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MONOGRAPH

LIQUIDATION OF LEGAL ENTITIES IN UKRAINIAN CIVIL LAW

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The monograph presents author's approach to the study of the liquidation procedure of legal entities through the prism of theoretical, legal and methodological foundations of the study, as well as the specifics of certain types of liquidation of legal entities, which allowed authors to develop and substantiate the specifics of liquidation of a legal entity by decision of its participants, the court and in a special liquidation procedure - as a result of declaring it bankrupt.

For teachers, postgraduate students, students, researchers, judges, attorneys and lawyers.

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INTRODUCTION

The democratic processes that have taken place in Ukraine in recent years, as well as the country's entry into the international arena, have necessitated corresponding changes in all areas of social life, the development of a new system of governance and management, and the establishment of a rule-of-law state. The European integration processes have specifically driven the reform of Ukraine's existing legislation to align it with the requirements of the European Union (EU).

The Law of Ukraine "On the Nationwide Program for the Adaptation of Ukrainian Legislation to the Legislation of the European Union" defines the purpose of adapting the legislation of our country to that of the EU, namely achieving the compliance of Ukraine's legal system with the acquis communautaire, taking into account the criteria set by the EU for countries seeking membership. The adaptation of Ukraine's legislation is a systematic process that involves several sequential stages, at each of which a certain degree of compliance with the EU acquis must be achieved.

According to the provisions of the Nationwide Program for the Adaptation of Ukrainian Legislation to EU Legislation, the priority areas for legislative adaptation include, among others, company law.

Over the past three years, the Cabinet of Ministers of Ukraine has optimized the regulatory framework by canceling more than 1,300 secondary regulatory legal acts, which should contribute to the improvement of the position of legal entities in general, and also adopted a number of legislative acts related to the regulation of relations of termination of legal entities, among them: Laws of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" and some other legislative acts on the decentralization of powers for state registration of legal entities, individual entrepreneurs and public organizations" dated November 25, 2015, "On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" of October 3, 2017,

"On Limited and Additional Liability Companies" of February 6, 2018, the Code of Ukraine on Bankruptcy Procedures of October 18, 2018, etc.

At the same time, the adoption of new legal acts and the active introduction of changes to national legislation in general, and in the area of the termination of legal entities in particular, have not resolved existing issues within the institution of liquidation of legal entities. This, in turn, has resulted in the emergence of various approaches to the application of the same legal norms, which is particularly evident in court decisions.

The theoretical foundation of this monographic study is based on the fundamental works of legal scholars such as V.I. Borisova, S.M. Bratus, O.M. Vinnik, V.M. Haivoronskyi, M.K. Halyantych, V.P. Hrybanov, V.V. Dzhun, O.V. Dzera, L.M. Doroshenko, V.M. Yermolenko, D.V. Zhekov, Yu.M. Zhornostkyi, V.P. Zhushman, A.V. Zelisko, O.I. Zozuliak, O.M. Zubatenko, O.O. Kvasnytska, O.R. Kibenko, N.V. Kozlova, V.M. Kossak, V.M. Kravchuk, Yu.M. Krupka, N.S. Kuznetsova, I.M. Kucherenko, V.V. Luts, R.A. Maidannik, V.K. Mamutov, V.P. Milash, O.A. Pidopryhora, P.O. Povar, M.Yu. Pokalchuk, I.O. Pushko, V.I. Semchyk, O.M. Skoropys, I.V. Spasybo-Fateyeva, I.A. Tarasov, O.V. Titova, M.V. Fesyura, Ye.O. Kharytonov, Ya.M. Shevchenko, V.S. Shcherbyna, O.S. Yavorska, V.L. Yarotskyi, and others.

In recent years, dissertations for the Doctor of Law degree have been defended, including O.I. Zozuliak's 2017 dissertation on "Non-Entrepreneurial Legal Entities as Subjects of Civil Law: Theoretical and Practical Aspects" and A.V. Zelisko's "Entrepreneurial Legal Entities as Subjects of Civil Legal Relations," but these studies focused on non-entrepreneurial and entrepreneurial legal entities and the specifics of their organizational and legal forms. Attention should be drawn to the dissertation research of O.M. Skoropys "Civil Law Regulation of the Liquidation of Legal Entities" (2010), which examined the problems of liquidating legal entities of different organizational forms, and D.V. Zhekov's "Termination of Legal Entities under Civil Law" (2015), which outlined the concept of the termination of legal entities, grounds, methods, and forms of termination of legal entities.

On the basis of the analysis of the scientific works of scientists, it is evident that many issues remain unexplored, particularly those related to the determination of the grounds, procedures, legal consequences, and specifics of the liquidation of legal entities under the civil legislation of Ukraine, as well as prospects for the development and improvement of regulatory legal frameworks in the area of the termination of legal entities.

Given the lack of comprehensive scientific research on the institution of liquidation of legal entities within the context of civil law doctrine, as well as the imperfection of legislation regulating the liquidation of legal entities, caused by the presence of conflicts and gaps in the legal regulation of the grounds, procedures, and legal consequences of liquidation under Ukraine's civil legislation, and the absence of a unified concept in legal approaches to the civil law regulation of the institution of liquidation, the study of the liquidation of legal entities under civil legislation is a relevant and promising direction for scientific inquiry.

The aim of the research is to establish the scientific and theoretical foundations of the institution of liquidation of legal entities under the civil legislation of Ukraine.

To achieve this aim, the following objectives are outlined:

- Define the state of scientific development and outline the methodology for researching the liquidation of legal entities;

- Highlight the evolution of legal regulation of the institution of liquidation of legal entities in Ukraine;

- Analyze international experience in the civil law regulation of the liquidation of legal entities;

- Formulate the concept and determine the types of liquidation of legal entities;

- Identify the grounds for the liquidation of legal entities;

- Describe the general procedure and investigate the legal consequences of the liquidation of legal entities under Ukraine's civil law;

- Identify the features of liquidation of legal entities by decision of their participants;

- Establish the specifics of the liquidation procedure by court order for violations committed during the creation of the legal entity that cannot be corrected;

- Analyze the features of termination of legal entities by court order based on a lawsuit filed by a participant of the legal entity or a relevant state authority;

- Examine the special procedure for the liquidation of legal entities under martial law;

- Develop scientifically grounded proposals for improving Ukraine's civil legislation on the liquidation of legal entities.

The object of the research is the social relations that arise during the liquidation of legal entities.

The subject of the research is the liquidation of legal entities under the civil legislation of Ukraine.

The research methodology is based on general scientific and special methods of legal phenomenon cognition, in accordance with the defined goal and set objectives. Thus, the historical-legal method was used to examine the evolution of legal regulation and the genesis of scientific views on the institution of liquidation of legal entities in Ukraine (sections 1.1, 1.2). The comparative-legal method was applied to provide a comparative analysis of the provisions of legal acts regulating the procedure for liquidation of legal entities under national and international legislation, identifying common and distinctive features of the studied phenomena, and comparing scientific views on the outlined issues (sections 1.1–1.3, 3.1–3.4). The methods of induction and deduction were used to classify the liquidation of legal entities, distinguish general and special grounds, and identify the peculiarities of different types of liquidation of legal entities under Ukraine's civil legislation (sections 2.1–2.3, 3.1–3.4). The system-structural method made it possible to establish the legal essence, grounds, and conditions for the liquidation of legal entities in Ukraine (sections 2.1–2.3). The formal-dogmatic method was employed to examine the content of legal categories and identify contradictions in the current legislation regulating relations in the field of liquidation of legal entities and the conceptual apparatus (sections 1.1, 2.1–2.3, 3.1–3.4). The logical method contributed

to the substantiation of scientific conclusions and the development of proposals for improving the civil legislation of Ukraine in the field of liquidation of legal entities (sections 1.2, 1.3, 2.1–2.3, 3.1–3.4). The method of system analysis was used to assess the state of legal regulation of the institution of liquidation of legal entities in Ukraine's civil legislation, as well as dissertations by domestic and foreign scholars, and practitioners' views on the legal regulation of the liquidation procedure (sections 1.1–1.3, 2.1–2.3, 3.1–3.4). The complex method was used to analyze the content of legal acts regulating civil law relations in the field of liquidation of legal entities (sections 3.1–3.4).

The scientific novelty of the obtained results lies in the fact that the monograph is a comprehensive study of the institution of liquidation of legal entities under the civil legislation of Ukraine, as a result of which a number of scientific provisions, conclusions, and proposals, which are put forward for defense, have been formulated, substantiated, and further justified, namely:

For the first time:

- The need to define an additional ground for a participant of a legal entity to file a claim for its liquidation, in particular, if the issue of liquidation cannot be resolved by the general meeting due to the lack of a quorum (if the location of participants is unknown or one of the participants is in the process of termination), has been substantiated.

- It has been established that the liquidation of a legal entity under civil legislation is a legally regulated procedure, the result of which, from the moment the relevant entry is made in the state register, is the complete termination of a solvent legal entity as a legal subject, with the possibility, in cases specified by law, of partial transfer of rights and obligations of the legal entity to others (successors).

- The liquidation of legal entities under civil legislation has been classified depending on the method of its execution into: 1) liquidation conducted in the general order based on the documents submitted by the applicant for state registration of termination of the legal entity; 2) simplified liquidation conducted: by court decision to cancel the state registration of the legal entity made before July 1, 2004; by court

decision to liquidate the legal entity made after July 1, 2004, in case of non-submission of documents required for state registration of termination within three years from the date of publication of the decision; in case of non-submission of the documents required for state registration of the termination of a legal entity due to its liquidation within one year from the date of entry into the Unified State Register of the suspension of the simplified state registration procedure of the termination of a legal entity due to its liquidation; 3) liquidation under the principle of tacit consent, conducted in the absence of information from state authorities regarding tax and fee debts, insurance contributions to the Pension Fund of Ukraine, unsanctioned issues of securities by the legal entity, or unsanctioned registration of joint-stock company shares.

- It has been substantiated that the general ground for the forced liquidation of a legal entity by court decision due to uncorrectable violations during its creation is the invalidation of the state registration of a legal entity based on the invalidity of its founding documents, due to non-compliance with legislative requirements and violations of the rights and legitimate interests of the participants.

Improved:

- The provision according to which, in case of liquidation of a legal entity by court decision due to uncorrectable violations during its creation, the court's decision must specify the composition of the liquidation commission, as well as the order and term for creditors to submit their claims.

- The position that the features of liquidation of legal entities under civil law, as a separate institution of civil law, include: 1) absence of universal succession, with the possibility of partial transfer of rights and obligations; 2) solvency of the liquidated legal entity; 3) the moment from which the legal entity is considered terminated (from the day of making the entry into the Unified State Register).

Further developed:

- the approach to the periodization of the development of legislation regulating the institution of liquidation of legal entities in Ukraine, highlighting such stages as: 1) regulation of liquidation under the Russian Empire (19th–early 20th century); 2)

the formation of civil legislation in the Ukrainian SSR (early 20th century–1991); 3) development of civil legislation in independent Ukraine (from 1991 to the present day).

- the provision that the court's decision to cancel the state registration of a legal entity cannot be the basis for its liquidation, as this makes it impossible to proceed with the procedure for the liquidation of a legal entity provided for in Art. 111 of the Civil Code of Ukraine.

Based on these provisions, recommendations for improving Ukrainian legislation have been developed, including proposals for amending Articles 110 and 111 of the Civil Code of Ukraine, Articles 57 and 82 of the Commercial Code of Ukraine, and Chapter VI of the Law of Ukraine "On Limited and Additional Liability Companies."

The practical significance of the obtained results lies in the use and potential use of the developed proposals and conclusions in:

- Scientific research – during further research in the field of civil law;

- Lawmaking – in the process of improving Ukraine's civil, corporate, and commercial legislation;

- Law enforcement – during the liquidation procedure of legal entities and in commercial litigation within the liquidation process;

- The educational process – when teaching "Civil Law", "Civil Law and Procedure", and relevant special courses; for the preparation of textbooks and teaching materials for these subjects.

SECTION I
THEORETICAL, LEGAL AND METHODOLOGICAL FOUNDATIONS OF THE STUDY OF LIQUIDATION OF LEGAL ENTITIES IN UKRAINE

1.1. The state of scientific development of the issue of liquidation of legal entities and the methodology of the study

Only with proper scientific support is it possible to successfully implement systemic reforms for the modernization of Ukrainian society, to ensure the country's development as a developed, legal, civilized European state with a high standard of living, social stability, culture and democracy. Scientific support for the implementation of the basic priorities of the modernization strategy in the Ukrainian reality, namely: creation of a modern competitive state, the defining characteristics of which are the rule of law and developed legal culture, balanced representative democracy, strong self-government, disciplined and mobile public administration; humanization of development through increased social investment in human capital, formation of modern life support infrastructure; introduction of a progressive model of development that combines the tactics of reform changes with strategic guidelines and priorities of social and economic development in order to ensure the effect of "continuous modernization"; assertion of national interests in the globalized world - is consider to determine the theoretical, methodological and technological aspects of the tasks [**Ошибка! Источник ссылки не найден.**, с. 8].

In this regard, the relevance of research into the theoretical and methodological aspects of the institution of liquidation of legal entities is of utmost importance.

The general theoretical issues relating to the legal entities' termination have been studied in numerous scientific works by legal scholars in the field of civil and commercial law of Ukraine. At the same time, the available researches do not exhaust the complexity of the problem, but only forms the fundamental basis for its further study.

The problems of legal entities types are the subject of research by Doctor of Law I. V. Spasibo-Fateeva, including the monograph "Joint Stock Companies: Corporate Legal Relations" (1998) [213] and other works of the scientist, which had considered the termination, namely reorganization, of legal entities, in particular: "Problems of organizational and legal forms of legal entities (on the example of joint ventures" (2006) [214], "Legal entities under the civil legislation of Ukraine" (2014) [216], "Some contradictions in the regulation of legal entities by the Civil and Commercial Codes of Ukraine" (2004) [212], "Problems of reorganization of joint stock companies" (1999) [211].

Great importance has the monograph of Doctor of Laws Kucherenko "Organizational and Legal Forms of Legal Entities of Private Law" (2004) [90], which examines the concept and types of organizational and legal forms of legal entities of private law; organizational and legal forms of non-entrepreneurial legal entities of private law; legal regulation of creation, reorganization and liquidation of certain organizational and legal forms of legal entities of private law. The following works are also devoted to the comprehensive study of legal entities: "The Concept and Main Features of a Legal Entity" (2011) [94], "Organizational and Legal Forms of Legal Entities under Public Law" (2007) [93], "History of the Emergence of Legal Entities under Public Law" (2007) [89], etc.

The doctrine of civil law in the field of studying the termination of legal entities is also represented by the work of O. V. Titova: "Grounds for liquidation of business entities" (2003) [224], "Distribution of property of a business entity among founders" (2003) [222], "Development of legislation on liquidation of business entities" (2005) [221]. The most important of these is the dissertation for the degree of Candidate of Law in the specialty 12.00.04 "Protection of property interests of participants in the liquidation process at enterprises" (2006) [223], which analyzes the ways to protect the property interests of business entities at the time of the liquidation process, substantiates measures to improve the procedure for liquidation of enterprises in order to protect the property interests of participants in the process.

A significant contribution to clarifying the theoretical provisions of regulation in the field of liquidation of legal entities was made by O. M. Zubatenko in her dissertation "Termination of Business Entities" (2007) [60]. Also among the author's scientific researches it is necessary to single out the following: "Problems of protection of shareholders' rights during the creation of joint stock companies through reorganization" (2007) [61], "On borrowing foreign experience of legal regulation of termination of business entities" (2009) [62], "On the ordering of information in the unified state register of legal entities and individual entrepreneurs" (2011) [63].

A thorough analysis of theoretical and practical problems of termination of legal entities in Ukraine was carried out by P. Povar. In particular, he conducted a dissertation study "Legal regulation of liquidation of enterprises in Ukraine" (2009) [125]. He also covered aspects of termination of legal entities in his works: "Compulsory Liquidation of an Enterprise" (2005) [127], "History of the Development of Legislation on Liquidation of Enterprises" (2007) [124], "Succession in the Formation and Termination of Central Executive Bodies" (2012) [126], "Modern Trends in Legal Regulation of Termination of Subjects of Organizational and Economic Powers" (2013) [128].

A modern Ukrainian researcher O. M. Skoropys directly contributed to the development of the institution of liquidation of legal entities. Her works are devoted to the issues of formation of the institute of liquidation of legal entities in the civil legislation of Ukraine, such as: "Some Problems of Legal Regulation of Liquidation of Citizens' Associations" (2007) [203], "Legal Problems of Liquidation of a Joint Stock Company" (2007) [204], "Legal Problems of Liquidation of Banks" (2008) [205], "Problems of Legislative Regulation of Liquidation of Associations of Co-Owners of an Apartment Building" (2009) [206]. In 2010, the researcher defended her dissertation for the degree of Candidate of Law on the topic "Civil Law Regulation of Liquidation of Legal Entities" [207].

D. V.Zhekov's contribution to the development of the institute of liquidation of legal entities was significant, as he prepared his dissertation research "Termination of Legal Entities under the Civil Law of Ukraine" (2015) [42]. He also analyzed aspects

of liquidation of legal entities in the following works: "On the Issue of Termination of Legal Entities" (2013) [40], "On the Issue of Grounds for Liquidation of a Legal Entity and Their Classification" (2014) [39], "On the Issue of Reorganization and Liquidation of Legal Entities" (2014) [41], etc.

In the science of civil law, in particular, in the development of the universal legal category "entrepreneurial legal entity of private law" and the systematic regulation of existing organizational and legal forms of legal entities within it, which, in particular, is important for the study of the institution of liquidation of legal entities, the dissertation for the degree of Doctor of Laws in the specialty 12.00.03 by A. V. Zelisko "Entrepreneurial legal entities of private law as subjects of civil legal relations" (2017) is significant [51]. The achievements of this author are also presented in the following articles: "Typology of Entrepreneurial Legal Entities of Private Law" (2016) [55], "Entrepreneurial Legal Entities of Private Law: Terminological Analysis" (2016) [53], "Entrepreneurial Legal Entities of Private Law as Corporate Entities" (2017) [50], "Unitary Private Enterprise as an Entrepreneurial Legal Entity of Private Law" (2017) [56], "Legal Characterization of the Current Status and Trends in Modification of the System of Business Associations" (2017) [54], etc.

An indirect influence on the study of the institute of liquidation of legal entities under the civil law of Ukraine was made by O. I. Zozuliak in her dissertation study "Non-Entrepreneurial Legal Entities as Subjects of Civil Law: Theoretical and Practical Aspects" (2017) [58], which is devoted to a comprehensive study of the problems of civil law regulation of non-business legal entities. In particular, it addresses the issues of the essence and qualification features, system, classification criteria, organizational and legal forms of non-entrepreneurial legal entities. For the study of liquidation of legal entities it is also interesting the work of the scientist "Theoretical and Applied Concept of Regulation of Entrepreneurial Legal Entities of Private Law in Ukraine" (2017) [59].

Significant role for the study of legal regulation of the institute of liquidation of legal entities had the fundamental works of Ukrainian civilists in scientific and

practical commentaries to the Civil Code of Ukraine, in particular: "Scientific and Practical Commentary to the Civil Code of Ukraine" edited by O. Dzera, N. Kuznetsova, V. Luts (2005) [111], "Civil Code of Ukraine: Scientific and Practical Commentary (explanations, interpretations, recommendations using the positions of the highest courts, the Ministry of Justice, scholars, and specialists)" edited by I. V. Spasibo-Fateeva (2009) [237], "Scientific and Practical Commentary on the Civil Code of Ukraine" edited by O. V. Dzera, N. S. Kuznetsova, V. V. Luts (2013) [112].

A prominent Ukrainian scientist, Doctor of Law V. M. Gaivoronsky, had an undeniable impact on the doctrine of civil law, in particular, the development of the institute of liquidation of legal entities. Among the fundamental works of the scientist, which investigate theoretical problems of property, property rights of business entities, problems of unification and codification of legislation, the following should be highlighted: "Legal basis of economic activity of state enterprises (associations)" (1988), "Legal means of restructuring the economic activity of enterprises and associations" (1990), "Legal means of restructuring the economic mechanism" (1991), "Institute of legal entity in the draft Civil Code of Ukraine" (2000), "Constitutional principle of the rule of law" (2003) [24], etc.

The general issues of liquidation of legal entities under civil law are covered in the academic literature, in particular, in the textbooks "Commercial Law" edited by V. S. Shcherbyna (2013) [246], "Commercial Law of Foreign Countries" edited by V. K. Mamutov (1996) [107], "Law of the European Union" edited by O. K. Vyshniakov (2013) [148], "Civil Law" edited by V. I. Borisova (2011) [235], "Business Law" edited by O. V. Startsev (2005) [123].

Some issues of the evolution of legal regulation of legal entities' termination, as well as international experience in this area, have been studied in the scientific works of V. M. Savetchuk. Savetchuk, in particular, in the dissertation research "Legal Regulation of Mergers and Acquisitions of Legal Entities under the Law of Ukraine and the European Union" (2018) [201], articles "Evolution of Legal Regulation of Mergers and Acquisitions of Legal Entities under the Law of the European Union" (2018) [199], "The Concept and Essence of the Categories of "Merger" and

"Acquisition" in National and Foreign Legislation: A Comparative Legal Aspect" (2018) [200], "Legal Regulation of Mergers and Acquisitions of Legal Entities under the Law of the European Union. Improvement of Legal Regulation of Rights and Fundamental Freedoms of Person and Citizen" (2016) [202].

In the context of the study of the institute of liquidation of legal entities, attention is drawn to the general works of L. V. Vinar "Legal Capacity of Legal Entities Established by the State" (2003) [18], "The Problem of Legal Capacity of Legal Entities of Public Law Established by the State" (2003) [19], "Methods of Establishment of Legal Entities Established by the State" (2004) [20], "Certain Aspects of Adaptation of the Legal Status of Legal Entities, Established by the State, to the Standards of the European Union" (2005) [16], "Organizational and Legal Forms of Legal Entities Established by the State" (2005) [17], etc.

The legal aspects of the liquidation institution are investigated in the scientific articles of O. Y. Kampi "Legal Aspects of Termination of Joint Investment Entities" (2011) [67], "Legal Problems of Termination of Joint Investment Entities" (2013) [68], in which the author concludes that "the concepts of "termination of a joint investment entity" and "termination of joint investment activity" are not identical. In addition, "it is incorrect to assume that an enterprise has already been liquidated (ceased to exist as a legal entity) because its activities have ceased. Yes, an enterprise may cease its business activities, but it remains a legal entity until an entry, about its termination by liquidation, is made in the Unified State Register. Moreover, an enterprise may terminate its economic activity even before the decision on liquidation is made, i.e. before the liquidation procedure begins, and thus, during the liquidation procedure, economic activity will not be terminated" [67, p. 339]. The same position was expressed by the Supreme Economic Court of Ukraine in its information letter No. 01-8/211 dated April 7, 2008, in which it noted that in case of termination of a legal entity, its business activity is also terminated, but termination of business activity does not mean automatic termination of a legal entity [64].

Interesting for the study of the concept of liquidation of legal entities were the works of O. Hnativ, who in scientific articles "The Concept and Types of Liquidation

as a Method of Termination of Legal Entities under the Civil Law of Ukraine" (2016) [26], "Stages of Liquidation of Legal Entities under the Civil Law of Ukraine" (2016) [27] and "Civil and Legal Aspects of Liquidation of Legal Entities by Court Decision" [28] notes that during liquidation, legal succession is possible, which differs from legal succession in the process of reorganization. Firstly, succession in the event of liquidation of a business entity occurs only if there is property remaining after the claims of all creditors have been satisfied in accordance with the procedure established by law. Secondly, the legal successors in this case are the founders, i.e. individuals and legal entities, except for the exceptions provided for by law. Thirdly, succession occurs only in respect of the part of the property remaining after the repayment of accounts payable, and not in respect of the entirety of the property owned. Fourthly, the procedure for transferring rights to property is carried out in the manner prescribed by law, constituent documents or a court decision [26, p. 107].

For the scientific development of issues related to the peculiarities of certain types of liquidation of legal entities, the research of M. Y. Pokalchuk is useful, namely, the dissertation "Peculiarities of termination of agricultural enterprises under the legislation of Ukraine" (2012) [130] and the article "On the procedure for termination of agricultural enterprises" (2013) [131]. While studying this issue, the author also analyzed the scientific developments of A. P. Nikitina, namely, the dissertation " Implementation of administrative powers by executive authorities of Ukraine upon termination of a legal entity" (2013) [115]; articles "Compulsory cancellation of state registration of a legal entity at the request of an executive authority as a means of administrative liability" (2014) [114] and "Administrative and legal nature of powers of executive authorities in the field of compulsory cancellation of state registration of legal entities" (2014) [113], in which the researcher comes to the conclusion that the using by the public authority to a legal entity to compulsorily cancel state registration is a manifestation of its administrative and legal powers, the peculiarity of which is that the state body applies these powers in the field of economic relations in connection with their violation.

At the same time, the scientific works of civil law scholars do not exhaust the complexity of the issue and form the fundamental basis for its further research.

For a thorough study of the legal public relations arising in the area of liquidation of legal entities which are the subject of the monograph, the author analyzes national and international legislation in the area of termination of legal entities.

However, the significant changes in the legal acts on termination of legal entities that have taken place in recent years and the formation of ambiguous case law in this regard, the deficiency of scientific literature on these issues, which should not only comment on current legislation and case law, but also highlight the main problems of legislation and suggest ways to solve them, demonstrate the need for new research on the outlined issues in the realities of today after significant changes in the legislation on termination of legal entities [34, c. 64].

The analysis of the state of scientific development of the issue of legal regulation of liquidation of legal entities gives rise to the conclusion that the available scientific research on the topic is devoted either to the aspects of liquidation of legal entities of various organizational and legal forms, or to the study of the concept, grounds, methods and forms of termination of a legal entity, mostly - termination as a result of reorganization. Given the above, it seems that the study of the issues of civil law regulation of the institution of legal entity liquidation is a relevant and promising area of scientific research.

An important aspect of any scientific research is the definition of methodology, which is traditionally viewed as a system of approaches, methods and techniques of scientific research which forms its basis. The purpose and objectives of the monograph have led to the use of the traditional system of approaches and methods of legal research, including general scientific and special methods of cognition of legal phenomena.

Given the specifics of the legal relations arising in the course of liquidation of legal entities in Ukraine, we will apply the following methods of cognition in the course of our research.

The historical and legal method made it possible to find out the history of legal relations in the field of liquidation of legal entities, to study historical legal acts and determine the stages of formation of civil law regulation of the procedure for liquidation of legal entities in Ukraine, and to outline the prospects for the development of legislation in the field of liquidation of legal entities.

The comparative legal method is used to make a comparative characterization of the provisions of legal acts regulating the procedure for liquidation of legal entities under national and international law, to identify common and distinctive features of the phenomena under study, and also to compare scientific views on the outlined issues. With the help of the comparative legal method, an array of normative legal acts of Ukraine was analyzed, as well as legislation in the field of termination of Germany, France, Great Britain, Lithuania, Poland and Georgia, some EU directives, the norms of which are aimed at regulating the liquidation procedure of legal entities (the First Directive 68/151/EC of the Council of the European Communities "On the coordination of guarantees (precautionary measures) required by member countries from companies within the context of the second paragraph of Article 58 of the Treaty to protect the interests of members and others with a view to making such guarantees the same throughout the Community" dated 9 of August 1968; directives of the European Parliament and the Council "On the reorganization and liquidation of credit institutions" 2001/24/EU and "On the reorganization and liquidation of insurance organizations" 2001/17/EU, etc.).

Based on the methods of induction and deduction, the author classifies liquidation of legal entities, identifies general and special grounds for liquidation, and also the specifics of certain types of liquidation of legal entities under the civil legislation of Ukraine.

The use of the systemic-structural method contributed to clarifying the legal nature, grounds and conditions for liquidation of legal entities in Ukraine.

The formal-dogmatic method is used to interpret legal categories and to identify conflicts and gaps in the current legislation [229, p. 8] regulating relations in the field of liquidation of legal entities.

The author also applies the logical method, which consists in using the rules of formal logic to understand legal phenomena, in particular, when formulating definitions of legal concepts [229, p. 18]. With the help of the logical method, the author argues proposals for optimization of the current civil legislation of Ukraine in the field of liquidation of legal entities.

The method of systematic analysis made it possible to assess the state of legal regulation of the institute of liquidation of legal entities in the civil legislation of Ukraine, the array of dissertation studies by domestic and foreign scholars, and the views of practitioners on aspects of legal regulation of the procedure for liquidation of legal entities.

Using a comprehensive method, the author analyzes the content and essence of legal acts regulating civil law relations in the area of liquidation of legal entities.

This methodological basis of the scientific research makes it possible to ensure the reliability of the results and conclusions drawn and to realize the tasks set.

Given the foregoing, it can be stated that all the methods used in the course of the study of civil law regulation of the institution of liquidation of legal entities are interrelated, complement each other, and were applied comprehensively to ensure the objectivity and reliability of the results obtained.

1.2. Evolution of legal regulation of the institution of liquidation of legal entities in Ukraine

The procedure for the termination of legal entities in Ukraine is regulated by a significant number of legal acts, namely: The Civil Code of Ukraine, the Economic Code of Ukraine, the Laws of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations" [162], "On Joint Stock Companies" [152], "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt" [158], "On Limited Liability Companies and Additional Liability Companies" [186], the Bankruptcy Code of Ukraine [74], etc.

In order to eliminate legislative contradictions, conflicts and gaps that arise during the liquidation procedure, it became necessary to study the historical origins and evolution of legislation in the field of liquidation of legal entities in Ukraine. Knowledge of how, when and who adopted the legal acts regulating the liquidation of legal entities will enhance the ability of domestic lawyers to reform and improve the current legislation of Ukraine, including in the area of legal entities' termination.

The formation and development of legislation in the field of liquidation of legal entities in Ukraine is directly related to the historical features of the socio-economic development of our country as a whole.

Investigating the genesis of legal regulation of liquidation of legal entities in Ukraine, O. Skoropys proposes to distinguish five periods: the first period (1917-1922) - the forced liquidation of legal entities established during the existence of the Russian Empire; the second period (1924-1963) was characterized by the establishment in civil law of the basic principles of termination (liquidation) of legal entities, as well as the adoption of a number of regulations that became the basis for the liquidation of certain types of legal entities that had already been established during the Soviet era (urban consumer societies, agricultural and credit cooperatives, industrial cooperation); the third period (1964-1991), during which the Civil Code of the Ukrainian Soviet Socialist Republic (USSR) in 1963 defined the concept of liquidation of a legal entity , establishing the specifics of liquidation of state legal entities, as well as cooperatives, state-owned collective farms and public organizations, and granting the latter the right to provide for the grounds for liquidation in their charters (regulations); the fourth period - from 1991 (Ukraine gained independence) to 2004 (the entry into force of the Civil Code and the Commercial Code of Ukraine) - saw the adoption of a significant number of regulations defining the legal status of both business and non-entrepreneurial legal entities. These regulations set out special grounds for the termination of certain types of legal entities, the specifics of their liquidation procedure, the procedure for the distribution of property after liquidation, and the priority of satisfaction of creditors'

claims; the fifth period (from 2004 to the present day) is an attempt to unify the grounds and procedure for liquidation of legal entities at the codified level [207, p. 7].

At the same time, P. O. Povar proposes to identify two levels of such periodization. Within the first level, which is based on the peculiarities of socio-economic transformations and the way of social relations at certain historical stages of the development of the State and legislation, we should distinguish 1) the pre-Soviet (pre-revolutionary) period; 2) the Soviet period; 3) the period of independent Ukraine. Such periodization reflects fundamental differences (compared to the Soviet period) in the principles of enterprise, the principles of state participation in the sphere of enterprise, fundamental differences in property relations, etc. These factors also affected the system of law in general and the legal regulation of the legal status of enterprises in particular. The second level defines the peculiarities of the legislation of the relevant period of the first level of periodization. Within the framework of the Soviet period, the scholar distinguished: 1) the legislation of the early Soviet period (20-30s of the twentieth century - the period of military communism, the NEP and post-NEP periods); 2) the legislation of the middle Soviet period (60-80s - the period of "developed socialism"); 3) the legislation of the late Soviet period (late 80s - early 90s - the period of perestroika). The period of legislation of independent Ukraine, according to the researcher, is divided into the following stages: 1) before the entry into force of the Economic Code and the new Civil Code of Ukraine of January 26, 2003 (the period of the first laws of market orientation); 2) after the modern codification of economic and civil legislation (the period of modern legislation) [124 p. 68].

At the same time, O. M. Zubatenko distinguishes only the Soviet and post-Soviet periods, which have eight main historical stages of development of legislation on termination of business entities: the period of military communism (1917-1922/23), when enterprises did not have independence, their reorganization and liquidation (mostly in the form of nationalization) were carried out by decrees; the period of the NEP (1922 - late 20s), when the grounds and procedure for reorganization and liquidation depended on the organizational and legal form of the

enterprise; the period of industrialization and collectivization (late 20s - early 30s), when the methods of termination (voluntary, prescriptive and compulsory) evolved towards the dominance of prescriptive and compulsory; the pre-war period (30s of the twentieth century), when the decision to terminate enterprises was made exclusively by ministries; the period of the Great Patriotic War and post-war economic recovery (40s - 50s), when the Fundamentals of Civil Legislation of the USSR and the Union Republics did not contain provisions on the regulation of reorganization and liquidation of legal entities, but were limited to a list of possible organizational and legal forms of legal entities; the period after the adoption of the Civil Code of the Ukrainian SSR in 1963 (mid-60s - mid-80s), when the provisions of the Civil Code of the Ukrainian SSR provided for two forms of termination of legal entities: liquidation and reorganization. Three forms of reorganization were enshrined in law: merger, division and accession; the period of perestroika (mid-80s - early 90s), when reorganization and liquidation were considered synonymous, and protection of creditors' rights was not ensured; the modern period after Ukraine's declaration of independence (since the early 90s) [60, p. 7].

