

**LEGAL STATUS OF THE SUBJECTS OF ECONOMIC ACTIVITIES IN
UKRAINE**

Ostapenko Olena Gennadiivna

Yerofieienko Larysa Vasilivna

PhD in Law, Associate Professor

Simon Kuznets Kharkiv National University of Economics,

Kharkiv, Ukraine

Abstract: the legal status of the subjects of economic activities in Ukraine was analyzed according to Ukrainian legislation. The article deals the special status of the subjects of economic activities in the field of economic legal relations. The legislative acts of legal regulation of economic activity of the subjects of economic activities are analyzed.

Key words: subjects of economic activities, organizational and legal form of entrepreneurial activity, legal entities, economic entities, natural person – entrepreneur.

The notion of a subject of economic law is justified by the theory of economic law, which proceeds from the fact that the subjects of economic law are participants in economic relations. According to art. 2 Economic Code parties in the field of economic relations are: a) subjects of economic activities; b) consumers; c) bodies of state power and bodies of local self-government, with economic competence; d) citizens, public organizations and other organizations that act as founders of subjects of economic activities or carry out organizational and economic powers in relation to them on the basis of property relations. The largest and most important for economic activity is the group of subjects of economic law being subjects of economic activities.

The aim of this article is to analyze the legal status of the subjects of economic

activities in Ukraine, its organizational and legal form.

Part 1 of art. 55 Economic Code recognizes as subjects of economic activities participants of economic relations, who carry out economic activities, realizing economic competence (a set of economic rights and obligations), have separate property and are responsible for their obligations within this property, except in cases provided by law. The above mentioned definition gives grounds to distinguish the following features of the subjects of economic activities. This subject is a participant in economic relations, it directly carries out economic activity, it is endowed with economic competence (a set of economic rights and responsibilities), which he realizes in the conduct of economic activity, while gaining new rights and responsibilities. This feature of the subject of economic law in the literature is also called economic legal personality. The subject of economic law has the opportunity based on the law to acquire property and personal non-property rights on its own behalf, to enter into obligations, to act in judicial bodies. The legal personality of the business entity is doctrinairely defined as economic competence, that is, the totality of rights and obligations established by law and acquired in economic relations. This subject has separate property from other entities (including from the owner) and it is responsible for the obligations within the bounds of its property.

Subjects of economic activities in accordance with part 2 of art. 55 Economic Code are:

- 1) economic organizations – legal entities created in accordance with the Civil Code of Ukraine, state, communal and other enterprises created in accordance with the Economic Code, as well as other legal entities that carry out economic activities and are registered in accordance with the procedure established by law;
- 2) citizens of Ukraine, foreigners and stateless persons who carry out economic activities and are registered as entrepreneurs in accordance with the law.

Subjects of economic activities perform their economic competence on the basis of property rights, economic rights, rights of operational management and the right to operatively use the property in accordance with the definition of this competence in the EC and other laws.

Subjects of economic activities – economic organizations operating on the basis of property rights, economic management or operational management, have the status of a legal entity as defined by civil law and the Economic Code.

For a person to engage in economic activities it is necessary to have the full legal personality (legal capacity and active legal capacity), due to the need to commit legally significant actions and the ability to bear responsibility in cases provided by law or contract. It is known that civil legal capacity arises at the time of birth and terminates in the death of a person, may be restricted in cases and in the order prescribed by law. Civil legal personality of legal entities arises simultaneously and is associated with its registration, and the termination of liquidation.

The subject of economic law is also the subject of other legal relations, especially civil, administrative, labor, etc., due to the nature of such activity, and its purpose and consequences. The latter manifest themselves both in civil law and in public law obligations to contractors, creditors, the state in the person of its competent organs, executions.

The legal capacity of any subject may be *general* and *special*. If general legal capacity is a prerequisite for the pursuit of any kind of activity and the acquisition of any kind of rights not prohibited by law, then a special one gives the opportunity to carry out only such activities that correspond to the subject of the activity of the particular subject. In this way the subject is the carrier of specific public-law responsibilities only.

