NATIONAL UNIVERSITY OF LIFE AND ENVIRONMENTAL SCIENSE OF UKRAINE

Department of Civil and Commercial Law

Methodical recommendations
for independent preparation for classes in the discipline **“Business Law”**

For students of the Faculty of Economics
of the Bachelor's degree in the 4th year of study in the specialty 076
“Entrepreneurship, Trade and Exchange Activities”
for full-time students”

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Methodical recommendations for independent preparation for classes in the discipline “Business Law” are developed in accordance with the content and structure of the working curriculum in the discipline “Business Law” and will help students to gain comprehensive knowledge of the legal procedure for organizing and conducting business; be able to prepare documents necessary for state registration of the creation, reorganization and termination of business entities; contracts used in business activities; learn to independently.

Methodical recommendations for independent preparation for classes in the discipline “Business Law” For students of the Faculty of Economics of the Bachelor's degree in the 4th year of study in the specialty 076 “Entrepreneurship, Trade and Exchange Activities” for full-time students” / Compilers: Piddubnyi O.Y., Pankova L.O., Adamovych O.V., Oleksiuk V.P. Kyiv, 2024, 254 p., 14,09 друк.арк.

General methodological recommendations for preparation for seminars and classes and their implementation in the discipline "Business Law"

The course **"Business Law"** is aimed at forming a system of students a system of knowledge about the regulation of legal relations arising in during the implementation of entrepreneurial activity; to characterize and systematize the main instruments of legal regulation of After studying the discipline, students should master the ability to analyze current legislation and use the acquired knowledge in practical activities. resolution of corporate disputes, liability for violation of corporate law.

The discipline is divided into 2 content modules that combine lecture material, seminars and practical classes, independent work of students and testing. The level of mastery of the module material is assessed by by the results of practical assignments and module tests. and module control work. In order to fully study this course, the student must learn how to apply various legal means, analyze legislation and current case law that helps to resolve issues that arise before the manager in the process of carrying out his/her activities, forms students' understanding of how the relevant legal legal norm corresponds to the current realities and economic situation in the country.

A **seminar** is a form of classroom instruction in which according to which the teacher organizes a discussion around predefined topics for which students prepare which students prepare theses on the basis of individually completed assignments (abstracts). Seminar classes are held in classrooms or in classrooms with one academic group, can be held online, using video conferencing platforms.

Tasks assigned to students for preparation:

- study of theoretical issues and scientific sources;
- analysis of current regulations;
- writing essays;
- writing essays;
- creation of multimedia presentations;
- solving practical problems with the use of current case law practice.

In order to study the **theoretical issues** that are submitted for consideration for each seminar, the student must attend lectures on the relevant topics, dedicated to the relevant topics and familiarize themselves with the content of the lecture in electronic format, which is posted on the official website of the NULES of Ukraine on the on the Elearn platform.

When studying theoretical issues, the student is obliged to pay due attention to the processing of **scientific sources**, including special legal literature, as well as the analysis of **regulations** that regulating the relations that are the subject of consideration in the seminar (the list of scientific sources and regulations is contained in the electronic lecture notes, which are an integral part of the educational and methodological complex in the discipline “Business Law”).

The development of regulatory legal acts should include determining the range of social relations regulated by this act, as well as determining the subject matter and ways of its influence on the relevant legal relations.

Regulatory legal acts required for the seminar should be in printed and/or electronic form for each student, present at the seminar.

The result of a proper study of theoretical issues and scientific sources, legal analysis of current regulations is an oral answer at the seminar, which is evaluated by the teacher in points: from 1 point to 15 points.

If the list of individual assignments for the list of individual assignments for the seminar includes writing essays and papers, the by the teacher who conducts the seminar, students must prepare written papers on the relevant topics that must meet the requirements described below.

Preparation for essays and papers should begin with compiling a bibliography on the chosen research topic.

In order to prepare essays and papers, you can work with the funds of the following libraries:

- Library of the National University of Life and Environmental Law of Ukraine (Kyiv, 13 Heroiv Oborony St., academic building No. 4; branch of the library: 17 Vasylkivska St., Kyiv, academic building 6);

- Vernadsky National Library of Ukraine (Kyiv, 3, Holosiivskyi Ave. 62, Volodymyrska St., Kyiv; branch No. 2 м. Kyiv, 79 Akademika Vernadskoho Ave;)

- Legal library of the Ukrainian Legal Foundation (41 Saksahanskoho str., Kyiv).

41, Saksahanskoho Str., Kyiv);

- Yaroslav Mudryi National Library of Ukraine (1, Hrushevskoho str.1, Hrushevskoho Str., Kyiv);

- M. Maksymovych Scientific Library of the Taras Shevchenko National Taras Shevchenko National University of Kyiv (58 Volodymyrska St., Kyiv).

The study of literature on the chosen research topic should start with the relevant textbooks, manuals, reviewing own lecture and seminar notes, gradually moving on to

familiarization with monographic studies, articles in scientific professional journals, materials of scientific and practical conferences, texts of and other texts.

First of all, you need to analyze the new literature, and then you can you can go deeper into the study of older sources.

It is also recommended to pay attention to Ukrainian legal journals, in particular: “Law of Ukraine, Entrepreneurship, Economy and Law, “Yurydychnyi Visnyk Ukrayiny, Yurydychna Ukraina, Yuryst, Bulletin of the of the Constitutional Court of Ukraine, etc.

Particular attention should be paid to problematic issues and discussions, controversial opinions and statements, shortcomings and inconsistencies in legislation.

It should be remembered that it is necessary to use the current regulatory legal acts in their latest, up-to-date version. To this end, you should use official publications and official websites of public authorities, in particular:

- Bulletin of the Verkhovna Rada of Ukraine;
- Official Gazette of Ukraine;
- “Governmental Courier”;
- https://rada.gov.ua;
- https://www.kmu.gov.ua;
- https://minjust.gov.ua;
- https://mon.gov.ua;
- http://www.me.gov.ua.

References to regulatory legal acts not in the current version or to legal acts that are not in force is possible only if the issue is studied in the historical or comparative legal aspect.

The abstract should consist of the following parts:

- Introductory (devoted to highlighting the relevance of the topic chosen by the author (dedicated to highlighting the relevance of the topic chosen by the author; the purpose and objectives of the study are highlighted);
- Main (should contain the main content of the study; the main theoretical provisions; analysis of national and foreign regulatory legal acts);
- Conclusions (the most important results of the study are presented). the most important results of the study).

The abstract ends with a list of references to which the referenced in the paper and used in its preparation.

The volume of the main text of the abstract should be no less than 15 pages and no more than 30 pages.

The main text includes:

- title page (1 page);
- Table of contents (1 page);
- introduction (1-2 pages);
- main part (10-25 pages);
- conclusions (1-3 pages);
- list of references (at least 10 references).

The result of the proper execution of the essay is: written work and a student's report on the topic of the essay at a seminar, which are evaluated by the teacher in points: 1-5 points - oral response; 1-5 points – written written essay. The minimum number of points that a student can receive can receive for completing the essay is 2 points, the maximum is 10 points.

When creating multimedia presentations, students should adhere to the following recommendations.

The presentation should be completed after the student has developed the general

structure of the presentation and collected illustrative material.

The first slide should contain the title of the topic, the author's name, surname, and the author's name and patronymic, and the purpose of the work.

It is advisable to add tables, charts, diagrams and graphs.

The main presentation of the material should be made on 10-12 slides.

Conclusions and recommendations should be placed on 1-2 slides. One slide should contain a list of references.

The presentation should not exceed 20 slides. The optimal number of slides is 15-16. The font size should be at least 20-22pt.

The result of a proper multimedia presentation is presentation design on electronic media and in printed form. Evaluation of the multimedia presentation is carried out by the teacher after it’s disclosure in a seminar class or after viewing a printed or electronic version of it or electronic version. The maximum number of points that a student can receive can receive for a multimedia presentation is 15 points.

It is extremely important to prepare for the seminar class by solving practical problems with the use of current case law.

Before solving a practical task, the student must familiarize himself or herself with the content of the lecture in electronic format, which is available on the official website of the NULES of Ukraine on the Internet. Then the student should analyze literary sources and regulations on the issues set forth in the terms of the task.

When solving a practical task, the student must take into account the provisions of the current legislation and refer to the current judicial case law, links to which can be obtained from the instructor.