A systematic analysis of the sources of legal regulation of legal entities' termination gives rise to the conclusion that civil law regulation of the institution of legal entities' liquidation has gone through three stages in its evolution:

1) legal regulation of the institute of liquidation of legal entities when Ukraine was part of the Russian Empire (nineteenth century - early twentieth century)

2) formation and development of the civil legislation of the Ukrainian SSR (early twentieth century - 1991);

3) the formation and development of civil legislation of Ukraine, which was marked by the adoption of a number of special and codified legal acts which provided comprehensive legal regulation - the period of independent Ukraine (from 1991 to the present).

For example, during the stage of legal regulation of the institution of liquidation of legal entities when Ukraine was part of the Russian Empire, the term

"liquidation of the company's affairs" was actively used, and there was no systematization of legal regulation of liquidation.

In the regulations of the Russian Empire, liquidation was defined as a certain process of termination of a legal entity, which began with the adoption of relevant decisions. Art. 2188 of the Code of Civil Laws of the Russian Empire provided that in the event of the closure of a joint-stock company, the board of the latter shall first of all begin to liquidate its affairs. The provisions of the Charter of a credit institution in terms of its termination without declaring it insolvent contained provisions that stated that "the general meeting of stockholders, members, shareholders, or the City Duma, having verified the existence of conditions that entail the termination of the credit institution, decides on its closure and liquidation of affairs" (Article 118) [22, p. 3].

A common interpretation of the term "liquidation of cases" was "final settlement". In this regard, O. A. Kvachevsky notes: "The natural consequence of the company's termination is the division of its property. Before starting the division, it is necessary to determine the composition of the company's property, to make a correct and transparent account of all available and debt property, as well as all debts of the company to the founders and third parties, and on this basis to calculate profits and losses. This calculation is called liquidation... Thus, the distribution must be preceded by liquidation of the company's property and all its affairs. The determination of debts from what belongs to the company and each founder is the goal and purpose of liquidation..." [71, c. 172]. This opinion is also supported by G. F. Shershenevych, who calls liquidation "a process of purification preceding distribution". "The termination of a company results in the distribution of its property among the members of such a company. But such distribution is possible only after the property is cleared of debts. This process consists of: a) payment of the company's debts; b) recovery of the company's property from third parties; c) realization, i.e. transformation of the value of all things belonging to the company into money; d) preparation of an exemplary calculation [243, p. 360].

There was no detailed legal regulation of the liquidation process. Such regulations were applied either to certain types or groups of legal entities (Rules on the Procedure for Liquidation of Private and Public Institutions of Short-Term Credit of 1884 Regulations on the Procedure for Liquidation of Railway Companies in the Case of Transfer of Their Roads, by Purchase, to the Treasury, without Declaring the Company Insolvent of 1892), or to the charters of individual companies. Sometimes the charters of legal entities required certain conditions to be met before liquidation (termination, closure) could begin, including prior government approval. For example, the Charter of the Company of Owners of the Odesa Kuyalnytsia-Khadzhibey Salt Works stated that "the company shall proceed to liquidate its affairs not otherwise than after obtaining permission from the Government to terminate its activities" [22, p. 6].

While this period is characterized by an insignificant level of legal regulation of liquidation of legal entities, the period of formation and development of civil legislation of the Ukrainian SSR (early XX century - 1991) saw the formation of the basic principles and principles of termination of existence (liquidation) of business entities as a component of the integral institution of enterprise legislation.

In the first post-revolutionary years, legal entities established during the existence of the Russian Empire were forcibly liquidated, which was most often justified by the social and political objectives of the revolution. For example, examples of forced liquidation are recorded in one of the first documents of the Provisional Workers' and Peasants' Government of Ukraine, the Decree "On the Separation of Church and State and School and Church" of January 19, 1919. On the basis of this document, the following were deprived of the rights of a legal entity (subject to closure): churches; private religious communities formed for the performance of any cult; charitable and educational organizations [219, p. 51].

The legal regulation of the liquidation (termination, closure) of legal entities was rapidly developing during the period of the first Civil Code of the Ukrainian SSR of 1922, which was copied in its entirety from the Civil Code of the Russian Socialist Federal Soviet Republic.

It should be noted that 1922 was the period of the NEP, when the Bolsheviks, for tactical reasons, allowed the country to partially return to market relations. The Bolsheviks did not recognize the division of law into public and private. In fact, civil rights were protected by law only if they did not contradict its socio-economic purpose. This criterion gave the courts arbitrariness, so the court could cancel rights. The principle of legality was opposed to the principle of expediency. This led to legal nihilism. Obligatory law consolidated the dominant position of the state and state-owned enterprises [1, p. 4-5].

The Civil Code of the Ukrainian SSR of 1922 contained a General Part, three sections, and 435 articles. The general rules on business companies defined certain provisions on the termination of their existence. In particular, it was provided that the company was terminated as a result of: a) death of any of the partners; b) declaration of any of the partners as incapacitated or insolvent; c) submission by any of the partners of a request for termination of an unlimited partnership; d) early withdrawal of one of the partners from participation in a partnership based on a term; e) expiration of the term for which the partnership was founded; f) achievement or impossibility of achieving the company's purpose; g) a claim by a creditor who has foreclosed on the share of one of the partners in the share capital; and h) agreement of the partners on the termination of the company. In the cases provided for in clauses "b", "c", "d" and "g", as well as in the event of the death of one of the partners, in the event that the heir of the deceased refuses to join the partnership, the partnership shall continue to exist if its continuation in these cases is provided for in the partnership agreement or is stipulated by agreement of the remaining partners. The liquidation of the company's affairs after its termination was carried out by the partners, subject to the following conditions: a) items contributed to the company for joint use only were returned to the partners who contributed them without remuneration for the use of these items, unless otherwise agreed; b) the distribution of joint property was carried out only after the undisputed or disputed debts of the partners were satisfied. In-kind contributions were returned in money at the value set for them in the partnership agreement, or in the absence of such an agreement, at their value at the time of

contribution in gold currency at the official exchange rate. If the joint property of the partners was insufficient to satisfy or secure the debts, the missing amount had to be replenished by the partners in the amount of the share of losses attributable to each of them. In the event of the insolvency of any of the partners, the part of the losses attributable to him was distributed among the remaining partners on the same basis. It has been established that the procedure for mutual settlements between partners during the liquidation of a company may also be established by an agreement of partners.

A general partnership was also terminated by declaring the company insolvent in court. The Law separately defined the grounds for termination of joint stock companies, namely: a) upon expiration of the term for which it was established; b) by resolution of the general meeting of shareholders on termination of its activities or on merger with another joint stock company; c) by declaration of insolvency.

In addition, the Civil Code of the Ukrainian SSR of 1922 stipulated that a general partnership was liquidated when it deviated from the purpose of its activities specified in the contract or when the activities of its bodies deviated in a direction contrary to the interests of the state; the company was closed by a resolution of the relevant district executive committee, which was adopted on the proposal of the department of the district executive committee in charge of the branch of the national economy in which the company operated. To liquidate the company's affairs, the partners had the right to elect individual liquidators from among themselves or from outside. In case of disagreement on the identity of the liquidator, the latter was appointed by the court at the request of any of the partners.

The grounds for termination of joint stock companies were separately defined, namely: a) upon expiration of the term for which it was established; b) by resolution of the general meeting of shareholders on termination of its activities or on merger with another joint stock company; c) with declaration of insolvency; d) by government resolution in case of evasion of the company from the purpose specified in the charter, as well as in case of evasion of its bodies in a direction contrary to the interests of the state.

Legal regulation of the liquidation of individual enterprises was carried out at the state level on the basis of special regulations, in particular: 1) Resolution of the All-Union Central Executive Committee and the Council of People's Commissars of the Ukrainian SSR of October 7, 1925 "On the Procedure for Liquidation of State Industrial and Commercial Enterprises Existing on the Basis of Economic Calculation, as well as Joint Stock Companies and Limited Liability Companies with Exclusive or Predominant Participation of State Capital"; 2) Resolution of the All-Union Central Executive Committee and the Council of People's Commissars of the Ukrainian SSR of October 7, 1925 "On the Procedure for Liquidation of Cooperative Organizations, Their Merger and Division" (later replaced by the Union Regulation on the Procedure for Termination of Cooperative Organizations of 1927). Compulsory liquidation of state-owned enterprises was carried out only in an administrative manner - by decision of an authorized state body, including in the case of insolvency of the enterprise (the reason for liquidation was insufficient working capital to cover debts presented for collection). Thus, the regulatory regulation of the liquidation procedure, in accordance with the said acts of 1925, covered the liquidation of both solvent enterprises whose property was sufficient to pay off creditors and insolvent ones [60, p. 70].

During the 1930s, a number of legislative acts were adopted, the main task of which was to ensure the indivisible planning and protection of socialist property, to strengthen the centralization and planning of the national economy.

The Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of January 30, 1930, "On Credit Reform," which abolished bill circulation and commercial lending and defined the procedure for liquidating credit unions, was intended to ensure centralized planned management of the economy. After the adoption of the Decree of the Council of People's Commissars of the USSR of September 29, 1935, "On the Work of Consumer Cooperatives in the Countryside," urban consumer cooperatives, agricultural cooperatives, and industrial cooperatives were liquidated. The Resolution of the Central Committee of the CPSU and the Council of Ministers of the USSR of July 20, 1960, No. 784 and the

Resolution of the Central Committee of the Communist Party of Ukraine and the Council of Ministers of the Ukrainian SSR of October 11, 1960, No. 1698 liquidated industrial cooperation, transferring its enterprises to the jurisdiction of state bodies, artels of disabled people and consumer cooperatives [48, p. 53-54].

During this tense period, the institution of liquidation of legal entities could not develop in a progressive direction and comply with the general legal principles of termination of legal entities under private law, which was primarily due to the difficult socio-economic and political situation in the state.

A significant shift in the development of legal regulation in this area was the adoption of the Law "On Approval of the Fundamentals of Civil Legislation of the USSR and the Union Republics" by the Supreme Soviet of the USSR on December 8, 1961, which was enacted on May 31, 1962. The main provisions of the law became the basis for the new Civil Code of the Ukrainian SSR of 1963. According to Art. 37 of the Civil Code of the Ukrainian SSR, a legal entity was terminated by liquidation or reorganization (merger, division or accession). The grounds and procedure for the liquidation of enterprises were defined in the legislation of the USSR and the Ukrainian SSR, and the specifics of the liquidation of cooperative and public organizations were also regulated in their charters (regulations). Article 38 of the Civil Code of the Ukrainian SSR stipulated that the termination of state organizations that were legal entities was carried out by the body by whose decision they were established. Article 40 of the Civil Code of the Ukrainian SSR determined the procedure for the use of property remaining after the satisfaction of the claims of all creditors of a liquidated cooperative organization, as well as the property of a liquidated other public organization. In particular, the property remaining after satisfaction of the claims of all creditors of a liquidated cooperative organization is used, unless otherwise provided by law, to return share contributions. The remaining property of this organization, as well as the property of the liquidated other public organization, was transferred to higher-level organizations, and in the absence of such organizations, to the relevant state body for general cooperative or public needs. The property remaining after satisfaction of the claims of all creditors of a liquidated

intercollective, state collective farm or other state cooperative organization was distributed among its members in proportion to their contributions [238].

The trend of the 1990s was the adoption of certain regulations that established special grounds for the termination of legal entities, a special liquidation procedure, the procedure for the distribution of property after liquidation, and the priority of satisfying creditors' claims.

A novelty of Soviet legislation was the Resolution of the Council of Ministers of the USSR of June 19, 1990 [132], which approved the Regulation on Joint Stock Companies and Limited Liability Companies and the Regulation on Securities. The Regulation defined and detailed the grounds for the termination of companies, the procedure for appointing and authorizing the liquidation commission; regulated the procedure for settlements with creditors and the distribution of property remaining after satisfaction of creditors' claims among the company's shareholders, and determined the moment of liquidation completion. In particular, clause 25 stipulated that the termination of a company's activities was carried out through its reorganization (merger, acquisition, division, spin-off, transformation) or liquidation. Clause 26 of the Regulations stipulated that the liquidation of a company was carried out by a liquidation commission appointed by the company, and in cases of termination of activities by a decision of a state arbitration or court, by a liquidation commission appointed by these bodies.

From the moment the liquidation commission was appointed, it was given the authority to manage the company's affairs. The liquidation commission assessed the company's available property, identified its debtors and creditors and settled accounts with them, took measures to pay the company's debts to third parties and its shareholders, drew up a liquidation balance sheet and submitted it to the company's supreme body. The funds available to the company, including the proceeds from the sale of its property as a result of liquidation, after settlements with the budget, payment of salaries to the company's employees, creditors and fulfillment of obligations to the holders of bonds issued by the company, were distributed by the liquidation commission among the company's shareholders in the manner and on the

terms provided for by this Regulation and the constituent documents. The property transferred to the company by the participants for use was returned in kind without remuneration [132].

The liquidation of a company was considered completed and the company was considered to have ceased to operate from the moment an entry was made in the state registration register.

In addition, the Regulations on Joint Stock Companies and Limited Liability Companies and the Regulations on Securities provided that the liquidation commission was liable for damages caused by it to the company, its shareholders, and third parties in accordance with the civil law of the USSR and the Union republics.

Among the laws of the Ukrainian SSR that regulated the basic provisions on the liquidation of legal entities not related to bankruptcy, one should single out the Law "On Enterprises in the Ukrainian SSR" of March 27, 1991, which was in force until the adoption of the Civil Code and the Civil Code of Ukraine in 2003 [103, p. 36].

The Law defined the prerequisites for the liquidation of legal entities, in particular, it established that a company was subject to liquidation in the following cases: if it was declared bankrupt; if a decision was made to ban the company's activities due to failure to comply with the conditions established by law and the company failed to comply with these conditions or change its type of activity within the time period stipulated by the decision; if a court decision invalidated the constituent documents and the decision to establish the company; and on other grounds provided for by the laws of Ukraine.

It was also stipulated that the procedure and terms of the liquidation procedure, as well as the deadline for filing creditors' claims, were determined by the owner, court or body authorized to establish enterprises that decided to liquidate the enterprise. It is established that the period for filing creditors' claims may not be less than two months from the date of the liquidation announcement.

The law stipulated that liquidation was carried out by a liquidation commission, which

- evaluates the available property of the liquidated company;
- settles accounts with creditors;
- draws up a liquidation balance sheet and submits it to the owner or the body that appointed the liquidation commission.

One of the novelties of the liquidation legislation introduced by the Law "On Amendments to Certain Legislative Acts of Ukraine" of March 14, 1995, was the provision of part 2 of Article 35 of the Law "On Enterprises in the Ukrainian SSR" that the accuracy and completeness of the liquidation balance sheet must be confirmed by an auditor (audit firm), except for those organizations that are fully supported by the budget and do not engage in entrepreneurial activity.

Article 36 of this Law determined the procedure and priority for satisfying creditors' claims, in particular, it established that debts to budgets and compensation for the restoration of the natural environment damaged by the liquidated enterprise were to be satisfied as a matter of priority.

It also stipulated that the property remaining after satisfaction of the claims of creditors and members of the labor collective was to be used at the direction of the owner [178].

Subsequently, the provisions of these articles became the basis for the provisions of the Civil Code of Ukraine of January 16, 2003 on the liquidation of legal entities (Articles 110, 111, 112).

The Law of Ukraine "On Amendments to the Law of the Ukrainian SSR 'On Entrepreneurship'" of October 15, 1992 introduced provisions on the compulsory cancellation of state registration of an enterprise, which is the basis for the liquidation of a legal entity, in particular, in accordance with a court decision in cases provided for by Ukrainian legislation.

The adoption of the Civil Code [236] and the Commercial Code of Ukraine [29] on January 16, 2003, marked a new stage in the development of legal regulation of liquidation of legal entities in Ukraine.

For the first time, the Civil Code of Ukraine defined the general principles and grounds for liquidation of legal entities under private law. The Code set out the

procedure for establishing and general functions of the liquidation commission, the order of priority for satisfying creditors' claims and the moment of termination of a legal entity.

The Law of Ukraine "On Limited Liability Companies and Additional Liability Companies" [186] adopted on February 6, 2018, which defines the legal status of limited liability companies and additional liability companies, the procedure for their establishment, operation and termination, and the rights and obligations of shareholders, is a novelty of modern Ukrainian legislation. The Law details the process of termination of limited liability companies and additional liability companies through reorganization, but it does not contain any provisions that would regulate liquidation. Thus, Article 48 stipulates that a company is terminated as a result of the transfer of all property, rights and obligations to other business entities - successors by merger, acquisition, division, transformation or liquidation. Paragraph 2 of this Article provides that voluntary termination of a company is carried out by a decision of the general meeting of shareholders in accordance with the procedure established by this Law, in compliance with the requirements of the law. Other grounds and procedures for company termination are regulated by law.

Thus, the Civil Code of Ukraine of January 16, 2003 (Articles 110, 111, 112) is now the main legislative act containing general rules governing the procedure for liquidation of legal entities in Ukraine [102, p. 70].

Summarizing the above, we propose to distinguish three main historical stages in the development of civil legislation on legal regulation of the institute of liquidation of legal entities in Ukraine:

1) legal regulation of the institute of liquidation of legal entities when Ukraine was part of the Russian Empire (nineteenth century - early twentieth century)

2) formation and development of the civil legislation of the Ukrainian SSR (early twentieth century - 1991), which was characterized by the formation and development of the basic principles and principles of termination of existence (liquidation) of business entities;

3) the formation and development of civil legislation of Ukraine, which was marked by the adoption of a number of special and codified legal acts that provided comprehensive legal regulation of the legal entity (from 1991 to the present). This stage was the novelization of legal regulation of the institution of liquidation of legal entities, which was marked by the adoption of the Civil Code and the Commercial Code of Ukraine in 2003, as well as a number of special regulations that defined the general principles and grounds for liquidation of legal entities of various organizational and legal forms, and also fixed the moment of termination of a legal entity.

The above gives grounds to assert that over the course of more than a century of history, the current rules governing the liquidation of legal entities in Ukraine are based on the liquidation structure of the Soviet period, which obviously cannot always meet the needs of the present, due to the rapid European integration processes and the desire to liberalize national legislation.

1.3. International experience in civil law regulation of the institution of liquidation of legal entities

Due to the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" and some other legislative acts of Ukraine on decentralization of powers of state registration of legal entities, individual entrepreneurs and public formations" of November 26, 2015 No. 835-VIII [160], in the Doing Business 2017 ranking, prepared by the World Bank to compare the accessibility of entrepreneurial activity in different countries, Ukraine managed to rise by 10 steps in the indicator "Business Registration" - from 30th to 20th place. However, the rating of our country has significantly decreased in such areas as Liquidation of a company (from 141st to 150th place). Despite the fact that the country's legislation contains provisions relating to the liquidation or reorganization procedure, Ukraine was assigned 0 points on the regulatory framework

efficiency index, as the indicators "time and financial costs" and "final result of the process" - in Ukraine recorded "no practice" [100].

Of course, such a situation is unacceptable and necessitates theoretical and practical study of international experience in the field of liquidation of legal entities in order to efficiently reform national legislation.

The rules aimed at regulating the liquidation procedure of legal entities are contained in certain areas of the EU legal framework.

In particular, the First Directive 68/151/EC of the Council of the European Communities "On co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community" of August 9, 1968 [173] also regulates the nullity of companies. Attention is focused on the legal means of preventing incorrect drafting of constituent documents: the choice is made between the introduction of control by the state authorities and notarization. The directive provides an exhaustive list of nullity of the company, which means that states can only shorten it. These grounds are:

1) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;

2) that the objects of the company are unlawful or contrary to public policy;

3) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;

4) failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up ;

5) the incapacity of all the founder members;

6) that, contrary to the national law governing the company, the number of founder members is less than two.

Given that a company’s nullity can be declared only on the above grounds, and that Member States have the discretion to introduce any of the above grounds into

their legislation, the regulation of this issue may differ from one Member State to another. However, they will definitely not go beyond those proposed by the Directive in the EU [148, p. 179-180].

In accordance with the provisions of Articles 11 and 12 of the First Directive 68/151/EC, nullity of the company must be ordered by decision of a court of law. Nullity shall entail the winding up of the company, as may dissolution. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.

The provisions of Art. 11 of the First Directive 68/151/EC on invalidation of state registration of a company were implemented in Ukrainian legislation, in particular in Part 2 of Art. 38 of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs". However, after the adoption of the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" and some other legislative acts of Ukraine on decentralization of powers on state registration of legal entities, individual entrepreneurs and public formations" of November 26, 2015, such grounds were excluded.

At the same time, the provisions of the First Directive 68/151/EC are embodied in the fact that only a court can decide on the compulsory liquidation of business entities in Ukraine. State authorities and local self-government bodies, which can only initiate the termination of the company by applying to the court, do not have such powers, which is due to the need to guarantee the rights of business entities from interference by state bodies [57, p. 68].

In accordance with the provisions of Directives 2001/24/EC [181] of the European Parliament and of the Council on the reorganization and winding up of credit institutions and 2001/17/EC [182] on the reorganization and winding up of insurance undertakings, liquidation procedures are collective procedures providing for the proper realization of assets and distribution of funds among creditors, shareholders or members of the undertaking, which necessarily includes any intervention by an administrative or judicial authority of a Member State, In

particular, if collective procedures are terminated by agreement or other similar measures, whether based on insolvency or voluntary or compulsory.

Directive 2001/24/EC filled a significant gap in the legislation on the provision of financial services. The purpose of this document was to ensure the application of the liquidation procedure to a credit institution that has branches in other EU member states under uniform rules in order to properly protect creditors and investors [148, p. 299-300].

Directive 2001/17/EC does not aim to harmonize national legislation on reorganization measures and liquidation procedures, but aims to ensure mutual recognition of the legislation of the Member States in the field of reorganization measures and liquidation of insurance undertakings, as well as the necessary cooperation. Such mutual recognition is implemented in this Directive through the principles of unity, universality, coordination, publicity, uniformity and protection of insurance creditors.

Directive 2001/17/EC establishes that measures in court proceedings against an insurance company must be taken by the competent authorities in accordance with the rules and within the framework of the legislation of the EU member state in which the company's authorization to operate was issued. As a general rule, the proceedings should concern all branches of the insurance company in the EU, and creditors should be provided with a legal regime that creates the necessary conditions for proper informing of the participants in the proceedings about the progress of the case, as well as guaranteeing non-discrimination of these legal relations, regardless of which state they are subjects of law [148, p. 299].

The detailed procedure for the liquidation of legal entities in the EU is determined by the internal legislation of the member states. For example, in France, the termination of commercial organizations is regulated by the Law on Commercial Companies of June 24, 1966; in Germany - by the Law on Joint Stock Companies of September 6, 1965 and the Law on Limited Liability Companies of April 20, 1892, the Commercial Code of May 10, 1897, and the German Civil Code of August 18,

1896; in the UK - by the Companies Act 1985 and the Disqualification of Company Directors Act 1986, the Insolvency Act 1986 [197, p. 20].

At the same time, in accordance with the provisions of Directive 2001/24/EC [181] and Directive 2001/17/EC [182], the law of the home Member State shall determine in particular:

(a) the goods subject to administration and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;

(b) the respective powers of the credit institution and the liquidator;

(c) the conditions under which set-offs may be invoked;

(d) the effects of winding-up proceedings on current contracts to which the credit institution is party;

(e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;

(f) the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in re or through a set-off;

(i) the conditions for, and the effects of, the closure of insolvency proceedings, in particular by composition;

(j) creditors' rights after the closure of winding-up proceedings;

(k) who is to bear the costs and expenses incurred in the winding-up proceedings;

(l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

The problems of liquidation of legal entities not related to bankruptcy within the framework of EU law have hardly been studied in our country. There are very few legal studies, including scientific articles. Among the scholars who conduct a

comparative analysis of Ukrainian corporate law with the legislation of EU member states and EU law itself, we can single out such researchers as: O. R. Kibenko, V. A. Vasyliev, O. M. Vinnik, O. M. Zagrebelnyi, and others. In Russia, there are more such scholars, although their circle is also limited. Interesting are the works devoted to the problems of corporate law by such Russian scholars as: S. Dubovitskaya, G. Kalashnikov, S. Gomtsyan [47, pp. 465-466].

According to V. K. Mamutov, in foreign legislation, despite the variety of national procedures, it is possible to identify at least two mandatory conditions common to all countries necessary for the recognition of economic entities as subjects of law. This is the definition of the name under which the entrepreneur must act in economic relations (firm) and the state registration of his enterprise [107, p. 60]. It can be concluded that a participant in economic activity ceases to be a subject of law from the moment of registration of its termination.

German law stipulates that the main governing body of a company was and is the general meeting, which elects the management board and can liquidate the company by a qualified majority of votes. The company's charter must specify the legal entities to which the property may be transferred. In the absence of this information, the property is transferred to the state. A company's activities in Germany may be terminated in the following cases:

- insolvency;
- closure in accordance with its own decision or full realization of the purpose;
- unlawful decision of the general meeting or unlawful actions of the management board;
- threats to the public interest.

This approach applies not only to commercial or social societies, but also to political and professional ones.

According to the French law "On Commercial Companies", the court may order the liquidation of a company if it turns out that an individual is the sole shareholder of two or more limited liability companies. As for joint-stock companies,

the court may order the termination if the number of shareholders is less than seven within a year.

Under British law, in addition to accountants and stock exchanges, there is a requirement of 20 members of the company. A company can be liquidated by a court, under court supervision or voluntarily.

Researcher O. M. Zubatenko identifies the following cases of liquidation of companies in the UK:

a) if a public company has not fulfilled the requirements for the authorized capital established by law, and a year has passed since its registration;

b) the company did not start its activities within a year from the date of its registration or suspended them for a year;

c) the number of members has become less than two;

d) the company is unable to pay its debts;

e) the court concluded that it would be reasonable and fair if the company was liquidated [62, p. 20].

Given the European vector of Ukraine's development, which is declared, in particular, by the Law of Ukraine of September 16, 2014 "On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand", the regulation of business in accordance with European standards is becoming important for our country [36, p. 35]. A prerequisite for the successful development of corporate legislation in Ukraine, including legislation in the field of legal entities' termination, should be the complexity of regulation and a strategic approach.

According to O. R. Kibenko, the main guideline for reforms should be EU legislation (current and prospective). However, the legislative experience of other countries should also be taken into account [72, p. 100-101].

In our opinion, it is advisable to focus on the successful experience of integrating the national legislation of the Baltic States with the EU requirements, including in the area of termination of legal entities.

Thus, the legal basis for the regulatory regulation of relations in the field of liquidation of legal entities in Lithuania is provided by: The Civil Code of July 18, 2000 [239], the Laws on Joint Stock Companies of July 13, 2000 [151], on Small Companies of June 29, 2012 [176] and on Bankruptcy of Enterprises of March 20, 2001 [154], which have undergone significant transformational changes in connection with Lithuania's accession to the EU in 2004.

The general principles of termination of legal entities are outlined in the Civil Code of the Republic of Lithuania.

It stipulates that legal entities are terminated by liquidation or reorganization, and a legal entity is deemed terminated from the date of removal of the entry on the legal entity from the register of legal entities.

Both the Civil Code of Ukraine and the Civil Code of the Republic of Lithuania do not contain a clear definition of the concept of liquidation of legal entities. However, unlike the Ukrainian Civil Code, the Lithuanian Civil Code details the grounds for termination of companies, the procedure for appointment and powers of the liquidator/liquidation commission; regulates the procedure for settlements with creditors and distribution of property remaining after satisfaction of creditors' claims among the company's shareholders, and determines the moment of completion of liquidation.

Art. 2.106 of the Civil Code of the Republic of Lithuania sets forth an exclusive list of grounds for liquidation of a legal entity. In particular, a legal entity is liquidated on the basis of: 1) a decision of the legal entity's shareholders to terminate its activities; 2) a decision of a court or creditors' meeting to liquidate a bankrupt legal entity; 3) a court decision to liquidate a legal entity not related to bankruptcy; 4) a decision of the administrator of the legal entity register to liquidate a legal entity; 5) expiration of the period for which the legal entity was established; 6) reduction of the number of shareholders of a legal entity below the minimum number established by law; 7) invalidation of the establishment of a legal entity.

After the adoption of the amendments to the Civil Code of the Republic of Lithuania and the Civil Procedure Code of the Republic of Lithuania in 2014, the

liquidation of a company may be initiated by the administrator of the register of legal entities "Center of Registers", namely if: 1) the company does not submit financial statements for 12 months; 2) the company's management bodies have not been formed and therefore cannot make decisions for more than six months; 3) it is impossible to find members of the management bodies at the legal address of the office or addresses of the company indicated in the register; 4) the company has not updated its data in the register of legal entities for five years and there are grounds to believe that the company does not carry out business activities.

The Lithuanian Civil Code stipulates that the decision to liquidate a legal entity and appoint a liquidator shall be made by a qualified majority of votes of the legal entity's shareholders, which may not be less than two-thirds of all votes cast at the general meeting. The meeting of shareholders of a legal entity that has decided to liquidate the legal entity, the court or the administrator of the register of legal entities must appoint a liquidator who has the necessary qualifications. In cases provided for by law, several liquidators may be appointed to form a liquidation commission. From the moment a liquidator is appointed or a liquidation commission is formed, the management bodies of a legal entity lose their powers.

The Law of the Republic of Lithuania "On Joint Stock Companies" specifies the powers of liquidators and, unlike the Law of Ukraine "On Joint Stock Companies", stipulates that liquidators are jointly and severally liable to the company and third parties for damage caused by the liquidators' fault. If the liquidator acts personally, he or she is individually liable for the damage caused.

The law also stipulates that the liquidation of a joint-stock company must be announced to the public three times with an interval of at least two months or each shareholder and creditor must be notified. The company's property may be divided among shareholders only after three months have passed since the third publication of information on liquidation or notification of each shareholder and creditor.

With regard to the procedure and priority of satisfaction of creditors' claims, the provisions of the Civil Code of the Republic of Lithuania are similar to those

contained in the Civil Code of Ukraine, in particular, it is stated that priority in satisfaction of creditors' claims is given to claims secured by a pledge of property.

The compliance of the legislation of the Republic of Lithuania with the EU legal norms, in particular in the field of liquidation of legal entities, is evidenced by the presence in the Lithuanian Civil Code of provisions on the grounds for declaring a company invalid, as provided for in Directive 68/151/EC [173]. A company may be declared invalid only by a court on the following grounds:

1) incapacity of all the original founders of the company or violation of the requirements for the minimum number of company members;

2) absence of constituent documents or failure to comply with formalities regarding their execution;

3) the company's charter defines the company's objectives that are contrary to public policy or the law;

4) failure to form the minimum amount of the authorized capital or violation of the procedure for its formation;

5) absence in the constituent documents or charter of any indication of the company's name, type, amount of contributions, authorized capital or failure to specify the company's objectives, if such requirements are provided for by laws governing certain forms of legal entities. If a company is recognized as invalid, the legal entity is liquidated in accordance with the procedure established by law.

The Republic of Poland is one of Ukraine's most important strategic partners. The close geographical proximity, common border, close ties throughout historical development, similarity in area, population, language group, mentality, and proximity in natural and geographical conditions and resources make it possible for Ukraine to use the European civilization approach and Poland's experience in achieving full EU membership. Poland joined the EU in 2004 and held the EU presidency in the second half of 2011. The adaptation of Polish laws to the requirements of EU legislation has led to large-scale reforms in the state's economic policy and significantly limited government intervention in the private sector [14, p. 85].

The Republic of Poland is a country whose legislation does not have a single codified legal act that would comprehensively regulate social relations in the field of entrepreneurial activity (analogous to the Economic Code of Ukraine). Despite this, it is possible to state a rather low level of "dispersion" of legislative norms that enshrine the general principles of entrepreneurial activity, in particular in the field of liquidation of legal entities, and in recent years Ukraine has been characterized by the processes of decodification and increase in the number of regulations governing relations in the field of entrepreneurship [36, p. 39].

On January 1, 2001, Poland enacted regulations that reformed the country's legislation in accordance with EU standards and rules of economic turnover. Since then, the National Polish Court Register, a specialized information system that includes: 1) the register of entrepreneurs; 2) the register of associations, other public and professional organizations, foundations, and public healthcare institutions 3) register of insolvent debtors.

Also, on January 1, 2001, the Code of Commercial Companies came into force, which is an example of the implementation of EU regulations into national legislation, since the provisions of the current EU directives were taken into account during its preparation [7, p. 72].

According to the Civil Code, in Poland, trading companies are divided into two types: personal (involving the changeability of personal composition, the pooling of members' property and their joint activities as a prerequisite for the existence of the company; each member of the company has the right to conduct business and represent the company: simple, general, partnership, limited partnership and limited liability companies) and capital (pooling of capital, does not require mandatory participation of members in the organization of the company's activities; operational activities of these companies and their representation are carried out by specially created bodies; the responsibility for the activities of such companies lies with the trading company itself: limited liability companies and joint stock companies).

