The basic rules governing the relations arising about the enterprise as an object of civil rights today are contained in the rules of article of law 119 of the Civil Code of the Republic of Kazakhstan. The Law of RK from 17.01.2002, «On the Merchant Shipping» to claim 26 of article of law 1 under the marine adventure now is property (ship, freight, cargo), by which the costs are recoverable in general average.

The Law of RK from 01.03.2011, «On State Property» also includes the definition of the enterprise [1]. We will compare, according to item 1 of article 119 of Civil Code of the Republic of Kazakhstan the enterprise as object of the rights, the property complex used for implementation of entrepreneurial activity. A bit different definition of the enterprise as object is fixed in the sub-section 1 of article 136 of the Law of RK, «About the State Property», according to which, «in the state-owned enterprise as a property complex includes all types of property intended for its activities, including buildings, equipment, inventory, raw materials, products, the right to land, the right to demand, debts, as well as the right to designate, individualize its activity (trade name, trademark), and other exclusive rights. «

The enterprise as legal category was designated and studied along with development of the economic relations, from the beginning of industrial «splash» from the second half of the nineteenth century, since those times and so far the enterprise as the phenomenon was considered ambiguously in domestic and foreign science. Views of jurists on the enterprise were shared on two main groups:

1) To the first group of authors are N.K. Klein, V.V. Chubarova, S.I. Klimkin and others, who consider that the company as a standalone economic independence, property separate participant, the subject of the enterprise relations; the enterprise is the legal entity entering independently the legal relations;

2) To the second group of authors are I.V. Amirkhanova, I.P. Greshnikov, R.A. Mametova, V.V. Vitryansky, etc. who consider that the enterprise, the isolated property complex means of extraction of the enterprise income, object of economic interests and the civil rights.

Today the term «enterprise» is applied in the legislation only to object, and in relation to designation of the legal entity this term is used as an exemption for state-owned enterprises.

The enterprise as a property complex cannot be attributed to any of the traditional types of objects of civil rights by virtue of its particular difficulty, the complexity and diversity of combinations of the constituent elements.

The enterprise as object of the right has essential differences from simple set of real estate objects even if all of them are together used in the enterprise sphere. The enterprise as a property complex has a number of qualification signs which are fixed standardly and (or) admit those literature. In particular, in compliance in the item 1 of article №119 of the Civil code of the Republic of Kazakhstan (further CC of the RK) the enterprise as the object of the right, admits the property complex used for implementation of business activity. The called line is a distinctive sign of the enterprise as object and distinguishes it in classification of objects of the civil rights.

Property complex is a set of things, and if he is not involved in the economic turnover, it cannot be considered now. The enterprise the property complex becomes only in that case when by means of its real and obligations contents and manifestation participation of the subject owner in a civil turn is carried out, the stable and definitely predicted income is taken, there are material benefits [2, p. 91-92].

Next, a feature of the enterprise as an object, we believe, is the possibility of defining it as a dynamic object. Dynamics of the enterprise as object is traced unlike other real estate objects on its use. Also as object points part of definition of the enterprise fixed by the Civil code of the Republic of Kazakhstan to dynamics of the enterprise – «... the property complex used for ...», and also the provided possibility of reference to structure of the enterprise – the rights of the requirement, debts. Thus, the enterprise actually is defined by the CC of RK as the operating, using dynamic object [3, p.23-27].

If the enterprise stops being acting, that is the criterion of dynamics is lost, it can be considered as other property complex or as real estate, but not as the enterprise.

Further emphasizing the originality of the enterprise as an object, the legislator used the term «property complex.» It testifies that all elements making property of the enterprise have to be integrated, closely connected among themselves, subordinated to the uniform purpose of use.

The term «complex» underlines internal unity of all property of the enterprise: «a complex (from Latin Complexus – communication, a combination) is a set of the subjects or phenomena making a single whole». A certain integrity, common elements of the property complex, thus, is one of the hallmarks of an enterprise as an object of civil rights [2, p.79].

Manifestation of legal coherence of things within large property educations – complexes as it is noted in literature, are objectively inevitable and are moreover predetermined by need of preservation of integrity of such complexes at inclusion of those in a civil turn as objects of the civil rights [4, p.355-370].

Definition of structure of a property complex, its borders is important not only for theoretical judgment, but also has important practical character as reference or not reference of this or that property (a thing or the right) to the enterprise directly influences features of a legal regime of this property.

Now by the existing civil legislation of the Republic of Kazakhstan (item 2 of article 119 of CC of the RK) all types of property intended for its activity including buildings, constructions, the equipment, stock, raw materials, production, the right of the requirement, debts, and also the rights for the designations individualizing its activity (a trade name, trademarks), and other exclusive rights if other isn't provided by acts or the contract are a part of the enterprise.

The text analyzed the norms of the Civil Code of Kazakhstan of its internal logic, construction, semantic emphasis involves the construction of a free and diverse elements of the property complex, the presence and the absence of some other, different combinations thereof. The specification of structure of the enterprise (quantitative and qualitative) is defined only by its actual contents and is production – economic appointment, object of activity and the place taken in system of the economic relations [2, p.98-99].

The enterprise in general as a property complex, according to the part №2 of item 1 of article №119 of CC of the RK, admits as the real estate. It seems that the determining factor in this is the presence in its composition of real estate. We, absolutely agree with opinion that «if concerning other property the alternative of its inclusion in structure of the enterprise is possible, concerning real estate obligatory inclusion, by its reference in general to real estate is legislatively actually provided» [5, p.203].

Article 119 of the Civil Code of RK gives the parties the possibility of varying the components that are included by the legislator of the property complex of the enterprise.

In the absence of the fixed structure of the enterprise as a property complex in practice there are situations when, without the presence of land (land rights) attempts to company registration.

For example: The company «Transtelekom» has on balance of the line of fiber-optical communication which have a dislocation both on the ground, and on the established land fastenings which don't admit real estate objects by the Kazakhstan legislation. In this connection, attempt to register the rights for the objects carriers having indissoluble communication

with the earth, not being real estate objects through registration of the enterprise as a property complex becomes. In our opinion, accurate definition of structure of the enterprise with maintaining as obligatory components (land and rights to land) and optional components – all other property is necessary.

Moreover, legislative determination of obligation of use of the enterprise in business activity (economic activity), i.e. the enterprise as operating, used, which is bringing in the income of object.

References

- 1 The law of the RK, of 01.03.2011 with amendments and additions. «About the state property»// Legal reference system Paragraf.
- 2 Stepanov S. A. Property complexes in the Russian Civil Law. – M.: Publishing house NORMA, 2002.
- 3 Amirkhanova I.V. Enterprise, entrepreneurial business as objects of civil rights // Vestnik KazGU. – 2000. – №2(15). – P. 23-27.
- 4 Lapach V.A. System objects of civil rights: theory and jurisprudence. – SPb.: «Law Press Center» Publishing House, 2002. – P. 355-370.
- 5 Amirkhanova I.V. Civil-law maintenance of development of entrepreneurship in the Republic of Kazakhstan. – Almaty, Kazak university, 2003.