The result of solving practical problems with the use of the current case law is: formalization of the solution of the practical task in writing and announcement of the results obtained at the seminar class. The minimum number of points that a student can receive for solving a practical task is 1 point, the maximum number is 5 points.

Description of the discipline
“Business law”

Load distribution, hours.

Total - 180 hours;

Lectures - 30 hours;

Practical - 30 hours;

Independent work - 120 hours;

The purpose of studying the discipline “Business Law” is the need to training of specialists in the economic sphere who will work in the conditions of building of the rule of law and market economy; study of a set of legal norms that regulate social relations and are formed in the course of ensuring by the executive authorities in the realization and protection of the rights, freedoms and legitimate interests of individuals and legal entities interests of individuals and legal entities, as well as in the process of public administration economic, socio-cultural and administrative-political construction in the state, the formation of legal awareness and legal culture in of future employees of the business elite, legal regulation of economic activities, the legal status of business and public authorities.

Objectives of the discipline:

- to provide the necessary amount of theoretical knowledge about the forms of business activities and legal support for the organization and activities of business organizations;

- to familiarize students with the stages of the rulemaking process, the principles of rulemaking technique, ways of presenting normative prescriptions and rules for resolving legal conflicts;

- to form students' understanding of the procedure for creating and organizing and organization of governing bodies in entrepreneurial and non-entrepreneurial companies;

- outline the features of legal expertise and its types, classifications of management decisions, the process of their preparation and adoption, the procedure for maintaining

management documentation;

- to comprehensively consider the requirements for legal acts that are created by business entities, the procedure for their adoption, promulgation, enactment, termination and cancellation;

- to highlight the legal status of officials of legal entities of private and legal entities of private and public law of Ukraine.

General competencies (GC)

GC2. Ability to apply the acquired knowledge in practical situations.

GC3. Ability to communicate in the state language both orally and in writing.

GC5. Skills in the use of information and communication technologies.

GC6. Ability to search, process and analyze information from various sources.

GC 10. Ability to act responsibly and consciously.

GC 11. Ability to realize their rights and responsibilities as a member of society, to realize the values of civil (free democratic) society and the need for its sustainable development society and the need for its sustainable development, the rule of law, human and freedoms of man and citizen in Ukraine.

Professional (special) competencies (PC):

SC3. Ability to carry out activities in the interaction of market participants of market relations.

SC 6. Ability to carry out activities in compliance with the requirements of regulatory legal documents in the field of business, trading and exchange activities.

Program learning outcomes

2. Apply the acquired knowledge to identify, formulate and solve tasks in various practical situations in business, trading and exchange activities.

3. Have skills in written and oral professional communication in the state and foreign languages and foreign languages.

4. To use modern computer and telecommunication technologies for the exchange and dissemination of professionally oriented information in the field of business, trade and exchange activities.

5. To organize search, self-selection, qualitative processing of information from different sources to form databases in the field of entrepreneurship, trade and exchange activities.

9. To know the requirements for activities in the specialty due to the need to ensure sustainable development of Ukraine, its strengthening as a democratic social and legal state.

10. Demonstrate the ability to act socially responsibly on the basis of ethical, cultural, scientific values and achievements of society.

11. Demonstrate basic and structured knowledge in the field of entrepreneurship, trade and exchange activities for further use in practice.

12. Possess methods and tools to justify management decisions on the creation and operation of decisions on the creation and operation of business, trading and exchange structures.

13. Use knowledge of the forms of interaction of market participants to to ensure the operation of business, trading and exchange structures.

16. To know the regulatory and legal support of business, trade and exchange structures and apply it in practice.

Prerequisites for studying the course

The discipline “Business Law” involves the study of student’s basic legal institutions of Ukrainian law, constitutional norms, civil, commercial, corporate, labor law, based on the basis of the acquired knowledge.

Further use of the acquired knowledge

After studying the discipline “Business Law”, students should be prepared for the application of theoretical and practical knowledge and skills in the process of professional activity, through effective of entrepreneurial activity in both the private and public sectors of the economy.

Total hours - 30 hours

Content module 1

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

Topic 2. Sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity.

Topic 4. Concept and types of corporate enterprises in Ukraine. Corporate management.

Topic 5. Legitimization of a business entity.

Topic 6. Termination of a business entity.

Content module 2

Topic 7. Property basis of entrepreneurial activity.

Topic 8. Contracts in business activity.

Topic 9. Intellectual property in the field of entrepreneurship.

Topic 10. General provisions of labor law applicable to entrepreneurial activity applicable to entrepreneurial activity. Legal status of officials of entrepreneurial companies.

Topic 11. Concept and methods of protection of the rights of business entities.

Program and structure of the discipline

1. Description of the discipline

	SYLLABUS OF THE DISCIPLINE **"Business law"**
	Degree of higher education - Bachelor's degree
	Specialty - 076 "Entrepreneurship, trade and exchange activity"
	Educational program - Entrepreneurship, trading and stock exchange activity
	Year of study, semester - 3, 6
	Form of study - Full-time, part-time
	Number of ECTS credits - 6.
	Language of instruction - Ukrainian
Course lecturer	Doctor of Law, Professor Oleksii Piddubnyi
Contact information	м. Kyiv, 17 Vasylkivska St., academic building 6, room. 209 tel. (044) 259-97-25
lecturer (e-mail)	piddubny_o@nubip.edu.ua
Course page in eLearn	

COURSE STRUCTURE

Topic	Hours (lectures/ seminars)	Objectives
Module 1		
Topic 1. General provisions on the legal regulation of of entrepreneurial activity. The concept of entrepreneurial law and entrepreneurial activity. and entrepreneurial activity.	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 2. Sources of business law.	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 3. Subjects of entrepreneurial activity of entrepreneurial activity. legal forms of implementation of entrepreneurial activity	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 4. The concept and types of corporate enterprises in Ukraine. Corporate governance	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 5. Legitimization of the subject of of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 6. Termination of a business entity of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 7. Property basis of of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 8. Contracts in entrepreneurial activity	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 9. Intellectual property property in the field of of entrepreneurial activity.	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 10. General provisions of labor law of labor law applicable in applicable to business activities. Legal status of officials officials of entrepreneurial companies.	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 11. Concept and ways to protect the rights of business entities	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Total for the semester	**30/30**	

The structure of the course **"Business Law"** includes topics that cover theoretical and practical provisions of legal science aimed at effective regulation and conduct of business activities, implementation of quality management of business entities, and preparation of specific documentation.

The discipline "**Business Law"** is studied for one semester by full-time and part-time students of the Faculty of Economics of the Bachelor's degree program in the 4th year of study for 1 semester. According to the curriculum, 180 hours are allocated for the course, including 30 hours of lectures, 30 hours of practical classes, and 120 hours of independent work.

The discipline is divided into 2 content modules, which combine lecture material, seminars and practical classes, independent work of students and testing. The level of mastery of the module material is assessed based on the results of practical assignments and module tests.

Lecture classes are a form of classes that help to activate students' thinking, allow them to raise problematic issues of the course, show contradictions, and familiarize students with the history of scientific research. In addition, lectures allow students to put forward problems for independent study. The topics of lectures and the distribution of lectures by modules and weeks are given in the calendar plans for full-time and part-time study, respectively.

Seminars and practical classes. The purpose of the seminars is to test, deepen and consolidate the theoretical knowledge gained by students during lectures and independent work; in-depth study of recent changes in legislation; consideration of issues not covered in lectures; formation of students' ability to interpret and apply corporate law in specific situations; providing students with a set of practical skills necessary for the formation of professional skills.

Seminars are one of the organizational forms of higher education. They are designed to ensure the development of creative professional thinking, cognitive motivation and professional application of knowledge in an educational setting, and to form students' interest in science and scientific and legal research.

Seminar classes are closely related to all types of academic work, including lectures and independent work, and also provide for a sequence of preparation for them and a certain order of conduct. Students prepare speeches or abstracts on theoretical issues. Speeches should be illustrated with references to the source base. They are then discussed by the group.

Independent and individual work is a form of study aimed at expanding and researching the issues covered in lectures, as well as working on issues that were not covered in lectures, seminars and practical classes.

Knowledge control is carried out in the form of a test. Full-time and part-time students take the exam in the 7th semester. The recommended topics and forms of classes provide an opportunity to use and consolidate knowledge and skills not only from special courses on corporate law, but also from civil law of Ukraine, commercial law of Ukraine, administrative law, financial law, and other disciplines studied by students.