In accordance with the provisions of the Commercial Companies Code, a sole proprietorship is terminated on the grounds provided for in the company agreement,

by law or by a court decision. In the course of liquidation, the name of the company is indicated with the addition of the words "in liquidation". Companies are terminated as a result of:

- achievement of the company's business purpose;
- expiration of the period for which the company was established;
- termination of the company by a court decision, at the request of any of the company's shareholders
- withdrawal or death of a company member, if there is only one member;
- bankruptcy of the company.

The Code of Commercial Partnerships provides that if only one partner remains in a partnership, or if only one partner is authorized to carry out professional activities, the partnership must be terminated no later than one year after the occurrence of the above circumstances. In such a case, during this year, there is "not a typical structure for personal partnerships, namely the existence of a single-person partnership". However, if during the year another partner joins the partnership who has the right to carry out professional activities related to the subject matter of the partnership, the grounds for termination of the partnership disappear [252, p. 88].

The termination of partnerships occurs after the liquidation procedure is completed and they are excluded from the Polish Court Register.

Pursuant to Article 82 of the Commercial Companies Code, the company's assets are used to satisfy claims on the company's obligations and make other mandatory payments as prescribed by law. The company's assets remaining after the repayment of liabilities are transferred to the shareholders in accordance with the terms and conditions set forth in the company agreement. In the absence of relevant provisions in the company agreement, the shareholders are paid their capital shares. The balance of the property is distributed among the shareholders in the ratio in which they participate in the distribution of the company's profits. Property contributed by a partner for use only is returned to the partner in kind.

Article 83 of the Code stipulates that if the property is insufficient to repay the company's capital shares and debts, the deficit is distributed among the partners in

accordance with the provisions of the agreement, and in their absence - in the ratio in which the partners share in the losses. In the event of insolvency of one of the partners, the part of the deficit belonging to it is distributed among the other partners in the same ratio.

The law stipulates that the moment the liquidation procedure for capital companies is initiated is when the company's shareholders decide to terminate the company or when a court decision to terminate the company comes into force. Pursuant to Article 276 of the Commercial Companies Code, all members of the management board are liquidators, unless otherwise provided by the company's charter or a resolution of the shareholders. If the liquidation is carried out by a court decision, the court may simultaneously appoint a third party not from among the members of the company's management board as liquidator.

The liquidation procedure begins with the liquidators preparing the opening balance sheet, which they submit to the shareholders' meeting for approval. The liquidation balance sheet must include all components of the assets at their marketable value (i.e., the real price that can be obtained at the time of the balance sheet preparation from the sale of these property components). The balance sheet is prepared within 15 days from the date of opening the liquidation. If the liquidation procedure is still in progress at the end of the next turnover year, the liquidators must submit a report on their activities and a financial report to the meeting of shareholders after the end of each turnover year [252, p. 124].

As in Ukraine, in Poland, the fulfillment of the company's obligations is carried out on the basis of the stated creditors' claims, the term of which has come. However, unlike the Civil Code of Ukraine, which provides that creditor's claims filed after the expiration of the period established by the liquidation commission for their submission shall be satisfied from the property of the legal entity being liquidated, which remains after satisfaction of creditors' claims filed in a timely manner; in Art. 285 of the Commercial Companies Code stipulates that a company is obliged to deposit for a court deposit the amounts necessary to satisfy claims or provide

guarantees to creditors known to the company who have not filed their claims in a timely manner, or whose claims have not matured, or whose claims are disputed.

In other words, the Polish Commercial Companies Code provides legal guarantees of repayment of claims of all creditors known to the company.

Upon completion of settlements with creditors, the remaining property of the company is distributed among the shareholders in proportion to their shares, unless otherwise provided by the charter documents.

One of the peculiarities of the legal regulation in Poland of the distribution of company property among the shareholders is the system of shareholder shares set out in the articles of association or agreement. If a company has a system of unequal shares subject to division, i.e. if each shareholder owns only one share, then the property is distributed in proportion to the value of the shares. If the company's agreement provides that the participants may have more shares that are equal and not subject to division, then the distribution of the liquidation estate is made in proportion to the number of shares owned by the participants [252, p. 125].

Upon completion of settlements with creditors, liquidators draw up a liquidation balance sheet, which is approved by the legal entity's shareholders, and ensure its submission to the registration court with simultaneous submission to the Polish National Register of an application for deletion of the company from the register.

In our opinion, Georgia is the most illustrative country for studying and borrowing experience in reforming the legislation on liquidation of legal entities, as it has implemented progressive reforms in various areas of public administration. The area of state registration is no exception. Although recently in this country corruption and embezzlement of funds were total, procedures related to the provision of administrative services to citizens were completely non-transparent [210, p. 94]. However, Georgia is now steadily rising in international rankings in terms of the ease of doing business.

The gradual simplification of the company registration process began in 2004. The procedures for registering with the court and then with the tax authorities were

merged. The “one-stop shop” principle was effectively implemented. Since 2008, it is no longer a requirement to have a charter capital, charter, own seal, or notarization of constituent documents. Changes also affected the rules of reorganization, liquidation and management. The interests of both creditors and co-founders of the company have become more protected. In fact, the internal structure of the company was completely liberalized. Almost everywhere where the law used to give strict instructions, a concession has been made: “Unless otherwise provided by the charter” [14, p. 201].

The main feature of the legislative regulation of voluntary liquidation of a legal entity (by decision of the owners) in Georgia is that the process of its implementation is spelled out in detail in one law, namely the Law of Georgia “On Entrepreneurs” [179]. In accordance with the provisions of Article 14 of this law, the partners of an entrepreneurial legal entity may decide to initiate liquidation of the enterprise. The partners, as well as, in the case provided for by the charter, members of the supervisory board or director(s), may appoint persons to liquidate the company (liquidators). At the general meeting, the partners decide to start liquidation of the legal entity, which is registered in the register of entrepreneurs and non-business (non-commercial) legal entities, and the liquidation procedure begins from that moment.

Simultaneously with the request for registration of the beginning of the liquidation process, the registration authority shall be provided with information on the terms of satisfaction of all claims of the company's known creditors, and from the moment of registration of the beginning of the liquidation process, the company's partners shall send a written notice to all known creditors of the beginning of the liquidation process, which shall specify the terms of satisfaction of creditors' claims.

The Revenue Service, in turn, within ten business days after receiving the notice, provides the registration authority with information on the risk of the entity's tax liability, which should include an indication of the term of the tax audit and the fact of confirmation of the existence of the debt. The duration of the tax audit may not exceed 90 days from the start of the company's liquidation, and if necessary, the

90-day period may be extended only once, but not for more than two months. If the tax authority misses the 10-day deadline for providing information on the existence of a risk as defined by law, as well as the term of the tax audit as defined by this provision, it is considered that the entity has no tax debt, and therefore, no measures that impede the liquidation process can be applied to it [100].

The main advantage of Georgia in the field of liquidation of legal entities is the clearly defined timeframe for the liquidation procedure. For example, Article 14 of the Law of Georgia “On Entrepreneurs” stipulates that the liquidator must start selling the company's property at market prices or through an auction no later than 90 days after the registration of the start of the liquidation process and place the amounts received from such sale on the deposit account of a court or a notary. It also stipulates that the liquidation process must be completed no later than four months after the registration of the start of the liquidation process, and in case of extension of the tax audit, no later than one month after the registration authority receives information on the completion of the tax audit. Upon completion of the process of satisfaction of creditors' claims, the authorized person(s) shall make a decision to complete the liquidation of the company, which shall state that all known claims of the company's creditors have been satisfied. This decision is submitted to the registration authority and serves as the basis for canceling the company's registration. If within three months after the company's registration is deregistered, it turns out that some of the claims of the company's creditors were not satisfied during the liquidation, they will be satisfied at the expense of the relevant amounts or property deposited in accordance with the requirements of the law. After the expiration of the three-month period, the deposited amounts or property are distributed among the partners in proportion to their shares, unless the charter (partners' agreement) provides for a different procedure. Thus, the term of voluntary liquidation may not exceed five months, unlike in Ukraine, where such a term is not limited by law and may last for years [104, p. 72].

Georgian legislation provides for an atypical ground for liquidation of a legal entity as compared to Ukrainian legislation, namely liquidation of a legal entity on

the basis of a court verdict in a criminal case on liquidation of a legal entity that has entered into force.

In such liquidation, the relevant provisions of the Law of Georgia “On Insolvency Proceedings” apply. Liquidation is mandatorily carried out by a court-appointed liquidator. From the moment the criminal proceedings are initiated until the court's guilty verdict comes into force or the criminal proceedings are terminated, liquidation and reorganization procedures are not allowed to be carried out against a legal entity.

In Ukraine, the liquidation of a legal entity is applied by a court as a criminal law measure pursuant to Article 96-9 of the Criminal Code of Ukraine, in case of committing crimes provided for by law by its authorized person.

The enshrining of such a criminal law measure as liquidation of a legal entity in the General Part of the Criminal Code of Ukraine was made within the framework of Ukraine's commitments to harmonize the provisions of domestic legislation with international standards (establishing the liability of legal entities for crimes). In this regard, on May 23, 2013, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of the Action Plan on Liberalization of the EU Visa Regime for Ukraine with Respect to Liability of Legal Entities” No. 314-VII, which resulted in the introduction of Section XIV-1 “Criminal Law Measures against Legal Entities” in the General Part of the Criminal Code of Ukraine [118, pp. 36-37].

However, in the context of today's realities, criminal proceedings to bring legal entities to criminal liability make up an insignificant percentage, and there are no decisions imposing criminal liability on a legal entity at all, which indicates the need to make a number of changes to legislative acts based on positive international experience.

Another atypical liquidation procedure available in Georgia is the cancellation of an unlawful decision of the registration authority to register a legal entity formed as a result of reorganization and the cancellation of the actual registration of such a business entity.

If, with the cancellation of an unlawful decision on the registration of a legal entity, the registration of a business entity that emerged on the basis of reorganization is canceled, the decision on cancellation restores the position of the enterprise that existed before the reorganization, and the legal successor of the canceled entity becomes the enterprise that existed before the reorganization. From the above, it can be seen that entering a record of the liquidation of the enterprise as a result of the reorganization may not always be the final registration action for the liquidated entity.

If the cancellation of an unlawful decision of the registration authority on registration entails the termination of the business entity so that it has no legal successor, the registration authority issues an administrative and legal act on the identification of deficiencies in registration and provides the legal entity with a period of 30 days to eliminate such deficiencies, which is noted in the register of entrepreneurs and non-business (non-commercial) legal entities. In case of failure to comply with the prescriptions within the specified period, the registration authority issues an administrative and legal act on the commencement of the procedure for the forced liquidation of the business entity. In this case, the partners of the legal entity or persons authorized to appoint a liquidator must appoint a liquidator and follow the procedures established by law for voluntary liquidation. In case of failure to appoint a liquidator, the process of compulsory liquidation is completed upon the expiration of the general term established by law for liquidation.

Conclusions to Section I

The study of the theoretical, legal and methodological foundations of the institution of liquidation of legal entities in Ukraine gives rise to the following conclusions:

1. The methodology for studying the legal regulation of the institution of liquidation in Ukraine is based on general scientific and special methods of cognition of legal phenomena, in particular, historical and legal, comparative legal, induction and deduction, systemic and structural, formal and dogmatic and logical methods.

2. There is a considerable number of scientific works devoted to certain aspects of the termination of business entities, but there is a lack of comprehensive scientific research on the institution of liquidation of legal entities in the context of the civil law doctrine, and the peculiarities of liquidation of legal entities under the civil law of Ukraine, as well as the prospects for the development and improvement of legal regulation in the field of liquidation of legal entities remain insufficiently researched.

3. In its evolution, civil legislation regulating the institution of liquidation of legal entities has passed several stages, including:

1) legal regulation of the institute of liquidation of legal entities during the period when Ukraine was part of the Russian Empire (nineteenth century - early twentieth century). During this period, the term “liquidation of the company's affairs” was actively used, and the legal regulation of liquidation was not systematized;

2) formation and development of civil legislation of the Ukrainian SSR (early twentieth century - 1991). This stage was characterized by the formation and development of the basic principles and principles of termination (liquidation) of business entities. Special grounds for the termination of legal entities, a special liquidation procedure, the procedure for the distribution of property after liquidation, and the priority of satisfaction of creditors' claims were identified;

3) the formation and development of civil legislation of Ukraine, which was marked by the adoption of a number of special and codified legal acts that provided

comprehensive legal regulation of the legal entity (from 1991 to the present). This stage was a novelization of the legal regulation of the institution of liquidation of legal entities, as the Civil Code and the Commercial Code of Ukraine were adopted in 2003, as well as a number of special regulations that defined the general principles and grounds for liquidation of legal entities of various organizational and legal forms, and fixed the moment of termination of a legal entity.

4. Reforming national legislation actualizes the need for theoretical and practical study of international experience in the field of liquidation of legal entities. Norms aimed at regulating the liquidation procedure of legal entities are contained in certain areas of the EU legal framework (First Directive 68/151/EC of the Council of the European Communities “On the coordination of safeguards (precautions) required by Member States from companies within the context of the second paragraph of Article 58 of the Treaty to protect the interests of members and others with a view to making such safeguards uniform throughout the Community” of August 9, 1968; Directives 2001/24/EC of the European Parliament and of the Council on the reorganization and winding up of credit institutions and 2001/17/EC on the reorganization and winding up of insurance undertakings). However, attention should be focused on the successful experience of integrating national legislation with EU requirements, in particular in the area of legal entities' liquidation, in the Baltic States, as well as in Georgia and Poland.

5. The analysis of international legislation in the field of liquidation of legal entities carried out within the framework of the study shows that the scope and detail of the regulation of the liquidation procedure of enterprises regardless of organizational and legal forms is significant, but there is no need to adopt a number of regulatory acts, but one balanced law that would regulate the liquidation procedure of legal entities in general and in detail is sufficient. Taking into account the positive international experience and adopting such a law or adopting amendments to the Civil Code of Ukraine, we can hope that the rating of our country in the area of “Liquidation of Enterprises” will significantly improve in terms of “time and financial costs” and “final result of the process”.

SECTION II
CIVIL LAW REGULATION
LIQUIDATION OF LEGAL ENTITIES IN UKRAINE

2.1. The Concept of Liquidation of Legal Entities and Its Types under the Civil Law of Ukraine

The modern legal space cannot exist without the institution of legal entities, because most business processes will be impossible without this legal structure [21, p. 13]. In the monograph “Organizational and Legal Forms of Legal Entities of Private Law” (2004), I. M. Kucherenko rightly notes: “The institute of a legal entity is one of the most studied in civil law and at the same time the most controversial issues. At the same time, it has traditionally been the case that in Ukraine only a legal entity is recognized as a subject of civil law relations, while other organizations which do not have the status of a legal entity are not” [90, pp. 5-8].

In particular, Article 80 of the Civil Code of Ukraine defines a legal entity as an organization established and registered in accordance with the procedure established by law, endowed with civil legal capacity and legal capacity, which may be a plaintiff and a defendant in court [236].

In the article “Legal Essence of a Legal Entity” (2013), V. V. Kochyn argues that in the context of the concept of a legal entity, its essence lies in the legally significant features of this participant of relations, which are imperative requirements for an organization that enables the latter to become a subject of civil relations. Such features include, in particular: 1) organizational unity; 2) publicity of occurrence and termination; 3) general (universal) legal capacity; 4) property separation; 5) independent responsibility; 6) participation in civil turnover on its own behalf [83, p. 44].

Thus, T.V. Blashchuk, conducting scientific research in the article “Peculiarities of participation of legal entities under public law in civil legal relations” (2009), notes that the institution of a legal entity exists so that its rules

consolidate the organizational, structural, property and functional unity of any subject of law, establish the limits of legal personality, forms and procedure for its exercise, the procedure for the emergence, reorganization and liquidation, as well as a number of other issues [9, p. 51].

The opinion of I.V. Spasybo-Fateeva seems to be correct, according to which the termination of legal entities is the antithesis of their creation [215, p. 272].

In the doctrinal sense, termination is considered to be the legal conditions under which business entities lose the right to conduct business activities and lose their business legal personality from the moment of making the relevant entry in the Unified State Register of Business Entities [123, p. 224].

The civil legislation of Ukraine does not define the concept of "liquidation of a legal entity". According to Part 1 of Article 104 of the Civil Code of Ukraine, a legal entity is terminated as a result of reorganization (merger, acquisition, division, transformation) or liquidation. At the same time, Article 110 of the Civil Code of Ukraine "Liquidation of a Legal Entity" does not define this legal category, but only regulates its grounds.

The term "liquidation" is derived from the Latin liquidatio, which means the end of a case. In the Dictionary of the Ukrainian Language, edited by I. K. Bilodid, the term "liquidation" is interpreted as termination of activity (of an institution, enterprise, institution, etc.); bringing something to an end in order to get rid of something, pay off someone, something, etc.; termination of existence, destruction of something; physical destruction of someone [209, p. 513].

It should be noted that the doctrine of civil law of Ukraine has not formed a unified approach to the definition of the concept of liquidation of a legal entity under civil law.

Some lawyers (V. M. Havryliuk, P. D. Pryhuza, Y. M. Yurkevych) traditionally advocate the view that liquidation is a form of termination of a legal entity which does not provide for the transfer of rights and obligations by way of legal succession to other legal entities, since the legal entity, and therefore its rights and obligations, are liquidated [235, p. 193].

This approach also appeals to V. S. Shcherbyna, who notes that in the event of liquidation, a business entity is terminated as a subject of law without legal succession [246, p. 119]; O. M. Skoropys considers the liquidation of a legal entity as a system of actions established by law aimed at terminating a legal entity without legal successors [207, p. 14]. A similar definition of liquidation is proposed by O. V. Titova, namely: “liquidation should be understood as the termination of a legal entity without transfer of rights and obligations by way of succession to other persons, except in cases specifically provided for by law” [223, p. 14].

At the same time, there are other positions on this issue. The opinion of O. Hnativ in the article “The Concept and Types of Liquidation as a Method of Termination of Legal Entities under the Civil Law of Ukraine” (2016) [26] is interesting, in particular, that during liquidation, succession is also possible, but it differs from succession in the process of reorganization.

We believe that this conclusion of O. Hnativ is quite correct, however, as the scholar notes, firstly, legal succession in the event of liquidation of a business entity occurs only if there is property remaining after satisfaction of the claims of all creditors in accordance with the procedure established by law. Secondly, the legal successors in this case are the founders, i.e. individuals and legal entities, except for the exceptions provided for by law. Such an exception, for example, is established by the Law of Ukraine “On Charitable Activities and Charitable Organizations”. According to part 5 of Article 18 of this Law, the assets of a liquidated charitable organization remaining after all creditors' claims have been satisfied must be transferred to one or more operating charitable organizations. Thirdly, succession occurs only in respect of the part of the property remaining after the repayment of accounts payable, and not in respect of the entirety of the property. At the same time, there is no succession in terms of the right of claim and debts of the liquidated legal entity. Fourthly, the transfer of property rights takes place in the manner prescribed by law, constituent documents or a court decision. Therefore, the scientist proposes to define liquidation as the termination of a legal entity in accordance with the

procedure established by law, without the formation of new business entities or accession to existing ones by way of succession [26, p. 107].

Instead, some scholars, offering their own variants of the definition of termination of entities, often equate the termination of an entity with the termination of its activities [120, p. 110]. Thus, O. V. Startsev believes that during the liquidation of a legal entity, the final termination of the business entity's activities occurs (without successors); M. Y. Novakhotska argues that liquidation is the termination of any activity of a business entity, its personal and property rights and obligations without succession [116, p. 71].

In our opinion, we cannot equate the content of such legal categories as “termination of a legal entity” and “termination of a legal entity”, since P. O. Povar rightly notes in his article “Succession in the Formation and Termination of Central Executive Bodies” (2012) [126] that an enterprise may terminate its economic activity, but it remains a subject of law until an entry is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations about its termination by liquidation. A company may terminate its business activities even before the decision to liquidate is made, i.e. before the liquidation procedure begins, so it will not cease to operate during the liquidation procedure.

According to Part 5 of Article 104 of the Civil Code of Ukraine, a legal entity is considered to be terminated from the date of entry into the Unified State Register of its termination [236].

In his research, M. Fesyura concludes that liquidation is the termination of an enterprise, institution, organization that is a business entity, which occurs on a legal basis, in the order and priority of satisfaction of creditors' claims, in accordance with the requirements of the state legislation of Ukraine [232, p. 313].

According to M. Y. Tykhomyrov, during liquidation, a joint-stock company ceases to exist as a legal entity and from that moment on cannot be a participant in civil turnover [80, p. 114]. In this regard, A. P. Nikitina believes that liquidation is a method of termination of a legal entity in which any of its activities and existence are impossible in the future, which is associated with the liquidation of its affairs and

property and the absence of a legal successor (i.e., termination of a legal entity is carried out without the transfer of its rights and obligations to other persons) [114, pp. 143-144]. In the article “Legal basis for the implementation of liquidation procedures” (2009) S. Zhukov noted: “It is obvious that liquidation is an object of civil law regulation, so liquidation itself is a set of certain social relations. On the other hand, these legal relations, in particular, the termination of the existence of a legal entity, cause certain consequences, namely the termination of the existence of a legal entity. Accordingly, the liquidation of a legal entity is a certain legal fact which entails certain legal consequences” [46, p. 175].

Liquidation of a legal entity, according to E. Sukhanov, is a method of termination in the absence of universal legal succession, and this is what makes it different from reorganization, where a set of rights and obligations is transferred. The scientist puts liquidation on a par with bankruptcy and reorganization as a way of termination of a legal entity, while he considers bankruptcy proceedings as a special type of liquidation [218, p. 130].

Attention should be focused on the statement of O. V. Shvets, who considers liquidation through the prism of a subjective and idealistic approach to studying the essence of a legal entity. In particular, he believes that the latter can be defined as a form that encompasses several types of legal relations: first, legal relations between the participants of a legal entity, which exercise their rights to participate in the management of its affairs and form its will; second, legal relations between each of the participants of a legal entity and the legal entity itself, in which their rights in rem or obligatory rights (if any) are exercised; and, finally, legal relations between a legal entity and all third parties in which a legal entity may be both an authorized and an obligated subject [241, pp. 233-234].

Liquidation, A. V. Korovayko concludes, is a procedure that mediates economic processes, mobilizes and consolidates the property (business) of the participants in the procedure on the basis of the subjective interests of creditors [81, p. 11].

Therefore, at the scientific and legislative levels, the concept of “liquidation of a legal entity” should be defined as the termination of a legal entity, not its activities.

In our opinion, the study of the liquidation procedure only through the prism of the existence of a legal entity is biased and one-sided, which does not allow to highlight the essence and purpose of such a legal phenomenon as liquidation. In this regard, we consider it necessary to consider the features that distinguish liquidation as a separate institution of termination of legal entities.

One of the traditional features of the institution of liquidation of legal entities is the absence of universal legal succession, such as a one-step transfer of rights and obligations within the same limits and scope.

However, after analyzing the array of legal acts and scientific views of such scholars as P. Povar, O. Titova, and O. Hnativ,

it can be argued that in some cases, during liquidation, the rights and obligations of the liquidated legal entity are partially transferred to other legal entities, which gives rise to speculation about the existence of partial or singular succession.

For example, clause 4 of Article 17 of the Law of Ukraine “On Scientific and Technical Information” [175] stipulates that the state promotes the formation, storage and efficient use of state resources of scientific and technical information, in particular by creating a mechanism for storing information resources, databases and data banks formed in state organizations and governing bodies, and their appropriate transfer to other institutions in the event of liquidation or reorganization.

In other words, the transfer of functions such as storage of information resources, databases and databanks cannot be considered as a universal succession on the grounds that it is not a transfer of rights and obligations in general, but only a partial transfer of certain powers.

Singular succession is also observed during the liquidation and establishment of new state bodies. For example, Resolution of the Cabinet of Ministers of Ukraine No. 17 of January 21, 2015 [122] liquidated the State Enforcement Service and established that the Ministry of Justice is the successor to the State Enforcement

Service in terms of tasks and functions of implementing state policy in the field of organizing the enforcement of decisions of courts and other bodies.

In our opinion, partial (singular) succession in the course of liquidation of a legal entity may be discussed in the context of Article 609 of the Civil Code of Ukraine, according to which obligations are not terminated by liquidation of a legal entity if the fulfillment of such obligation is assigned to another legal entity, in particular, the obligation to compensate for damage caused by injury, other damage to health or death.

Part 12 of Art. 111 of the Civil Code of Ukraine stipulates that the property of a legal entity remaining after satisfaction of creditors' claims (in particular, taxes, fees, a single contribution to the obligatory state social insurance and other funds that must be paid to the state or local budget, the Pension Fund of Ukraine, social insurance funds) shall be transferred to the participants of the legal entity, unless otherwise provided by the constituent documents of the legal entity or the law. According to part 5 of Article 18 of the Law of Ukraine “On Charitable Activities and Charitable Organizations” [155], the assets of a liquidated charitable organization remaining after all creditors' claims have been satisfied must be transferred to one or more operating charitable organizations. At the same time, based on the analysis of these legislative provisions, it should be noted that there is no provision on succession in terms of the right of claim or debts of a liquidated legal entity, which, in our opinion, also confirms the existence of singular succession in the liquidation of legal entities in some cases.

Instead, in comparison with the procedure for terminating the activities of an individual entrepreneur, in the event of the latter's death, debt obligations are not terminated but transferred to the heirs. Also, the Supreme Court of Ukraine in its decision of December 4, 2013 in case No. 6-125cc13 [135] concluded that one of the special grounds for termination of obligations for an individual entrepreneur is that in case of termination of an individual entrepreneur (exclusion from the register of business entities), his obligations under the concluded agreements are not terminated, but remain with him as an individual, since the individual does not cease to exist.

In view of the above, it can be argued that, unlike the termination of an individual entrepreneur, the liquidation of a legal entity does not provide for universal succession, but in certain cases specified by law, singular succession is allowed, which consists in the partial transfer of certain powers and obligations of the liquidated legal entity to other legal entities.

In our opinion, the distinctive feature of liquidation of legal entities, which makes it a distinct institution, is the solvency of legal entities. The current Civil Code of Ukraine defines the legal prerequisites, grounds and procedure for liquidation of only solvent legal entities that are subject to liquidation on certain grounds, since in case of insolvency of a legal entity, the latter is obliged to take all necessary actions provided for by the law on restoration of solvency or declaration of bankruptcy.

The issue of solvency of legal entities is mostly the subject of research by economists. In particular, A. D. Sheremet argues that the solvency of an enterprise is defined as the ability to cover all liabilities of the enterprise (short-term and long-term) with all assets [242, p. 165]; E. E. Ionin believes that the liquidity of an enterprise is the ability to timely convert assets into money in order to make the necessary payments, which is one of the necessary conditions for ensuring solvency. Some scholars are convinced that “solvency is a broader concept than liquidity” [65, p. 34], while others note that “liquidity is a more capacious concept” [220, p. 143]. According to B. E. Grabovetskyi, solvency is the ability of an enterprise to pay off its debt obligations at a particular moment, and liquidity reflects not only the current state but also the future [30, p. 213]. That is, a legal entity is solvent if the total value of its property exceeds the total value of its liabilities. However, in our opinion, the definition proposed by G. V. Paliy most accurately reflects the essence of the concept of solvency, according to which the solvency of an enterprise is its ability to pay off its obligations in full and on time with the help of cash resources and other assets and the ability to carry out continuous financial and economic activities [119, p. 2].

Thus, the sufficiency or insufficiency of a legal entity's property to satisfy and cover all creditors' claims (solvency) is a defining feature of a legal entity subject to liquidation in the general manner prescribed by the Civil Code of Ukraine.

Another general feature of the institution of liquidation is the moment when a legal entity is deemed to have ceased to exist. According to part 5 of Article 104 of the Civil Code of Ukraine, a legal entity is considered to be terminated from the date of entry of an entry on its termination in the Unified State Register.

P. Povar rightly notes that this time does not depend on the form or grounds for termination of the entity and is defined by law as the moment when the state registrar enters an entry in the Unified State Register on state registration of termination of a legal entity. The date of entry into the Unified State Register of the state registration of termination of a legal entity is the date of state registration of termination of a legal entity [127, p. 112].

Thus, liquidation of legal entities under the civil law of Ukraine as a separate institution of termination of legal entities provides for the following:

1) the absence of universal legal succession, as well as the possibility of partial transfer of rights and obligations of the liquidated legal entity to other persons;

2) solvency of the legal entity being liquidated;

3) the moment from which the legal entity is considered to have been terminated (from the date of entry into the Unified State Register of its termination).

The national legislation does not define the term “liquidation of a legal entity”, which leads to conflicting court decisions.

Article 110 of the Civil Code of Ukraine is entitled “Liquidation of a Legal Entity”, but it does not contain a definition of liquidation, and Article 111 of the Civil Code of Ukraine covers only the general procedure for its implementation. At the same time, the peculiarities of the liquidation procedure are outlined for almost all types and organizational and legal forms of legal entities in certain provisions of the Civil Code of Ukraine (Articles 132, 139) or in certain legislative acts (Laws of Ukraine “On Limited Liability Companies and Additional Liability Companies” [186], “On Joint Stock Companies” [152], “On Banks and Banking Activities” [153], “On the Individual Deposit Guarantee System” [183], etc.).

In particular, part 1 of Article 48 of the Law of Ukraine “On Limited and Additional Liability Companies” [186] stipulates that a company is terminated as a

result of the transfer of all its property, rights and obligations to other business entities - successors by merger, accession, division, transformation or liquidation.

At the same time, no article of the law adopted to properly regulate the activities of limited liability companies regulates the liquidation procedure for the latter.

In general, the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” contains many progressive provisions compared to the provisions of the Law of Ukraine “On Business Associations”, which has regulated the business activities of limited liability companies since the 1990s. The number of requirements that must be contained in the company's charter has been reduced, significant transactions have been defined as additional protection of the company's assets, the list of grounds for excluding a shareholder from the company's membership has been limited, etc. In our opinion, proper implementation of such provisions will help to bring the domestic business environment closer to the European one. However, this law does not solve the existing problems in the field of liquidation of limited liability companies and additional liability companies, which again necessitates the need to refer to the general provisions of the Civil Code of Ukraine.

When studying the essence of the liquidation procedure, it is also necessary to highlight the functions performed by this mechanism. In particular, A. I. Dmytrenko proposes to define the following:

1) incentive (the potential threat of business termination and, as a result, the loss of invested capital and, in some cases, personal property by owners, makes them care about the proper level of performance);

2) recovery (the market and relevant state authorities rid the business environment of insolvent and criminal participants, and direct its assets, labor resources, etc. to efficient business entities);

3) regulatory (with the help of an algorithm clearly defined in regulatory documents, entrepreneurs can legally terminate a project due to the expiration of its life, reduced efficiency, etc. with full release from its debts and obligations);

4) transformational (liquidation is a necessary tool for changing the form of ownership, organizational and legal form of doing business in order to ensure its development and integration processes in the market);

5) rehabilitation (timely and successful voluntary termination of the enterprise's activities makes it possible to preserve the invested funds or most of them, as well as the business reputation of the owners) [33, p. 212-213].

In describing the legal essence of the institution of liquidation, it should be noted that the termination of a legal entity is a complex process that can be classified according to various criteria.

D. I. Meyer associated the termination of a legal entity. Meyer associated with the following ways: when the existence of a legal entity is made dependent on any condition or term, for example, the achievement of the statutory purpose; when the very purpose for which a legal entity exists may disappear from reality either due to incompatibility with the tasks of the state or under the influence of circumstances; by the decision of those persons who express the will of a legal entity by their will (such a verdict is similar to an act of suicide of an individual), but it is required that such a will be expressed in a proper manner as determined by the state authorities, but in such a way as not to cause a significant blow to the interests of persons who are members of the legal entity; withdrawal of all members, because then the legal entity will not have any support; at least one member of the association must remain to continue the life of the legal entity; a legal entity loses real support even if it loses all its property; declaration of a legal entity as an insolvent debtor, in respect of whose property a tender is opened, after the termination of the legal entity and liquidation of its affairs, the question of the further fate of its property also arises [39, p. 122].

Most scholars suggest that the grounds for liquidation of legal entities should be classified by the bodies that make decisions on the termination of a legal entity, in particular

1) participants (founders) of a legal entity;

2) the owner or a body authorized to establish legal entities;

3) the court and other competent state bodies that have the right to decide on the compulsory termination of a legal entity, if there are grounds provided for by law.

Scholar O. Melnikov proposes to classify liquidation according to various criteria:

I. By the criterion of the will of the legal entity owner:

a) voluntary

b) forced;

c) compulsory.

II. Depending on the presence of a volitional moment:

a) grounds for termination related to the will of the owner or other body;

b) grounds related to the occurrence of certain legal facts [108, p. 59].

A. I. Dmytrenko classifies liquidation of legal entities according to the following criteria: compulsory and voluntary. Compulsory liquidation is applied by a court decision at the request of a state or municipal body or a counterparty. Liquidation of an enterprise may be voluntary by decision of the founders or another body authorized by the constituent documents; by the purpose of liquidation, one can distinguish liquidation as a result of a change in the organizational and legal form of business, with the aim of termination of activity and an alternative; by the main motive - liquidation due to inefficient operation, achievement of the purpose of functioning and non-compliance with regulatory requirements of functioning; by the scale of distribution - liquidation of the parent company (holding), ordinary enterprise, branch or representative office, structural unit, certain functions or procedures, as well as staff reduction; by the technology of liquidation, it can be carried out in a general manner, within bankruptcy, automatically or as a termination of activity using a special technology [33, p. 216-217].

