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The Share Capital Reduction in Business Partnerships of Uzbekistan

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ABSTRACT

The article studies the legal basis of business partnerships, their definition and main features. This material analyzes the influence of the organizational and legal form on the institution of the share capital. The author points out that in business partnerships the share capital should not play a major role, and especially when reducing the share capital. The materials indicate that in business partnerships, members bear unlimited liability to creditors, and accordingly, measures to protect the rights and interests of creditors should not be applied in case of share capital decrease. The author carries out a comparative analysis of the share capital system and its reduction on the example of Uzbekistan, Great Britain and Germany. The author proposes to distinguish between the concepts and approaches of the institution of reducing the share capital in relation to corporations with unlimited liability and corporations with limited liability.

The concept of a business partnership

Business partnerships are a commercial organization in accordance with the legislation of Uzbekistan. The main purpose of the partnership is to make a profit. The main characteristic feature of a business partnership is its participants, who directly manage the affairs of the partnership and bear unlimited liability [1, p.60].

Despite the fact that a business partnership is divided into two main types: a general partnership and a limited partnership, the legislator establishes uniform rules for the charter fund in relation to them. Looking ahead a little, it can be noted that for almost all forms of commercial organizations, uniform requirements and conditions for the functioning of the charter fund have been established [12].

In business partnerships, the authorized capital consists of the nominal value of the shares that belong to their participants. This norm means that the authorized capital is not divided by the number of shares, in which each share has a certain value. In case of business partnerships of Uzbekistan, we can see that the law uses the same scheme for determining the value of shares as in limited liability companies does. Moreover, the procedure for determining and fixing the size of shares in business partnerships is the same as in a limited liability company.

The size of the share directly affects the volume of net assets. If a participant in a business partnership owns 25 percent of the charter fund, 25 percent of the net assets belong to this participant, respectively. Under the net assets in the framework of Uzbek legislation means the company's assets after deduction of debt obligations [2, p.10].

A feature of the Uzbek model of business partnership in comparison with the traditional continental model is that a minimum amount of authorized capital is set forth. At present time, the minimum size of the charter fund of a business partnership is 50 basic calculated values. In the German model of a business partnership, a certain amount as a minimum in relation to the authorized capital is not set forth. This fact speaks about the peculiarities of legal regulation. Such a requirement is not provided for in Russia either, however, in the Republic of Kazakhstan in business partnerships, the minimum amount of the authorized capital is 25 calculated indicators [3, C .13] (as of March 23, 2023, 1 calculated indicator is 3,450 tenge [4]). In fact, the Uzbek and Kazakh models take the same position against terms of amount.

An additional feature of the business partnership of Uzbekistan is that, as in credit organizations in the form of a limited liability company, at least 30 percent of the authorized capital must be formed by the time of state registration.

A business partnership and a limited liability company have the same position regarding the content and concept of the contribution, as well as the procedure for its application. Moreover, in terms of regulating the decrease and increase in the authorized capital, a business partnership and a limited liability company have the same approaches and regulation rules.

Before studying the problems of reducing the authorized capital in this paper, the role of the authorized fund in partnerships and the main role of the authorized fund must be described.

Function of the charter fund

The role of the institution of the charter fund directly depends on the concept of a legal entity. An artificially created legal entity is a source of danger in economic turnover. In fact, the founders of a legal entity transfer to that legal entity the material liability for possible future obligations.

The liberal position of the legislator regarding the formation of the charter fund allows a legal entity be created with practically minimal funds and be a shell. Such a legal entity may not be able to pay off its debts, since the charter fund does not perform the function of a deterrent from collapse.

The main manifestation of a legal entity is its charter fund, which acts as a personified property. In simple words, a legal entity is an acting property complex, which bears independent property liability. The authorized capital shows the amount of investments of its founders, however, its actual size and the minimum size of the authorized capital predetermine the buoyancy of the business.

It should be noted that the personification of property and the theory of the minimum value of the authorized capital are developed only within the framework of limited liability companies. This circumstance is justified due to the limited liability of its members.

Regards to business partnerships, which based on unlimited liability, the establishment of a minimum value of the authorized capital does not make sense. In any case, in case of insolvency, claims of creditors and other property disputes, participants in a business partnership bear unlimited liability.