Mastering the theoretical provisions related to the regulation of management activities and the experience of applying the acquired skills is impossible without studying special literature and regulations, the lists of which are given below.

PROGRAM OF THE ACADEMIC DISCIPLINE

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

The essence and types of entrepreneurship. The concept and essence of business law. Subject method, principles of business law. The system of business law.

Topic 2. Sources of business law.

Basic approaches to the definition of the concept of "source of law". Types of sources of law and their structure. Normative acts and their types. The system of legislation. The concept of business legislation. The system of sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity

Legal relations in entrepreneurial activity. General characteristics of a business entity. An individual as a business entity. The right to engage in entrepreneurial activity. Legal entities of public and private law. The concept of "legal entity" in business law. Classification of business entities.

Topic 4. Concept and types of corporate enterprises in Ukraine. Corporate governance.

The concept and characteristics of business entities. Legal regulation of a general partnership. Legal regulation of a limited partnership. Legal regulation of a limited liability company. Legal regulation of a company with additional liability.

Legal regulation of joint stock companies. Legal regulation of production cooperatives. Other types of corporate enterprises.

Corporate governance. The concept and principles of corporate governance. Supreme governing bodies of a corporate enterprise. Executive management bodies of corporate enterprises. Supervisory board. Audit committee (auditor). Corporate secretary. Other bodies of corporate enterprises. Peculiarities of corporate governance in personal business companies.

Topic 5. Legitimization of a business entity

The procedure for establishing business entities. State registration of business entities of entrepreneurial activity. Legislative regulation of business entities of entrepreneurship.

Topic 6. Termination of a business entity

General provisions on the termination of a corporate entity corporate entity - a corporate enterprise. Reorganization as a form of termination. Liquidation as a form of termination. The concept of bankruptcy, parties to the bankruptcy case bankruptcy, bankruptcy proceedings, bankruptcy procedure.

Module 2

Topic 1: Property basis of entrepreneurial activity

The concept of property rights. Forms of ownership. Property and property rights as the basis of entrepreneurial activity. Rights and obligations of the property owner. Formation of he property basis of entrepreneurial activity. Property rights of subjects of entrepreneurial activity. The concept and types of property in business in entrepreneurial activity. The use of natural resources in business. Securities in business activity. Corporate rights of business entities of entrepreneurship.

Topic 2. Contracts in business activities

The concept and features of a business contract. Types of business contracts. Functions of a business contract. Content and form of a business contract.

Topic 3. Intellectual property in the field of entrepreneurship. General provisions of intellectual property rights. Use of intellectual property rights in business activities. General conditions for the protection of intellectual property rights under special legislation.

Topic 4. General provisions of labor law applicable to business activities. Legal status of officials of business companies.

The concept of labor relations. Subjects of labor relations. Rights and obligations of employers. Rights and obligations of employees. Social guarantees of employees. Labor contract.

The concept of officials of a corporate enterprise. Restrictions on the acquisition of the status of an official of a corporate enterprise. Responsibility of officials of a corporate body. Legal status of the head of the executive body of a business entity.

Topic 5. The concept and methods of protecting the rights of business entities

The concept and methods of protecting the rights of business entities. Protection and defense of trade secrets. Protection of honor, dignity and business reputation. General principles of liability of participants in economic relations. Contractual liability, compensation for damages. Concept, signs and principles of economic and legal liability. Administrative and economic sanctions in business activities.

LECTURE MATERIALS

Lecture 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity. Sources of business law

1. The concept and subject matter of business law regulation.

In modern legal science, business law is considered as a branch of law, as a science and as an academic discipline.

Business law as a branch of the national law of Ukraine is a set of legal norms that regulate the relations of various business entities (hereinafter referred to as "business entities") with each other regarding the receipt of profit, as well as with state and local government bodies and their officials. Business law as an academic discipline is a body of knowledge about the legal regulation of business activities and the use of relevant legal norms in business practice.

The subject matter of business law regulation is legal relations arising between different business entities. The essence of entrepreneurial activity should be revealed by analyzing its correlation with the concept of "economic activity".

The first legislative (legal) definition of the concept of "economic activity" was enshrined in the Law of Ukraine "On Foreign Economic Activity" back in 1991. According to Article 1 of this Law of Ukraine, "economic activity is any activity, including entrepreneurial activity, related to the production and exchange of tangible and intangible goods in the form of goods". Subsequently, the adopted Commercial Code of Ukraine (hereinafter - the CC of Ukraine) clarified this concept in relation to the range of entities engaged in economic activity.

Thus, according to Article 3 of the Commercial Code of Ukraine, economic activity in this Code means the activities of business entities in the field of social production aimed at the manufacture and sale of products, performance of works or provision of services of a costly nature that have a price determination. The concept of "economic activity" is an economic and legal category, therefore, it is impossible to give a purely legal characterization to its individual components.

However, there are sufficient and necessary grounds to distinguish the following main features of economic activity:

economic activity is the activity of certain subjects as an active, specifically human form of relation to the world, the content of which is its purposeful change and transformation. This form of relation includes the goal, means, result and the process of activity itself. An inherent characteristic of this, as well as any other purposeful activity, is the awareness of its essence by its subjects;

economic activity is always carried out by specially authorized entities, which the Commercial Code of Ukraine calls “economic entities” or business entities. Such “powers” or “economic competence” are granted to a business entity both by regulation and voluntarily - by the business entity itself (its founders or participants);

economic activities are always aimed at: a) manufacturing and selling products, or b) performing work, or c) providing services of a valuable nature. This means that within the framework and with the help of economic activities, products are sold, works are performed, services are rendered that can be valued in monetary terms; - products sold, works performed and services rendered within the framework of economic activities always have a price certainty. In other words, these components of the subject of business activity have a selling price, consisting of the cost price and the amount of production or trade margin, which is subsequently used to form profit (for individual business entities, the category “income” is used for these purposes).

The legislator distinguishes between two main types of economic activity: non-commercial economic activity and entrepreneurship. Pursuant to Article 3(2) of the Commercial Code of Ukraine, economic activity carried out to achieve economic and social results and for profit is entrepreneurship, and business entities are entrepreneurs. Article 42 of the Commercial Code of Ukraine defines entrepreneurial activity as an independent, proactive, systematic, risk-averse economic activity carried out by business entities (entrepreneurs) with the aim of achieving economic and social results and making a profit.

The theoretical study of the essence of entrepreneurial activity is characterized by a rather long history. As the German scholar P. Verhan once noted, it is difficult to find a field of activity as complex and ambiguous as entrepreneurship. This is due to the fact that in a market economy it is realized at the crossroads of economics, politics,

technology, law, psychology and ethics.

Since the eighteenth century, entrepreneurial activity has been the subject of various discussions among scholars to varying degrees. It especially attracted the attention of economists in the XIX century, when the world began to use the concepts of "business activity", "entrepreneurship" and "capitalism" as synonyms or closely related concepts. For example, the leading English economist of the late 19th century and early 20th century, Professor of Cambridge University A. Marshall, emphasizing the role of entrepreneurial activity, believed that the best characterization of life at that time was the expression "freedom of production and entrepreneurship or economic freedom".

The classical economic theory, when defining entrepreneurial activity, focused on the issues of maximizing profit from resources and achieving equilibrium in society. Representatives of non-traditional economic theory explained the essence of entrepreneurial activity from the standpoint of the economic theory of dynamic disequilibrium. Thus, one of them, Austrian economist J. Schumpeter, in his work "The Sociology of Imperialism" formulated the thesis that the essential feature of the economy is not equilibrium, calm, but rather dynamic disequilibrium caused by active entrepreneurial activity aimed at creating and satisfying the growing demand. He argued that commodity relations form a specific type of person who, unlike a person of previous times, tries to solve his or her problems peacefully, to obtain the necessary goods through exchange or other fair dealing, and not through violence, which was a characteristic feature of the feudal period.

According to J. Schumpeter and other representatives of the Austrian economic school, the spontaneous, spontaneous nature of the market is best analyzed not in terms of equilibrium that exists at a certain moment, but in terms of a continuous process. The entrepreneur and his or her activities are the main factor in this process. It is the entrepreneurial activity of moving funds and resources from the category of low-valued to the category of high-valued (of course, making a profit) that organizes this process.

Famous microeconomic analysts E. J. Dolan and D. Lindsay consider entrepreneurship to be the process of finding the best way to combine the three main factors of production - labor, capital and natural resources.