O. M. Zubatenko also proposes to classify the grounds for termination of business entities by dividing them into:

1) with regard to the legality of termination - into legal and illegal;

2) with regard to the bodies that make decisions on termination - termination by decision of participants (founders), termination by decision of the owner or body

authorized to establish such business entities, termination by decision of judicial bodies and executive authorities;

3) with respect to the purpose pursued - internal (in favor of the entity) and external (in favor of third parties);

4) with regard to the presence (absence) of a volitional moment - for the termination of business entities related to the will of the owner or other body, and for the termination of business entities related to the occurrence of certain legal facts [60, p. 7].

At the same time, O. Hnativ classifies liquidation depending on various factors:

I. Depending on the organizational and legal form of the legal entity:

a) liquidation of companies;

b) liquidation of institutions.

II. By type of legal entity:

a) liquidation of legal entities under public law;

b) liquidation of state legal entities of private law.

III. Depending on the entity initiating the liquidation procedure:

a) voluntary liquidation, if a legal entity ceases to exist on its own initiative, including through the courts;

b) compulsory liquidation in case of termination of a legal entity against its will on the initiative of other entities [26, p. 108].

It is the division of liquidation into voluntary and compulsory that is actively used in the legal literature, although it is conditional. The approaches to distinguishing between voluntary and compulsory liquidation are indirectly enshrined in the current legislation.

In particular, Article 110 of the Civil Code of Ukraine provides that a legal entity is liquidated 1) by a decision of its members or a body of a legal entity authorized to do so by its constituent documents, including in connection with the expiration of the period for which the legal entity was established, the achievement of the purpose for which it was established, as well as in other cases provided for by the constituent documents; 2) by a court decision on liquidation of a legal entity due to

violations committed during its establishment that cannot be eliminated, at the request of a participant of a legal entity or the relevant state authority; 3) by a court decision on liquidation of a legal entity in other cases established by law - at the request of the relevant state authority.

In view of the above, it can be concluded that the concepts of “compulsory liquidation” and “liquidation by court decision” are identical. Thus, the voluntary procedure for making a decision on liquidation of a legal entity is a consequence of the lawful behavior of the latter.

The legal rules governing the procedure for applying the voluntary liquidation procedure are dispositive in nature, which distinguishes voluntary liquidation from compulsory liquidation. The legislator provides a legal entity with the option, not the obligation, to voluntarily apply the liquidation procedure. In this case, it is believed that the application of the liquidation procedure is in the interests of the legal entity and is the result of the latter's will.

Pursuant to Article 110 of the Civil Code of Ukraine, compulsory liquidation is a measure of liability of a legal entity for violations in the field of business activities. The application of such liquidation is the result of the will of a state body, local government body or a person who is legally entitled to initiate liquidation proceedings in court.

Based on the traditional division of legal facts, according to which actions are divided into lawful and unlawful, O. Noda proposes to distinguish between liquidation resulting from lawful actions and liquidation resulting from objectively unlawful actions. According to the researcher, liquidation may be the result of a lawful action or serve as a sanction, so they may have different legal content. If liquidation is voluntary, then it can be based only on the will of the founders (participants) or the body of a legal entity expressed in accordance with the procedure established by law, so the voluntary liquidation of a legal entity is based on a legal act (agreement) as a lawful act specifically aimed at achieving certain legal consequences. Compulsory liquidation is carried out by a court decision if the activities of a legal entity are carried out without an appropriate permit (license), if

such activities are expressly prohibited by law or are associated with repeated or gross violations of the law [117, p. 122].

In our opinion, the opinion of Y. P. Bytyak is interesting, as he notes: “By entering into legal relations, legal entities, like individuals, may exercise their rights and fulfill their obligations, i.e., engage in lawful behavior, but they may also violate them, i.e., engage in misconduct. For certain manifestations of misconduct, the law provides for bringing the offender, in our case - a legal entity, to legal liability” [5, p. 193]. This opinion is shared by A. P. Nikitina, who argues that compulsory cancellation of state registration is a consequence of administrative liability being applied to a legal entity. Administrative liability of a legal entity is a set of certain measures implemented by the authorized body of power, they are aimed at punishing a legal entity, which entails for violators burdensome adverse consequences of a material, restrictive nature (suspension of licenses or permits) and/or entails their complete termination (liquidation) [114, p. 146-147].

Having analyzed the provisions of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, we propose to distinguish liquidation of legal entities depending on the method of liquidation, namely:

1) liquidation carried out in accordance with the general procedure, i.e. on the basis of documents submitted by the applicant for state registration of the legal entity's termination;

2) simplified liquidation, which is carried out

- by a court decision to cancel the state registration of a legal entity adopted before July 1, 2004;

- by a court decision on liquidation of a legal entity adopted after July 1, 2004, if the chairman of the liquidation commission or the liquidator of the legal entity fails to submit the documents required for state registration of termination of a legal entity as a result of its liquidation to the state registration authority within three years from the date of publication of the notice of such court decision;

- if the chairman of the liquidation commission for the termination of a legal entity or the liquidator of a legal entity fails to submit the documents required for state registration of the termination of a legal entity as a result of its liquidation within one year from the date of entry in the Unified State Register on the suspension of the simplified procedure for state registration of the termination of a legal entity as a result of its liquidation;

3) liquidation by tacit consent. Pursuant to clause 12 of Article 1 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, the principle of tacit consent in the field of state registration is the principle according to which the state registrar acquires the right to conduct state registration and other registration actions without receiving relevant documents (except for court decisions and enforcement documents) or information from state authorities in the manner and cases specified by this Law, provided that the relevant state authorities have not sent such documents or information to the state registrar within the time limit established by this Law [162].

Liquidation by tacit consent is carried out in case of failure to receive information from state authorities on the absence of arrears in the payment of taxes and fees, insurance funds to the Pension Fund of Ukraine and social insurance funds, on the absence of unrevoked issues of securities of the issuing legal entity and unrevoked registration of the issue of shares of a joint-stock company. At the same time, it can be concluded that liquidation of a legal entity on the principle of tacit consent is possible only on the basis of clause 1, part 1, Article 110 of the Civil Code of Ukraine by decision of its participants or a body authorized to do so by the constituent documents, in particular in connection with the expiration of the term for which the legal entity was established, achievement of the purpose for which it was established, as well as in other cases provided for by the constituent documents, i.e. only on a voluntary basis.

Liquidation should be viewed through the prism of a set of features inherent in this legal institution as a completed legal procedure. We propose to define that liquidation of a legal entity under civil law is a legal procedure regulated by law,

which results in complete termination of a solvent legal entity as a legal entity with the possibility, in cases provided for by law, of partial transfer of rights and obligations of a legal entity to other persons (legal successors) from the moment of making the relevant entry in the State Register.

2.2. Grounds for liquidation of legal entities in Ukraine

Before turning to the question of the grounds for liquidation of legal entities in Ukraine, it is necessary to clarify the meaning of such legal terms as “grounds”, “forms”, “methods”.

In the civil law literature, there are different opinions on the use of the terms “grounds”, “forms” and “methods” of termination of legal entities. According to Y. M. Yurkevych, the latter two concepts can be used as identical. At the same time, the scholar distinguishes between these concepts when analyzing the termination of legal entities, for example: by a court decision - it is more appropriate to consider a court decision as a ground for termination of legal entities; as a result of liquidation - to define liquidation as a form of termination of legal entities; by merger - to consider merger as a method of termination of legal entities [248]. Instead, other scholars distinguish between these terms: the grounds for termination are certain factual circumstances with which the law links the termination of legal entities. Such circumstances are always established in the legislation (legislation on banking, bankruptcy, antitrust legislation, legislation in the field of mining, etc.) In addition, the Law provides for the right of business entities to establish certain grounds as circumstances for termination of these entities in their statutory documents [46, p. 177]; methods of termination are the procedure for termination of legal entities determined by law; forms of termination are methods of termination of legal entities provided for by law. The method of termination is also interpreted as the procedure for termination of a legal entity determined by law, which establishes the right of the relevant body to decide on the termination of the enterprise's activities [28, p. 319-320].

In science, the method is also considered a practical aspect of activity, a system of subjective and objective determinants functionally related to the place, time, and means of achieving the goal. The choice of the method of liquidation of an enterprise depends on the type of its activity, the stage at which the authorized body or person made the decision to liquidate, preferences, requirements, experience, and forms of property assets. This approach reflects the dependence of the method on the characteristics of the activity, among which the stages of such activity play a significant role. On this basis, the method and the stage (stage) are different: the method is an action (system of actions) used in the course of performing a certain work, doing something. A stage is a period, a stage in development. The termination method clarifies the procedure, helps to specify its boundaries - the starting and ending points that are important for establishing stages. Its purpose is to explain the reasons for liquidation, ways to resolve the further fate of the enterprise, its property complex, satisfaction of creditors' claims with reference to the legal grounds for acquisition through a set of actions [43, p. 487].

It is worth emphasizing the position of O. V. Noda, according to which all known grounds for liquidation of a legal entity are an act of will. For example, the liquidation of a legal entity is not caused by the expiration of the term for which the legal entity was established, but by the decision of the founders (or body) to liquidate in connection with the expiration of this term. Similarly, it is not the insolvency of a legal entity that causes its liquidation, but the court's decision to declare a legal entity bankrupt [117, p. 59].

According to E. V. Petrov, the grounds for termination of a business entity are the circumstances provided for by law or constituent documents that lead to the termination of its existence as a legal entity [121, p. 205].

O. Hnativ considers the term “grounds” in at least two aspects. The grounds for termination of a legal entity may be a court decision not related to bankruptcy proceedings. However, the grounds for making such a decision must be provided for by law and exist in fact (for example, the absence of a legal entity at its location specified in the registration documents) [28, p. 320].

We share the scholar's opinion that a more correct and justified approach is to consider the grounds to be the circumstances provided for by law, with the occurrence of which the legislator links the adoption of a decision by the competent authority in the form prescribed by law. The form of termination of legal entities is an external expression of the grounds for termination. Such external expression may be a court decision in a bankruptcy case; a court decision (resolution in an administrative case) that is not related to bankruptcy proceedings; a decision of the founders to terminate the legal entity, etc. The method of termination should be considered the procedure for terminating legal entities. These methods are liquidation and reorganization (termination of legal entities with legal succession).

Some researchers rightly note that legal entities differ in various legal parameters that affect, in particular, the grounds and procedure for termination of these entities [90, p. 110].

Some scholars believe that although legal entities of different organizational and legal forms and types have special grounds for liquidation, it is possible to distinguish between general grounds inherent in almost all legal entities [207, p. 149] and special grounds for liquidation of legal entities.

The general grounds for liquidation of legal entities are set forth in Article 110 of the Civil Code of Ukraine, according to which a legal entity is liquidated 1) by a decision of its shareholders or a body of the legal entity authorized to do so by its constituent documents, in particular in connection with the expiration of the period for which the legal entity was established, achievement of the purpose for which it was established, as well as in other cases provided for by the constituent documents; 2) by a court decision to liquidate a legal entity due to violations committed during its establishment that cannot be eliminated, at the request of a shareholder of the legal entity or the relevant state authority. Paragraph 3 of Part 1 of Article 110 of the Civil Code of Ukraine stipulates that a legal entity is liquidated by a court decision on the liquidation of a legal entity in other cases established by law - at the request of the relevant state authority. This provision is consistent with the provisions of the

Commercial Code of Ukraine. Thus, Article 59 of the Commercial Code of Ukraine provides that a business entity shall be terminated in accordance with the law.

At the same time, the grounds for liquidation of legal entities are established for almost all types and organizational and legal forms of legal entities in certain provisions of the Civil Code of Ukraine or legislative acts and depend on the purpose of their establishment, subject matter of activity and other features.

Therefore, we conclude that the grounds for liquidation of legal entities enshrined in civil law, namely Article 110 of the Civil Code of Ukraine, cover both general (clauses 1 and 2) and special (clause 3) grounds for liquidation of legal entities.

Some scholars conclude that special grounds are available exclusively for the compulsory liquidation of legal entities, i.e., liquidation based on a court decision or other competent public authority. However, this position seems unfounded.

The Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” in part 1 of Article 48 establishes that a company is terminated as a result of the transfer of all its property, all rights and obligations to other business entities - successors by merger, accession, division, transformation or liquidation. Part 2 of this Article stipulates that voluntary termination of a company is carried out by a decision of the general meeting of shareholders in accordance with the procedure established by this Law, in compliance with the requirements provided for by law. Other grounds and procedures for company termination are established by law.

One of these “other” or special grounds is the delay in making a contribution by a company member.

Article 14 of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” regulates the obligation of each shareholder to make its contribution in full within six months from the date of state registration of the company. Article 15 of this Law defines the obligation of the company's executive body to convene a general meeting of shareholders in case of delay in making a contribution by a shareholder. As a result, the general meeting of shareholders may decide to liquidate the company.

In view of the above, it appears that liquidation of a limited liability company is possible on a voluntary basis by decision of the participants of the legal entity on a “special” basis as a delay in making a contribution by a participant of the company.

Thus, the Civil Code of Ukraine establishes special grounds for liquidation of a general and a limited partnership. Pursuant to Article 119 of the Civil Code of Ukraine, a general partnership is a company whose members, in accordance with an agreement concluded between them, carry out business activities on behalf of the company and jointly and severally bear additional (subsidiary) liability for its obligations with all the property they own. Article 133 of the Civil Code of Ukraine defines a limited liability company as a company in which, along with the members who carry out business activities on behalf of the company and jointly and severally bear additional (subsidiary) liability for the company's obligations with all their property (general partners), there are one or more members (depositors) who bear the risk of losses related to the company's activities within the amounts of their contributions and do not participate in the company's activities.

In Art. 132 of the Civil Code of Ukraine provides that it is completely liquidated on the grounds that the goods established by Art. 110 of the Civil Code of Ukraine, i.e. on general grounds, and a special basis for its liquidation is also established - in the event that one participant remains in the company. In Art. 139 of the Civil Code of Ukraine stipulates that a limited partnership is liquidated on the same grounds as a full partnership, and liquidation of all depositors is specified as a special basis.

At the same time, the question of the order in which liquidation of such companies should take place and by whom after the relevant decision remains unresolved.

The Law of Ukraine "On joint-stock companies" understands that the voluntary liquidation of a joint-stock company is created by the decision of the general meeting, in particular in connection with the expiration of the period during which the company was created, or after the achievement of the purpose for which it was created, in the manner prescribed by the Civil Code of Ukraine . and other acts of

legislation, taking into account the peculiarities established by this Law. Other grounds and the procedure for the liquidation of the company for the adoption of legislation.

One of the "other", or special, grounds for the liquidation of joint-stock companies, in accordance with Part 4 of Art. 16 of the Law, is a reduction of the authorized capital by a joint-stock company below the amount established by law.

According to Art. 14 of this Law, the minimum amount of the authorized capital of a joint-stock company is 1,250 minimum wages, according to the minimum wage rate effective at the time of creation (registration) of the joint-stock company. The company's charter capital determines the minimum amount of the company's property that guarantees the interests of its creditors.

In our opinion, the position of scientists who believe that the establishment of the minimum size of the authorized capital of the company and the prohibition of its reduction is a certain guarantee of the protection of the rights of creditors is correct, but the dependence of the minimum amount of the authorized capital on the minimum wage rate in force at the time of creation is a legislative deficiency (registration) of a joint-stock company, as the amount of the minimum wage is constantly increasing. Thus, the minimum authorized capital of joint-stock companies established from January 1, 2018 to December 31, 2018 is UAH 4,653,750.00, and that of joint-stock companies established since January 1, 2019 is already UAH 5,216,250.00.

Therefore, scientists argued that the minimum amount of authorized capital should be unchanged, that is, it should not depend on the minimum amount of wages. The law must establish this amount in the national currency [90, p. 96–97].

In Part 3 of Art. 155 of the Civil Code of Ukraine defines another special basis for the liquidation of joint-stock companies, in particular: the company is subject to liquidation if the value of the company's net assets becomes less than the minimum amount of authorized capital established by law.

Such a legal provision seems debatable. O. M. Skoropys in her dissertation work "Civil-law regulation of the liquidation of legal entities" in 2010 raised the

question of the incorrectness of such wording of Part 3 of Art. 155 of the Civil Code of Ukraine. Thus, the researcher noted: "Having established a requirement for the liquidation of joint-stock companies... the value of whose net assets becomes less than the minimum size of authorized capital established by law, the domestic legislation did not determine the size of the minimum authorized capital with which the value of net assets should be compared: with the minimum amount of authorized capital , which is established by the legislation for today, or with the minimum size of the authorized capital, which was established by the legislation at the time of the creation of the company. In this regard, the thesis expresses the opinion that companies whose net assets value becomes less than the minimum amount of authorized capital established by law at the time of the company's creation are subject to liquidation. In addition, it is proposed to provide an opportunity to reorganize such a company into a legal entity of a different organizational and legal form within one year, and only in case of non-fulfillment of this requirement, the question of liquidation of the company should be raised" [207, p. 10–11].

From a comprehensive analysis of the current legislation of Ukraine, it can be seen that the liquidation of legal entities is carried out exclusively on a voluntary or compulsory basis.

At the same time, in research works, scientists focus on the internal contradiction of the concept of grounds for voluntary liquidation, since if the liquidation is voluntary, then its basis can only be the will of the founders (participants) or the body of the legal entity, expressed in the order established by law, that is, the voluntary liquidation of a legal entity is based on the legal act (agreement) as a legitimate action, specifically aimed at achieving certain legal consequences. Typical reasons for voluntary liquidation are the impracticality of the legal entity's continued existence, the expiration of the term for which it was created (for example, the purchase of leased property by a collective of tenants), a change in the ways of achieving the goal (reorganization to increase the efficiency of the use of the property complex, the management of the enterprise - the creation of state-owned enterprises), achievement or, on the contrary, the fundamental unattainability of the

organization's statutory tasks (privatization of state property or refusal of the owner or founder from further participation in the activity) [39, p. 122].

In the scientific literature, there is also an ongoing discussion regarding the attribution of the expiration of the term for which a legal entity was created to the grounds or reasons for voluntary liquidation. According to G. S. Shapkina, the expiration of the term of activity of a legal entity, as well as the achievement of the goal for which the organization was created, belongs to the reasons for voluntary liquidation, and not to independent grounds for voluntary liquidation. At the same time, A. G. Stepanov believes that the expiration of the term or the achievement of the goal are only examples of voluntary liquidation, then clarifies that voluntary liquidation can also be carried out without grounds. M. I. Braginsky also advocates a similar position [39, p. 123].

According to O. M. Hnativ, the forced liquidation of a legal entity is carried out against its will by a court decision or other body authorized by the state [45, p. 320].

Prior to the adoption by the Verkhovna Rada of Ukraine on November 26, 2015 of the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" and some other legislative acts of Ukraine regarding the decentralization of powers for state registration of legal entities, individual entrepreneurs and public formations" grounds for forced liquidation were defined in Art. 38 of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs". In particular, this article provided that the grounds for issuing a court decision on the termination of a legal entity, which is not related to the bankruptcy of a legal entity, are:

1) recognition by the court as invalid of the state registration of a legal entity due to violations committed during its creation that cannot be eliminated, as well as in other cases established by law;

2) its conduct of activities that contradict the founding documents or that are prohibited by law;

3) non-compliance of the minimum size of the authorized capital of a legal entity with the requirements of the law;

4) failure to submit tax declarations and financial reporting documents to the revenue and collection authorities during the year in accordance with the law;

5) the presence in the Unified State Register of a record of the absence of a legal entity at its specified location;

6) recognition by the court of the legal entity - the issuer as meeting the signs of fictitiousness;

7) non-submission by the joint-stock company for two years in a row to the National Commission for Securities and the Stock Market (NCSSM) of the information required by law;

8) failure of the joint-stock company to convene a general meeting of shareholders for two consecutive years;

9) non-establishment of the bodies of the joint-stock company within a year from the date of registration of the report on the results of the private placement of shares among the founders of the joint-stock company by the NCSSM.

This list of reasons for forced liquidation of a legal entity was not entirely optimal, but it seemed to be systematized and specified.

In the new edition of the Law of Ukraine "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations", this article is excluded, which makes it difficult to determine the grounds for liquidation, as it requires recourse to a significant number of special regulatory legal acts.

In particular, the legal grounds for the liquidation of a legal entity by a court decision, which is not related to bankruptcy, are established:

1) in Art. 55-1 of the Commercial Code of Ukraine, which defines the signs of fictitious economic activity, which provide grounds for applying to the court for the termination of a legal entity or the termination of activity by an individual entrepreneur, in particular, the recognition of registration documents as invalid, namely:

- registered (re-registered) for invalid (lost) and forged documents;

- not registered with state bodies, if the obligation to register is stipulated by legislation;

- registered (re-registered) in the state registration authorities by natural persons with subsequent transfer (registration) into the possession or management of fictitious (non-existent), deceased, missing persons or such persons who did not intend to conduct financial and economic activities or exercise powers;

- financial and economic activity was registered (re-registered) and carried out without the knowledge and consent of its founders and legally appointed managers;

2) in clause 31-1 part 1 of Article 8 of the Law of Ukraine "On the State Regulation of the Securities Market in Ukraine" [161], which defines the authority of the NCSSM to apply to the court with a claim (application) for the termination of a joint-stock company as a result of:

- admission during its creation of violations that cannot be eliminated;

- non-submission by the joint-stock company for two years in a row to the NCCPFR of the information provided for by law;

- non-establishment of the bodies of the joint-stock company within a year from the date of registration of the report on the results of the private placement of shares among the founders of the joint-stock company by the NCSSM;

- non-convening of general meetings of shareholders by the joint-stock company for two years in a row;

- absence of a share issue registered in the established manner in the joint-stock company;

3) in clause 20.1.37, part 20.1. Art. 20 and clause 67.2 of Art. 67 of the Criminal Code of Ukraine [129], which determine the right of controlling bodies in accordance with the procedure established by law to appeal to the court regarding the termination of a legal entity and the termination of an individual entrepreneur's business activity and/or the invalidation of founding (founding) documents of economic entities;

4) in Part 4 of Art. 58 of the Law of Ukraine "On the Protection of Economic Competition" [171], which defines the grounds for canceling the state registration of

an economic entity created as a result of a concentration at the request of the Antimonopoly Committee of Ukraine, in the event that, based on the results of the review of the decisions, the Antimonopoly Committee of Ukraine makes a decision to prohibit the concentration;

5) in Art. 96-9 of the Criminal Code of Ukraine [87], which establishes that the liquidation of a legal entity is applied by the court in the event that its authorized person commits any of the crimes provided for in Art. 109 "Actions aimed at the violent change or overthrow of the constitutional order or at the seizure of state power", Art. 110 "Encroachment on the territorial integrity and inviolability of Ukraine", Art. 113 "Sabotage", Art. 146 "Illegal deprivation of liberty or abduction of a person", Art. 147 "Capture of hostages", Art. 160 "Violation of the Referendum Legislation", Art. 260 "Creation of paramilitary or armed formations not provided for by law", Art. 262 "Stealing, misappropriating, extorting firearms, ammunition, explosives or radioactive materials or taking possession of them by fraud or abuse of official position", Art. 258 "Terrorist Act", Art. 258-1 "Involvement in the commission of a terrorist act", Art. 258-2 "Public calls to commit a terrorist act", Art. 258-3 "Creation of a terrorist group or terrorist organization", Art. 258-4 "Aiding the commission of a terrorist act", Art. 258-5 "Financing of terrorism", Art. 436 "War Propaganda", Art. 437 "Planning, preparation, initiation and conduct of an aggressive war", Art. 438 "Violation of the laws and customs of war", Art. 442 "Genocide", Art. 444 "Crimes against persons and resolutions having international protection", Art. 447 "Employment" of the Criminal Code of Ukraine;

6) also in other legislative acts.

In addition, the conclusions of E. V. Petrov, who considers the forced termination (liquidation) of a business partnership as a measure of the subject's responsibility for illegal behavior, namely, an administrative and economic sanction, appear to be correct. This approach proposes a distinction between sanctions for measures of legal responsibility and measures of protection, since the forced performance of an unfulfilled duty does not yet create negative consequences for the offender, and therefore it cannot be considered a measure of responsibility, because it

is a measure of protection [121, p. 205]. According to O. R. Zeldina, only the court can make a decision on the forced liquidation of business associations. Bodies of state power and local self-government, which can only initiate the termination of a partnership by applying to the court, do not have such powers, which is due to the need to guarantee the rights of business entities against interference by state authorities. This position is shared by the Higher Administrative Court, which in its decision dated November 8, 2011 in the case No. K/9991/40455/11 noted that the termination (liquidation) of a business entity due to its violation of the tax reporting procedure is a measure of legal responsibility [120, p. 113].

Some courts consider the liquidation of a legal entity as a sanction - a measure of responsibility for violations of tax laws by taxpayers, their officials and officials of supervisory bodies and violations of requirements established by other legislation, the control of compliance of which is entrusted to supervisory bodies. In particular, in the decision of the Chernihiv District Administrative Court dated November 21, 2016, the court, in accordance with Part 1 of Art. 238 of the Commercial Code of Ukraine, reached a conclusion on the termination of a legal entity as a measure of an organizational and legal nature, aimed at stopping the violation, taking into account the specified clause 20.1.37 clause 20.1 of Article 20 and clause 67.2 of Art. 67 of the Tax Code (PC) of Ukraine, the right of the state tax service body to apply to the court with a claim for the termination of a legal entity [146].

At the same time, the decision of the District Administrative Court of Kyiv dated November 27, 2017 is interesting, in the motivational part of which it is stated that, despite the fact that the controlling body is empowered by legislation to apply to the court regarding the recognition of the founding documents as invalid, the fact of recognizing the invalidity of the founding documents (statute) has no legal significance and does not entail any legal consequences regarding the creation and termination of a legal entity, and therefore one should come to the conclusion that the claims are groundless, since the determining factor for the termination of a legal entity is the court's recognition of the invalid state registration of a legal entity due to violations committed during its creation, which cannot be eliminated [140]. That is,

the court's decision is still based on the grounds defined in Art. 38 of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" as amended until January 1, 2016.

The resolution of the Kherson District Administrative Court dated August 20, 2013 stated that, given the provisions of Art. 20, 21 of the Code of Ukraine regarding the controlling functions of the tax service, which correspond to the provisions of Part 2 of Art. 38 of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" dated May 15, 2003 No. 755-IV, state tax authorities may apply for the termination of a legal entity not in all cases specified in Art. 38 of the said Law, but only in those cases when tax authorities act to exercise their power. Therefore, state tax inspectorates have the right to apply for the termination of business entities only if the basis of the claim is failure to submit tax declarations and tax reporting documents to the state tax service authorities within one year; conduct of activities contrary to the founding documents or prohibited by law; presence in the Unified State Register of a record of the absence of a legal entity at its specified location. According to Art. 205 of the Criminal Code of Ukraine, fictitious entrepreneurship is the creation or acquisition of business entities (legal entities) for the purpose of concealing illegal activities or carrying out prohibited activities. Fictitious entrepreneurship is a criminal offense, the commission of which is confirmed not by the motivational part of a court decision in an administrative case, but by a court verdict in a criminal case. Recognition of a partnership as having signs of fictitiousness is possible only by a court verdict in a criminal case, and therefore, such recognition cannot be the subject of an administrative lawsuit [145].

In Art. 238 of the Commercial Code of Ukraine stipulates that administrative and economic sanctions, i.e. measures of an organizational, legal or property nature, aimed at stopping the offense of sub of the enterprise and liquidation of its consequences. In Art. 239 of the Commercial Code of Ukraine contains a list of such administrative and economic sanctions, one of which is the liquidation of a legal entity.

In this regard, L.M. Doroshenko notes that after the adoption of the new version of the Law of Ukraine "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations", judicial practice has not yet formed a unified approach to resolving cases of termination of a legal entity. The lack of clear grounds for forced liquidation and the legally defined circle of subjects authorized to initiate the termination of legal entities causes the absence of a state reaction to the commission of offenses by legal entities in the field of economic activity [34, p. 67].

However, the liquidation of a legal entity is not only an administrative and economic sanction, but also measures of a criminal and legal nature.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union Regarding the Liability of Legal Entities" of May 23, 2013 [159] amended the General Part of the Criminal Code of Ukraine, which defines the measures of criminal law of a nature applicable to legal entities.

According to Part 1 of Art. 96-6 of the Criminal Code of Ukraine, the court may apply criminal law measures, including liquidation, to legal entities.

The grounds for applying forced liquidation to a legal entity as a measure of a criminal law nature are the commission of crimes by its authorized person under the mandate or order, in collusion and complicity, or in other ways defined by the Special Part of the Criminal Code of Ukraine.

The liability of a legal entity in criminal proceedings is mediated by the will of individuals who, during the commission of crimes from the specified list, act in the name and in the interests of or on behalf of a legal entity that cannot influence whether they commit or do not commit a criminal offense. Therefore, the actions of a legal entity cannot have a subjective aspect of the crime, the presence of which is mandatory for criminal liability. That is why the legislator used the terms "proceedings against a legal entity" and "measures of a criminal legal nature" instead of the criminal liability of a legal entity and its punishment [78, p. 88].

At the same time, the liquidation of a legal entity as a type of responsibility for the commission of crimes by its authorized person is not used in the practice of law enforcement agencies, which proves the ineffectiveness and the need to finalize such an institution in the Criminal Code of Ukraine.

According to O. O. Kashkarov, the establishment of criminal liability of legal entities is a complex and multi-vector process that requires a rethinking of the existing principles of criminal law and criminal liability, namely, the subjective attitude towards guilt and individualization of criminal punishment, as well as the development of new principles, which will meet the modern requirements of the legislation on criminal responsibility [70, p. 239].

In view of the above, the author shares the position of O. M. Hnativ, who notes that the mechanism of implementation of the specified norms of the Criminal Code of Ukraine, which is an amendment to Ukrainian legislation, remains unclear. At the same time, the concept, types, general procedure and consequences of the liquidation of legal entities are currently regulated by the Civil Code of Ukraine. Therefore, in order to implement the provisions of the Criminal Code of Ukraine regarding the forced liquidation of a legal entity based on a sentence, the court must use acts of the civil legislation of Ukraine, since the liquidation of a legal entity is an institution of civil law, not criminal law. In addition, the Criminal Procedural Code of Ukraine does not establish any requirements regarding the content of the court verdict regarding the liquidation of a legal entity. There are no such requirements in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union Regarding the Liability of Legal Entities", which introduces a system of criminal legal measures applicable to legal entities. Obviously, such features must be established or a reference must be made to the relevant articles of the Civil Code of Ukraine [28, p. 322].

2.3. Procedure and legal consequences of liquidation of legal entities under the civil law of Ukraine

A legal entity as a legal category is a well-established phenomenon in the law. Thus, Art. 80 of the Civil Code of Ukraine defines this concept as an organization established and registered in accordance with the procedure established by law, which is endowed with civil legal capacity and capacity to act and the ability to be a plaintiff and defendant in court [83, p. 43].

According to Art. 91 of the Civil Code of Ukraine, a legal entity is capable of having the same civil rights and obligations (civil legal capacity) as an individual, except for those that by their nature can only belong to a person. The civil legal capacity of a legal entity arises from the moment of its establishment and terminates from the date of entry into the Unified State Register of its termination.

Article 92 of the Civil Code of Ukraine regulates that a legal entity acquires civil rights and obligations and exercises them through its bodies acting in accordance with its constituent documents and the law.

The doctrinal interpretation of the provisions of the Civil Code of Ukraine in the context of the termination of legal entities suggests that the liquidation process as a result of a number of successive actions (stages) results in the successive termination of the rights and obligations of both the legal entity and the rights and obligations of persons involved in its management.

Article 105 of the Civil Code of Ukraine provides that the participants of a legal entity, a court or a body that has decided to terminate a legal entity must, within three business days from the date of the decision, notify the state registration authority in writing and appoint a legal entity termination commission (reorganization commission, liquidation commission), the chairman of the commission or a liquidator, and establish the procedure and deadline for creditors to file their claims against the legal entity being terminated.

The analysis of Ukrainian legislation in the field of legal entities' termination shows that liquidation of a legal entity is a complex procedure that requires a clear, phased plan for its implementation.

Article 111 of the Civil Code of Ukraine provides for the liquidation commission (liquidator) to perform a set of actions and measures provided for in this article in the voluntary (pre-trial) procedure for the liquidation of a legal entity, in particular, the liquidation commission (liquidator)

1) shall take all necessary measures to collect receivables of the legal entity being liquidated and notify each of the debtors in writing of the termination of the legal entity within the time limits established by this Code;

2) file claims and lawsuits for debt collection from debtors of the legal entity;

3) must notify the participants of the legal entity, the court or body that made the decision to terminate the legal entity, of its participation in other legal entities and/or provide information on the business entities and subsidiaries established by it;

4) close accounts opened with financial institutions, except for the account used for settlements with creditors during the liquidation of a legal entity;

5) take measures to take an inventory of the property of the legal entity being terminated, as well as the property of its branches and representative offices, subsidiaries, business entities, as well as property confirming its corporate rights in other legal entities, and take measures to return property held by third parties;

6) in cases established by law, ensure independent valuation of the property of the legal entity being terminated;

7) take measures to close separate subdivisions of the legal entity (branches, representative offices) and, in accordance with the labor legislation, dismiss employees of the legal entity being terminated;

8) ensure timely provision of documents of the legal entity (its branches, representative offices) to the revenue and duties authorities, the Pension Fund of Ukraine, social insurance funds, including primary documents, accounting and tax registers for audits and determination of the presence or absence of arrears in

payment of taxes, duties, single contribution to the obligatory state social insurance, insurance funds to the Pension Fund of Ukraine, social insurance funds;

9) prior to the approval of the liquidation balance sheet, prepare and submit to the tax authorities, the Pension Fund of Ukraine and social insurance funds the reports for the last reporting period;

10) after the expiration of the period for submission of claims by creditors, draw up an interim liquidation balance sheet, which includes information on the composition of the property of the legal entity being liquidated, a list of claims submitted by creditors and the result of their consideration;

11) upon completion of settlements with creditors, draw up a liquidation balance sheet, ensure its approval by the legal entity's shareholders, the court or the body that made the decision to terminate the legal entity, and ensure its submission to the revenue and duties authorities;

12) ensure submission to the state registrar of documents required by law for state registration of the legal entity's termination within the time limit established by law.