The organizational and legal form of entrepreneurial activity indicates the peculiarities of the legal status of the owner of the property, the procedure for exercising his authority on management, and determines the types of activity permitted by the current legislation, governing bodies, the limits and procedure for responsibility for business obligations. Studying and taking into account these features contributes to the optimal organization of entrepreneurship in one or another field of business, allows to achieve more purposefully the set goal, minimizing the risk elements in implementation, and in the most appropriate way to ensure the protection of its legitimate business rights and interests.

Such activity is carried out in any organizational and legal forms on the choice of the entrepreneur. It is the will of the latter to be the main factor in the choice of the organizational and legal form of entrepreneurship, which is emphasized in the principles of entrepreneurship and is covered by Art. 42 of the Constitution of Ukraine. But such a will must take into account objective trends and, above all, domestic practice. Therefore, the procedure for the establishment and operation, reorganization and liquidation of specific subjects of entrepreneurship is determined in detail by the relevant legislative acts of Ukraine. That is, the latter contain models of the subject of entrepreneurship, which should be followed by those who realize their entrepreneurial legal capacity. In the situation that this procedure is not established by special legislation, the entrepreneur should be guided by the general approaches of the legislator and the local normative act approved by him or by the authorized body. For example, if an enterprise is defined as the main organizational and legal form of the national economy of Ukraine, all created commercial structures, regardless the characteristics of founders, property, etc., must comply with the requirements of the enterprise, but have the right to provide other provisions that are not inconsistent with the current provisions of their constituent legislation documents. The optimal organization of entrepreneurial activity requires a thorough knowledge of economic methods and methods of production organization, highly professional management of the enterprise, understanding of the regularities of interpersonal communication in the team. In this regard, are distinguish economic, managerial and psychological forms of enterprise organization. At the same time, these forms of business organization are used by entrepreneurs indirectly, but significantly affect the choice of a specific legal form of business organization and are reflected in the activities of an individual entrepreneur, enterprise, its varieties or other business structure.

In legal literature, as a criterion for the classification of entrepreneurial activity (on the basis of organizational and legal form), forms of property, types and methods of separation/division of powers in enterprises of separate forms of property, management of its property are distinguished. Other authors as a criterion of

classification distinguish the characteristic (circle) of the rights and obligations of its participants to the property of the business structure, as well as the purpose of the activity.

In accordance with the current legislation of Ukraine, the organizational and legal forms of entrepreneurial activity can be summarized as follows: entrepreneurial activity without the formation of a legal entity, which provides for the independent exercise by a citizen or other individual of such activity at the expense of the property belonging to them on the right of private property and a separate part thereof specially allocated for this purpose and entrepreneurial activity of legal entities (enterprises).

Each of the forms of entrepreneurial activity defined in the legislation of Ukraine has its own peculiarities, connected both with the process of its organization and creation, and with the possibilities of realization of the desired type (subject) of activity and its regime. For example, entrepreneurship without a legal entity is the easiest in the management and organization of business, at the same time, this organizational and legal form is not suitable for the selection of such business as insurance, banking, lombard operations and some others. The entrepreneurial activity of legal entities involves solving the problem associated with the formation of the authorized capital, determining the relationship between the founders of a legal entity, the procedure for distributing profits and losses as a result of entrepreneurial activity, etc. Thus, in deciding what kind of activity the business entity will deal with, it is necessary to determine both the possibilities of this structure to implement it and the optimal ways of its organization, which will avoid possible misunderstandings and conflicts between entrepreneurs and authorities and management bodies.

Organization of a business without a legal entity is the most simple way of managing the property necessary for its implementation. It is manifested in the autonomy of the activity, where the individual decides to engage in such an entrepreneurship, its type and place, according to which he chooses specific starting positions. For such activities, a simplified procedure for legalization is provided: registration is carried

out mainly in the place of residence, as a rule, does not require licensing, certification, etc.

