

# Subjects of Civil Law: Legal Entities

Legal entity (or a juridical person) is an organization which:

- Has its separate assets on the basis of ownership right, right of business authority or right of operational management;
- Is liable for its obligations by its assets;
- May in its name acquire and exercise proprietary and personal non-proprietary rights and obligations;
- Can be the plaintiff and the defendant in the court;
- Has independent balance-sheet or budget;
- Has seal with its name thereon.

# The Legal Capacity of a Legal Entity

- The legal capacity of a legal entity
  - arises at the moment of its creation and
  - ceases at the time of completion of its liquidation.
- A legal entity is deemed to be created from the moment of its state registration with the bodies of the Ministry of Justice.
- The legal capacity of a legal entity which requires a licence for the execution of its activities,
  - arises from the moment of the procurement of such a licence and
  - ceases at the moment of its revocation or expiry of the term.

# Organs of Legal Entity

- A legal entity acquires civil rights and assumes obligations through its bodies which operate in accordance with legislative acts and the foundation documents.
  - Supreme Body (General Council)
  - Executive Body
    - Individual (General Director, President)
    - Collective (Board, Board of Directors)
  - Supervisory Body (Supervisory Board, Auditing Committee)

# Foundation Documents of a Legal Entity

- A legal entity must carry out its activities on the basis of its foundation documents: the Foundation Agreement (which is concluded by founders) and the Charter (which is confirmed by founders).
  - The foundation agreement is not concluded where a commercial organisation is established by one person.
- In the case of contradiction between the Foundation Agreement and the Charter of a legal entity:
  - the rules of the Foundation Agreement apply with respect to the internal relations of founders;
  - The rules of the Charter apply with respect to the relations of a legal entity with third parties.

# Foundation Agreement and Charter

## Foundation Agreement

- Information about founders;
- Decision on the creation of the legal entity;
- Name of the legal entity;
- Location of the legal entity;
- List of founders;
- Procedure for the establishment of the legal entity
- Amount of the Contribution to the Fund
- Conditions of the transfer of the assets to the ownership of the Legal Entity;
- Terms and procedure for distributing profits and losses between founders;
- Terms and procedure for the management of the legal entity;
- Terms and procedure for the withdrawal of the founders.

## Charter

- Type of the the legal entity;
- Name the legal entity;
- Location the legal entity;
- Composition and powers of the governing and supervising bodies;
- Procedure for the their formation and the regime of their work;
- Procedure for the formation of the property of the legal entity and the distribution of income;
- Conditions for reorganisation and termination of activities of the the legal entity;
- Relations between the legal entity and its founders, between its administration and its staff;
- Any other provisions which do not contradict legislation.

# Affiliates and Representations

- An affiliate is a separate subdivision of a legal entity which is located outside the place of its location
  - which carries out all or part of its functions including the function of representation.
- A representation is a separate subdivision of a legal entity, which is located outside the place of its location,
  - which carries out the protection and representation of the interest of the legal entity (and may also commit transactions on its behalf).
  - Both must be indicated in the foundation documents of a legal entity;
  - They are not legal entities themselves;
  - They are provided with separate assets by the legal entity which created them;
  - They act on the basis of regulations approved by the legal entity which created them;
  - Their heads are appointed by the legal entity which created them and act on the basis of its letter of attorney.

# Reorganization of a Legal Entity

Reorganization of a legal entity is carried out upon the decision of:

- the owner of its property or the body authorised by the owner;
- the foundation parties (founders);
- the body the legal entity authorised by the foundation documents or
- *the court in the cases which are stipulated by legislative acts.*

## Forms of Reorganization

- Merger,
- Adjoining,
- Division,
- Separation,
- Transformation.

Reorganisation may be conducted voluntarily or compulsorily.

- A compulsory reorganisation may be effected upon the decision of judicial bodies in the cases stipulated by legislative acts.

A legal entity is deemed to be reorganised, except for the case of reorganisation in the form of adjoining [to it of another legal entity], from the moment of the registration of the newly-emerged legal entities.