Regardless of who made the decision to liquidate the legal entity and in what form it will be carried out, there is a general liquidation procedure that can be divided into certain stages. At each of these stages, certain legal relations involving such a legal entity are terminated [147, p. 18] and certain legal consequences occur.

In view of the general provisions set forth in Article 105 of the Civil Code of Ukraine, the first stage of the liquidation procedure is the decision to liquidate a legal entity, which entails the transfer of powers to manage the legal entity. In particular, part 4 of this article of the Civil Code of Ukraine establishes that the termination commission (reorganization commission, liquidation commission) or liquidator shall be empowered to manage the affairs of the legal entity from the moment of appointment. The chairman of the commission, its members or the liquidator of the legal entity represent it in relations with third parties and act in court on behalf of the legal entity being terminated.

Pursuant to part 4 of Article 88 of the Law of Ukraine “On Joint Stock Companies”, from the moment the liquidation commission is elected, it takes over the powers of the supervisory board and the executive body of the joint stock company.

If the question arises as to the procedural consequences of the decision to liquidate a legal entity made after the opening of proceedings in a civil case, then the liquidation commission should be involved as a representative of the legal entity being liquidated [6, p. 3].

Thus, as S. Dyachenko rightly notes, from the moment the liquidation commission is established, the executive body of the legal entity ceases to function, and its powers are fully transferred to the liquidation commission. The executive body transfers all documents, seals, stamps, etc. to the liquidation commission, but all transactions of the liquidated company are executed directly at the company, all documents use the company's details, and the liquidator or chairman of the liquidation commission (members of the commission) is a representative of the company and works on its behalf. In other words, the liquidation commission does not have the status of a legal entity, and the liquidated company does not lose its status as a legal entity during its work [37, p. 207].

Neither the Civil Code nor the Commercial Code of Ukraine nor other laws regulating the liquidation of legal entities of various organizational and legal forms by decision of their shareholders impose any requirements for the composition of the commission and the number of its members. The participants of the legal entity that decided to liquidate it are fully responsible for regulating the work of the liquidation commission, as there is no regulatory act in Ukraine that would regulate the activities of the liquidation commission. The commission can be formed from either the founders or employees, or both. The director of the company may be appointed as the liquidator. Moreover, the commission may include a person who is not an employee or founder [8, p. 155]. At small enterprises, liquidation may be carried out by one individual - a liquidator, for example, a director.

To effectively organize the work of the liquidation commission, the documents on its establishment should delineate the powers of the commission members,

indicate what functions are assigned to the chairman of the commission, stipulate the procedure for making decisions, and the form of documents to be used to formalize the decisions made [37, p. 206].

One of the options for resolving the issue of regulating the work of the liquidation commission may be for the owner to develop the Regulations on the liquidation commission. This document should detail the procedure for the liquidation commission's work. In our opinion, the main aspects that should be reflected in such Regulations should be:

- the name of the liquidation commission;
- functions of the liquidator or chairman and each member of the commission
- frequency of meetings of the commission;
- the procedure for making decisions (personally or by the chairman of the collegial commission);
- the procedure and form of documents to be used to document the results of the commission's work;
- frequency, terms and procedure for submitting reports on the course of liquidation to the owner(s);
- liability of the liquidator or the chairman and members of the commission for failure to perform or improper performance of their duties [189, p. 107].

It should be noted that there are no time or other restrictions on the activities of the liquidation commission in the context of managing a legal entity.

At first glance, the liquidation procedure is described in detail and step by step in the Civil Code of Ukraine. However, the initiation of the liquidation procedure does not always mean the termination of the legal entity.

For example, the law does not formulate clear requirements regarding the timeframe for liquidation and the liability of officials/officers for violation of such timeframes. Therefore, liquidation may continue for an unlimited period of time.

In practice, there are many cases when the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations contains a record of the

decision of the founders (participants) of a legal entity or their authorized body to liquidate the legal entity, but the company continues to operate in a “normal mode”.

Paragraph 3 of Part 1 of Article 39 of the Law of Ukraine “On Enforcement Proceedings” [157] stipulates that enforcement proceedings are subject to termination in the event of termination of a legal entity that is a party to enforcement proceedings, if the fulfillment of its obligations or requirements in enforcement proceedings does not allow for legal succession. Part 3 of this article establishes that the enforcement document is sent together with the resolution on the termination of enforcement proceedings to the court or other body (official) that issued it.

Pursuant to Part 1 of Article 40 of the Law of Ukraine “On Enforcement Proceedings”, in case of termination of enforcement proceedings, return of the enforcement document to the court that issued it, the seizure imposed on the debtor's property (funds) is lifted, information about the debtor is excluded from the Unified Register of Debtors, other measures taken by the enforcement officer to enforce the decision are canceled, and other necessary actions are taken in connection with the termination of enforcement proceedings.

The courts mostly conclude that since debt claims against a legal entity cannot be filed after an entry is made in the state register on the termination of the legal entity, the termination of enforcement proceedings and sending the enforcement document to the liquidator only after an entry is made on the termination of the legal entity is illogical and incorrect, since after such an entry is made, all debts of the legal entity are considered to be repaid. Debt collection from a legal entity in liquidation outside the statutory liquidation procedure, including by a state enforcement officer in accordance with the Law of Ukraine “On Enforcement Proceedings,” could give one person an advantage over others whose claims are subject to satisfaction in the first place. In other words, failure to terminate the enforcement proceedings after the commencement of the debtor's liquidation procedure and failure to send the enforcement document to the liquidation commission (liquidator) is a violation of the liquidation procedure and may result in violation of the rights of other creditors. Therefore, it is the liquidation commission (liquidator) that is responsible for

enforcing decisions to satisfy the claims of creditors of a legal entity in liquidation during the liquidation procedure, and not the state enforcement officer in accordance with the Law of Ukraine “On Enforcement Proceedings”. The same legal conclusions are set forth in the resolution of the Grand Chamber of the Supreme Court of October 3, 2018 in case No. 487/3335/13 (proceedings No. 14-111cc18) [134].

The Law of Ukraine “On the Permitting System in the Field of Economic Activity” [163], which defines the legal and organizational principles of the permitting system in the field of economic activity, establishes the procedure for the activities, in particular, of state administrators, does not contain a requirement for a business entity to notify the state administrator of the decision to terminate its business activity [97].

Thus, in a letter dated April 2, 2012, the Ministry of Economic Development and Trade of Ukraine provides clarifications on some issues of obtaining permits by business entities that are in the process of terminating their business activities. In particular, the Ministry notes that a legal entity is considered to be terminated from the date of entry into the Unified State Register of its termination. From that moment on, business entities lose their business legal personality and, consequently, the right to conduct any business activity.

Part 5 of Article 4-1 of the Law of Ukraine “On the Permitting System in the Field of Economic Activity” regulates the grounds for refusal to issue a permit, which does not include such grounds as a business entity being in the process of terminating its business activity.

In view of the above, business entities may apply for permits and submit declarations for registration until an entry is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations about their termination.

At the same time, the authorized body emphasizes in this letter that according to Part 7 of Article 4-1 of the Law of Ukraine “On the Permitting System in the Field of Economic Activity”, the grounds for revocation of a permitting document are: application of a business entity for revocation of a permitting document; termination

of a legal entity (merger, accession, division, transformation or liquidation), unless otherwise provided by law; termination of business activity of an individual entrepreneur; establishing the fact of providing false information in the application and documents attached to it [98].

Thus, the legal personality of a legal entity does not change during the liquidation procedure, which provides ample opportunities for abuse by its founders. To avoid fulfillment of obligations, an unscrupulous debtor need only make a decision on liquidation and not necessarily bring it to an end.

For example, an analysis of the data from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations shows that the Closed Joint Stock Company “6th Kyiv Automobile Repair Plant” (register code 33870196) has been in a state of liquidation since August 22, 2007, Polirem-Vostok Limited Liability Company (register code 31633440) has been in a state of termination by court order since May 4, 2006, Polirem Thermosystems Limited Liability Company (register code 36186042) has been in a state of termination since July 4, 2011, Komora Pivdenna Limited Liability Company (register code 25051665) has been in a state of termination since September 6, 2013. And there are many such legal entities that are in the process of termination and continue to carry out business activities in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

In view of the above, we propose to supplement Article 111 of the Civil Code of Ukraine with the following provision: “Transactions made by the liquidation commission (liquidator) or its members that go beyond the scope of the liquidation procedure or are not related to its implementation may be declared invalid by the court.”

Due to the legal essence of the institution of liquidation of legal entities, one of the consequences caused by it is the termination of relations that arose with its participation [26, p. 107].

If we consider a legal entity from the standpoint of subjective idealism, it can be defined as a form that encompasses several types of legal relations: first, legal

relations between the participants of a legal entity, through which their rights to participate in the management of its affairs are exercised and its will is formed; second, legal relations between each of the participants of a legal entity and the legal entity itself, in which their rights in rem or obligatory rights (if any) are exercised; finally, legal relations between a legal entity and all third parties in which a legal entity may be both an authorized and obligated entity. Therefore, if we consider a legal entity only as a form of existence of a specific legal relationship, then, when characterizing liquidation, we should consider the termination of the legal entity rather than the legal relationship itself. Thus, if the form cannot exist without the content, then the consequence of liquidation is the termination of the legal entity itself [241, pp. 233-234].

A civil legal relationship is a dynamic system of legal relations that are in a permanently active state. At a certain stage of its development in the stage of law enforcement, it may undergo changes, which is reflected primarily in its subjective component. Since the purpose of civil relations is the occurrence of the consequences envisaged by its legal model, the deformation of their structure affects the reality and proper fulfillment of the obligation which is the subject of civil relations [82, p. 49].

As a general rule, defined by Art. 609 of the Civil Code of Ukraine, an obligation is terminated by liquidation of a legal entity (debtor or creditor), except when the law or other legal acts assign the obligation of a liquidated legal entity to another legal entity, in particular, under obligations to compensate for damage caused by injury, other health damage or death, i.e. in case of termination of the obligation, it ceases to exist.

According to O. S. Yavorska, “termination of obligation” as a general term refers to all types of obligations, regardless of the grounds for their occurrence [251, p. 205]; M. V. Tkachenko notes that “termination of obligation also covers the grounds and consequences of termination of obligations arising not from a contract”. “Termination of a contract” is actually identical to ‘termination of an obligation’ in the sense that it refers to the termination of a contractual obligation; the latter should also cover those grounds for termination which do not depend on the will of the

parties (death of an individual, liquidation of a legal entity), and mutual agreement of the parties [227, p. 163].

Certain cases of termination of obligations by liquidation of a legal entity are established in a number of articles of the Civil Code of Ukraine regulating specific types of obligations. For example, according to Part 2 of Article 784 of the Civil Code of Ukraine, the lease agreement is terminated in case of liquidation of a legal entity that was the lessee or lessor [111, p. 128].

Analyzing the legal provisions governing the liquidation procedure, scholars conclude that the termination of obligations as a result of the liquidation of a legal entity occurs from the moment an entry is made in the Unified State Register on the termination of a legal entity.

According to Yulia Trufanova, such conclusions are debatable and require amendments to the legislation. Depending on the chosen position - the existence of succession in case of alienation of property in the course of liquidation procedure or the absence of succession under such conditions, part 1 of Article 770 of the Civil Code of Ukraine after the words “in case of change of ownership of the leased property” should be supplemented with one of two phrases - “in particular, as a result of alienation of the property in the course of liquidation of the lessor” or “except for cases of alienation of the property in the course of liquidation of the lessor”. The concept under which there is no succession during the transfer of ownership of a thing in the process of liquidation is logically justified only if the moment of termination of the contract under part 2 of Article 781 of the Civil Code of Ukraine is recognized as the opening of the liquidation procedure (adoption of a relevant resolution by an economic court or a decision by the general meeting of participants (shareholders) [228, p. 104].

In addition, clause 3 of part 1 of Article 1141 of the Civil Code of Ukraine defines the death of an individual participant or liquidation of a legal entity participating in a simple partnership agreement as one of the grounds for termination of a simple partnership agreement, unless the agreement between the participants provides for the preservation of the agreement in respect of other participants or

replacement of the deceased participant (liquidated legal entity) by his heirs (successors). However, even in this case, the legislator makes an exception and notes that in cases where the law or other regulatory legal acts impose the fulfillment of the obligation of a liquidated legal entity on another legal entity, in particular, under obligations to compensate for damage caused by injury, other health damage or death, the obligations are not terminated [247, p. 86].

Thus, part 2 of Article 1205 of the Civil Code of Ukraine establishes that in case of liquidation of a legal entity, payments due to the victim or persons specified in Article 1200 of the Civil Code of Ukraine must be capitalized for payment to the victim or these persons in the manner prescribed by law or other regulatory legal act. Claims for compensation for damage caused by injury, other damage to health or death are among those that are satisfied in the event of liquidation of a solvent legal entity as a matter of priority (clause 1 part 1 of Article 112 of the Civil Code of Ukraine). An important guarantee of protection of the victim's interests is his/her right to file a lawsuit in court if the liquidated legal entity does not have the funds to capitalize the payments to be made, with a demand to oblige the liquidation commission to ensure the capitalization of the necessary funds to compensate for the damage caused [111, p. 928].

It should also be noted that liquidation of a legal entity is the basis for termination of a loan agreement (Article 835 of the Civil Code of Ukraine), an annuity agreement (clause 1 part 3 of Article 740 of the Civil Code of Ukraine), a life care agreement (part 2 of Article 758 of the Civil Code of Ukraine), and a property management agreement (clause 1 part 3 of Article 1044) of the Civil Code of Ukraine).

Exceptions to this rule are established by acts of civil legislation of Ukraine. In particular, according to subpara. 2, Part 2, Article 758 of the Civil Code of Ukraine, if property received under a life care contract is transferred to the founder of a liquidated legal entity, the rights and obligations of the transferee under this contract are transferred to him. Such a legislative construction not only does not deny, but, on

the contrary, allows for the possibility of legal succession in the event of liquidation of a legal entity [26, p. 108].

Part 1 of Art. 111 of the Civil Code of Ukraine provides that from the date of entry into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of the record of the decision of the founders (participants) of a legal entity, court or their authorized body on the liquidation of a legal entity, the liquidation commission (liquidator) is obliged to take all necessary measures to collect receivables of the legal entity being liquidated and to notify each of the debtors in writing of the termination of the legal entity within the time limits established by this Code. The liquidation commission (liquidator) shall file claims and lawsuits for debt collection from the debtors of the legal entity.

The legal nature of accounts receivable may vary, and therefore, the procedures for its collection may also vary.

In the case of debt collection from debtors of a company undergoing liquidation proceedings whose obligations are due (including overdue), there are generally no legal issues, except for the debtors' solvency and the availability of a realistic possibility to repay the debt.

A problematic situation arises when the debtors' obligations have not yet become due, and the contracts do not explicitly state that the creditor's entry into liquidation is the basis for their early termination.

Many scholars share the opinion that the use of such an accounting term as accounts receivable is extremely unfortunate, since the term “accounts receivable” is used in several meanings in the law and accounting literature. These are the rights of claim under monetary obligations that have become due (overdue receivables) and the rights of claim under monetary obligations that will become due in a certain period of time (current receivables).

Pursuant to Article 531 of the Civil Code of Ukraine, the debtor has the right to fulfill its obligation ahead of schedule, unless otherwise provided by the contract, civil law or arises from the nature of the obligation or business practices.

The analysis of this article shows that early fulfillment of obligations by the debtor is only his right, not his obligation. Exceptions to this rule established by the legislator, in particular, those specified in a contract, acts of civil law or arising from the nature of the obligations, do not include such a ground as the liquidation of the creditor.

However, in our opinion, the legal construction of receivables collection when the debtors' obligations have not yet become due is evident from the analysis of Article 512 of the Civil Code of Ukraine, which provides for the possibility of replacing the creditor in the obligation with another person as a result of the transfer of its rights to another person under a transaction (assignment of claims).

Pursuant to Article 516 of the Civil Code of Ukraine, the creditor in an obligation may be replaced without the debtor's consent, unless otherwise provided by the agreement or law.

It should be noted that the creditor's right to assign the right of claim is unconditional even when this right is exercised within the framework of bankruptcy proceedings without requiring any additional confirmation [187, p. 505]. This position was expressed by the Supreme Court in its decision of April 5, 2018 in case No. 910/8493/17 [136], in particular, it was determined that from the moment the bankruptcy case is initiated against the debtor, it is in a special legal regime that changes the entire complex of legal relations of the debtor, and the special provisions of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt” have priority in application in bankruptcy cases in relation to other legislative acts of Ukraine.

Currently, there is no unambiguous court practice on the collection of such receivables in the course of voluntary liquidation, which in turn results in a delay in the liquidation procedure, and therefore it is proposed to enshrine at the legislative level the obligation of the liquidation commission/liquidator to ensure the replacement of the creditor in the obligation by another person as a result of the transfer of its rights to another person under a transaction (assignment of claims).

In addition to the termination of a legal entity's contractual obligations, liquidation also results in the termination of labor relations.

Pursuant to part 5 of Article 112 of the Civil Code of Ukraine, the liquidation commission (liquidator) takes measures to close separate subdivisions of a legal entity (branches, representative offices) and, in accordance with the labor law, dismisses employees of the legal entity being liquidated.

Based on the analysis of labor legislation, namely the Labor Code, P. V. Kachanova concludes that the dismissal of employees during the liquidation of an enterprise is the responsibility of the employer, but the obligation to inform employees lies with the head of the relevant legal entity, and the direct dismissal (including making entries in the employment record book), final settlements with employees is the responsibility of the liquidator [69, p. 15].

Article 40 of the Labor Code provides that an employment contract concluded for an indefinite period, as well as a fixed-term employment contract before its expiration, may be terminated by the owner or his authorized body in case of changes in the organization of production and labor, in particular, liquidation, reorganization, bankruptcy or re-profiling of an enterprise, institution, organization, reduction in the number or staff.

Analyzing the problems of legal regulation of the employment contract, V. Danilov argues that in case of dismissal of an employee at the initiative of the employer, the law imposes on the latter the obligation to confirm the actual existence of certain circumstances specified in the law that necessitate dismissal of the employee. The employer must explain the reasons for the employee's dismissal and prove the circumstances that contradicted the employee's job performance and made it impossible for the employee to continue working. The state's task is to create conditions for guaranteeing the protection of the right to work, guided by the principles of non-discrimination and creating mechanisms to prevent unjustified dismissals. The employer's right to terminate the employment relationship with an employee on its own initiative is limited: the law establishes an exhaustive list of

grounds for termination of an employment contract, in the presence of which the dismissal is convincing [32, p. 86].

According to V. Shyshliuk, the concept of “dismissal” can be interpreted as a set of interrelated procedural actions of the employer towards the employee aimed at legalizing the termination of employment, which includes the occurrence of circumstances that lead to the termination of the employment contract, the issuance of an order or instruction by the employer indicating the grounds for dismissal in accordance with the law, the issuance of a properly executed employment record book and the final settlement with the employee. In case of liquidation of the company, the employment relationship with the employees is definitely terminated. However, in this case, the termination of the employment agreement is initially preceded by the legal fact of liquidation of the legal entity and termination of the employment relationship, which results in the termination of the employment agreement. A condition for termination of employment is the fact of liquidation of the company. The legal basis for the termination of labor relations is the decision of the owner or court to terminate the legal entity [244, p. 81, 83].

The procedure for termination of an employment agreement in the event of termination (liquidation or reorganization) of an enterprise, institution or organization provides for a procedure to be followed by the parties to the employment relationship. For example,

M. V. Fesyura in her study “Determination and Characterization of the Grounds for Termination of an Employment Agreement in the Event of Liquidation, Reorganization and Bankruptcy of an Enterprise, Institution or Organization” (2013) notes that the procedure for termination of an employment agreement in the event of liquidation, reorganization and bankruptcy of an enterprise, institution or organization is a special procedure regulated by the legal norms of the state labor legislation aimed at harmonizing the interests of the parties to labor relations and ensuring the observance of their rights, freedoms and interests [231, p. 539].

The legislation establishes cases when dismissal of certain categories of employees in connection with the liquidation of an enterprise is allowed only with

subsequent employment, in particular: pregnant women and women with children under the age of three, single mothers with a child under the age of 14 or a disabled child; fathers raising children without a mother (in particular, in case of a mother's prolonged stay in a medical institution), as well as guardians (trustees), foster parents; employees under the age of 18. The search for jobs can be carried out by contacting the State Employment Service or using information on the availability of jobs from other sources [10].

However, in practice, the application of these norms raises problems that require analysis. For example, it is necessary to clarify the meaning of the concept of “complete liquidation of an enterprise, institution or organization” and who is responsible for employment in case of dismissal of women who have entered into an employment contract for an indefinite period, since part 3 of Article 184 of the Labor Code does not cover these issues. Pursuant to Article 49-2 of the Labor Code, the owner or his authorized body shall notify the State Employment Service of the dismissal of an employee. In addition, part 3 of Article 184 of the Labor Code provides that the owner or his authorized body may not dismiss the women mentioned therein until they are employed. That is, the owner or his authorized body is primarily interested in their employment. Therefore, it should be assumed that: employment of women and other categories of employees specified in part 3 of Article 184 of the Labor Code, the prohibition of dismissal of which without providing a new job is provided for by regulations, is the responsibility of the owner or his authorized body. This is also confirmed in paragraph 9 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Consideration of Labor Disputes by the Courts” of November 6, 1992, No. 9. Thus, “when considering cases of dismissal under paragraph 2 of Art. 36 of the Labor Code, the courts should take into account that dismissal on these grounds of pregnant women and women with children under the age of three (or over three years, but not more than 6 years, if the child is medically determined to need home care during this period), single mothers (a woman who is not married and whose child's birth certificate does not contain an entry about the child's father or the entry about the father was made in accordance

with the established procedure at the direction of the mother, widow, other woman who raises and maintains the child alone) in the presence of a child under the age of fourteen or a disabled child is carried out with compulsory employment (part. 3 of Article 184 of the Labor Code). It cannot be recognized that the owner or his authorized body has fulfilled this obligation to employ, if the employee was not provided with another job at the same or another enterprise (institution, organization) or offered a job that she refused for valid reasons (for example, for health reasons)" [150, p. 1].

The fulfillment of the obligation to employ a pregnant woman in the event of liquidation of the enterprise is problematic, as there is no clearly regulated legal mechanism for the implementation and enforcement of such an employer's obligation. The analysis of practice shows that a bona fide employer applies to employment centers or recruitment agencies, while an unscrupulous employer dismisses an employee at her own request or on the basis of paragraph 1 of Part 1 of Article 36 of the Labor Code (by agreement of the parties).

At the same time, it should be noted that in practice there are no court cases challenging the actions of the liquidation commission regarding the unlawful termination of employment relations with employees under clause 1, part 1, Article 40 of the Labor Code.

Conclusions to Section II

Having studied the civil law regulation of liquidation of legal entities in Ukraine, we have come to the following conclusions:

1. “Termination of a legal entity” and ‘termination of a legal entity’ are not identical concepts, since an enterprise may cease its activities, but it remains a subject of law until an entry is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations about its termination by liquidation.

2. The defining features of the liquidation of legal entities under civil law as a separate institution of civil law are: 1) the absence of universal legal succession, as well as the possibility of partial transfer of rights and obligations of the liquidated legal entity to other persons; 2) solvency of the liquidated legal entity; 3) the moment from which the legal entity is deemed to have been terminated (from the date of entry into the Unified State Register of its termination).

3. The author determines that liquidation of a legal entity under civil law is a legal procedure regulated by law, which results in complete termination of a solvent legal entity as a legal entity from the moment of making the relevant entry in the State Register with the possibility, in cases provided for by law, of partial transfer of rights and obligations of a legal entity to other persons (legal successors).

4. The liquidation of legal entities under civil law is classified depending on the method of its implementation into: 1) liquidation carried out in the general procedure on the basis of documents submitted by the applicant for state registration of termination of a legal entity; 2) simplified liquidation, which is carried out by a court decision to cancel the state registration of a legal entity adopted before July 1, 2004; by a court decision on liquidation of a legal entity adopted after July 1, 2004, if the chairman of the liquidation commission or the liquidator of a legal entity fails to submit to the state registration authority within three years from the date of publication of the notice of adoption of such a court decision the documents required for state registration of termination of a legal entity as a result of its liquidation; if the

chairman of the liquidation commission for the termination of a legal entity or the liquidator of a legal entity fails to submit the documents required for state registration of the termination of a legal entity as a result of its liquidation within one year from the date of entry in the Unified State Register on the suspension of the simplified procedure for state registration of the termination of a legal entity as a result of its liquidation; 3) liquidation by tacit consent, which is carried out in the event that the state authorities do not provide information on the absence of arrears in the payment of taxes and fees, insurance funds to the Pension Fund of Ukraine and social insurance funds, the absence of unrevoked issues of securities of the issuing legal entity and unrevoked registration of the issue of shares of a joint-stock company.

5. The grounds for liquidation of legal entities enshrined in civil law, namely Article 110 of the Civil Code of Ukraine, cover both general (clauses 1 and 2) and special (clause 3) grounds for liquidation of legal entities.

6. The legal consequences of liquidation arise from the moment a decision is made to liquidate a legal entity and a corresponding entry is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

7. The possibility of collecting receivables when the debtors' obligations have not yet been fulfilled is evident from the analysis of Article 512 of the Civil Code of Ukraine, which, in particular, regulates the possibility of replacing a creditor in an obligation with another person as a result of the transfer of its rights to another person under a transaction (assignment of claims). In this regard, the author proposes to enshrine at the legislative level the obligation of the liquidation commission/liquidator to ensure that a creditor is replaced in an obligation by another person as a result of the transfer of its rights to another person under a transaction (assignment of claims).

SECTION III
PECULIARITIES OF CERTAIN TYPES OF LIQUIDATION OF LEGAL ENTITIES UNDER THE CIVIL LAW OF UKRAINE

3.1 Peculiarities of liquidation of legal entities by decision of their shareholders

Pursuant to clause 1 part 1 of Article 110 of the Civil Code of Ukraine, a legal entity is liquidated by decision of its participants or a body of the legal entity authorized to do so by the constituent documents, in particular in connection with the expiration of the period for which the legal entity was established, achievement of the purpose for which it was established, as well as in other cases provided for by the constituent documents. According to Article 48 of the Law of Ukraine "On Limited Liability Companies and Additional Liability Companies" [186], a company is terminated as a result of transfer of all property, all rights and obligations to other business entities.

Part 2 of the said article stipulates that voluntary termination of a company is carried out by a decision of the general meeting of shareholders in accordance with the procedure established by this Law, in compliance with the requirements provided for by law. Other grounds and procedure for company termination are regulated by law.

Article 135 of the Law of Ukraine "On Joint Stock Companies" [152] states that the voluntary liquidation of a joint stock company is carried out by decision of the general meeting, in particular in connection with the expiration of the term for which the company was established or upon achievement of the purpose for which it was established, in the manner prescribed by the Civil Code of Ukraine and other legislative acts, in accordance with the specifics established by this Law. Other grounds and procedure for liquidation of a company are determined by law. Paragraph 3 of this Article provides that the decision to liquidate a joint stock company, elect a liquidation commission, approve the liquidation procedure, as well

as the procedure for distributing property remaining after satisfaction of creditors' claims among shareholders, shall be made by the general meeting of the joint stock company, unless otherwise provided by law.

Pursuant to Article 97 of the Civil Code of Ukraine, the general meeting of shareholders and the executive body are the governing bodies of a company, unless otherwise provided by law.

The Laws of Ukraine “On Limited Liability Companies and Additional Liability Companies” and “On Joint Stock Companies” stipulate that the general meeting of shareholders is the supreme body of the company, which is competent to decide on the spin-off and termination of the company, liquidation of the company, election of a termination commission (liquidation committee), approval of the procedure for the company's termination, the procedure for the distribution of property remaining after satisfaction of creditors' claims among the company's shareholders in the event of its liquidation, approval of the liquidation plan, and approval of the liquidation of the company's assets.

According to the general rule set forth in subparagraph 2, part 2, Article 98 of the Civil Code of Ukraine, which corresponds to Article 34 of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” and Article 53 of the Law of Ukraine “On Joint Stock Companies”, the decision to liquidate a company is made by a majority (not less than three-fourths of the votes), unless otherwise provided by law.

Thus, the “beginning of the end” is the adoption of the relevant decision by the general meeting of the legal entity's shareholders or by a body of the legal entity authorized to do so by the constituent documents.

It should be noted that the Civil Code of Ukraine contains uniform approaches regulating the procedure for implementing a decision to terminate a legal entity both through reorganization and liquidation. At the same time, the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” details the process of termination of companies only by merger, acquisition, division, transformation (i.e., by reorganization, although the legislator has moved away from this concept in

the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies”), but there are no rules regulating liquidation at all. The legislator left out the legal aspects of liquidation of limited liability companies and additional liability companies, referring to the provisions of the Civil Code of Ukraine that regulate the procedure for liquidation of legal entities in general [105, p. 72].

The Code obliges the shareholders of a legal entity, the court or the body that decided to terminate the legal entity to appoint a termination commission (reorganization commission or liquidation commission), the chairman of the commission or the liquidator and determine the procedure and time limit for creditors to file their claims against the legal entity being terminated.

From the moment of appointment, the liquidation commission or liquidator is empowered to manage the affairs of the legal entity.

Until an entry is made in the Unified State Register on the termination of a legal entity by liquidation, the liquidation commission continues to maintain accounting and tax records in the general manner. According to part 1 of Article 8 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” [156], accounting at an enterprise is kept continuously from the date of registration until its liquidation.

In order to ensure the maintenance of liquidation accounting, the liquidation commission (liquidator), fulfilling the requirements of Part 4 of Article 8 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine”, may:

1) entrust it to the company's accountants with whom employment contracts have been concluded until the moment of liquidation; 2) keep records independently; 3) conclude fixed-term employment contracts for the period of liquidation with individual accountants; 4) use the services of an accounting specialist registered as an entrepreneur who carries out business activities without establishing a legal entity; 5) entrust the accounting to a centralized accounting department or an enterprise, business entity, or self-employed person engaged in accounting and/or auditing activities on a contractual basis.

In other words, one of the main responsibilities of the liquidation commission (liquidator) is to keep accounting records for the period between the date of the

decision of the legal entity's shareholders to liquidate it and the date of entry into the Unified State Register of the state registration of the legal entity's termination. Pursuant to part 3 of Article 13 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine”, the reporting period of a liquidated company is the period from the beginning of the reporting year to the date of the decision to liquidate it. Thus, the liquidation commission (liquidator) must prepare all annual financial statements for this period.

Pursuant to part 9 of Article 8 of the above Law, the responsibility for accounting for business transactions related to the liquidation of an enterprise, including the valuation of property and liabilities of the enterprise and the preparation of the liquidation balance sheet and financial statements, rests with the liquidation commission or liquidator.

Since the issue of formalizing the relationship between the owner(s) of a legal entity and persons engaged to work as members of the liquidation commission or as liquidators is not regulated by law and no special mechanism for remuneration of their work is provided for, it would be appropriate to define the relevant issues in the Regulation on the liquidation commission. If the liquidation commission is composed exclusively of employees of the company, then it is their labor responsibility to perform all necessary actions in the liquidation procedure. In other cases, civil law relations arise between the owner and the members of the liquidation commission or the liquidator, which are formalized by appropriate agreements.

Given the realities of today, it can be argued that one of the most important problems that arise in the process of voluntary liquidation of any organizational and legal form of legal entities is the lack of a clear list of measures to be taken by the liquidation commission or liquidator. Chapter VI of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies”, “Spin-off and Termination of a Company”, regulates in detail the procedure for the termination of companies by merger, acquisition, division and transformation, and contains such novelties for Ukrainian corporate law as the provision on the company termination agreement. However, none of the articles of this chapter of the Law deals with the

termination of companies by liquidation, which, in our opinion, is a significant drawback of the special regulatory act and requires further development.

In this regard, we propose to supplement Chapter VI of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” with an article on the termination of a company by liquidation, to define an exclusive list of actions of the liquidation commission and the terms of their implementation.

Based on the analysis of the provisions of Article 111 of the Civil Code of Ukraine, certain stages can be identified within which the liquidation commission or liquidator must fulfill the tasks set to ensure the effectiveness of the liquidation procedure, in particular

1. Notification of the state registration authority of the decision to terminate the company through liquidation.

The Civil Code of Ukraine obliges the participants of a legal entity or the body that made the decision to terminate the legal entity to notify the state registration authority in writing within three business days from the date of such decision. Pursuant to clause 10 of Article 17 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, a copy of the original (notarized copy) of the decision of the legal entity's participants or the relevant body of the legal entity to terminate the legal entity and a copy of the original (notarized copy) of the document approving the personal composition of the liquidation commission shall be submitted for state registration of the decision to terminate the legal entity.

The Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” provides for the possibility to submit documents for state registration both in paper and electronic forms. The procedure for submitting documents in electronic form through the e-services portal is regulated by the Procedure for State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations that Do Not Have the Status of a Legal Entity, approved by Order of the Ministry of Justice of Ukraine No. 359/5 dated February 9, 2016 [170].

In accordance with clause 1 of Section IV of this Procedure, the applicant forms an application in electronic form using the software tools for maintaining the Unified State Register on the portal of electronic services with the imposition of his/her own qualified electronic signature with the obligatory attachment of the originals of electronic documents for state registration. Such an application in electronic form is printed out and attached in one copy to the relevant registration file. All documents generated in electronic form are stored in this form in the Unified State Register.

2. Conducting an inventory and independent valuation of the company's property.

Part 4 of Article 111 of the Civil Code of Ukraine establishes that the liquidation commission (liquidator) shall take measures to take an inventory of the property of the legal entity being terminated, as well as the property of its branches and representative offices, subsidiaries, business entities, as well as property confirming its corporate rights in other legal entities, identify and take measures to return property held by third parties. The procedure for conducting an inventory of assets is determined by the Regulation on Inventory of Assets and Liabilities, approved by Order of the Ministry of Finance of Ukraine No. 879 of September 2, 2014 [168].

In this regard, O. M. Stolyarenko rightly notes: “Inventory plays a major role in the information system of accounting, providing an exhaustive list of all components of the property and liabilities of an economic entity not only in monetary terms but also in kind, emphasizing the individual characteristics of property rights and obligations” [217, p. 476].

Paragraph 7 of Regulation No. 879 provides that an inventory is mandatory in the event of the termination of an enterprise. In accordance with clause 5 of this Regulation, an inventory is carried out to ensure the reliability of the company's accounting data and financial statements. During the inventory of assets and liabilities, their existence, condition, and compliance with the criteria for recognition and valuation are checked and documented. This is done by: identifying the actual availability of assets and checking the completeness of the reflection of liabilities, targeted financing, deferred expenses; determining the surplus or shortage of assets

by comparing their actual availability with accounting data; identifying assets that have partially lost their original quality and consumer properties, obsolete, as well as tangible and intangible assets that are not used, unused collateral amounts; identifying assets and liabilities that do not meet the criteria for recognition and valuation.

The analysis of the provisions of Regulation No. 879 shows that all liabilities and assets of the enterprise, including those transferred for paid use (rental, lease), repaired, reconstructed and/or modernized, regardless of location and technical condition, as well as assets and liabilities accounted for on off-balance sheet accounts, are subject to inventory. The results of the inventory are documented in the minutes of the inventory committee.

Once the inventory stage is completed, the property must be appraised for further sale (Article 7 of the Law of Ukraine “On Appraisal of Property, Property Rights and Professional Appraisal Activity in Ukraine”), and in the case of state-owned property, the appraisal must be reviewed by the State Property Fund of Ukraine, as well as authorization in the form of an order/directive from the property management body (Procedure for Alienation of State-Owned Property, approved by Resolution of the Cabinet of Ministers of Ukraine No. 803 of June 6, 2007). While in the case of liquidation of a private enterprise, the liquidation commission can perform the valuation, a state/municipal enterprise must engage a valuation entity. This stage of liquidation of a state-owned business entity seems to be imperfect. It is extremely difficult to obtain a review of the valuation of inventoried property for the purpose of its subsequent sale and repayment of creditors' claims from the State Property Fund of Ukraine, which inevitably causes the liquidation procedure to be delayed indefinitely. The procedure for obtaining permission to alienate property from the property management body, such as the relevant ministry, is equally time-consuming. In addition, the property needs to be monitored, which imposes inevitable costs on the company for the protection of such facilities [133].

On 6 September 2017, within case № 6-1081cc17, Judicial Chambers on Civil and Commercial Cases of the Supreme Court of Ukraine, eliminating shortcomings in

the application by the cassation courts of the same substantive law, namely Articles 5, 7 of the Law of Ukraine “On Management of State-Owned Property”, paragraphs 5-8 of the Procedure for Alienation of State-Owned Property, approved by Resolution of the Cabinet of Ministers of Ukraine dated 6 June 2007 № 803, in conjunction with Art. 74, 75, 136 of the Commercial Code of Ukraine, Articles 203, 215 of the Civil Code of Ukraine, investigated the issue of the procedure for the sale of property of a state-owned enterprise in the liquidation procedure and concluded that the sale of property of a state-owned enterprise in the liquidation procedure is a type of its alienation, for which the business entity must obtain the consent of the State Property Fund of Ukraine. The absence of an appropriate permit/approval may be grounds for invalidating the contract of sale of property of a state-owned enterprise [188].

The Civil Code of Ukraine in paragraph 2 of Part 4 of Article 111 stipulates that in cases established by law, the liquidation commission (liquidator) ensures an independent assessment of the property of the legal entity being terminated. According to Article 7 of the Law of Ukraine “On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine” [177], property valuation is mandatory in cases of reorganization, bankruptcy, liquidation of state, municipal enterprises and enterprises (business entities) with a state share of property (share of municipal property).

However, we believe that an independent valuation of a legal entity's property should be a mandatory stage of the liquidation procedure, as the determined value of the property confirms the level of solvency of the company and serves as collateral for repayment of creditors' claims. The mandatory valuation of the property of a liquidated legal entity is also stipulated by part 3 of Article 110 of the Civil Code of Ukraine, which obliges a legal entity to take all necessary actions established by the law on restoring solvency or declaring bankruptcy in case of insufficient property value to satisfy creditors' claims.

Thus, we propose to amend part 4 of Article 111 of the Civil Code of Ukraine to read as follows: “The liquidation commission (liquidator) shall take measures to take an inventory of the property of the legal entity being liquidated, as well as the

property of its branches and representative offices, subsidiaries, business entities, as well as property confirming its corporate rights in other legal entities, identify and take measures to return property held by third parties, and ensure an independent assessment of the property of the legal entity being liquidated."

3. Closing accounts opened with financial institutions, except for the account used for settlements with creditors.

Part 3 of Article 111 of the Civil Code of Ukraine defines the obligation of the liquidation commission (liquidator) to close accounts opened with financial institutions, except for the account used for settlements with creditors during the liquidation of a legal entity, before the expiration of the period for submitting creditors' claims.

Pursuant to clause 11.9 of the Procedure for Registration of Taxpayers and Duties, approved by Order of the Ministry of Finance of Ukraine No. 1588 dated December 9, 2011, in order to ensure the closure of accounts of legal entities in liquidation, the supervisory authority at the main place of registration, upon request of the liquidation commission (liquidator, liquidation committee, etc.), provides a list of accounts in financial institutions of the relevant legal entity and/or its separate subdivisions, which at the time of the request were registered by the supervisory authorities and in respect of which no notification of their closure was received.

The issue of closing bank accounts of a legal entity that is in the process of termination is regulated by the Resolution of the Board of the National Bank of Ukraine "On Approval of the Instruction on the Procedure for Opening and Closing Bank Customer Accounts and Correspondent Accounts of Resident and Non-Resident Banks" No. 492 dated November 12, 2003 [167].

Pursuant to clause 147 of the said Instruction, one current account of the legal entity being liquidated, determined by the liquidation commission (liquidator, liquidation committee), is used to conduct the liquidation procedure in case of termination of a resident legal entity as a result of its liquidation. In this case, a copy of the shareholders' resolution on the basis of which the legal entity is liquidated must be submitted to the bank.

However, in practice, it is extremely difficult to fulfill the tasks assigned to the liquidation commission within the specified timeframe, as there are situations where the accounts of the legal entity being liquidated are seized.

According to subparagraph 5, paragraph 9.10 of the Instruction on Cashless Settlements in Ukraine in the National Currency, approved by Resolution of the National Bank of Ukraine No. 22 dated January 21, 2004 [166], in case of closure of an account initiated by the bank or the client, in particular in cases of reorganization of legal entities, the seizure of funds is not terminated, and the document on their seizure continues to be recorded in the relevant off-balance sheet account.

In view of the foregoing and taking into account the requirements of the regulations governing the opening and closing of bank customer accounts, it is believed that the existence of a seizure of a legal entity's funds accounted for in bank accounts is a ground for a banking institution to refuse to close the current accounts of a business entity in the process of termination.

Thus, the chairman of the liquidation commission or the liquidator are obliged to take all necessary actions to close the enforcement proceedings, in particular, to file a relevant application with the state enforcement officer in accordance with the requirements of the Law of Ukraine “On Enforcement Proceedings”.

According to paragraph 9.11 of the said Instruction No. 22, the bank shall lift the seizure of funds upon the bailiff's resolution to lift the seizure of funds adopted in accordance with the laws of Ukraine by a court decision, a ruling of an investigating judge, a court, or a prosecutor's resolution delivered to the bank by the bailiff (messenger, assistant to a private bailiff), investigator, court representative, investigating judge, prosecutor, or supervisory authority, or received by registered or valuable mail sent by the bailiff, court, investigating judge, prosecutor, or supervisory authority. The Bank also accepts for execution the bailiff's resolution on lifting the seizure of funds sent in the form of an electronic document in compliance with the requirements of the legislation of Ukraine on electronic document management, electronic digital signature, and information protection.

In addition, given the difficult situation in the banking sector, the choice of the bank in which the liquidation account will be opened should also be treated with increased attention, as in recent years, bankruptcies of banks in which liquidation accounts of legal entities were opened have become widespread. In such circumstances, companies become hostages to the situation, as they cannot repay their creditors' claims. They are now forced to file claims with the bank's liquidator and wait for the repayment of claims that, according to the law, fall within the seventh priority, which is mostly not covered by the bank's assets, so it is unlikely that they will be able to receive the expected funds that were in the liquidation account. If such a situation does arise and the bank where the liquidation account was opened is declared insolvent, the liquidator may face another problem in the form of the inability to open a new liquidation account, as the tax authority cannot register a new current account of a legal entity until the previous ones are closed. Therefore, R. Kravchenko notes, the only way out is to go to court with a request to register a new current account. Courts mostly satisfy such claims in full [84].

4. Conducting audits and determining the presence or absence of arrears in the payment of taxes, fees, and a single contribution to obligatory state social insurance

Part 7 of Article 111 of the Civil Code of Ukraine stipulates that in order to conduct inspections and determine the presence or absence of arrears of taxes, duties, a single contribution to the obligatory state social insurance, insurance funds to the Pension Fund of Ukraine and social insurance funds, the liquidation commission (liquidator) ensures timely provision of documents of the legal entity (its branches, representative offices) to the revenue and duties authorities and the Pension Fund of Ukraine and social insurance funds, in particular, primary documents, accounting registers, etc. Prior to the approval of the liquidation balance sheet, the liquidation commission (liquidator) shall prepare and submit to the revenue and duties authorities, the Pension Fund of Ukraine and social insurance funds the reports for the last reporting period [236].

Article 97 of the Tax Code of Ukraine, in particular, clause 97.1, states that the liquidation of a taxpayer is considered to be the liquidation of a taxpayer as a legal entity or state registration of the termination of an individual's business activity or registration with the relevant authorized body of the termination of an individual's independent professional activity (if such registration was a condition for conducting independent professional activity), which results in the closure of their accounts and/or loss of their status as a taxpayer in accordance with the law.

In accordance with subparagraph 97.4.1 of clause 97.1 of Article 97 of the Tax Code of Ukraine, the liquidation commission or other body conducting the liquidation of a legal entity is responsible for repayment of monetary liabilities or tax debt of the taxpayer being liquidated.

The procedure for deregistration of liquidated legal entities with the tax authorities is regulated by the Procedure for Registration of Taxpayers and Duties, approved by Order of the Ministry of Finance of Ukraine dated December 9, 2011 № 1588. Clause 11.1 of Procedure No. 1588 stipulates that a taxpayer is obliged to notify the controlling authorities at the place of registration of such taxpayer of its liquidation or reorganization within three business days from the date of the relevant decision (unless the obligation to make such notification is imposed by law on the state registration authority). At the same time, the data on the decision to terminate legal entities, information on which is contained in the Unified State Register, is received by the controlling authorities from state registrars in the course of information interaction between the Unified State Register and the information systems of the Central Controlling Authority.

In subparagraph 78.1.7 of paragraph 78.1 of Article 78 of the Tax Code stipulates that the grounds for an unscheduled documentary audit may be the initiation of a procedure for reorganization of a legal entity (except for transformation), termination of a legal entity or business activity of an individual entrepreneur, closure of a permanent establishment or separate subdivision of a legal entity, including a foreign company or organization, initiation of proceedings for declaring a taxpayer bankrupt or filing an application for deregistration of a taxpayer.

Procedure No. 1588 stipulates that a tax audit shall be conducted within the timeframe and in such a way that the claims for payment are generated and received by the legal entity no later than the timeframe specified for filing creditor claims.

Paragraph 82.2 of Art. 82 of the Tax Code of Ukraine stipulates that the duration of the audits specified in Art. 78 of this Code should not exceed 15 business days for large taxpayers, 5 business days for small businesses, and 3 business days for individual entrepreneurs who do not have employees, subject to the conditions specified in subpargraph 3-8 of this clause - 3 business days, for other taxpayers - 10 business days.

However, the controlling authorities mostly do not conduct liquidation audits or conduct them within the timeframe that goes beyond the concept of “reasonable”. This leads to a delay in the liquidation procedure or to a situation where an entry on the termination of a legal entity is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, but the legal entity is registered as not deregistered with the tax authorities.

According to the State Fiscal Service of Ukraine (response of the SFS of Ukraine of August 20, 2018 to the request for access to public information), in 2017, the units of the Main Department of the SFS based on subparagraph 78.1.7 of paragraph 78.1 of Article 78 of the Tax Code of Ukraine, audits covered 26.2 thousand taxpayers in respect of which the liquidation (termination) procedure was initiated or the taxpayer filed an application for deregistration, of which: legal entities - 8.4 thousand; individuals - 17.8 thousand, in 2017 397.2 thousand taxpayers were deregistered with the SFS (excluding taxpayers of the FEZ “Crimea”).

In 2018, the units of the Main Department of the State Fiscal Service of Ukraine based on subparagraph 78.1.7 of clause 78.1 of Article 78 of the Tax Code of Ukraine, audits covered 6.8 thousand legal entities in respect of which the liquidation (termination) procedure was initiated or the payer filed an application for deregistration. During 2018, 24.3 thousand legal entities and their separate subdivisions were deregistered from the regulatory authorities (liquidated,

terminated) (response of the SFS of Ukraine of May 29, 2019 to a request for access to public information) [96].

In view of the above, we propose to define a specific period during which the regulatory authorities have the right to conduct a liquidation audit of a business entity, and to establish that in case of failure to conduct such an audit or conducting it in violation of the established deadlines, it will be considered that the entity has no debt to such authorities, and therefore, measures that impede the liquidation process cannot be applied to it.

Pursuant to clause 5.1 of the Procedure for Registration and Deregistration of Payers of the Single Contribution for Obligatory State Social Insurance with the Pension Fund of Ukraine, approved by Resolution of the Board of the Pension Fund of Ukraine No. 21-6 dated September 27, 2010 [169], in case of receipt of a notification from the state registrar of the decision of the founders (participants) of a legal entity or their authorized body to terminate the legal entity, the Pension Fund body shall, within 10 days, conduct a documentary inspection of the payer to verify the correctness of the accrued single contribution. Based on the inspection report, the payer makes final payments. If the payer whose state registration is terminated has debts, the Pension Fund of Ukraine body shall file claims as a creditor within the time limits stipulated in the notice of entry in the Unified State Register regarding the decision of the founders (participants) of the legal entity, court or their authorized body to terminate the legal entity by sending to the chairman of the liquidation commission, his authorized person or liquidator a certificate of debt for all types of payments, as well as documents confirming the amount of arrears (reports of payment of taxes, fees, dues, etc.). After conducting an unscheduled inspection of the payer, making payments in accordance with this Procedure and on the basis of certificates of absence of arrears in payment of insurance funds provided by social insurance funds in the form according to Annex 8 to this Procedure, the Pension Fund of Ukraine shall issue a certificate of absence of arrears in payment of the single contribution to the obligatory state social insurance and insurance funds to the Pension Fund of

Ukraine and social insurance funds in the form according to Annex 6 to this Procedure.

However, attention should be focused on the inconsistency of the current bylaw with the Law of Ukraine “On Collection and Accounting of the Single Contribution for Obligatory State Social Insurance” [172].

According to clause 2 of part 1 of Article 1 of the Law of Ukraine “On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance”, the single contribution for compulsory state social insurance (single contribution) is a consolidated insurance contribution, which is collected to the system of compulsory state social insurance on a mandatory and regular basis in order to ensure protection, in cases provided for by law, of the rights of insured persons to receive insurance payments (services) for the available types of general

Part 1 of Article 5 of the Law of Ukraine “On Collection and Accounting of the Single Contribution for Obligatory State Social Insurance” stipulates that the registration of payers of the single social contribution is carried out in accordance with the procedure established by the central executive body that ensures the formation and implementation of state tax and customs policy, in agreement with the Pension Fund and funds of obligatory state social insurance, and in respect of insured persons who are members of the funded system of obligatory state pension insurance, The registration of single social contribution payers is carried out by the income and taxes authority by entering the relevant information into the register of insurers.

According to subparagraph 7 of Part 1 of Article 5 of the Law of Ukraine “On Collection and Accounting of the Single Contribution for Obligatory State Social Insurance”, deregistration of single contribution payers is carried out by the income and taxes authorities on the basis of information from the registration card provided by the state registrar, and deregistration of single contribution payers - individual entrepreneurs - on the basis of information from the registration card provided by the state registrar, after conducting statutory inspections of payers and making the final payment.

Article 13 of the Law of Ukraine “On Collection and Accounting of the Unified Social Tax” stipulates that revenue and duties authorities have the right to conduct inspections at enterprises, institutions and organizations, persons engaged in independent professional activities, and individual entrepreneurs of accounting books, reports, estimates and other documents on the accrual, calculation and payment of the unified social tax, the accuracy of information submitted to the State Register, and to obtain the necessary explanations, certificates and information (including written information). Documentary and in-house audits are conducted in accordance with the procedure established by the Tax Code of Ukraine.

The Pension Fund of Ukraine, in response to a request for access to public information dated May 30, 2019, stated that the bodies of the Pension Fund of Ukraine carry out inspections of business entities exclusively in accordance with the procedure established by the Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Economic Activity” [99]. Scheduled inspections are carried out in accordance with the requirements of Articles 4 and 5 of the Law, unscheduled inspections - in cases provided for in Article 6 of the Law, in particular in connection with the submission by a business entity of a written application to the relevant state supervision (control) authority for the implementation of a state supervision (control) measure at its request. During 2018, the territorial bodies of the Pension Fund of Ukraine conducted 5,461 unscheduled inspections of legal entities upon written applications for unscheduled inspections in connection with the decision to terminate a legal entity as a result of its liquidation.

Therefore, it appears that the only regulatory act that defines the procedure for conducting audits on the presence or absence of arrears in the payment of taxes, fees, and the unified social security tax is the Tax Code of Ukraine, and the authorities authorized to conduct such audits are the revenue and duties authorities.

In this regard, we propose to amend part 7 of Article 111 of the Civil Code of Ukraine and restate it in a new version in accordance with the Law of Ukraine “On Collection and Accounting of the Single Contribution for Obligatory State Social Insurance”: “In order to conduct inspections and determine the presence or absence

of arrears in the payment of taxes, fees, and the unified social tax, the liquidation commission (liquidator) shall ensure timely provision of documents of the legal entity (its branches, representative offices), including primary documents, accounting and tax registers, to the revenue and duties authorities."

5. Dismissal of employees.

Part 5 of Article 111 of the Civil Code of Ukraine provides that the liquidation commission (liquidator) shall dismiss employees of the legal entity being terminated in accordance with the labor legislation.

The grounds for termination by the owner or his authorized body of an employment contract concluded for an indefinite period, as well as a fixed-term employment contract before its expiration in accordance with clause 1

of Article 40 of the Labor Code [75] are changes in the organization of production and labor, including liquidation, reorganization, bankruptcy or re-profiling of an enterprise, institution, organization, reduction in the number or staff.

During the voluntary liquidation of a legal entity, the owner or his authorized body (liquidation commission), if a primary trade union organization is established at the enterprise, must comply with the requirements of Part 3 of Article 22 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" [180], in particular, the employer must provide primary trade union organizations with information on these measures in advance, no later than three months before the planned dismissals, including information on the reasons for further dismissals, the number and categories of employees who will be affected. Trade unions have the right to submit proposals to state authorities, local self-government bodies, employers, and their associations to postpone, suspend or cancel measures related to dismissal of employees, which are mandatory for consideration (Article 494 of the Labor Code).

The employer has an obligation to consider proposals of trade union bodies to postpone, suspend or cancel measures related to the dismissal of employees, but the owner or his authorized body may reject such proposals without consideration.

Pursuant to Article 49-2 of the Labor Code, the liquidation commission or liquidator must personally notify all employees of the forthcoming dismissal no later than two months in advance.

The current legislation does not regulate either the procedure or the form of notice of dismissal in connection with changes in the organization of production and labor, including liquidation, reorganization, bankruptcy or re-profiling of an enterprise, institution, organization, reduction in the number or staff. In any case, employees may be dismissed no earlier than two months after the expiration of the notice period. At the same time, pursuant to part 3 of Article 49-2 of the Labor Code, if the dismissal is massive in accordance with Article 48 of the Law of Ukraine “On Employment of the Population”, the owner or his authorized body shall notify the state employment service of the planned dismissal of employees.

Pursuant to Article 47 of the Labor Code, the employer is obliged to issue a duly executed employment record book to the employee on the day of dismissal and to pay the employee within the time limits specified in Article 116 of this Code. The Constitutional Court of Ukraine in its Decision No. 4-rp/2012 dated February 22, 2012 on the official interpretation of the provisions of Article 233 of the Labor Code of Ukraine in connection with the provisions of Articles 117, 237 of this Code clarified that under Article 47 of the Labor Code, the employer is obliged to pay the employee in the event of dismissal all amounts due to him from the enterprise, institution, organization within the time limits specified in Article 116 of the Labor Code, namely on the day of dismissal or no later than the next day after the dismissed employee submits a request for payment. Failure of the owner or his authorized body to pay the employee within the specified time limits is grounds for liability under Article 117 of the Code, i.e. payment of the employee's average earnings for the entire period of delay until the day of actual payment. A guaranteed way to protect your right to receive your salary is to go to court. An employee can apply to the court in writ proceedings if he or she claims to recover accrued but unpaid wages, or in lawsuit proceedings if there is a dispute over the amount of wage arrears and/or the right to receive them [195].

Thus, the dismissal of employees of a legal entity undergoing liquidation is one of the important stages of the liquidation procedure.

6. Satisfaction of creditors' claims.

One of the key elements of the liquidation procedure decided by the company's shareholders is the consideration and satisfaction of creditors' claims. The liquidation commission/liquidator is obliged to consider the stated claims of creditors and decide on the recognition or rejection of such claims separately for each claim. The liquidator is obliged to notify each creditor of the results of consideration of its claims within 30 days from the date of receipt of the relevant applications.

Based on the results of the consideration of creditors' claims, inventory and, in some cases, valuation of the company's property, the liquidation commission shall draw up an interim liquidation balance sheet, which shall indicate the composition of the property, the stated claims of creditors and the results of their consideration. If it is established that the company's own funds and the funds to be received from the sale of all assets are insufficient to repay its creditors' claims, the legal entity is obliged, in accordance with part 3 of Article 110 of the Civil Code of Ukraine, to apply to the court for the initiation of bankruptcy proceedings. The peculiarities of proceedings in such cases are regulated by bankruptcy law [158].

In case of availability of own funds, the creditors' claims are satisfied in accordance with the order of priority established by Article 112 of the Civil Code of Ukraine, in particular:

1) claims for compensation for damage caused by injury, other damage to health or death, and claims of creditors secured by collateral or otherwise are satisfied in the first place

2) in the second place, the claims of employees related to labor relations, the author's claims for payment for the use of the result of his/her intellectual and creative activity are satisfied;

3) in the third place, they satisfy the requirements for taxes, fees (mandatory payments);

4) in the fourth place, they satisfy all other requirements.

In our opinion, the fifth priority may be distinguished as well, since, pursuant to parts 3 and 4 of Article 112 of the Civil Code of Ukraine, if the liquidation commission refuses to satisfy the creditor's claims or evades their consideration, the creditor has the right to file a lawsuit against the liquidation commission within one month from the date when he or she learned or should have learned of such refusal. By a court decision, the creditor's claims may be satisfied at the expense of the property remaining after the liquidation of the legal entity, and the creditor's claims filed after the expiration of the period established by the liquidation commission for their filing shall be satisfied from the property of the legal entity being liquidated, which remains after the satisfaction of the creditors' claims filed in a timely manner.

The validity of our position is partially confirmed by the court practice, in particular, the decision of the Commercial Court of Mykolaiv Region in case No. 915/640/19 dated May 16, 2019, which states: “In assessing these circumstances, the economic court takes into account that according to part 4 of Article 112 of the Civil Code of Ukraine, creditor's claims filed after the expiration of the period established by the liquidation commission for their filing shall be satisfied from the property of the legal entity being liquidated, which remains after the satisfaction of creditors' claims filed in a timely manner. Thus, the untimely appeal of the creditor (plaintiff) to the debtor (defendant) for recognition of its monetary claims in the procedure of voluntary liquidation of the debtor (defendant) does not result in their repayment, but only affects the procedure for satisfying such claims” [193].

From the analysis of these provisions of Article 112 of the Civil Code of Ukraine, it is clear that in the fifth place, at the expense of the property of a legal entity remaining after satisfaction of the claims of creditors of all previous queues, the claims of creditors by court decision, as well as claims filed with the missed deadlines determined by the liquidation commission, are satisfied.

In this regard, V. Shcherbyna notes: “The essence of the priority is that the claims of each subsequent priority are fulfilled after the claims of the previous priority are fully satisfied. If there is not enough property within one priority to fully

repay the debts, it is distributed among the creditors in proportion to the amounts declared by them and determined by the liquidation commission" [246, p. 139].

The law stipulates that the claims of one priority shall be satisfied in proportion to the amount of claims belonging to each creditor of that priority. For the most part, creditors' claims are satisfied at the expense of the business entity's property by selling the assets on its balance sheet. Claims of creditors not recognized by the liquidation commission are considered repaid if such a creditor, after receiving a notice of full or partial rejection of its claims, has not filed a claim with the court within one month or has a court decision dismissing such claims. Also, claims that are not satisfied due to the absence of property of the legal entity being liquidated are considered to be extinguished.

Part 2 of Article 112 of the Civil Code of Ukraine stipulates that the priority of satisfaction of creditors' claims under insurance contracts is established by law. For example, part 6 of Article 43 of the Law of Ukraine "On Insurance" [184] provides that during the liquidation of a solvent insurer, the claims of insureds under insurance contracts are among the first priority claims.

Also, a special liquidation procedure is established for banks, in accordance with the Law of Ukraine "On Banks and Banking Activities" [153].

Pursuant to Article 78 of this Law, a bank is liquidated at the initiative of its owners in accordance with the procedure provided for by the legislation on the liquidation of legal entities, if the National Bank of Ukraine, after receiving the owners' decision to liquidate the bank, has not identified any signs that the bank may be classified as troubled or insolvent. The bank's owners have the right to initiate the bank's liquidation procedure by resolution of the general meeting only after the National Bank of Ukraine has given its consent and subject to revocation of the bank's license.

If a bank that is being liquidated at the initiative of its owners is classified by the National Bank of Ukraine as problematic or insolvent, the National Bank of Ukraine and the Deposit Guarantee Fund take measures against it as provided for by this Law and the Law of Ukraine "On the Individual Deposit Guarantee System". Article 52 of

the Law of Ukraine “On the Individual Deposit Guarantee System” [183] defines 10 stages of satisfaction of creditors' claims.

A different procedure for satisfying creditors' claims is established by the Law of Ukraine “On Credit Unions” [174], according to part 5 of Article 9 of which, during the liquidation of a solvent credit union, the claims of its creditors are satisfied in the following order: first of all, the claims of credit union employees and members of the liquidation commission related to labor relations; secondly, claims for deposits of credit union members on deposit accounts and claims of creditors secured by collateral or in any other way; thirdly, claims for payment of taxes, fees (mandatory payments); fourthly, other claims.

Thus, there is no uniform approach to determining the priority of creditors' claims, the Civil Code of Ukraine establishes only the general procedure and priority of creditors' claims in the liquidation procedure, while the specifics of liquidation of legal entities are regulated by special laws. In other words, the provisions of the Civil Code of Ukraine are of a referential nature, which in turn causes conflicts and contradictions between the general and special provisions of the liquidation legislation.

7. Approval of the liquidation balance sheet and settlements with the participants of the legal entity.

Upon completion of settlements with all creditors, the liquidation commission (liquidator) draws up a liquidation balance sheet, which is approved by the general meeting of the company's shareholders, and ensures its submission to the tax authorities.

The property of the legal entity remaining after satisfaction of creditors' claims is transferred to the participants of the legal entity in the manner prescribed by the company's constituent documents.

According to I. R. Kalaur, participants of all forms of business entities are endowed with a property right in relation to a corporation, which is directly defined in Article 167 of the Civil Code of Ukraine as the right to a part of assets in the event of its liquidation. It arises on the basis of the general rule established by Part 4 of Art. 111 of the Civil Code of Ukraine, according to which the property of a legal entity

remaining after satisfaction of creditors' claims is transferred to its participants, unless provided for by the constituent documents of a legal entity or by law [66, p. 102].

The scholar V. Tsikalo advocates the position that the exercise of certain rights of participants in a business entity, as well as the rights to participate in its management, receive dividends and distribute assets in the event of liquidation, is based on a proportional basis, that is, depends (is conditioned) on the size of the participant's share in the authorized capital of the company [240, p. 51].

At the same time, M. I. Kozyreva believes that the right to receive part of the property during the liquidation of a business entity is a guarantee of receipt by the participants of the property placed in the authorized (share) capital of the company. Business companies are characterized by the principle of proportionality of distribution of assets among shareholders in the event of liquidation, i.e. each shareholder receives a portion of assets proportional to the size of its share in the authorized capital at the time of liquidation. This provision is dispositive, so the constituent documents may provide for other rules [77, p. 318].

In this regard, V. K. Andreyev notes that the right to receive a share of a joint-stock company's property during its liquidation does not have a substantive nature. If the liquidation commission refuses to allocate to a shareholder a share of the company's property distributed among the shareholders, such a shareholder has the right to file a claim with the court to reclaim property from someone else's illegal possession in proportion to his/her share in the authorized capital of the company. The liquidation commission and other shareholders who have illegally obtained property are unfair purchasers [2, p. 516].

However, V. Lapach notes that the right of a shareholder to receive in case of liquidation of a company a part of the property remaining after settlements with creditors or its value contains a binding basis only insofar as it may refer to the distributed but not paid part of the profit. Claims for the distribution of property of a liquidated company among its members are more in rem than in obligation. In addition, the researcher determines that the debtor on these claims is the liquidation commission, not the company [95, p. 6].

The end result is a “zero” liquidation balance sheet, after settlements with the participants, the business entity should not have any funds (property) left. This statement is obvious and is based on the provisions of part 4 of Article 111 of the Civil Code of Ukraine, which refers to the transfer of such property to the participants. Therefore, settlements with participants are actually the final stage of liquidation of a business entity after the liquidation balance sheet is drawn up and approved by the participants of the business entity or the body that made the decision to liquidate [37, p. 210].

8. Transfer of documents subject to mandatory storage to the relevant archival institutions and submission to the state registrar of documents provided for by the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”.

The final step is for the liquidation commission (liquidator) to take technical measures, including closing the liquidation account, transferring all documents of the legal entity to an archival institution and destroying the seals. Confirmation of the completion of the liquidation procedure of a legal entity is an entry in the Unified State Register on its termination. To do so, the liquidation commission or liquidator must submit to the state registrar an application for state registration of the termination of a legal entity as a result of its liquidation and a certificate from the archival institution on the acceptance of documents that are subject to long-term storage in accordance with the law.

In view of the foregoing, it should be noted that some actions of the liquidation commission are regulated by bylaws, which in most cases do not correspond to the realities of today and contradict the provisions of the current laws.

Therefore, we consider it expedient to amend the Civil Code of Ukraine as the only legislative act that defines the general principles of liquidation of a legal entity by decision of its participants, in particular, to legislate the quantitative composition of the liquidation commission, as well as to establish a list of all actions to be taken by the liquidation commission within the liquidation procedure.

3.2. Specifics of the procedure for the termination of legal entities by a court decision on the liquidation of a legal entity due to violations committed during its creation that cannot be eliminated

In recent years, Ukraine has adopted a number of new legal acts relating to aspects of liquidation of legal entities, in particular: the Law of Ukraine “On Amendments to the Law of Ukraine ‘On State Registration of Legal Entities and Individual Entrepreneurs’ and some other legislative acts of Ukraine on decentralization of powers on state registration of legal entities, individual entrepreneurs and public formations” of November 25, 2015, “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine and the Code of Civil Procedure of Ukraine” of November 25, 2015.

However, in our opinion, the changes in the legislation have not had a qualitative impact on the current situation in the field of liquidation of legal entities and do not solve the problems that have arisen, including in court practice.

Article 110 of the Civil Code of Ukraine provides that a legal entity is liquidated voluntarily by a decision of its shareholders or a body of the legal entity authorized to do so by its constituent documents, and compulsorily by a court decision.