In theory, various concepts are used in relation to the size of the authorized capital as fixed capital or declared capital, which in fact have an equivalent concept.

At the initial introduction of the concept of authorized capital in limited liability companies in Germany in 1892 [5, C .75], that performed an educational function so that the members of the corporation carried out their activities in good faith. It can be noted that the minimum value of the authorized capital is a type of severity threshold for the filter of unscrupulous investors.

The very establishment of the minimum size of the authorized capital or the so-called fixed

capital not only serves as a threshold for the seriousness of the business, but also in its own way protects the creditor from insolvent entrepreneurs. It should be noted that the fixing of the charter fund by the founders causes an obligation for them to maintain this level. In the event of a decrease in the size of the authorized capital, the creditor protection function is applied.

Measures to properly maintain the balance of the authorized capital especially affect the activities of management bodies. The legislator obliges them to take measures to protect creditors in the event of insolvency and a decrease in the assets of the corporation. Strict compliance with the law means protection of governing body from additional liability, along with protection of creditors from possible additional property losses.

The Anglo-Saxon doctrine, which does not recognize the concept of fixed capital, opposes strict regulation of the size of the authorized capital. In their opinion, the current minimum capital is not able to adequately protect creditors and ensure the integrity of the participants. The Anglo-Saxon model pays more attention to internal organization and the establishment of strict requirements for the integrity of management. It is also noted that participants in transactions in civil circulation must be aware of and accept the risk of insolvency of the counterparty for obligations.

Remarkable is the fact that neither the continental nor the Anglo-Saxon model denies the minimum size of the charter fund in relation to public joint-stock companies. For everything else, and to this day, the European system of corporate law adheres to a unified position that the minimum size of the authorized capital should be in relation to limited liability companies [8] .

Now we need to define and summarize what an authorized fund is and why it is needed. A legal entity, as a corporate shield to protect the personal pocket of the founders, must have a legal index that contains information on the amount of investments made.

It cannot be denied that the authorized capital serves as a kind of indicator of changes in the company's assets. First of all, in the event of a decrease in the authorized capital, creditors receive a signal that the company's assets are declining or the company's participants have decided to withdraw capital from the business. This circumstance cannot but alert creditors who are primarily interested in satisfying claims. The very existence of the authorized capital is a key factor in the functioning of the company and the protection of the rights of creditors.

The position of the minimum size of the authorized capital, established in the European model, is very different from the Anglo-Saxon model, which acts as a filter of seriousness. In this regard, the position of the Anglo-Saxon model is more considered justified, it is unlikely that the amount of 50,000 euros can protect creditors to a large extent. When making a contribution and increasing the share in the authorized capital, the participants in any case indicate their investments.

Decrease in the authorized capital

In the UK, the protection of creditors is carried out in a peculiar way with a decrease in the authorized capital. In the process of implementing this procedure, the main role is played by the director. The executive body is obliged to draw up a document on solvency, which will mean solvency even after a decrease in the authorized capital. Based on the submitted document, the founders must decide to reduce the authorized capital. An alternative safe way to reduce the authorized capital is to carry out the reduction through the courts. In this case, the court must agree to reduce the authorized capital, but the court always proceeds from the consent of the creditors [6. C.8].

In Germany, the reduction of the authorized capital has a rather similar scheme to the British model, in which the creditors agree to the reduction, and the dissenting creditors must receive satisfaction of the requirements. Without the provision of supporting documents, the law

prohibits the reduction of the authorized capital and its registration [7. C.58].

The above measures to protect creditors in the event of a decrease in the authorized capital are provided only for structures with limited liability. However, in relation to business partnerships, all measures of the creditor's interests protection in case of the authorized capital reduced, does not provide any adventures due to the unlimited liability of the members.

In the Uzbek model, the decrease of the authorized capital cannot be less than the minimum amount of the authorized capital established by law. It should be noted that, as studied above, the minimum amount of authorized capital was introduced only in the European system in relation to limited liability companies. This institution served as a threshold of severity, however the application to a business partnership has no legal backgrounds. In this regard, it is more expedient to exclude the rule of the minimum size of the charter fund from a business partnership. Moreover, 50 basic design values can hardly serve as a severity threshold.