# Legal Successorship in Reorganising Legal Entities

- 1. When legal entities merge, the rights and obligations of each of them are transferred to the newly-emerged legal entity in accordance with the conveyance act.
- 2. When adjoining a legal entity to any other legal entity, the rights and obligations of the adjoined legal entity are transferred to the latter in accordance with the conveyance act.
- 3. When dividing a legal entity, its rights and obligations are transferred to the newly-emerged legal entity in accordance with the division balance sheet.
- 4. When one or several legal entities are appropriated from a legal entity, the rights and obligations of the reorganised legal entity are transferred to each one of them in accordance with the division balance-sheet.
- 5. When transforming a legal entity of one type into a legal entity of any other type (altering organisational and legal forms), the rights and obligations of the reorganised legal entity are transferred to the newly-emerged legal entity in accordance with the conveyance act.



# Liquidation of a Legal Entity

- **Voluntary Liquidation a Legal Entity**
  - exercised upon the decision of:
    - the owner of its property or the body authorised by the owner;
    - the body of the legal entity authorised by the foundation documents.
- **Compulsory Liquidation a Legal Entity**
  - in accordance with the decision of the court in the following cases:
    - 1) bankruptcy;
    - 2) recognition of registration of a legal entity as invalid because of violations of legislation which took place when creating that legal entity and which cannot be eliminated;
    - 3) systematic conducting of activities which contradict the charter objectives of the legal entity;
    - 4) carrying out activities without license;
    - 5) carrying out activities which are prohibited by legislative acts.

# Procedure for Liquidating a Legal Entity

- Decision on the Liquidation
  - Adopted by the owner of the assets of a legal entity or an authorized body
- Informing organs of Justice in writing that the legal entity is in the process of liquidation.
  - Done by the owner of the assets of a legal entity or an authorized body
  - Making entries into the State Register Legal Entities that the legal entity is in the process of liquidation.
    - Done by organs of Justice
- Appointing a Liquidation Commission
  - Done by the owner of the assets of a legal entity or an authorized body;
  - From the moment of appointment of the liquidation commission, the powers associated with managing the property and affairs of the legal entity are transferred to it.
  - Publication in mass media about the procedure and deadlines for the filing of the claims by creditors.
    - Done by Liquidation Commission. The period for filing claims may not be less than two months from the time of publication concerning the liquidation.
  - Identification of creditors and collection of debts.
    - Done by Liquidation Commission.

# Procedure for Liquidating a Legal Entity

- Compiling intermediary liquidation balance-sheet
  - Done by the Liquidation Commission.
- Carrying out a sale of the assets of the legal entity in a public auction
  - Done by the Liquidation Commission in the case when the monetary resources are insufficient for the satisfaction of the creditors' claims.
- Paying money to the creditors of a legal entity
  - Carried out by the liquidation commission in a priority procedure as established by law.
- Compiling the liquidation balance-sheet
  - Carried out by the liquidation commission
- Making entry to the State Register of Legal Entities.
  - Done by organs of Justice

# Satisfying the Claims of Creditors

- When liquidating a legal entity, the claims of its creditors are satisfied in the following sequence:
  - 1) in the first turn, the claims of citizens to whom the enterprise in liquidation bears the liability for causing harm to life and health, by way of capitalising appropriate periodic payments;
  - 2) in the second turn, the settlements shall be carried out with regard to work remuneration to those persons who work in accordance with employment agreements, and those associated with the payment of remuneration under copyright agreements.
  - 3) in the third turn, the claims shall be satisfied of the creditors for the obligations which are secured with the pledge of property of the legal entity in liquidation;
  - 4) in the fourth turn, the debt shall be repaid on the compulsory payments to the Budget and to the non-budgetary funds.
  - 5) in the fifth turn, settlements shall be conducted with any other creditors in accordance with legislative acts.