The peculiarities of the grounds and procedure for the compulsory liquidation of legal entities are covered by clauses 2, 3 of part 1, part 2 of Article 110 of the Civil Code of Ukraine, which define two groups of grounds for the termination of legal entities by a court decision

1) due to violations committed during their establishment that cannot be eliminated (clause 2, part 1, article 110)

2) other cases established by law (clause 3, part 1, Article 110) [3, p. 173].

It should be noted that the issue of liquidation of a legal entity due to violations committed during its creation that cannot be eliminated has been almost never studied by scholars.

In theoretical studies of administrative law scholars, attention is focused on the issues of compulsory cancellation of state registration of a legal entity as a measure of state coercion from the standpoint of administrative and legal liability.

However, we believe that the issue of liquidation of a legal entity due to violations committed during its establishment which cannot be eliminated belongs to the civil law plane and requires scientific research and improvement in the context of the positions of the courts set out in the relevant court decisions in recent years.

Various aspects of the issue under study have been the subject of scientific research by scholars within the framework of the issue of the grounds for liquidation of legal entities. In particular, they were considered by O. M. Zubatenko in his dissertation “Termination of Business Entities” (2007) [60]; O. M. Skoropys in his dissertation research “Civil Law Regulation of Liquidation of Legal Entities” (2010) [207]; D. V. Zhekov in his dissertation “Termination of Legal Entities under the Civil Law of Ukraine” (2015) [42], as well as in the article “On the Grounds for Liquidation of a Legal Entity and Their Classification” (2014) [39]. It is also worth mentioning the works of

E. V. Petrova “Grounds for termination of business entities” (2013) [121]; O. M. Hnativ “Civil law aspects of liquidation of legal entities by court order” (2015) [28]; L. M. Doroshenko “Types of legal grounds for compulsory liquidation of business entities” (2013) [35];

A. P. Nikitina “Compulsory cancellation of state registration at the request of an executive authority as a means of administrative liability” (2014) [114], etc. The analysis of these works shows that the grounds for compulsory liquidation of legal entities, in particular due to violations committed during the establishment of a legal entity that cannot be eliminated, were considered in the context of Article 38 of the Law of Ukraine “On Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” in its original versions. However, since the time of writing, the legislation in the field of legal entities' termination has undergone significant changes. In particular, after the new version of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” of

November 25, 2015 came into force, the provision on the grounds for compulsory liquidation was removed from the law in order to liberalize the legislation of Ukraine in the field of registration, establishment and termination of legal entities.

We share the opinion of the majority of scholars (K. I. Apanasenko, Doroshenko L.M., Petrov E.V., Shpuganych I.I. and others) that the most complete list of grounds for a court decision on the termination of a legal entity that is not related to the bankruptcy of a legal entity was defined in Article 38 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs” in the version before November 25, 2015, which is still relevant.

One of such grounds was the court's invalidation of the state registration of a legal entity due to violations committed during its creation that could not be eliminated, as well as in other cases established by law. This provision of the Law was in line with the provision of Part 1 of Article 110 of the Civil Code of Ukraine in the version effective as of November 4, 2012, which stipulated that a legal entity is liquidated, in particular, by a court decision in case the court invalidates the state registration of a legal entity due to violations committed during its establishment. Also, Article 59 of the Civil Code of Ukraine of a similar wording contained a provision that a business entity is liquidated in case of cancellation of its state registration in cases provided for by law. Obviously, the legislation defined the adoption of a court decision to cancel the state registration of a legal entity as a prerequisite for the application of the procedure for liquidation of a legal entity in the general manner provided for in Article 111 of the Civil Code of Ukraine, which is fully consistent with the current realities of judicial practice.

However, the current version of the Civil Code of Ukraine stipulates that a legal entity is liquidated by a court decision on liquidation of a legal entity due to violations committed during its establishment that cannot be eliminated.

In view of the above, it seems that in case of establishing violations committed during the establishment of a legal entity that cannot be eliminated, the courts should invalidate the state registration of such a legal entity as a basis for a decision to liquidate it due to violations committed during its establishment that cannot be

eliminated, with reference to paragraph 2 of part 1 of Article 110 of the Civil Code of Ukraine, appoint a liquidation commission and establish the procedure and deadline for creditors to file their claims against the legal entity being terminated.

However, there is a situation when courts decide to cancel the state registration of a legal entity due to violations committed during its establishment that cannot be eliminated, after which the legal entity simply “disappears”, but the issue of the procedure for terminating the activities of such a legal entity remains unresolved.

For example, the decision of the District Administrative Court of Kyiv of November 27, 2017 in case No. 826/9677/16 noted that the determining factor for the termination of a legal entity is the court's invalidation of the state registration of a legal entity due to violations committed during its creation that cannot be eliminated [140]. In other words, the court's decision is still based on the grounds set out in Article 38 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs” in the version in force before November 25, 2015, which is a prerequisite for the general liquidation procedure in accordance with Article 111 of the Civil Code of Ukraine.

The problematic issue is that national legislation does not define which violations during the establishment of a legal entity give rise to a court decision on its liquidation.

Article 87 of the Civil Code of Ukraine stipulates that in order to establish a legal entity, its participants (founders) shall develop constituent documents, which shall be set forth in writing and signed by all participants (founders), unless the law establishes a different procedure for their approval. The constituent document of a company is the charter approved by the shareholders or the memorandum of association between the shareholders, unless otherwise provided by law.

Part 3 of this article of the Civil Code of Ukraine stipulates that an institution is established on the basis of an individual or joint constituent act drawn up by the founder (founders). The constituent act may also be contained in a will. Prior to the establishment of an institution, a constituent act drawn up by one or more persons may be canceled by the founder(s) [236].

It is legally regulated that the company's charter shall specify the name of the legal entity, the company's management bodies, their competence, the procedure for making decisions, the procedure for joining and leaving the company, unless additional requirements for the content of the charter are established by this Code or another law.

Article 89 of the Civil Code of Ukraine provides that a legal entity is subject to state registration in accordance with the procedure established by law. The state registration data is included in the Unified State Register, which is open to the public.

According to clause 4 of part 1 of Article 1 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, state registration of legal entities, public organizations that do not have the status of a legal entity and individual entrepreneurs (hereinafter - state registration) is official recognition by the state of the fact of creation or termination of a legal entity, public organization that does not have the status of a legal entity, certification of the fact of the relevant status of a public association, trade union, its bodies, etc.

Thus, the national legislation clearly regulates that a legal entity is a subject of law from the moment of state registration of its establishment until the moment of state registration of its termination.

When determining the legal content of violations during the establishment of a legal entity, the courts are guided by Resolution of the Plenum of the Supreme Court of Ukraine No. 13 “On the Practice of Corporate Disputes Consideration by the Courts” of October 24, 2008 [142], which provides that the grounds for invalidating an act, in particular a charter, are its non-compliance with the requirements of applicable law and/or the competence of the body that issued (approved) the act, as well as violation of the rights and legally protected interests of the plaintiff in connection with its adoption. Paragraph 13 of this resolution clarifies that in accordance with the requirements of Articles 88, 143, 154 of the Civil Code of Ukraine, Articles 57, 82 of the Commercial Code of Ukraine, Articles 4, 37, 51, 65, 67, 76 of the Law of Ukraine “On Business Associations”, Articles 27, 30 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and

Public Organizations", the courts may invalidate the constituent documents of a company if the following conditions are met:

- at the time of the case consideration, the constituent documents do not meet the requirements of the law;

- violations committed during the adoption and approval of the constituent documents cannot be eliminated;

- the relevant provisions of the constituent documents violate the rights or legally protected interests of the plaintiff.

In its decision No. 911/1394/18 dated May 8, 2019, the Northern Commercial Court of Appeal concluded that the following cannot be grounds for satisfying a claim under Part 1 of Article 27 of the Law: the discrepancy between the information about the founders (participants) of a legal entity and the information about them contained in the Unified State Register; the presence in the register of a name identical to the name of the legal entity that intends to register. The court noted that the information about the legal entity - Tosna Paper and Technical Products Factory ALC and the list of its founders were not listed in the register before the date of the disputed registration action. Taking into account the other organizational and legal form of the legal entity being registered (ALC "Factory of paper and technical products 'Tosna'), the legal entity that was listed in the Unified Register of Legal Entities (CJSC 'Factory of paper and technical products 'Tosna"), the registrar had no grounds for refusing to conduct state registration of the legal entity in accordance with Part 1 of Article 27 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations" [141].

According to paragraph 5.1 of the Resolution of the Plenum of the Supreme Economic Court of Ukraine "On Some Issues of the Practice of Resolving Disputes Arising from Corporate Legal Relations" No. 4 of February 25, 2016 [143], when resolving corporate disputes on invalidation of constituent documents, economic courts should be guided by the fact that approval of a constituent document is a necessary action in the process of establishing a legal entity. Therefore, when determining the grounds for invalidation of constituent documents, commercial

courts should be guided by clause 2 of part 1 of Article 110 of the Civil Code of Ukraine. According to this provision, the grounds for a decision to invalidate constituent documents are violations of the law that cannot be eliminated. Such a ground may be the absence in the constituent documents of the information that must be contained in them by law, in particular, as set forth in Articles 88, 120, 134, 143, 151, 154 of the Civil Code of Ukraine, Articles 57, 82 of the Commercial Code of Ukraine, Articles 4, 51, 65, 67, 76 of the Law of Ukraine “On Business Associations”, Article 13 of the Law of Ukraine “On Joint Stock Companies”.

However, part 2 of Article 87 of the Civil Code of Ukraine provides that the constituent document of a company is a charter approved by the participants or a memorandum of association between the participants, unless otherwise provided by law. Part 1 of Article 82 of the Commercial Code of Ukraine stipulates that the constituent document of a general and limited liability company is a memorandum of association. The constituent document of a joint-stock company, limited liability company and additional liability company is a charter. Pursuant to Article 11 of the Law of Ukraine “On Limited Liability and Additional Liability Companies”, the constituent document of a company is its charter. Paragraph 5 of this article regulates that the company's charter should contain information on: the full and abbreviated (if any) name of the company; the company's management bodies, their competence, the procedure for making decisions; and the procedure for joining and leaving the company.

After the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” came into force, the Law of Ukraine “On Business Associations” and the provisions of the Civil Code of Ukraine on limited liability companies and additional liability companies were partially repealed. However, no changes were made to the provisions of the Commercial Code of Ukraine, which also set forth the requirements for the constituent documents of business entities.

Thus, according to part 4 of Article 57 of the Commercial Code of Ukraine, the charter of a business entity must contain information on its name, purpose and subject matter of activity, the amount and procedure for the formation of authorized capital

and other funds, the procedure for the distribution of profits and losses, management and control bodies, their competence, conditions for reorganization and liquidation of the business entity, as well as other information related to the specifics of the organizational form of the business entity provided for by law. The charter may contain other information that does not contradict the law.

Part 2 of Article 82 of the Commercial Code of Ukraine stipulates that the constituent documents of a business company must contain information on the type of company, the subject and objectives of its activities, the composition of the founders and participants, the composition and competence of the company's bodies, the procedure for making decisions by them, including a list of issues requiring unanimity or a qualified majority of votes, and other information provided for in Article 57 of this Code. Pursuant to part 4 of this article, the charter of a limited liability company, in addition to the information specified in part 2 of this article, must contain information on the size of the shares of each participant, the size, composition and procedure for making contributions.

Logical questions arise: whether the basis for a decision to invalidate a company's charter is the availability of only the information specified by the Law of Ukraine “On Limited and Additional Liability Companies”; whether the absence of information in the company's charter provided for in Articles 57 and 82 of the Civil Code of Ukraine can be considered a violation committed during the creation of a legal entity that cannot be eliminated in the context of Article 110 of the Civil Code of Ukraine. These issues remain unexplored in legal science.

Thus, in order to eliminate ambiguity and legal conflict, we consider it necessary to amend Articles 57 and 82 of the Commercial Code of Ukraine, harmonizing them with the Civil Code of Ukraine and the Law of Ukraine “On Limited and Additional Liability Companies”, stipulating that: “The company's charter shall specify the name of the legal entity, the company's management bodies, their competence, the procedure for making decisions, the procedure for joining and leaving the company, unless additional requirements for the content of the charter are established by this Code or another law.”

Having conducted a systematic analysis of the court practice, we find that most court decisions on the liquidation of legal entities do not refer to the grounds for such liquidation. Instead, the courts are guided by Article 25 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, which stipulates that state registration and other registration actions are carried out on the basis of court decisions that have entered into force and entail changes in the information in the Unified State Register regarding, in particular, the recognition of decisions of the founders (participants) of a legal entity or their authorized body as fully or partially invalid.

Thus, by the decision of the Obolonskyi District Court of Kyiv dated February 14, 2019 in case No. 756/16624/18, the claims of a member of the condominium association were satisfied, the decision of the constituent assembly of the condominium association “Our House Pryrichna-5”, formalized by the protocol, was invalidated

No. 1 dated July 22, 2016, due to the illegal holding of the constituent assembly, and the state registration of the legal entity - the association of co-owners of the apartment building “Our House Pryrechnaya-5”, carried out on September 12, 2016, was canceled. In the court decision, the court stated that: “When claiming invalidation of the constituent documents and the charter of the Association, the plaintiff referred to the illegality of the constituent assembly on the establishment of condominiums and the decisions taken by them. These circumstances were verified by the court and confirmed during the trial. Without resorting to excessive formalism in determining the claims, the court considers it correct to determine the way to protect the plaintiff's rights as a co-owner of an apartment building, violated during the creation of condominiums and the illegal holding of the constituent assembly by invalidating the decision of the constituent assembly of the condominium “Our House Pryrechna-5”, formalized by the protocol No. 1 of the constituent assembly of condominiums of July 22, 2016” [196].

Similar are the conclusions of the Kherson Court of Appeal, set forth in the decision of November 29, 2018 No. 664/296/18, which states that: “According to

clause 2 of part 1 of Article 25 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs”, state registration and other registration actions are carried out, in particular, on the basis of court decisions that have entered into force and entail changes in the Unified State Register. Paragraph 2 of Part 1 of Article 110 of the Civil Code of Ukraine sets forth the grounds for liquidation of a legal entity, in particular, by a court decision to liquidate a legal entity due to violations committed during its establishment that cannot be eliminated or in other cases established by law. Considering that the decision of the constituent assembly of the apartment building located at: 1, Oleshkivskyi district, Kherson region, dated July 22, 2017, which is formalized by the minutes of the constituent assembly dated June 2, 2017, is recognized in court as invalid, the decisions taken at it, which became the basis for making a registration record on the state registration of Amethyst-87 condominium, are also subject to invalidation from the moment of their adoption. The invalidation of the constituent documents of a legal entity has the legal consequence of canceling the state registration of a legal entity, since in this case the violation of the procedure for convening and holding the constituent assembly of Amethyst-87 condominium is precisely the ground provided by law for the cancellation of state registration” [144].

However, there are still cases when courts decide to cancel the state registration of a legal entity, referring to the provisions of Article 38 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs” in the version before November 25, 2015.

Thus, by the decision of the Commercial Court of Kyiv in case No. 910/9117/18 dated August 31, 2017, the court invalidated the constituent documents of a legal entity - the association of co-owners of the apartment building “Simon Service” in a non-residential building located at: 5 Symona Petliury St., Kyiv, 01032, and canceled the state registration of the legal entity. The court based its decision on part 2 of Article 38 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs”, which states that the grounds for a court decision on the termination of a legal entity, which is not related to the bankruptcy of a legal entity,

are, in particular, the court's invalidation of the state registration of a legal entity due to violations committed during its creation that cannot be eliminated, as well as in other cases established by law. The court also referred to part 7 of Article 59 of the Civil Code of Ukraine, noting that the cancellation of state registration deprives a business entity of the status of a legal entity and is the basis for its removal from the state register. Thus, the invalidation of the constituent documents of a legal entity has the legal consequence of canceling the state registration of a legal entity, as provided by this Law. Since the state registrar carried out the state registration of the condominium association “Simon Service” on the basis of the constituent documents that were recognized by the court as invalid, the state registration of the defendant is subject to cancellation.

The court considered this case already during the period when the new version of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” was in force, which removed Article 38 and part 7 of Article 59 of the Civil Code of Ukraine was excluded from the Code in 2014.

In this regard, a logical question arises: after the entry on the registration of a legal entity in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations is canceled, what further actions should be taken. Prior to the cancellation of state registration, a legal entity has acquired the status of a business entity, taxpayer, employer, bona fide contractor, and has acquired certain material and technical facilities, so how does it terminate its activities? No regulatory act defines the further fate of a legal entity whose state registration has been canceled by a court decision and the procedure for terminating its activities, which leads to a number of negative and contradictory consequences, since there can be no liquidation of a legal entity without the appointment of a liquidation commission and the procedure established by law.

In our opinion, the amendments to the Civil Code of Ukraine, the Commercial Code of Ukraine and the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” aimed at liberalizing the

Ukrainian legislation in the field of registration of creation and termination of legal entities have backfired and led to court decisions that do not terminate a legal entity, but only cancel its state registration, which is not currently a ground for liquidation of the latter.

Therefore, we advocate the need for legislative definition in the Civil Code of Ukraine of clear grounds for compulsory liquidation, in particular, we propose that among the general grounds for liquidation of a legal entity by a court decision due to violations committed during its establishment that cannot be eliminated, we should include invalidation of state registration of a legal entity on the basis of invalidity of the constituent documents of a legal entity due to: non-compliance with the requirements of the law; if the violations committed during their adoption and approval cannot be eliminated; the provisions of the constituent documents violate the rights and legally protected interests of the legal entity's shareholders.

3.3 Peculiarities of termination of legal entities by court decision on liquidation of a legal entity at the request of a participant of a legal entity or a relevant public authority

Article 7 of the Law of Ukraine “On the Principles of Domestic and Foreign Policy” stipulates that creating favorable conditions for the development of entrepreneurship, simplifying the conditions for starting a business and exiting it, limiting state interference in the economic activities of business entities, simplifying the system of obtaining permits, reducing pressure on business from regulatory authorities are important principles of the domestic policy of our state in the economic sphere [165].

The main aspects of liberalization of Ukrainian legislation in the field of legal entities' termination are implemented through the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”, which underwent fundamental changes at the end of 2015. By “softening” the

regulation of the procedure for liquidation of legal entities, in particular, by excluding Article 38 “Procedure for State Registration of Termination of a Legal Entity on the Basis of a Court Decision Not Related to the Bankruptcy of a Legal Entity”, the lawmakers actually created new gaps in the legislation, which, given the “legal culture” of Ukrainian society and the practice of doing business in our country, led to a number of contradictions and inconsistent court decisions [101, p. 81].

According to paragraphs 2 and 3 of Part 1 of Article 110 of the Civil Code of Ukraine, a legal entity is liquidated by a court decision on liquidation of a legal entity due to violations committed during its establishment that cannot be eliminated, at the request of a participant of a legal entity or the relevant public authority, as well as in other cases established by law - at the request of the relevant public authority.

It is quite natural that the grounds for a shareholder of a legal entity to apply to the court for its liquidation, as defined by the Civil Code of Ukraine, are very limited. In particular, the law defines only one condition under which a shareholder may exercise such a right - due to violations committed during the establishment of a legal entity that cannot be eliminated. In other cases, the compulsory liquidation of a legal entity is carried out at the request of the relevant state authority.

This is the position taken by the courts in resolving relevant disputes.

In case No. 914/3229/16, a minority shareholder filed a claim with the Commercial Court of Lviv Region to terminate Public Joint Stock Company Mykolaivcement due to the unwillingness to comply with the requirements of Part 3 of Article 155 of the Civil Code of Ukraine in connection with the decrease in the value of the company's net assets. The court dismissed the claims, as the liquidation of a joint-stock company may be voluntary by the decision of the shareholders and involuntary by a court decision, while liquidation at the request of a shareholder is possible only due to violations committed during its establishment that cannot be eliminated. The court concluded that the law does not entitle shareholders to file a claim for compulsory liquidation of a company under Part 3 of Article 155 of the Civil Code of Ukraine, such liquidation can theoretically be carried out only on a

voluntary basis by the company (i.e. by adopting a decision of the relevant competent management body) [191].

However, in practice, there are situations when the need to liquidate a company may be due to various reasons, and it is not possible to voluntarily liquidate such a legal entity by the decision of the participants.

For example, in case No. 922/777/17, which was considered by the Commercial Court of Kharkiv Region, the Ukrainian-Russian Joint Venture Studbud Limited Liability Company filed a lawsuit against the Ukrainian Industrial Institute Limited Liability Company to terminate the latter. In support of the claim, the plaintiff states that according to the decision of the Kharkiv District Administrative Court of 14 March 2014 in case No. 820/1878/14, the second participant of the enterprise, the International Investment Center Joint Stock Company, whose authorized capital is 55.3%, is in a state of termination and there is no connection with it. This circumstance, according to the plaintiff, makes it impossible to hold a general meeting of participants of the Ukrainian Industrial Institute Limited Liability Company in the absence of the required number of votes for its competence, and therefore the ability to carry out the tasks of the company for which it was established, and therefore he requested to liquidate the company by force. However, the decision of the Economic Court of Kharkiv Region of April 4, 2017 dismissed the claims, the court was guided by the provision according to which the liquidation of a legal entity at the request of a participant is possible only due to violations committed during its creation that cannot be eliminated, and therefore, the law does not entitle participants to file a claim for the forced liquidation of the company on the basis of paragraph 2 of part 1 of Article 110 of the Civil Code of Ukraine [194].

In our opinion, there is an obvious need to define additional grounds at the scientific and legislative levels that would enable a participant of a legal entity to file a claim with the court for its liquidation, in particular, when the issue of liquidation cannot be objectively resolved by the general meeting due to the lack of the required quorum of votes. To substantiate this position, an example can be given when a person who is one of the shareholders of an enterprise that does not carry out business

activities is appointed to the public service, which is incompatible with business activities, but it is not possible to withdraw from the shareholders or decide to liquidate such a legal entity, since other shareholders, abusing their rights, may not gather for the general meeting of shareholders or when the location of the latter is unknown.

Based on the foregoing, we propose to restate clause 2 of part 1 of Article 110 of the Civil Code of Ukraine in a new wording, stating that a legal entity is liquidated:

“2) by a court decision on liquidation of a legal entity at the suit of a participant of a legal entity due to violations committed during its establishment that cannot be eliminated and/or due to the absence of the required quorum of votes of the general meeting to decide on the liquidation of a legal entity (if the location of the participants is unknown or one of the participants is in a state of termination), as well as in case of impossibility to achieve the goals for which it was established, in particular if the implementation of the activities of the legal entity becomes impossible or significantly complicates.”

According to K. I. Apanasenko, the Civil Code of Ukraine recognizes only two possible groups of plaintiffs in cases of forced liquidation: participants of a legal entity or authorized state authorities. The researchers refer to the provisions of Art. 1 of the Economic Procedure Code of Ukraine on the right of enterprises, institutions, organizations and individual entrepreneurs to file claims with the economic court in case of violation of a right or legal interest as the basis for filing a claim for compulsory liquidation. We share the researcher's opinion that such a position seems legally weak, given the rather unambiguous interpretation of clauses 2, 3 of part 1 of Article 110 of the Civil Code of Ukraine. However, if the provisions of Art. 1 of the Economic Procedure Code of Ukraine are not applied, the issue of combating such violations as the implementation of economic activities prohibited by law, the lack of an adequate amount of authorized capital in an enterprise, etc. will be complicated, since the laws do not define the public authorities that could file claims for the forced liquidation of business entities, regardless of the type of their economic activity in these cases [3, p. 176].

Pursuant to Article 19 of the Constitution of Ukraine, state and local government bodies and their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine. In other words, it is the state that defines the tasks of state bodies, the limits of their powers and establishes the method of realization of these tasks by means of legislation.

For example, the Supreme Court of Ukraine in its Resolution No. 21-281A12 of October 16, 2012 noted that a consistent analysis of the list of grounds for a public authority to apply to the court gives rise to the conclusion that it must have sufficient administrative capabilities to perform the tasks and functions defined by law, and only in cases where the Constitution or laws of Ukraine establish judicial restrictions on its activities, it applies to the court with a claim on the merits to obtain a court order. An expanded interpretation of the ways in which a public authority exercises its powers is not allowed. In this regard, the subject matter of the claim, which is determined by law, with which the subject of authority may apply to the court in the exercise of its administrative functions, is not subject to an extended interpretation [139].

According to clause 5 of part 1 of Article 19 of the Code of Administrative Procedure of Ukraine, the jurisdiction of administrative courts extends to cases in public law disputes, in particular, at the request of a public authority in cases where the right to go to court to resolve a public law dispute is granted to such a subject by law [73].

As early as August 11, 2010, the Supreme Administrative Court of Ukraine in its decision No. K-17526/10 noted that in order to substantiate the right to apply to an administrative court, the subject of authority is obliged to refer to a special provision of the relevant law authorizing it to file a lawsuit [230].

In this regard, V.B. Averyanov rightly notes: “Thus, by its very nature, the competence of executive authorities is a legal reflection (mediation) of the functions assigned to them in special, so-called competent (or status) legal acts by fixing the goals, objectives and the set of rights and obligations necessary for their

implementation, i.e., state power powers. Powers indicate what rights and obligations an executive body has to achieve the goals and objectives set out in its competence. In the legal acts that enshrine the powers of executive authorities, along with the terms “right” and “duty”, the terms “tasks”, “functions”, “obligations”, and “responsibility” are used. In addition, as noted by A. P. Khodyko, certain principles and procedures are enshrined that establish the procedure for exercising the powers granted to the bodies”. Thus, the executive body acts within clear restrictions mediated by its tasks and responsibilities, which are clearly reflected in legal acts [233, p. 1034].

It can be concluded that only those state authorities whose right to do so is expressly provided for by law are entitled to file a lawsuit for the liquidation of a legal entity.

It is believed that one of the state authorities that are legally authorized to file a lawsuit for the termination of legal entities is the controlling bodies defined in Article 41 of the TC of Ukraine, in particular, the central executive body that implements the state tax, state customs policy, state policy on the administration of the single contribution, state policy in the field of combating offenses in the application of tax and customs legislation, legislation on the payment of the single contribution and other legislation, control over compliance with both

In subparagraph 20.1.37 of paragraph 20.1 of Article 20 of the TC of Ukraine defines the rights of controlling authorities, including the right to apply to the court for termination of a legal entity and termination of business activity by an individual entrepreneur and/or invalidation of constituent (founding) documents of business entities.

Paragraph 67.2 of Article 62 of the Tax Code of Ukraine provides that controlling authorities have the right to apply to the court for a court decision in accordance with the procedure provided by law regarding:

1) termination of legal entities or business activities of individual entrepreneurs;

2) cancellation of state registration of termination of legal entities or business activities of individual entrepreneurs;

3) cancellation of state registration of amendments to constituent documents.

Thus, a special regulatory legal act grants the controlling authorities the right to file a lawsuit to terminate a legal entity. However, the TC of Ukraine restricts such right of the controlling authority, namely, it establishes that the controlling authority may exercise the relevant right only in accordance with the procedure established by law.

As A. V. Krasovska rightly points out, the mentioned provisions of the Tax Code of Ukraine do not stipulate on what grounds the tax authorities may file such claims to the court. An appeal of a public authority to an administrative court is a form of exercise of its powers and should be related to its tasks and functions defined by law [86, p. 53].

L. M. Doroshenko's opinion that some courts apply an expansive interpretation of the law and recognize the right of controlling authorities to apply to the court in case of non-compliance with financial discipline by the taxpayer, while other courts literally interpret the law and deny the existence of such a right of tax authorities due to the absence of a specific list of grounds for a court decision on the termination of legal entities seems to be correct [34, p. 66].

In most cases, the courts consider liquidation of a legal entity as a sanction - a measure of responsibility for violations of laws on taxation and violations of requirements established by other legislation, control over compliance with which is entrusted to the controlling authorities in accordance with paragraph 109.2 of Article 109 of the TC of Ukraine. In particular, in the decision of the Chernihiv District Administrative Court No. 825/1904/16 dated November 21, 2016, which was not appealed in the appeal and cassation procedures, the court, pursuant to part 1 of Article 238 of the Civil Code of Ukraine, concluded that the legal entity was terminated as a measure of organizational and legal nature aimed at stopping the violation, taking into account the provisions of subparagraph 20.1.37 of paragraph 20.1 of Article 20 and paragraph 67.2 of Article 67 of the TC of Ukraine, the right of the state tax service to file a claim for termination of a legal entity to the court [146].

However, this position seems not entirely correct. Article 238 of the Commercial Code of Ukraine stipulates that for violation of the rules of economic activity established by legislative acts, business entities may be subject to administrative and economic sanctions by authorized state authorities or local self-government bodies, i.e. measures of an organizational, legal or property nature aimed at stopping the offense of a business entity and eliminating its consequences. Part 2 of this Article also provides that the types, conditions and procedure for the application of administrative and economic sanctions may be established exclusively by laws.

According to O. M. Borisov, taking into account the general legal principles of legal liability (in particular, the presence of guilt) and the established criteria for limiting rights and freedoms, compliance with which is mandatory not only for the legislator but also for the law enforcement officer, the disputed provision provides that repeated violations of the law in the aggregate must be so significant as to allow the arbitration court, taking into account all the circumstances of the case, in particular, to assess the violations committed by the legal entity and the consequences caused by them, to decide on the liquidation of the legal entity as a measure necessary to protect the rights and legitimate interests of other persons [13, p. 6-7].

Article 247 of the Commercial Code of Ukraine, entitled “Liquidation of a business entity whose activities contravene the law or its constituent documents,” provides that liquidation of a legal entity as an administrative and economic sanction may be applied by a court decision in cases provided for by law.

Unlike the Ukrainian Civil Code, the Civil Code of the Russian Federation in Article 61 clearly defines the grounds for compulsory liquidation of a legal entity by a court decision, which are not exclusive, namely:

1) at the request of a state or local government body that is authorized by law to file a claim for liquidation of a legal entity, in case of invalidation of the state registration of a legal entity, in particular in connection with gross violations of the law committed during its establishment, if such violations cannot be eliminated;

2) at the request of a state body or local self-government body authorized by law to file a claim for liquidation of a legal entity, if the legal entity carries out activities

without a proper permit (license) or in the absence of mandatory membership in a self-regulatory organization or the required certificate of admission to a certain type of work issued by a self-regulatory organization;

3) at the request of a governmental body or local self-government body authorized by law to file a claim for liquidation of a legal entity, if the legal entity carries out activities prohibited by law, or in violation of the Constitution of the Russian Federation, or with other repeated or gross violations of the law or other legal acts;

4) at the request of a state or local government body authorized by law to file a claim for liquidation of a legal entity, in case of systematic activities of a public organization, public movement, charitable or other foundation, religious organization that contradict the statutory objectives of such organizations;

5) at the request of the founder (participant) of a legal entity in case of impossibility to achieve the objectives for which it was established, in particular, if the legal entity's activities become impossible or significantly complicated;

6) in other cases provided for by law [31].

In other words, one article of the Civil Code of the Russian Federation, which is the main legislative act defining the general grounds for liquidation of legal entities, sets out a complete list of grounds for a court decision to terminate a legal entity that is not related to bankruptcy. The same legal provision was in the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” in the version that was in force until 2016. However, currently, the law does not specify the grounds for regulatory authorities to apply to the court with demands for liquidation of legal entities.

In this regard, our society has a situation where the controlling authorities are legally empowered to file a lawsuit to terminate legal entities, but the law does not clearly define the cases when such competence can be applied, which is evidence of a legal gap that results in the vesting of a “dead” power in a public authority.

Another body empowered to file a lawsuit to terminate legal entities is the NCSSM, which, in accordance with Article 5 of the Law of Ukraine “On State

Regulation of the Securities Market in Ukraine," carries out state regulation of the securities market.

This law empowers the NCSSM to file a lawsuit to the court to terminate the legal entity-issuer in connection with its inclusion in the list of issuers with signs of fictitiousness (clause 5-2 of Article 8), as well as to file a lawsuit (application) to the court for termination of a joint-stock company due to: violations that cannot be eliminated during its establishment; failure of the joint-stock company to submit information required by law to the NCSSM for two consecutive years; failure of the joint-stock company's bodies to form a report on the results of private placement of shares among the founders of the joint-stock company within one year from the date of registration by the NCSSM; failure of the joint-stock company to convene a general meeting of shareholders for two consecutive years; the absence of a duly registered issue of shares in a joint-stock company (clause 31-1 of Article 8).

Thus, the special law empowers the NCSSM to apply to the court for the termination of a legal entity-issuer, as well as a joint stock company, and establishes special grounds for such an application.

According to scholars, the NCSSM's right to file lawsuits to terminate a legal entity that has signs of fictitiousness is a mechanism for applying organizational, legal, administrative and economic sanctions for violations in the stock market.

In order to free the market from fictitious issuers and "technical" shares, the law provides for signs of fictitiousness of the issuer of securities, in the presence of which the NCSSM decides to include the issuer in the list of those with signs of fictitiousness, suspends the circulation of the issuer's securities in connection with its inclusion in this list; cancels the registration of the issuer's securities issue after the court makes a relevant decision.

It is worth noting that the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" sets out the grounds for a state body, namely the NCSSM, to file a lawsuit with the court to terminate a legal entity, including a joint stock company. In other words, the law vests the state body with the relevant powers and defines the grounds and procedure for their exercise.

The peculiarity of termination of economic legal personality of a joint-stock company by means of compulsory liquidation, as O. V. Garagonych rightly notes, is that the liquidation procedure may be started only if the circumstances specified by law that constitute the elements of an economic offense occur. In other words, the compulsory liquidation of a joint-stock company is a sanction, in particular an administrative and economic sanction, for offenses committed in the course of the company's establishment or operation. According to Article 247 of the Civil Code of Ukraine, an administrative and economic sanction in the form of liquidation of a joint-stock company may be applied only in cases established by law [25, p. 42].