In general, according to A. Busygin, the development of the process of scientific comprehension of entrepreneurial activity has a number of stages, “waves”. The “first wave”, which arose in the XVIII century, was associated with a focus on the characterization of risk as a special feature of entrepreneurial activity (R. Cantillon, J. Thünen, G. Mangoldt, F. Knight). The “second wave” in the scientific understanding of entrepreneurship is associated with the emphasis on innovation as its main characteristic feature (J. Schumpeter). The “third wave” is associated with the substantiation of the multifunctional model of entrepreneurship and is characterized by a focus on the personal qualities of the entrepreneur (L. Mizek, F. Hayek, I. Kirzner). The current stage of development of the theory of entrepreneurship is referred to as its “fourth wave”. The emergence of this stage is associated with the shift of theoretical economists' emphasis to the managerial aspect in the analysis of entrepreneurial actions, including the study of intra-company entrepreneurial activity.

Thus, it is worth noting that in the foreign literature, many different terms have been used to define the concepts of “business activity” and “entrepreneurship” in recent decades. Some of them emphasized the relationship between entrepreneurship and society. Other definitions view entrepreneurship as a type of behavior that includes proactive decision-making by an individual, organization or reorganization of economic mechanisms, and the entrepreneur's acceptance of the risk of failure. Often, entrepreneurship is defined as a dynamic process of creating profitable wealth by individuals who take into account major risks; a human creative act, the application of energy, initiative and the creation of an enterprise or organization that requires a willingness to take risks and do everything possible to reduce the risk of failure. These definitions emphasize the special, dynamic, risky nature of entrepreneurial activity.

The foregoing allows us to conclude that entrepreneurial activity “in foreign economic literature over the past few decades has been interpreted in many ways and is referred to as a ‘type of behavior’, ‘creative act’, ‘dynamic process’, etc. Despite the attractiveness of the definition of entrepreneurship as a process, it cannot be used as a basis for the legislative definition of entrepreneurial activity, given its generalization and the lack of a number of specific features of entrepreneurship that allow distinguishing it

from other types of activity.

Business activities can be classified according to various criteria.

It is divided into individual entrepreneurial activity of citizens and entrepreneurial activity of legal entities by the subject of its implementation. According to the legal status of the bearer, entrepreneurship is distinguished between entrepreneurship carried out by the owner and entrepreneurship on the basis of powers delegated by the owner. According to the phases of the production cycle, there are production, commercial and financial entrepreneurship, and according to the criterion of the scale of entrepreneurship, there are such types of entrepreneurship as small, medium and large. According to the degree of novelty, the presence of a creative element, it is proposed to distinguish between innovative (pioneering), imitative (as a proactive borrowing of innovations) and routine (reproductive) entrepreneurship. From the perspective of the public good, entrepreneurship can be either constructive or destructive. And according to such criteria as the current legal order and the actual practice of entrepreneurial activity, lawful (legal) and illegal entrepreneurship are distinguished.

In addition, it should be borne in mind that one of the important differentiations of entrepreneurial activity in the economic literature is its division according to the subject of activity. Thus, entrepreneurial activity is divided into: 1) production (it includes activities aimed at manufacturing products, performing works and services, collecting, processing and providing information to be sold to consumers, etc.); 2) commercial, the content of which is trade and exchange operations, and the essence of which is transactions and sales contracts.

1. Signs of entrepreneurial activity

Signs of entrepreneurial activity

1. Entrepreneurship is an independent activity. This means that, firstly, entrepreneurship in Ukraine can be carried out in any organizational form determined by the laws of Ukraine, at the choice of the entrepreneur (Article 45 of the Civil Code of Ukraine). At the same time, individuals have the opportunity to register as business

entities and carry out such activities without establishing a legal entity. Secondly, in view of the principle of free choice of business activities by an entrepreneur provided for in part 1 of Article 44 of the Commercial Code of Ukraine, entrepreneurs have the right to carry out any activity independently in accordance with the needs of the market, making appropriate decisions at their own discretion that do not contradict the law.

2. Entrepreneurial activity is always an initiative activity. That is, engaging in such activities is a voluntary act. No state body, non-governmental organization, or official can force a person to engage in entrepreneurial activity. However, this does not mean that a person cannot be forced to fulfill obligations voluntarily assumed (e.g., under a contract concluded in the course of entrepreneurial activity) or obligations provided by the state and arising from the person's entrepreneurial activity (e.g., tax obligations).

3. Entrepreneurship is a systematic activity. However, the legislation does not establish clear quantitative criteria of systematic nature (i.e., how many times an activity must be engaged in in order to be considered entrepreneurial). Prior to the entry into force of the Tax Code of Ukraine, the literature suggested that the Decree of the Cabinet of Ministers of Ukraine of March 17, 1993 “On the Tax on Crafts” should be applied in this case, according to Article 1 of which the sale of manufactured, processed and purchased products, things, goods, which was carried out more than four times during a calendar year, was considered systematic.

4. Entrepreneurial activity is an activity at one's own risk. This means that for violation of contractual obligations, credit and tax discipline, product quality requirements and other rules of business activity, business entities are independently liable under the laws of Ukraine. In other words, a business entity assumes both positive and negative consequences of its business activities. This is determined by the provisions of the Civil Code of Ukraine (hereinafter - the “CC of Ukraine”), which establish the independent liability of an individual business entity (Article 52) and a legal entity (Article 96) for obligations related to their business activities.

5. Entrepreneurial activity is carried out by business entities registered as entrepreneurs. In other words, business activities are carried out by individuals and legal entities registered as business entities in accordance with the procedure established by

law. This means that both legal entities and individuals who have acquired the status of a business entity may engage in entrepreneurial activity.

6. Economic and social results are achieved as a result of entrepreneurial activity. Entrepreneurial activity has a significant impact on economic and social development. The most important economic results are the creation of a competitive environment, saturation of the market with goods and services, and significant intensification of international economic relations. At the same time, market reorientation also causes new problems. For example, shadow transactions are spreading, which are usually accompanied by tax evasion and state budget deficits, thereby destabilizing the official economy. It should be noted, however, that small and medium-sized businesses provide new jobs, significantly stimulate the professional development of employees, their initiative and creativity, and generally contribute to the survival of the population in times of crisis. The gradual strengthening of business entities and their profitability provide an additional financial basis for such socially useful activities as charity and sponsorship.

Thus, entrepreneurial activity is a type of economic activity.

Entrepreneurial activity is an independent, proactive, systematic, risk-based economic activity carried out by business entities (entrepreneurs) in order to achieve economic and social results and make a profit. It is entrepreneurial activity that is the subject of regulation by business law.

1. Basic functions and principles of entrepreneurship

The essence of entrepreneurship is more deeply revealed through its main functions - innovative (creative), resource, organizational, stimulating (motivational).

The innovative (creative) function of entrepreneurship is to facilitate the generation and implementation of new commercial ideas, technical and economic, scientific developments, and projects involving economic risk.

The resource function of entrepreneurship involves the mobilization of material, financial, labor, information, intellectual and other resources on a voluntary basis.

The organizational function of entrepreneurship is to directly organize

production, sales, and advertising, and is reduced to combining resources in optimal proportions and controlling their use.

The incentive (motivational) function of entrepreneurship is reduced to the formation of an incentive (motivational) mechanism for the efficient use of resources, taking into account the achievements of science, technology, management of production organization, as well as the maximum satisfaction of consumer needs.

The principles of entrepreneurial activity are its fundamental ideas, the principles to which it must comply. The Commercial Code of Ukraine, by enshrining the principles of entrepreneurship in Article 44, proceeds from the general provision on its freedom.

Entrepreneurship is carried out on the basis of:

- free choice by the entrepreneur of types of entrepreneurial activity;
- independent formation of the entrepreneur's program of activities, selection of suppliers and consumers of manufactured products, attraction of material, technical, financial and other types of resources, the use of which is not restricted by law, setting prices for products and services in accordance with the law;
- free hiring of employees by the entrepreneur;
- commercial calculation and own commercial risk;
- free disposal of profits remaining with the entrepreneur after payment of taxes, fees and other payments required by law;
- independent conduct of foreign economic activity by the entrepreneur, use of the entrepreneur's share of foreign currency earnings at his/her discretion.

1. System and methods of business law

Business law has a certain system. It consists of two parts **- general and special.**

The general part of business law studies the concept, subject matter, methods of business law, the structure and composition of business legislation, the legal status of business participants, the essence of a contract as the main means of formalizing business legal relations, the rules for its execution, etc.