The entrepreneurial legal personality of natural persons is based on civil legal capacity but has a number of peculiarities which have found their normative reflection in the Civil Code of Ukraine, where there is a chapter entitled “Natural person – entrepreneur”. Characteristically, in Part 1 of Art. 50 is stressed that the right to engage in entrepreneurial activities is granted only to a person with full active legal capacity. The latter comes only from the age of 18, from the moment of marriage, or in this case – the emancipation. Under emancipation we understand the recognition of a minor who has reached 16 years of age, provided that he works under an employment contract or, with the consent of his parents, is engaged in entrepreneurial activity, fully capable. Emancipation is exercised in such a case, with the decision of the guardianship and guardianship body, in the presence of the consent of both parents or the court, if one of the parents does not consent. Emancipated minor acquires full legal personality and parents, adoptive parents and co-owners are not liable for his obligations. Implementing the emancipation should be taken into account the psychophysical factor – the state and level of mental development of the person, and legal – the ability to report it to their actions and properly evaluate them.

A natural person exercising his right to entrepreneurship must be registered in the order established by the current legislation as an entrepreneur. Following such a national registration, an individual, as an entrepreneur, is included in the single register of individuals, which is open/available to public inspection and ensures transparency of business entities.

In the case when the individual started the business without state registration, having entered into the relevant contracts (bought the wholesale lot of the goods for the purpose of its further implementation, entered into a lease agreement, etc.) he has no right to sell them as an entrepreneur on the grounds that it is not legalized, even in the case when the procedure of legalization (registration) was violated, but legally, the registration authorities refused it. Under the concluded contracts, such person is fully

responsible within the general legal personality. Individuals who have exercised their right to engage in entrepreneurial activity are called *individual entrepreneurs*.

This term was established in the early 90's with the adoption of a number of normative acts on individual labor activities of citizens. They operate using property belonging to them on the right of private (individual) property, solely at their own initiative and at their own risk.

On realizing his right to entrepreneurship an individual must comply with the relevant conditions for its implementation: not to violate the laws, legal rights and interests of other persons, to observe the moral principles of society, not to use their civil rights in order to restrict competition and abuse the dominant position in the market, not to act solely with the intent to cause harm to another person, as well as abuse of the law in other forms.

In the legislation of Ukraine, legal entities recognized as organizations that have separate property, may, on their own behalf, acquire property and personal non-property rights and bear responsibilities, be claimants and defendants in court, economic and arbitration courts. The Civil Code of Ukraine in force enshrines in Art. 80 the following notion of a legal entity: "A *legal entity* is an organization established and registered in accordance with the procedure established by law. A legal entity is endowed with civil capacity and ability, may be the plaintiff and defendant in court".

Sign of a legal entity is an organizational unity. Not in spite of the fact that the human structure and property of legal entities structured displayed in the statute, but in legal entity acting as a whole, the negative effects inept business and shortcomings in its implementation right there and take the interests of each member of the team or the co-founder. The presence of a separate property of a legal entity manifests itself in the fact that its available property is isolated from the property of founders, other legal entities and the state. The state guarantees the inviolability of property and ensures the protection of the property rights of the entrepreneur. Withdrawal from the state of the business of its main and reverse funds and other property used by it shall not be allowed except in cases stipulated by the legislation of Ukraine. The losses incurred by the entrepreneur as a result of violation of their property rights by

citizens, legal entities or state bodies are compensated in accordance with the current legislation. Bonds or contributions to the charter capital of a corporate legal entity are distinguished and their depositor has only property rights. Property separation of a legal entity manifests itself in the independence of the balance sheet. A legal entity independently acts in legal relationships on its own behalf by acquiring property and personal non-property rights and legal obligations. Legal entity acting as a party and procedural relations can be a plaintiff in respect to their debtors and therefore the respondent to its creditors, including bear legal responsibility.

Formal legal entity attribute is that it should be legalized as a business entity and registered, obtain necessary licenses, commercial patents, quotas etc . Only such a legal entity can engage in business.

From the moment of state registration in a legal entity as a subject of entrepreneurship there is a legal personality. The legal capacity of a legal entity, unlike an individual, arises simultaneously and has a specific character. In addition, the capacity of a legal entity does not arise immediately from registration, but permanently and only if licensed to a type of activity provided for by law.

As a rule, commercial entities in their charters provide a fairly wide range of business activities. However, they can only do such activities if they are licensed. The exception is some types of activities that do not require licensing. The larger the permissions are, the greater the legal personality of the founders or the location of the building is, what is confirmed by the relevant legal documents.

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