# Satisfying the Claims of Creditors

- The claims of each turn are satisfied upon the complete satisfaction of the claims of the previous turn.
- When assets of a legal entity in liquidation are not sufficient, they are distributed among the creditors of each relevant turn in proportion to the amounts of claims which are subject to satisfaction, unless otherwise is stipulated in law.
  - In the case of the refusal of the liquidation commission to satisfy the claims of a creditor or of an evasion from consideration, the creditor may, prior to the approval of the liquidation balance-sheet of a legal entity, to appeal to the court with the action against the liquidation commission.
- The assets which remain upon the satisfaction of the claims of creditors of the legal entity, are transferred to its owner or the founders.
- The claims of creditors which are not satisfied because of a shortage of assets of the legal entity in liquidation and also those which are not claimed before the approval of the liquidation balance-sheet are deemed to be satisfied.

# Bankruptcy

- Bankruptcy is the consistent incapacity of a debtor (an individual entrepreneur or a legal entity) to satisfy the claims of its creditors and to pay tax and any other obligatory payments, as a result of the excess of the debtor's liabilities over its assets.
  - Only the court may recognise a debtor as bankrupt.

## **Kinds:**

- **Voluntary**
  - exercised upon the application of the debtor to the court.
- **Compulsory**
  - exercised upon the application of the debtor to the court.

## **Bankruptcy Procedures:**

- **Rehabilitation Procedures**
  - external administration of the debtor's assets is established;
  - all possible measures may be taken in order to restore the solvency (reorganization).
- **Liquidation Procedures**

# The types and forms of legal entities

- **Commercial organizations**

pursue the making of profit as the principal purpose of their activities:

- business partnership;
- state enterprise;
- production cooperative.

- **Non-commercial organizations**

do not have the making of profit as the goal and do not distribute the made profits between the participants.

- institution;
- public association;
- consumer cooperative;
- foundation;
- religious association.

# Commercial organizations

- Business Partnership is a commercial organization with the charter fund divided into shares (investments) of the founders (participants).
- Production Cooperatives is a voluntary association of citizens on the basis of the membership for joint entrepreneurial activities which is based on personal labor participation and association by the members of their property contributions (shares).
- State enterprise is a legal entity which:
  - 1) is based either on the right of business authority or the right of operative administration (state owned enterprise);
  - 2) has indivisible property which cannot be distributed according to contributions (shares) amongst enterprise employees;
  - 3) is formed according to the decision of the authorized state body.



# Forms of Business Partnerships

- *general partnership*
  - in the case of insufficiency of the property of the GP the participants (general partners) carry joint liability on its obligations with all of their property;
- *kommandit partnership*
  - besides one or more general partners also there are one or more participants whose liability is limited by the amount of the contribution made by them to the assets of the full partnership (investors) and who do not participate in the management of the partnership's business activities;
- *limited liability partnership*
  - the partners bear the risk of losses associated with the activities of the partnership within the limits of the contributions made by themselves;
- *partnership with additional liability*
  - the participants are liable in respect of its obligations with the investments to the charter fund and in the case those are insufficient additionally with the assets that belong to them in the amount which is a multiple of the contributions made by themselves;
- *joint stock company*
  - the participants (shareholders) bear the risk of losses associated with the activities of company within the limits of the shares that belong to them.

# Non-Commercial Legal Entities

- Institution - an organization which is created and financed by the owner for carrying out administrative, social, cultural or any other functions of non-profit nature.
- Public association - a public organization which emerged as a result of a association of citizens for the purpose of achieving the common interests.
- Public foundation - a non-commercial organization which does not have any membership, which is founded by the citizens or legal entities on the basis of the voluntary property contributions and which pursues social, charity, cultural, educational and any other publicly useful purposes.
- Consumer cooperative – a voluntary association of citizens on the basis of the membership for the satisfaction of the social and economic requirements of their member and any other citizens by way of uniting on a shared property basis of its participants.
- Religious association - a voluntary association of citizens united according to the procedure established by legislative acts on the basis of common interests for the purpose of satisfaction of spiritual needs.