The special part of business law contains the rules of legal regulation of entrepreneurship in certain industries and areas (stock exchange activities, insurance, foreign economic activity, investment activity, banking, etc.).

Among the main methods of legal regulation of business relations are **the method of governmental prescriptions,** the method of recommendations and the method of will autonomy. The latter plays a leading role.

The method of autonomy of will means the right of a business entity to make legally significant decisions (perform acts) independently, autonomously, and independently of anyone, and the corresponding obligation of all other subjects of social relations not to interfere with this. This method of legal regulation is based on the fact that a business entity has the right to perform any actions and make any decisions at its own discretion and on its own initiative, provided that they do not contradict the legislation of Ukraine. In view of this, a business entity is free from any external pressure and operates autonomously on its own:

1) choose the field and type of business activity;

2) determine plans for its further activities;

3) select business partners;

4) within the framework of the applicable law, enter into agreements, defining their own obligations and other conditions.

The method of recommendations means that the state, through authorized bodies and officials, regulates the behavior of business entities by issuing certain acts that recommend certain models of behavior, and the right to apply these models remains with the entrepreneur. Examples of the use of this method of legal regulation by the state include various model (standard) forms of contracts for certain types of legal relations, guidelines for carrying out certain types of activities, etc.

The method of governmental prescriptions should be understood as various requirements of laws and regulations regarding mandatory forms, methods and types of business activities. This applies, for example, to the mandatory payment of a certain fee for state registration of a business entity, notification of the registration authority by the said entity of a change of its legal address, obtaining a

license, patent or quota for certain types of business activities specified by law, prohibition of acts that have signs of unfair competition or monopoly, compliance with the prohibitions of the law on carrying out a particular type of activity, etc.

5. The Constitution of Ukraine as a source of business law.

When studying the topic, students should familiarize themselves with the lecture material, as well as with the relevant sections of sources No. 7-10 in the printed and online sources. Also, students should be familiar with the material provided in Lecture 1.1.

Sources of business law are external forms of expression of legal norms that certify their binding nature for all participants in business relations.

The Constitution of Ukraine is the main source of all branches of law, including business law. It defines the basic principles of economic activity, including freedom of entrepreneurship, the right to private property and its protection, and the obligation to pay taxes and fees.

Considering this issue, we would like to note that the sources of business law are based on the following provisions of the Constitution of Ukraine

- Recognition and operation of the rule of law in Ukraine in all spheres of public life (Article 8);

- ensuring by the state the social orientation of the economy of Ukraine (Article 13);

- ownership rights of the Ukrainian people to the land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, exclusive (maritime) economic zone, exercised on behalf of the Ukrainian people by state authorities and self-government bodies within the limits determined by the Constitution of Ukraine (Article 13);

- the right of every citizen to use the natural objects of property rights of the Ukrainian people in accordance with the law (Article 14);

- ensuring by the state the protection of the rights of all subjects of property and economic activity, preventing the use of property to the detriment of a person and society (Article 14);

- the right of every citizen to own, use and dispose of his or her property, the results of his or her intellectual and creative activity (Article 41);

- recognition of all subjects of property rights as equal before the law, inviolability of private property rights, and prevention of unlawful deprivation of property (Article 41);

Article 41 of the Constitution of Ukraine establishes the economic basis for entrepreneurial activity, stipulating that **"everyone has the right to own, use and dispose of his or her property, the results of his or her intellectual and creative activity. The right to private property is acquired in the manner prescribed by law. Citizens may use objects of state and municipal property to meet their needs in accordance with the law. No one shall be unlawfully deprived of the right to property. The right to private property is inviolable."**

In addition, the same article of the Constitution of Ukraine stipulates that **"the expropriation of private property may be applied only as an exception for reasons of social necessity, on the basis and in accordance with the procedure established by law, and subject to prior and full compensation of their value. Compulsory alienation of such objects with subsequent full compensation of their value is allowed only in the conditions of martial law or a state of emergency."**

The said article of the Basic Law of Ukraine also stipulates that confiscation of property may be applied exclusively by court decision in cases, to the extent and in accordance with the procedure established by law. The use of property may not harm the rights, freedoms and dignity of citizens, the interests of society, or worsen the environmental situation and natural qualities of the land. These norms fully apply to the legal status of property of business entities.

Article 42 of the Constitution of Ukraine provides that "everyone has the right to engage in entrepreneurial activity not prohibited by law. The entrepreneurial activity of deputies, officials and employees of state authorities and local self-government bodies is limited by law. The state ensures the protection of competition in entrepreneurial activity. Abuse of a monopoly position in the market, unlawful restriction of competition and unfair competition are not allowed. The types and limits of monopoly

are determined by law."

Thus, at the highest legal level, the law defines the range of entities entitled to engage in entrepreneurial activity, establishes an exhaustive list of categories of individuals whose entrepreneurial activity is restricted by law, establishes state restrictions on monopoly, and provides for legal protection of competition in entrepreneurial activity.

6. Кодифіковані акти як джерела підприємницького права

The Commercial Code of Ukraine https://zakon.rada.gov.ua/laws/show/436-15#Text was adopted on January 16, 2003, and entered into force on January 1, 2004. It aims to ensure the growth of business activity of business entities, the development of entrepreneurship and, on this basis, to increase the efficiency of social production, its social orientation in accordance with the requirements of the Constitution of Ukraine, and to establish a proper economic order in the economic system of Ukraine.

According to Art. 1 of the Commercial Code of Ukraine, the subject matter of regulation is the basic principles of economic activity in Ukraine and economic relations arising in the process of organizing and conducting economic activity between business entities, as well as between these entities and other participants in economic relations.

Commercial Code of Ukraine:

divides economic activity into non-commercial economic activity and commercial economic activity (entrepreneurship);

defines organizational forms of entrepreneurship;

outlines general guarantees of entrepreneurs' rights;

establishes the legal basis for state support of entrepreneurship;

defines the legal status of business entities, its property basis, and the essence of economic obligations;

outlines the principles of liability of participants in economic relations;

defines legal regulation in certain areas of business, etc.

The Sections of the Commercial Code of Ukraine (except for Section 9) are

divided into Chapters, some of which, namely: Chapter 30 “Peculiarities of Legal Regulation of Economic and Commercial Activities” and Chapter 35 “Peculiarities of Legal Regulation of Economic Activities”, in turn, are divided into Paragraphs.

Section 1 of the Civil Code of Ukraine defines the subject matter of regulation of this Code, the concept of economic activity and economic relations, lists the participants in relations in the field of economic activity, its constitutional foundations and general principles, outlines the main directions and forms of participation of the state and local self-government bodies in the field of economic activity, the principles of limiting monopoly and protecting business entities and consumers from unfair competition, formulates the definition of entrepreneurship as a type of economic activity, its principles and organizational

Section 2 of the Commercial Code of Ukraine sets out the concepts of a business entity, an enterprise as an organizational form of business and its types, general provisions on state and municipal enterprises, business companies and their types, peculiarities of the legal status of a citizen as a business entity and other issues.

Section 3 of the Commercial Code of Ukraine defines the property basis of business, namely:

1) legal regime of property of business entities

2) the essence of property in the field of business and sources of its formation;

3) legal basis for the use of natural resources in the field of business;

4) legal basis for the use of intellectual property rights in economic activity;

5) the essence of securities and corporate rights, means of their use in economic activity.

Section 4 of the Commercial Code of Ukraine sets out general provisions on business obligations, their classification by such criteria as the basis for their occurrence and their content, defines the essence, terms, general procedure for concluding business contracts, rules of pricing in the field of business, rules for the fulfillment and grounds for termination of business obligations, the essence of debtor's insolvency and recognition of a business entity as bankrupt, etc.

The legal provisions **of Section 5 of the Civil Code of Ukraine** establish the

general principles of liability of participants in economic relations, the essence of economic liability, its grounds and economic sanctions as a legal means of liability in the field of business.

Such sanctions include: 1) compensation for losses; 2) fines; 3) operational and economic sanctions; 4) administrative and economic sanctions.

In addition, this section of the Commercial Code of Ukraine contains general rules for regulating the liability of business entities for violations of antitrust and competition laws of Ukraine.

The content of Section 6 of the Commercial Code of Ukraine is to define the types of economic activities and their classification, as well as to establish the specifics of legal regulation of relations in certain sectors of business.