Thus, the grounds for the NCSSM to file a lawsuit to terminate a joint-stock company are:

1) violations that cannot be eliminated during its establishment;

2) failure of a joint-stock company to provide the NCSSM with the information required by law for two consecutive years;

3) failure of the bodies of a joint-stock company to prepare a report on the results of a private placement of shares among the founders of the joint-stock company within one year from the date of registration by the NCSSM;

4) failure to convene a general meeting of shareholders for two consecutive years;

5) the company does not have a duly registered share issue.

In addition, part 5 of Article 9 of the Law of Ukraine “On Joint Stock Companies” stipulates that actions that violate the procedure for establishing a joint stock company established by this Law are grounds for the NCSSM to decide to refuse to register the report on the results of a private placement of shares. If the NCSSM makes such a decision, it files a lawsuit with the court to liquidate the joint-stock company.

Two groups of grounds for “compulsory” liquidation of a joint-stock company are distinguished by O. Kolohida: 1) violations committed during the establishment of a joint-stock company that cannot be eliminated; 2) violations defined by other general and special laws. The researcher notes that both the NCSSM and its territorial

bodies have the right to sue, if it is provided for by the relevant provision on the territorial body of the NCSSM [79, p. 86].

V. M. Kravchuk believes that the conditions for exercising the powers to file a lawsuit for liquidation of a joint-stock company are: 1) violation of the procedure for establishing a joint-stock company; 2) the decision of the NCSSM to refuse to register the report on the results of a private placement of shares. In his opinion, it would also be advisable to establish additional grounds for the termination of legal entities, in particular: 1) failure to bring the charters in line with the requirements of the Law of Ukraine “On Joint Stock Companies”; 2) unfair transformation into another type of company with violation of shareholders' rights; 3) violation of the transformation procedure (transformation without cancellation of securities issue) [85, p. 5].

Thus, the NCSSM has the right to apply to the court for liquidation of a joint-stock company and a legal entity-issuer only on the grounds specified by law and related to the exercise of its powers.

Scholars have long noted that the forced liquidation of fictitious joint-stock companies at the request of the NCSSM could be an effective means of preventing the circulation of fictitious financial instruments and fictitious securities transactions, as well as freeing the market from “technical” shares and ensuring a civilized termination of joint-stock companies.

However, the NCSSM does not currently exercise the right to apply to the court for the termination of legal entities - issuers and joint stock companies, as such a liquidation mechanism is financially costly for the state body. Since the state does not allocate funds for the liquidation of such “dead” joint stock companies, they continue to “exist” in a state of termination by court decision on other grounds and at the request of other state bodies.

In this regard, A. V. Krasovska notes that a public authority may be a plaintiff in a case only in cases expressly provided for by the Constitution or law of Ukraine, and distinguishes the following range of public authorities that may file a lawsuit for the compulsory termination of legal entities 1) state tax authorities; 2) state registrar; 3)

NCSSM; 4) Ministry of Justice of Ukraine and its bodies; 5) Prosecutor General of Ukraine and prosecutors; 6) regional, Kyiv and Sevastopol city state administrations, the Government of the Republic of Crimea, the State Committee of Ukraine on Nationalities and Religions; 7) Security Service of Ukraine, its bodies and employees [86, p. 53-54].

However, we do not share the opinion of the scientist, since in the vast majority of laws defining the powers of public authorities, the subjects of power are endowed with the right to apply to the court for the cancellation of the state registration of a legal entity, namely: part 3 of Article 12 of the Law of Ukraine "On the Organizational and Legal Framework for Combating Organized Crime" stipulates that, based on the materials of operational and investigative activities and criminal proceedings, special units for combating organized crime have the right to file applications with the court However, in the context of the amendments to the Civil Code of Ukraine, the Commercial Code of Ukraine and the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations", it is quite clear that the law does not define the cancellation of state registration of a legal entity as a ground for a decision to liquidate a legal entity.

The opinion of O. M. Skoropys seems to be correct, who believes that since a legal entity is considered to be created from the moment of state registration, its cancellation calls into question the existence of the legal entity itself [207, p. 8].

The analysis of the source material of theoretical and practical orientation makes it possible to assert that it is the invalidation of the state registration of a legal entity that should be a prerequisite for the application of the procedure for its liquidation, since only from the moment of making an entry in the State Register on the liquidation of a legal entity, the latter is considered to be terminated as a subject of law.

Thus, there is a situation when in one case state authorities are authorized by law to file a lawsuit to terminate legal entities, but the grounds and procedure for exercising such powers are not defined in law, and in the other case the prerequisites for a court decision on the liquidation of a legal entity are regulated, but there is no

corresponding authority of such a body, which shows the need to define clear grounds for the compulsory liquidation of legal entities at the request of state authorities in the Civil Code of Ukraine. Therefore, we propose to amend clause 3 of part 1 of Article 110 of the Civil Code of Ukraine to read as follows: “3) by a court decision on liquidation of a legal entity at the suit of a state body authorized by law to file a corresponding suit. The grounds for a court decision on liquidation of a legal entity are:

- invalidation by the court of the state registration of a legal entity due to violations committed during its establishment that cannot be eliminated;
- conduct by a legal entity of activities contrary to its constituent documents or prohibited by law;
- a court's recognition of the issuing legal entity as having signs of fictitiousness;
- systematic violation by the legal entity of financial and legal norms established by regulatory legal acts;
- in other cases, established by law.”

3.4. Special procedure for liquidation of a legal entity as a result of being declared bankrupt

The inability of an enterprise to satisfy creditors' claims for debt repayment is now a common situation, and the initiation of bankruptcy proceedings is also a commonplace process.

Bankruptcy is a consequence of negative actions and various factors, the share of influence of which may vary. In developed countries with stable political and economic systems, bankruptcy is caused by external and internal factors [226, p. 135].

Since in the legal system of Ukraine bankruptcy is traditionally studied in the context of the activities of legal entities and individual entrepreneurs, the categorical and conceptual apparatus on the issues of bankruptcy and restoration of solvency is

formed by the science of commercial law. At the same time, some scholars quite appropriately emphasize that the concept of insolvency should be within the scope of scientific interests of civil law specialists. Thus, at the beginning of the twentieth century, O. M. Traynin noted that bankruptcy covers two elements, one of which - insolvency - is a concept of civil law [190, p. 61].

Thus, in the study of the issues of the institute of insolvency and bankruptcy in civil law, O. M. Boreiko interprets insolvency (bankruptcy) as an integral economic and legal category based on insolvency, and a distinctive feature is the insufficiency of property to cover obligations in the event of bankruptcy proceedings [12, p. 4].

According to E. A. Vasylieva, to which O. M. Boreiko refers in her article “Categories of ‘insolvency’ and ‘bankruptcy’ in law and theory”, insolvency is the inability of a debtor against whom a bankruptcy case has been initiated and is being considered by an economic court to fully satisfy the claims of creditors [11, p. 71].

The problem of insolvency (bankruptcy) of a debtor who fails to fulfill its obligations is one of the most pressing in modern civil law, since it is directly related to the development of commodity-money relations and the formation of a contract as an instrument of civil turnover. The institution of insolvency (bankruptcy) was formed and remains at the intersection of private and public law, regulates relations in which the public interest and the aspirations of individuals are closely intertwined, and covers substantive and procedural rules. The institute of insolvency (bankruptcy) contains provisions of several branches of law as a complex legal institution. In resolving issues related to insolvency (bankruptcy), the rules of civil, criminal, commercial law, civil and commercial procedure are applied. In addition, depending on the specific situation, the rules of family, land and labor law may be applied. In this regard, it is impossible to study the institute of insolvency (bankruptcy) within one branch of law [12, p. 15].

The imperfect regulation of bankruptcy procedures allowed debtors to evade their obligations to creditors. The shortcomings of the special law, namely the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt”, poor wording or unresolved rules created space for arbitrary interpretation of its

provisions, sometimes with different and even opposite meanings, which in turn led to the courts not having a unified position on its application in practice. The bankruptcy procedure in Ukraine was too lengthy and inefficient, and the process of selling property allowed for the sale of the debtor's property on terms favorable to both individual creditors and the debtor, in order to avoid full repayment of creditors' claims.

To improve the bankruptcy legislation, the Verkhovna Rada of Ukraine adopted the Bankruptcy Code of Ukraine on October 18, 2019, which entered into force on October 21, 2019 [76].

As with every new law, the Bankruptcy Code of Ukraine contains important changes that will affect bankruptcy procedures in the near future. The Code has such novelties both in relation to the opening of bankruptcy proceedings (at the request of the creditor and at the request of the debtor) and the closure of bankruptcy proceedings [44].

According to the Bankruptcy Procedures Code, bankruptcy is the inability of a debtor recognized by a commercial court to restore its solvency through the rehabilitation and restructuring procedure and to repay the monetary claims of creditors established in accordance with the procedure established by this Code other than through the application of the liquidation procedure.

In this context, it is advisable to focus on the problematic issues that arise when applying the bankruptcy procedure to a legal entity that is liquidated by the decision of the participants.

The civil legal status of a debtor in a competitive relationship is determined not only and not so much by whether it is an individual or a legal entity, but by certain characteristics, which will make it possible to distinguish two most general categories - ordinary debtors (for which there is no need to develop special rules applicable in competitive relations) and debtors of special (separate) categories (for which special competitive rules are necessary to achieve the objectives of initiating insolvency (bankruptcy) proceedings) [12, p. 12].

According to V. Pohrebniak, even legal entities - subjects of power (public authorities, local governments, other subjects of power) and institutions and organizations established by them may be debtors, since the Code does not set any restrictions on the bankruptcy of such legal entities [49, p. 28].

Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt”, entitled “Peculiarities of Applying the Bankruptcy Procedure to a Debtor Liquidated by the Owner”, stipulates that if the value of the property of the debtor - a legal entity in respect of which a decision was made to liquidate, is not sufficient to satisfy the claims of creditors, such a legal entity is liquidated in the manner prescribed by this Law. In the event of the above circumstances, the liquidator (liquidation commission) is obliged to apply to the commercial court with a petition to initiate bankruptcy proceedings against such a legal entity, which was in line with the provisions of Part 3 of Article 110 of the Civil Code of Ukraine, according to which if the value of the property of a legal entity is insufficient to satisfy the claims of creditors, the legal entity shall take all necessary actions established by the law on restoring solvency or declaring bankruptcy.

This simplified procedure was used by debtors who, having gone through voluntary liquidation, did not have the financial means to complete it. The peculiarity of the procedure provided for in Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt” was to provide debtors with the opportunity to immediately proceed to the liquidation procedure, bypassing the disposal of property and rehabilitation.

In this case, V. F. Zharenko notes, the owner of the debtor legal entity, even before the decision to liquidate it, is fully aware of the insufficiency of the value of the property of the legal entity owned by him to cover the accounts payable, especially when this debt, for example, exceeds the value of the debtor's assets ten times or more according to the accounting data. In other words, the initiation of liquidation of a legal entity by the owner in this case is purely formal, it is carried out with the only deliberate purpose - to cover up the results of unsatisfactory management or even possible abuse, in particular, the commission by the owner,

manager or liquidator of such a legal entity of intentional actions or criminal omissions that led to its bankruptcy [38, p. 26].

In his scientific opinion on the application of the provisions of the Civil Code of Ukraine and other rules of law regarding the limitation period in bankruptcy cases (2017) [4], O. Belyanevych notes that bankruptcy proceedings are an independent type of court proceedings characterized by a special procedural procedure for consideration of cases, specific tasks, special subject composition, and duration of court proceedings, which significantly distinguish this proceeding from the action proceedings.

According to I. Vechirko, the exercise of the right to apply to court for protection, namely, the opening of court proceedings in a case, depends on objective and subjective conditions. The prerequisites are the circumstances of a procedural and legal nature (legal facts), the presence (absence) of which is necessary for the exercise of the right to go to court for protection of a violated or disputed subjective substantive right or legally protected interest. The presence or absence of such circumstances determines the emergence of a subjective right of specific persons to file an application for the opening of proceedings in a case [49, p. 15].

Based on a systematic analysis of the provisions of Art. 110 of the Civil Code of Ukraine, Article 11 and Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt” and Article 34 of the Code of Ukraine on Bankruptcy Procedures, two prerequisites can be distinguished for a debtor to apply to the court with a petition for initiation of bankruptcy proceedings 1) mandatory compliance by the debtor with the procedure for liquidation of a legal entity in accordance with the laws of Ukraine, i.e., as set forth in Articles 110, 111 of the Civil Code of Ukraine; 2) the debtor's property sufficient to cover court costs.

In its ruling of July 9, 2019 in case No. 909/95/18, the Supreme Court noted that the special procedure provided for in Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt” (bankruptcy of a debtor liquidated by the owner) follows from the procedure of voluntary liquidation of a legal entity, and only compliance with the requirements set forth in Article 111 of the

Civil Code of Ukraine and the performance of a set of actions established by the provisions of this article with the provision of evidence of their performance is the basis for the liquidator to apply for the initiation of bankruptcy proceedings under a special procedure, which is initiated in accordance with the provisions of Article 95 of the Bankruptcy Law. A prerequisite for the initiation of bankruptcy proceedings in accordance with Article 95 of the Law is the provision of adequate evidence to confirm the existence of all the prerequisites for the initiation of proceedings under this Article at the time of the debtor's application [137].

In its ruling of January 23, 2019 in case No. 908/608/18, the Supreme Court noted that, according to part 1 of Article 95 of the Law, a special procedure for proceedings is applied to a debtor that is liquidated by the owner. The main condition for the initiation of bankruptcy proceedings under this article is the state of non-payment of the debtor, which is established by the liquidator (liquidation commission) based on the results of the analysis of the debtor's liabilities and assets [138].

In turn, the court's determination of the circumstances of non-compliance with the necessary prerequisites for filing a petition to initiate bankruptcy proceedings against the debtor in accordance with Article 95 of the Law may be grounds for termination of illegally initiated proceedings (conclusion on the application of the law set forth in the resolutions of the Supreme Court of April 18, 2018 in case No. 922/2362/17 and of June 19, 2019 in case No. 912/1298/18).

In addition, according to the provisions of part 4 of Article 11 of the Bankruptcy Law, which was universal in nature, an application for initiation of bankruptcy proceedings could be filed by the debtor only if it had property sufficient to cover court costs. In other words, the provisions of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt” established an additional mandatory requirement for the debtor's application to initiate bankruptcy proceedings in a special procedure under Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt”, in particular, the availability of property sufficient to cover court costs associated with bankruptcy proceedings.

Such expenses include, in particular, payment of remuneration to the insolvency officer in the minimum amount for at least 12 months of his work, reimbursement of expenses for the publication of announcements in the case, court fees paid by creditors, etc. (the conclusion on the application of the law is set out in the resolutions of the Commercial Court of Cassation of the Supreme Court of 14 March 2018 in case No. 904/1853/17, of 1 August 2018 in case No. 911/3540/17, and No. 910/14947/18 of July 25, 2019).

Thus, Article 110 of the Civil Code of Ukraine establishes a clear obligation of the debtor in case of insufficient property to satisfy the creditors' claims to apply to the court for initiation of bankruptcy proceedings with the possibility of applying a simplified procedure depending on the specifics provided for in Article 95 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt”. However, a systematic analysis of Art. 11 of this Law and the Supreme Court's conclusions gives grounds to assert that the debtor who does not have the property to cover court costs is effectively excluded from the possibility of filing a petition to initiate bankruptcy proceedings.

In its ruling of July 9, 2019 in case No. 909/95/18, mentioned above, the Supreme Court stated: “From the content of part 4 of Article 11 of the Bankruptcy Law, according to which the debtor shall file an application with the economic court if it has property sufficient to cover court costs, unless otherwise provided by this Law, the Court concludes that the debtor's lack of property sufficient to cover court costs excludes the possibility of the court to conduct bankruptcy proceedings in its bankruptcy case by virtue of the mandatory provisions of part 4 of Article 11 of the Bankruptcy Law” [137].

In other words, there is a conflict between general and special legislation, which could be resolved by the new Bankruptcy Code of Ukraine.

However, unlike the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt,” the Code does not define the specifics of bankruptcy of business entities that have social or other value or special status, agricultural enterprises, or a debtor being liquidated by its owner.

Pursuant to the Final and Transitional Provisions of the Code, from the date of its entry into force, further consideration of bankruptcy cases already initiated must be carried out in accordance with its provisions, except for cases already under rehabilitation. Thus, if at the time of the Code's entry into force the debtor received a court order declaring it bankrupt and opening a liquidation procedure in accordance with the procedure provided for in Article 95 of the Law, then in the future (after the Code enters into force) the liquidation procedure will be carried out in accordance with the rules established by the Code [225].

Part 2 of Article 4 of the Bankruptcy Code stipulates that in the event of signs of bankruptcy, the debtor's director is obliged to send information to the debtor's founders (participants, shareholders), property owner (body authorized to manage the property) of the debtor regarding the presence of bankruptcy signs.

Pursuant to part 6 of Article 34 of the Code, the debtor is obliged to apply to the commercial court within one month to initiate proceedings in the case if the satisfaction of the claims of one or more creditors will lead to the inability to fulfill the debtor's monetary obligations in full to other creditors (threat of insolvency), in other cases provided for by this Code.

In other words, this clause duplicates clause 5 of Article 11 of the Law of Ukraine “On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt”, which established the debtor's obligation to apply to the commercial court for initiation of bankruptcy proceedings in case, in particular, if satisfaction of the claims of one or more creditors will lead to the inability to fulfill the debtor's monetary obligations in full to other creditors (threat of insolvency).

As before, part 5 of Article 34 of the Code currently stipulates that a debtor shall file a petition with the commercial court if it has property sufficient to cover the costs of the proceedings, unless otherwise provided by this Code. Pursuant to the requirements of this Article, the debtor's application for commencement of proceedings shall be accompanied, inter alia, by proof of payment of the court fee, unless the court fee is not payable by law.

In view of the amendments to the Law of Ukraine “On Court Fees” [185], as of October 21, 2019, no court fee is required to be paid for the debtor's application for opening bankruptcy proceedings.

That is, the debtor is obliged to apply to the economic court with a petition to initiate bankruptcy proceedings in case of a threat of insolvency, but after the adoption of the Bankruptcy Code, the debtor was granted a certain benefit in the form of no court fee for such an application, which is logical in a situation of threatened insolvency of a legal entity [106, p. 145].

According to scholars and experts in the field of liquidation, the abolition of the “simplified” procedure will lead to a significant increase in the cost of bankruptcy proceedings for legal entities that have decided to cease operations but have outstanding debts to creditors that exceed the value of the property of such legal entities - debtors. In this regard, the creditors of such a debtor will receive significantly less, as the sale of the debtor's property will primarily compensate for the costs of the bankruptcy procedure and the remuneration of the insolvency officer. In addition, the procedure will last longer than the procedure under Article 95 of the Law [74].

Therefore, M. Shulyakivska is convinced that the newly developed mechanisms are intended to speed up the process, but not by reducing the time of the trial, but by restricting the right to appeal (in cassation) against certain types of court decisions in a bankruptcy case; establishing additional requirements for other court procedures (accelerating “intermediate stages”, fixing the automatic start of liquidation of the enterprise in the absence of a rehabilitation plan approved by the creditors' meeting) [245].

In our opinion, the abolition of the “simplified” liquidation procedure is undoubtedly a step forward that will prevent the instant liquidation of “unscrupulous” debtors who have tried to avoid liability for failure to fulfill their debt obligations. However, the issue of the impossibility of going to court if the debtor has no property to cover court costs remains unresolved, which also applies to the advance payment of remuneration to the insolvency officer if the legal entity has no assets. The

unresolved issue will only lead to the accumulation of business entities that do not actually intend to continue to carry out business activities, while, depending on the circumstances, it will encourage creditors to either initiate bankruptcy of the debtor on their own initiative (i.e., incurring additional costs to finance the costs of the insolvency officer and court fees which will not be reimbursed), or to write off the debt as uncollectible, which will cause additional damage due to the need to increase the financial result included in accounting and tax accounting.

Thus, this issue can be resolved by obliging the owners (participants) of a legal entity that is at risk of being declared insolvent to finance the costs associated with bankruptcy proceedings with their own funds (property) in proportion to the size of their shares.

Conclusions to Section III

The analysis of the peculiarities of certain types of liquidation of legal entities under the civil law of Ukraine has led to the following conclusions:

1. In the course of the liquidation procedure, the liquidation commission (liquidator) takes measures to take an inventory of the property of the legal entity being terminated, and in certain cases specified by law, conducts an independent valuation of the property of such a legal entity. The dissertation study substantiates the expediency of supplementing Part 4 of Article 111 of the Civil Code of Ukraine with the provision on mandatory independent valuation of property of a legal entity being liquidated by the liquidation commission.

2. The author argues that it is necessary to supplement Chapter VI of the Law of Ukraine “On Limited and Additional Liability Companies” with an article on termination of a company by liquidation, and to regulate the exclusive list of actions of the liquidation commission and the terms of their implementation.

3. Failure to set time limits for tax audits in the legislation leads to a delay in the liquidation procedure or a situation where an entry on the termination of a legal entity is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, but the legal entity is registered as not deregistered with the regulatory authorities. The author substantiates the need to define a specific period within which the regulatory authorities have the right to conduct a liquidation audit of a business entity, and also provides that in case of failure to conduct such an audit or its conduct in violation of the established deadlines, it will be considered that the entity has no debts to such authorities, and therefore, it cannot be subject to measures that impede the liquidation process

4. Each individual action of the liquidation commission is regulated by separate bylaws, which in most cases do not correspond to modern realities and contradict the provisions of the current laws.

5. To eliminate ambiguity and legal conflicts, we consider it appropriate to amend Articles 57 and 82 of the Commercial Code of Ukraine, harmonizing them

with the Civil Code of Ukraine and the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies”, namely to determine: “The company's charter shall specify the name of the legal entity, the company's governing bodies, their competence, the procedure for making decisions, the procedure for joining and leaving the company, unless additional requirements for the content of the charter are established by this Code or another law.”

6. The author substantiates the need to define an additional ground for a participant of a legal entity to file a claim for its liquidation, namely, if the issue of liquidation of a legal entity cannot be resolved by the general meeting due to the lack of the required quorum of votes. It is proposed that clauses 2 and 3 of part 1 of Article 110 of the Civil Code of Ukraine be restated as follows, stating that a legal entity is liquidated: “2) by a court decision on liquidation of a legal entity at the suit of a participant of a legal entity due to violations committed during its establishment that cannot be eliminated and/or due to the absence of the required quorum of votes of the general meeting to make a decision on liquidation of a legal entity (if the location of the participants is unknown or one of the participants is in a state of termination), as well as in case of impossibility to achieve the tasks for which it was established, in particular if the implementation of the activities of a legal entity becomes impossible or significantly complicated;

3) by a court decision on liquidation of a legal entity at the request of a state body authorized by law to file a corresponding claim with the court. The grounds for a court decision on liquidation of a legal entity are:

- invalidation by the court of the state registration of a legal entity due to violations committed during its establishment that cannot be eliminated;
- conduct by a legal entity of activities contrary to its constituent documents or prohibited by law;
- a court's recognition of the issuing legal entity as having signs of fictitiousness;
- systematic violation by the legal entity of financial and legal norms established by regulatory legal acts;
- in other cases established by law”.

7. Compulsory liquidation of fictitious joint-stock companies at the request of the NSSMC can be an effective means of preventing the circulation of fictitious financial instruments and fictitious securities transactions, as well as freeing the market from “technical” shares and ensuring a civilized termination of joint-stock companies.

8. There are two mandatory conditions for filing a petition with the court to initiate bankruptcy proceedings at the request of the debtor: 1) the debtor must comply with the procedure for liquidation of a legal entity in accordance with the laws of Ukraine, i.e., as set forth in Articles 110 and 111 of the Civil Code of Ukraine; 2) the debtor must have sufficient property to cover court costs.

9. The abolition of the “simplified” liquidation procedure is undoubtedly a progress that will prevent the instant liquidation of “unscrupulous” debtors who thus tried to avoid liability for failure to fulfill their debt obligations.

10. The author substantiates the position that the owners (participants) of a legal entity which is under the threat of being declared insolvent should be obliged to finance the costs associated with bankruptcy proceedings with their own funds (property) in proportion to the size of their shares.

CONCLUSIONS

The dissertation study provides a theoretical generalization and proposes a new solution to the scientific task of forming the scientific and theoretical foundations of the institute of liquidation of legal entities under the civil legislation of Ukraine.

The study made it possible to formulate recommendations aimed at improving the civil legislation of Ukraine in the field of liquidation of legal entities.

The most important scientific results of the work are the following conclusions:

1. In its evolution, the civil legislation regulating the institution of liquidation of legal entities in Ukraine has passed several stages, including: 1) legal regulation of the institute of liquidation of legal entities when Ukraine was a part of the Russian Empire (nineteenth century - early twentieth century); 2) formation and development of civil legislation of the Ukrainian SSR (early twentieth century - 1991), which was characterized by the formation and development of the basic principles and principles of termination of existence (liquidation) of business entities; 3) the formation and development of civil legislation of Ukraine, which was marked by the adoption of a number of special and codified legal acts that provided comprehensive legal regulation of the legal entity (since 1991 to the present day).

2. Reform of national legislation necessitates theoretical and practical study of international experience in the field of liquidation of legal entities. The rules aimed at regulating the liquidation procedure of legal entities are contained in certain areas of the EU legal framework. In particular, this is the First Directive 68/151/EC of the Council of the European Communities “On the coordination of safeguards (precautions) required by Member States from companies within the context of the second paragraph of Article 58 of the Treaty to protect the interests of members and others with a view to making such safeguards uniform throughout the Community” of August 9, 1968; Directives 2001/24/EC of the European Parliament and of the Council on the reorganization and winding up of credit institutions and 2001/17/EC on the reorganization and winding up of insurance undertakings. The experience of

integrating the national legislation of the Baltic States with the EU requirements, in particular in the area of legal entities' liquidation, as well as that of Georgia and Poland, is successful.

3. The author determines that liquidation of a legal entity under civil law is a legal procedure regulated by law, which results in complete termination of a solvent legal entity as a legal entity from the moment of making the relevant entry in the State Register with the possibility, in cases specified by law, of partial transfer of rights and obligations of a legal entity to other persons (legal successors).

4. The liquidation of legal entities under civil law is classified depending on the method of its implementation into: 1) liquidation carried out in the general procedure on the basis of documents submitted by the applicant for state registration of termination of a legal entity; 2) simplified liquidation, which is carried out: by a court decision to cancel the state registration of a legal entity adopted before July 1, 2004; by a court decision on the liquidation of a legal entity adopted after July 1, 2004, in case of failure to submit within three years from the date of publication of the notice of adoption of such a court decision the documents required for state registration of the termination of a legal entity as a result of its liquidation; in case of failure to submit the documents required for the state registration of the termination of a legal entity as a result of its liquidation within one year from the date of entry in the Unified State Register of the entry on the suspension of the simplified procedure for state registration of the termination of a legal entity as a result of its liquidation; 3) liquidation by tacit consent, which is carried out in the event that the state authorities do not provide information on the absence of arrears in the payment of taxes and fees, insurance funds to the Pension Fund of Ukraine and social insurance funds, the absence of unrevoked issues of securities of the issuing legal entity and unrevoked registration of the issue of shares of a joint-stock company.

5. It is established that the legal consequences of liquidation arise from the moment when a decision to liquidate a legal entity is made and a corresponding entry is made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

6. The possibility of collecting receivables when the debtors' obligations have not yet been fulfilled is evident from the analysis of Article 512 of the Civil Code of Ukraine, which, in particular, regulates the possibility of replacing a creditor in an obligation with another person as a result of the transfer of his rights to another person under a transaction (assignment of claims). In this regard, it is proposed to enshrine at the legislative level the obligation of the liquidation commission/liquidator to ensure the replacement of a creditor in an obligation by another person as a result of the transfer of its rights to another person under a transaction (assignment of claims).

7. It is argued that the grounds for liquidation of legal entities enshrined in civil law, namely, Article 110 of the Civil Code of Ukraine, cover both general (clauses 1, 2) and special (clause 3) grounds for liquidation of legal entities.

8. The provision has been improved, according to which in the case of liquidation of a legal entity by a court decision due to violations committed during its establishment that cannot be eliminated, the operative part of the court decision must specify the composition of the liquidation commission, as well as the procedure and time limit for creditors to submit their claims.

9. Signs of liquidation of legal entities under civil law as a separate institute of civil law are: 1) the absence of universal legal succession, as well as the possibility of partial transfer of rights and obligations of the liquidated legal entity to other persons; 2) the solvency of the legal entity being liquidated; 3) the moment from which the legal entity is deemed to have been terminated (from the date of entry of the termination record in the Unified State Register).

10. The provision that a legal entity is liquidated in accordance with Article 111 of the Civil Code of Ukraine, in particular by a court decision in the event that a court invalidates the state registration of a legal entity due to violations committed during its establishment that cannot be eliminated, has been improved.

11. The provision was further developed that a court decision to cancel the state registration of a legal entity cannot be the basis for its liquidation, as this makes

it impossible to go through the liquidation procedure of a legal entity provided for in Article 111 of the Civil Code of Ukraine.

12. The author substantiates the need to determine an additional ground for a participant of a legal entity to file a claim for its liquidation, namely, if the issue of liquidation of a legal entity cannot be resolved by the general meeting due to the lack of the required quorum of votes (if the location of the participants is unknown or one of the participants is in a state of termination).

13. The author substantiates the position that the general ground for compulsory liquidation of a legal entity by a court decision due to violations committed during its establishment which cannot be eliminated is the invalidation of the state registration of a legal entity on the basis of invalidity of the constituent documents of a legal entity, which are found to be: non-compliance with the requirements of the law; violation of the rights and legally protected interests of the participants of a legal entity.

14. Each individual action of the liquidation commission is regulated by separate bylaws, which mostly do not correspond to the realities of today and also contradict the provisions of current laws.

15. The author argues that there is a need to harmonize the by-laws regulating certain stages of the liquidation procedure with the requirements of the Civil Code of Ukraine, and for this purpose, to determine a specific period during which the regulatory authorities have the right to conduct a liquidation audit of a business entity, and also to provide that in case of failure to conduct such an audit or its conduct in violation of the established time limits, it will be considered that the entity has no debt to such authorities, and therefore cannot be subject to measures that impede the liquidation process.

16. It is proved that the abolition of the “simplified” liquidation procedure is undoubtedly a shift that will prevent the instant liquidation of “unscrupulous” debtors who thus tried to avoid liability for failure to fulfill their debt obligations.

17. It seems necessary to define the obligation of owners (participants) of a legal entity that is under the threat of being declared insolvent to ensure the financing

of expenses related to the bankruptcy procedure with their own funds (property) in proportion to the size of their shares.

18. Proposals have been developed to improve the legislation of Ukraine in the field of liquidation of legal entities, namely, it is proposed to supplement Articles 110 and 111 of the Civil Code of Ukraine with new provisions, as well as to amend Articles 57 and 82 of the Commercial Code of Ukraine, harmonizing them with the Civil Code of Ukraine and the Law of Ukraine “On Limited and Additional Liability Companies”:

a) clauses 2 and 3 of part 1 of Article 110 of the Civil Code of Ukraine should be amended to read as follows, stating that a legal entity is liquidated: “2) by a court decision on liquidation of a legal entity at the suit of a participant of a legal entity due to violations committed during its establishment that cannot be eliminated and/or due to the absence of the necessary quorum of votes of the general meeting to make a decision on liquidation of a legal entity (if the location of the participants is unknown or one of the participants is in a state of termination), as well as in case of impossibility to achieve the tasks for which it was established, in particular, if the implementation of the activities of a legal entity becomes impossible or significantly complicated;

3) by a court decision on liquidation of a legal entity at the request of a state body authorized by law to file a corresponding claim with the court. The grounds for a court decision on liquidation of a legal entity are:

- invalidation by the court of the state registration of a legal entity due to violations committed during its establishment that cannot be eliminated;

- conduct by a legal entity of activities contrary to its constituent documents or prohibited by law;

- a court's recognition of the issuing legal entity as having signs of fictitiousness;

- systematic violation by the legal entity of financial and legal norms established by regulatory legal acts;

- in other cases established by law.”

b) to amend part 4 of Article 111 of the Civil Code of Ukraine to read as follows: “The liquidation commission (liquidator) shall take measures to take an inventory of the property of the legal entity being liquidated, as well as the property of its branches and representative offices, subsidiaries, business entities, as well as property confirming its corporate rights in other legal entities, identify and take measures to return property held by third parties, and ensure an independent assessment of the property of the legal entity being liquidated.”

c) Chapter VI of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” should be supplemented with an article on termination of a company by liquidation, defining an exclusive list of actions of the liquidation commission and the terms of their implementation;

d) in order to eliminate ambiguity and legal conflicts, amend Articles 57 and 82 of the Commercial Code of Ukraine, harmonizing them with the Civil Code of Ukraine and the Law of Ukraine “On Limited and Additional Liability Companies”, namely to provide that: “The company's charter shall specify the name of the legal entity, the company's management bodies, their competence, the procedure for making decisions, the procedure for joining and leaving the company, unless additional requirements for the content of the charter are established by this Code or another law.”

e) supplement the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” with a provision according to which, in the event of a threat of insolvency and in the absence of sufficient property of such a legal entity, the owners (participants) of the legal entity are obliged to ensure the financing of expenses related to the bankruptcy procedure with their own funds (property) in proportion to the size of their shares.

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