According to the law, a business partnership has the right to reduce the authorized capital on a voluntary basis, and in cases of a decrease in assets below the value of the authorized capital, the partnership is obliged to make a reduction.

If the partnership decides to make a charter fund reduction, the business partnership is obliged to notify all known creditors of this and publish a notice in the mass media within thirty days from the date of such a decision. After notification, creditors within thirty days have the right to demand early termination or performance of the obligation, while the requirement must be in writing. Without providing evidence of notification, a business partnership is not entitled to conduct re-register of charter documents.

Notification of creditors in a business partnership is a relevant institution if we consider only the protection of creditors. In any outcome, a participant in a business partnership, namely a general partner, bears unlimited liability for all obligations with all the property belonging to him. If a member of the partnership wishes to avoid liability, the member can establish a business corporation or get rid of all personal property before establishing a business partnership.

From January 1, 2023, the requirement for a written notification of creditors during the procedure for reducing the authorized capital and an announcement in the media is canceled [9. C.3]. This innovation is revolutionary, especially in relation to business partnerships. However, in this innovation, this rule applies to all business entities, which is unreasonable. Currently, this provision has not yet been introduced into the laws governing business partnerships and limited liability companies. If such a norm is introduced into the laws, the status of the creditor will be greatly infringed and his well-being will depend only on the nobility of the members in limited liability companies.

Conclusion

In business partnerships, the charter fund should regulate and function only as an indicator of investment, which will declare the attractiveness of the partnership and trust in it. This wording is especially justified in relation to a limited partnership, where there are investors.

The current concept of the minimum value of the charter fund and the reduction of the charter fund do not correspond to the concept of a business partnership. It is advisable to abolish the minimum threshold of the authorized capital in the partnerships of Uzbekistan due to inexpediency. Also, the institution of notification of creditors is not of particular importance in business partnerships due to the unlimited liability of participants for obligations to creditors.

List of used literature:

1. Гражданский кодекс Республики Узбекистан. URL: https://lex.uz/docs/111181
2. Национальный стандарт бухгалтерского учета Республики Узбекистан (НСБУ № 14)

«Отчет о собственном капитале». URL: https://lex.uz/acts/707415

3. Закон Республики Казахстан о хозяйственных товариществах от 2.05.1995 года №2255
4. Закон Республики Казахстан о республиканском бюджете на 2023-2025 года от 1.12.2022 года №163-VII ЗРК. URL: https://zakon.uchet.kz/rus/docs/Z2200000163
5. Суханов Е.А. Сравнительное корпоративное право. М. Статут 2014.
6. Companies Act 2006. URL: https://www.legislation.gov.uk/ukpga/2006/46/contents
7. Act on Limited Liability Companies (Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG). URL: https://www.gesetze-im-internet.de/englisch_gmbhg/index.html#gl_p0012
8. Торговое уложение Германии. URL: https://www.gesetze-im-internet.de/hgb/index.html
9. Закон Республики Узбекистан «О хозяйственных товариществах» от 06.12.2001 г. № 308-II. URL: https://lex.uz/docs/2457
10. Указ Президента Республики Узбекистан «О мерах по упрощению государственного регулирования предпринимательской деятельности» от 09.11.2022 г. № УП-244. URL: https://lex.uz/ru/docs/6279884
11. Ruzinazarov, S. N., & Achilova, L. I. (2021). A new stage in the development of the civil code of the Republic of Uzbekistan in the context of digital reality. International Relations: Politics, Economics, Law, 2020(1), 58-65.
12. ДЖУМАНОВ А.Х. Правовая природа хозяйственного товарищества в Узбекистане // Юрист ахборотномаси – Вестник юриста – Lawyer herald. № 6 (2022) С. 42-48.
13. Qizi A. S. A. RAQOBAT HUQUQI: USTUN MAVQE TUSHUNCHASI VA UNI TARTIBGA SOLISHNING AHAMIYATI //Ta'lim fidoyilari. – 2022. – Т. 14. – №. 1. – С. 19-27.