Thus, the provisions of this section of the Civil Code of Ukraine outline the specifics of legal regulation of various forms of economic and commercial activities (supply, contracting of agricultural products, energy supply, exchange trading, property rental, leasing, etc.), commercial intermediation, cargo transportation, innovation, use of the rights of other business entities in business activities, etc.

General rules for regulating foreign economic activity, including foreign investment, are contained in **Section 7 of the Commercial Code of Ukraine**, and general rules on special (free) economic zones, concessions and other types of special regimes of economic activity are contained in **Section 8 of this Code.**

Work is currently underway to recodify civil legislation. One of the points of this concept is to abolish the Commercial Code and regulate its main provisions with the updated Civil Code and specialized legislation.

The Civil Code of Ukraine was adopted and entered into force simultaneously with the CC of Ukraine https://zakon.rada.gov.ua/laws/show/435-15#Text. It is the second most important legal act in the state, after the Constitution of Ukraine, and the "constitution of civil society", as it is designed to regulate primarily economic, property relations and some personal non-property relations between legally free and equal partners, including business entities.

A number of provisions of the Commercial Code of Ukraine contain references to the provisions of the Civil Code of Ukraine:

1. part 1 of Article 175 of the Commercial Code of Ukraine establishes that property obligations arising between parties to economic relations are regulated by the Civil Code of Ukraine, taking into account the specifics provided by the Civil Code of Ukraine.

2. Part 7 of Article 179 of the Civil Code of Ukraine states that commercial contracts are concluded in accordance with the rules established by the Civil Code of Ukraine, taking into account the specifics provided for by the Civil Code of Ukraine and other regulatory legal acts on certain types of contracts.

3. The relevant provisions of the Civil Code of Ukraine, taking into account the peculiarities provided by the Commercial Code of Ukraine, apply to relations related to the use of intellectual property rights in economic activity (part 2 of Article 154 of the Civil Code of Ukraine) and to the performance of economic contracts (part 1 of Article 193 of the Civil Code of Ukraine).

4. The relevant provisions of the Civil Code of Ukraine apply to:

- relations to ensure the fulfillment of obligations of participants in economic relations (part 1 of Article 199 of the Civil Code of Ukraine)

- relations on termination of economic obligations (part 3 of Article 202 of the Civil Code of Ukraine);

- issues related to the terms of realization in court of liability for offenses in the field of business (part 1 of Article 223 of the Civil Code of Ukraine);

- relations regulating the circulation of industrial and technical products and the circulation of consumer goods in the business sector, not regulated by the Commercial Code of Ukraine and other regulatory legal acts adopted in accordance with it (part 3 of Article 262 of the Commercial Code of Ukraine)

- supply relations not regulated by the Commercial Code of Ukraine (Article 265(6) of the Commercial Code of Ukraine), etc.

The special importance of the Civil Code of Ukraine as a source of business law lies in the fact that it fundamentally regulates obligations arising from contractual

relations, i.e. relations based on contracts, and they (contracts) are the main means and instrument for the implementation of business activities. In general, the Civil Code of Ukraine plays a leading role as a tool for further development of the market economy, and is a means of implementing general principles and values of civil society in property and some personal non-property relations in the business sphere. It is the fundamental regulatory act under which legal regulation of all property relations of a commodity-money nature is carried out.

The Tax Code of Ukraine regulates relations arising in the field of collection of taxes and fees, in particular, defines the list of taxes and fees, taxpayers, their rights and obligations, liability for violation of tax legislation, etc. https://zakon.rada.gov.ua/laws/show/2755-17#Text

The Labor Code of Ukraine regulates the labor relations of all employees. It defines the legal basis for hiring employees by an entrepreneur (conclusion of an employment contract, working hours, labor standards and remuneration, etc.) https://zakon.rada.gov.ua/laws/show/322-08#Text.

In addition, the legal framework for business activities is established by the Water Code of Ukraine, the Subsoil Code of Ukraine, the Forest Code of Ukraine, the Criminal Code of Ukraine, the Code of Administrative Offenses and special laws.

7. Laws of Ukraine and bylaws as sources of business law

The set of laws adopted by the Verkhovna Rada of Ukraine as sources of business law is quite extensive and branched. This is due to the wide range of types and areas of business activity. The content of the majority of laws adopted since Ukraine's independence directly or indirectly regulates economic relations, including entrepreneurial activity.

The laws of Ukraine that are sources of business law include:

a) laws of Ukraine of general regulatory nature:

1. The Law of Ukraine “On Property”

2. The Law of Ukraine “On Entrepreneurship”

3. The Law of Ukraine “On Business Associations”

4. Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”

5. The Law of Ukraine “On Bail”

6. The Law of Ukraine “On Leasing”

7. The Law of Ukraine “On Protection of Economic Competition”

8. The Law of Ukraine “On Protection against Unfair Competition”, etc.

b) laws of Ukraine of a sectoral nature:

1. The Law of Ukraine “On the Electricity Market”

2. The Law of Ukraine “On Capital Markets and Organized Commodity Markets”

3. The Law of Ukraine “On Prices and Pricing”

4. The Law of Ukraine “On Motor Vehicle Transport”

5. The Law of Ukraine “On Insurance”

6. Law of Ukraine “On Banks and Banking Activities” 7. The Law of Ukraine “On Transport”

8. Law of Ukraine “On Peasant (Farm) Economy”

9. Law of Ukraine “On Education”

10. The Law of Ukraine “On Foreign Economic Activity”, etc.

c) laws of Ukraine of a special nature:

1. The Law of Ukraine “On Licensing of Certain Types of Economic Activity”

2. The Law of Ukraine “On Standardization”

3. Law of Ukraine “On Mortgage”

4. The Law of Ukraine “On Peculiarities of State Regulation of Business Entities' Activities Related to Production, Export, Import of Disks for Laser Reading Systems”

5. Law of Ukraine “On the Regime of Foreign Investment”

6. Law of Ukraine “On the Circulation of Bills of Exchange in Ukraine”

8. The Law of Ukraine “On State Regulation of Imports of Agricultural

Products", etc.

Subordinate legal acts include:

1) resolutions and orders of the Cabinet of Ministers of Ukraine;

2) orders and instructions of ministries and other central executive authorities;

3) acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea;

4) acts of local executive authorities and their officials;

5) decisions of local self-government bodies.

A special role among bylaws is played by acts of executive authorities. All of them are embodied in an appropriate form, acquire a certain legal force and are communicated to executors through established information channels. The form of executive acts is stipulated by the provisions of the Constitution of Ukraine and the norms of acts adopted on its basis.

Based on the current legislation, the following main forms of acts of executive authorities can be distinguished:

Resolutions are acts of management, usually of a regulatory nature, which are adopted at the highest and central levels of executive power in a collegial manner on important issues. The Cabinet of Ministers of Ukraine, state services, inspectorates, agencies of Ukraine, the Government of the ARC, and departments are entitled to adopt such acts;

Orders are, as a rule, individual acts of management adopted individually at all levels of the state's administrative hierarchy, the legal force of which depends on the nature and legal status of the specific holder of power - the author of the order;

Orders are management acts that contain a direct, binding order from executive authorities to a certain individual or legal entity (persons) and require the performance of an action or refraining from it;

Decisions are acts of governance adopted in a collegial manner on important issues and in most cases are normative in nature. They are adopted by the colleges of ministries, the Council of Ministers of the ARC, and local state administrations;

instruction - a departmental regulatory act of management that establishes a

procedure and explains the conditions for the application of any legislative or regulatory act. Hence its derivative, secondary nature. Instructions are designed for repeated use. They are issued by ministries, departments, and local state administrations.

8. International agreements

International treaties occupy a special place among the sources of business law. Pursuant to Article 9 of the Constitution of Ukraine, international treaties in force and ratified by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine. Ukraine has ratified a number of international treaties (agreements, conventions, etc.) aimed at regulating certain relations between national business entities and foreign business entities and applying international legal norms in relations between Ukrainian entrepreneurs.

Such agreements include, in particular: The Universal Postal Convention, the Convention on the International Carriage of Goods under Cover of TIR (TIR Convention), the Vienna Convention on International Contracts for the Sale of Goods (1980), the Vienna Convention on the Law of Treaties, the Convention on the Settlement of Certain Conflicts of Laws Concerning Bills of Exchange and Promissory Notes (Geneva, 1930), the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) with the Vienna Protocol of 1980, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), European Convention on International Commercial Arbitration (Geneva, 1961), Convention between the Government of Ukraine and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Property, Convention of the CIS Member States on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and other international treaties.

9. The role of customs in business law

An analysis of the content of international treaties shows that they have in a certain way “absorbed”, “accumulated” and unified various rules that functioned at the level of international trade customs.

The peculiarity of the latter in the regulation of international trade relations as one of the types of business relations is determined by the fact that they were historically the first means of regulating these relations.

The process of forming a custom consisted of the practice of applying and recognizing a certain rule of conduct as having legal force (opinio juris).

This practice should be characterized by a certain stability and the absence of significant deviations in one direction or another.

International custom, including trade custom, as a method of rule-making is characterized by the following features

a) spontaneity of emergence;

b) informalized and non-institutionalized nature;

c) the coincidence of the will of the persons who "established" and those who continue to follow the custom (although the custom may be formed as a result of a single precedent).

Trade terms, in the form of a dictionary, are used to harmonize the terms of supply when concluding contracts internationally. They explain the process of allocating responsibilities, costs and risks between the parties entering into a contract: the seller and the buyer.

The need to apply custom in business law is also evidenced by special instructions of legal norms such as "trade and other fair practices" (Article 32 of the Civil Code of Ukraine), "professional ethics" (Article 38 of the Civil Code), "conditions necessary for contracts of this type" (Article 180 of the Civil Code of Ukraine), "requirements that are usually imposed in certain conditions" (Article 193 of the Civil Code of Ukraine), "types of security for fulfillment of obligations that are usually used in economic (business) turnover" (Article 199), "usual level of quality" (Article 268 of the Civil Code of Ukraine), "banking customs" (Article 344 of the Civil Code of Ukraine), etc.

It is worth highlighting cases of appropriate authorization of customs by the Civil Code of Ukraine. In particular, the Civil Code refers to the "custom of business turnover" in Articles 213, 526, 529, 538, 627,630, 652, etc.

Incoterms (International Commercial Terms) is a set of international rules that provide unambiguous interpretations of the most widely used terms in foreign trade.

Incoterms are trade terms abbreviated by the first three letters that reflect business practices in international sales contracts. The Incoterms rules mainly define the obligations, costs and risks arising from the delivery of goods from sellers to buyers.

The main principles regulated in the terms of Incoterms:

distribution of transportation costs for the delivery of goods between the seller and the buyer, i.e. determination of which costs are borne by the seller and until when, and which costs are borne by the buyer from what point on.

the moment when the risks of damage, loss or accidental destruction of the cargo are transferred from the seller to the buyer.

the date of delivery of the goods, i.e., determining the moment when the seller actually places the goods at the disposal of the buyer or his representative - for example, a transport organization - and, therefore, the fulfillment or non-fulfillment by the former of its obligations under the delivery terms.

10. Vienna Convention on Contracts for the International Sale of Goods 1980.

The adoption of the Vienna Convention of 1980 was driven by the need to combine the principles of the Romano-Germanic and Anglo-American legal “families” in one international document, the need to promote the development of relations between states by applying unified international legal norms. The Convention does not affect the effect of other international treaties regulating foreign trade relations. It defines the legal concept of the contract for the international sale of goods; establishes the form of such a contract; regulates the content of the basic rights and obligations of the seller and the buyer, including liability for breach of contractual obligations, etc. The Vienna Convention of 1980 applies to contracts where the parties' places of business are located in different states: if these states are contracting states or if the law of a contracting state is applied in accordance with the rules of private international law.

The fact that the parties' commercial enterprises are located in different states shall not be taken into account if it does not follow either from the contract or from

business relations or information exchange between the parties before or at the time of its conclusion.

The provisions of this Convention shall not apply to contracts:

1) for the supply of goods to be manufactured, if the ordering party undertakes to supply a significant part of the materials required for the manufacture of such goods;

2) in which the obligations of the party supplying the goods consist mainly of performing work or rendering other services.

By regulating the procedure for concluding a sales contract, the rights and obligations of the seller and the buyer arising from such a contract, the Convention does not address

1) the validity of the contract itself or its individual parts, as well as customs;

2) regulation of ownership of the goods sold;

3) regulation of liability for damage caused by the goods to a person's health or death.

The 1980 Vienna Convention is characterized by its dispositivity. This feature is manifested in the broad autonomy of the will of the parties, who, by mutual agreement, may apply this Convention in whole or in part.

The dispositivity of the Convention is also manifested in the fact that the scope of its application may be limited by the use of declarations and reservations by a state party, which was used by Argentina, China, Denmark, Finland, Hungary, Norway, Sweden, Ukraine, the United States, and the United Kingdom when ratifying it. According to one of Ukraine's reservations, agreements entered into by business entities located in Ukraine must be in writing, regardless of the place of their execution. A written form within the meaning of this Convention is a communication by telegraph or teletype. For states that have not made such a reservation, Article 11 of the Vienna Convention of 1980 is applicable, which allows both oral and written forms of conclusion or confirmation of a contract, as well as the use of any means, including witness testimony, to prove a sale contract.

The Vienna Convention of 1980 defines: a) the procedure for concluding sales contracts through the exchange of offers and acceptances; b) the mutual rights and

obligations of the parties under the contract; c) the procedure for terminating contracts; d) the means of

The civil or commercial nature of the contract is also not taken into account in determining the application of this Convention.

In addition, the Convention does not apply to the sale of goods

1) acquired for personal, family or household use, unless the seller at any time or at the time of the conclusion of the contract did not know or should not have known that the goods were acquired for such use;

2) at an auction;

3) in the course of enforcement proceedings or otherwise in accordance with the law;

4) stocks, shares, security papers, negotiable documents and money;

5) vessels of water and air transport, as well as hovercraft;

6) electricity.

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Lecture 2. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity

Legal nature and peculiarities of corporate legal relations. Issues related to the concept of corporate legal relations are no less debatable in civil studies and economic law than the problems of the subject of legal regulation and are directly related to it. The main difference in scientific approaches existing in the legal literature lies in the presence of a broad and narrow understanding of corporate legal relations. Offering a broad understanding of them, experts proceed from the understanding of the corporation as a legal entity and take as a basis for research not only internal relations but also the so-called "external" relations of the corporation as a legal entity. The basis of this approach is the indication that, in the broad sense, corporate legal relations are any legal relations in which a corporation is a participant as an organizational and legal form of a legal entity carrying out entrepreneurial activities, i.e. both legal relations arising inside the corporation and outside it , related to the participation (activity) of the corporation (tax, labor, housing, land, business, etc.). This aspect is related to the state regulation of the creation and operation of corporations (for example, regulation of the issue of securities, affiliation of economic companies, etc.).

Corporate legal relations in the narrow sense are legal relations that arise in connection with the activities of the participants (shareholders, members) of the corporation in management by participating in general meetings, controlling the

participants of the corporation's activities, and receiving information about its activities.

There are three main approaches to defining corporate legal relations, according to which they are: 1) economic; 2) civilian, and 3) comprehensive.

Representatives of the science of economic law argue for the dominance of the economic element in corporate relations for the following reasons: the combination of property and organizational elements in such relations; the emergence of corporate relations not only between independent legal entities but also between the company's bodies (if it is a holding company - between the management body of the holding company and the subsidiary); building corporate relations vertically, that is, according to the principle of authority and subordination; their legal regulation should be carried out by the norms of economic law (the arguments given are supported by V.A. Gureev, I.V. Lukach, D.I. Pogribny). The main argument is that corporate relations have both binding and property properties. In addition, a significant part of corporate relations is management relations, which are not covered by the concept of traditional civil legal relations. This theory is called "entrepreneurial legal relationship".

Civilian scientists (I.V. Spasio-Fateeva, V.V. Luts, Yu.M. Zhornokuy) believe that corporate legal relations as legal relations have a civil-legal nature. The recognition of corporate legal relations as civil is based on the fact that they, as legal relations, are a concrete social bond, since they arise between their participants, who have subjective rights and obligations, the implementation of which is ensured by the possibility of applying state coercion (the so-called theory of "civil legal relationship").

Like any legal relationship, a corporate legal relationship is a relationship regulated by law. However, in addition to legal regulation, internal corporate norms play a significant role in them. The latter have their characteristics, which are:

firstly, in fact, they seem to synthesize the will of the state and the corporate organization;

secondly, they are adopted by the corporation itself (for example, by the general meeting of shareholders) and act only within its limits;

thirdly, corporate norms specify the general norm regarding the specifics of a

particular corporation.

With the help of internal documents, the corporate rights granted to each participant (shareholder) to participate in management, to receive dividends, to receive information, etc., are established.

Thus, summarizing different approaches to the definition of the concept of corporate relations, we can conclude that corporate relations are social relations regulated by law and constituent (founding) documents that arise between the founders of a corporate-type legal entity in the process of its creation and relations between the legal a person and their participants regarding the realization of corporate rights and obligations (their acquisition, implementation or termination).

Since July 27, 2022, the Civil Code of Ukraine has been supplemented by Article 96-1, part six of which legislatively enshrines the concept of corporate legal relations, in particular, corporate relations are relations between participants (founders, shareholders, members) of legal entities, including those arising between them before the state registration of a legal entity, as well as relations between a legal entity and its participants (founders, shareholders, members) regarding the emergence, exercise, modified Types of corporate legal relations. Corporate relations have a complex nature and a complex structure, however, there is currently no clear classification of them in legal science and legislation.

Types of corporate legal relations. Corporate relations have a complex nature and a complex structure, however, there is currently no clear classification of them in legal science and legislation. So depending on the component of the object, corporate relations are divided into property and non-property. This division is based on their substantive part - rights divided into property and non-property rights. For example, if the right to participate in the distribution of profits (the right to dividends) and the right to the "liquidation quota" form the basis of property corporate rights, then the rights of a participant (shareholder) to management and information belong to another type of them - non-property corporate rights.

Supporting the idea of a complex nature, corporate legal relations are classified into internal, arising within the corporate entity and external, arising in the process of the

latter's economic activity, as well as mixed. Thus, internal corporate legal relations are of a private law nature, and external ones can be both of a private law nature (civil, labor) and of a public law nature (administrative, financial, criminal law).

Depending on the content, corporate relations are divided into:

- property;
- management;
- informative;
- relations of participation.

Depending on the subject composition, corporate relations are distinguished:

- between founders;
- between participants;
- between the corporation and participants;
- between management bodies of the corporation, etc.

According to the position of the subjects, corporate relations are classified into:

- vertical (subordination relations);
- horizontal (relations of legal equality or relations of legal subordination). Depending on the stage of existence of the corporate entity, corporate relations are divided into: - relations at the stage of creation of a corporate enterprise;
- relations at the stage of functioning (activity); - relations at the stage of termination of the business entity.

Also, some scientists classify corporate relations into 1) external corporate relations, 2) intra-economic relations, and 3) economic-procedural relations, aimed at regulating and resolving the conflict of interests between the participants of the above-mentioned relations, arising both within the framework of external corporate and intra-economic relations.

Grounds for the emergence of corporate legal relations. Disclosure of the concept of corporate legal relations is associated with the study of the reasons for their emergence. Of course, legal norms in themselves do not give rise to corporate legal relations. For public relations, or more precisely, public relations of members of society to be successfully coordinated among themselves in the relevant legal field, legal grounds for

their emergence are necessary. On the one hand, such grounds for the emergence of corporate legal relations are legal facts, which are understood as factual circumstances of reality, under the legal model of which the occurrence of a consequence through the emergence, change, or termination of a subjective legal relationship is a legal fact. civil rights, legal obligations, as well as the legal relationship as a whole. However, such an approach to understanding the reasons for the emergence of corporate legal relations does not allow us to reveal the structure of these legal relations. However, the given formulation of corporate legal relations allows us to conditionally classify the grounds for the emergence of these legal relations into initial and derivative.

Based on the classical interpretation of the grounds for the emergence of property rights, the original grounds for the emergence of corporate legal relations should include such legal facts that lead to the emergence of corporate rights for the first time (those that arise in the process of creating a legal entity).

Derivatives, in turn, are those that lead to the emergence of corporate rights in the process of legal implementation of the stipulated legal relations. In the process of implementing corporate legal relations, its participants may conclude the need to include other persons in the composition of the founders. Therefore, the acquisition of corporate rights based on a deed (civil law contract, decision to include the heir in the founders, etc.) is already a derivative basis for the emergence of a new corporate relationship. The above emphasizes the complex nature of corporate legal relations. Taking into account the dual nature of the object and the broad approach to the circle of subjects of corporate legal relations, the following criteria for the classification of the emergence of corporate legal relations are proposed in the legal literature depending on:

1) the object of corporate legal relations: the emergence of corporate rights and corporate governance. At the same time, such grounds can be universal for both types of relationships (for example, during the creation of a corporation, both the prerequisites for the emergence of corporate rights of participants arise, and the management bodies of the company are created). At the same time, some reasons result in exclusively corporate

rights or corporate governance. For example, the alienation of a share in the authorized capital leads to the emergence of corporate rights in the new participant. However, management relations do not directly arise here. An example of the emergence of purely corporate governance relations is the appointment of the chairman and members of the executive body of a joint-stock company by the supervisory board. In support of this thesis, we note that the supervisory board may include independent directors who are not shareholders and do not have direct ties to the joint-stock company. In this example, it is difficult to talk about the exercise of the corporate rights of the participants. That is why it is necessary to highlight the legal facts of the emergence of corporate governance;

2) circles of subjects of corporate legal relations: general and special. General grounds apply to all subjects of corporate legal relations. For example, the creation of a company is the basis for the potential emergence of rights and obligations of all subjects of corporate legal relations. But special ones apply only to certain subjects. Yes, the adoption of a decision to reduce the authorized capital of a limited liability company is the basis for the emergence of corporate relations among the creditors of this company. Also, a special basis will be, for example, the adoption of a decision by the founders to create a company. Corporate rights do not yet arise in such relations, but these persons acquire the status of founders of the company, which in the future will lead to the emergence of corporate rights after the creation of such a company;

3) the moment of emergence: the grounds for the emergence of corporate legal relations can be divided into previous, from the direct exercise of corporate rights and corporate management, as well as subsequent corporate relations. However, such names are quite conventional. Their place in the classification is explained purely by time limits. Since the corporate rights of a member of a company arise only after the corporation acquires the status of a legal entity, the scientific literature rather artificially separates relations regarding the procedures for the creation of a corporation and the previous actions of future participants (for example, during the purchase of a significant block of shares).

4) legal facts: from the contract, from the previous contract (intention), from the

decision of the general meeting, from the decision of the corporate management body, from the charter, from the law.

Thus, it can be seen that corporate legal relations are social relations regulated by legal norms that arise exclusively between subjects of corporate legal relations in the process of exercising corporate rights and corporate management.

Corporate rights and responsibilities. Revealing the meaning of the concept of corporate rights, one should note the definition proposed by V.M. Kravchuk, as a set of legal possibilities of a participant of a certain legal entity, the content of which is determined by its organizational and legal form.

The Tax Code of Ukraine defines corporate rights as the rights of a person whose share is determined in the authorized capital (property) of an economic organization, which includes the right to participate in the management of an economic organization, receive a certain share of the profit (dividends) of this organization and assets in the event of liquidation of the latter, respectively to the law, as well as other powers provided by the law and statutory documents.

It can be seen that the category of "corporate rights" is economic and legal and is attached not to the category of "companies" or "business companies", but to the "business organization" in general, that is, to both business companies and production cooperatives, whether - any other types of both corporate and unitary enterprises, their associations, charitable and other non-profit organizations, including those subjects where the authorized capital is not created, and the participation of the founders in the formation of property is carried out through other mechanisms. In particular, V.A. Vasylieva points out that all corporate rights are characterized by:

1) they arise as a result of the creation of a legal entity;

2) express the relationship between the founder and the legal entity;

3) have an organizational and property nature, i.e. provide the right to manage or participate in management, the right to income;

4) related to the influence of the founder on the formation of the will of the legal entity;

5) related to the indirect right to the property of a legal entity upon its liquidation.

In 2022, the Central Committee of Ukraine was supplemented by Art. 96-1, devoted to the definition of the concept, the list and the moment of acquisition of corporate rights, the concept of corporate legal relations. In particular, in accordance with Part 1 of Art. 96-1 of the Civil Code of Ukraine, corporate rights are defined as a set of powers that belong to a person as a participant (founder, shareholder, shareholder) of a legal entity by the law and the company's charter. At the same time, part 2 of Art. 96-1 of the Civil Code of Ukraine, the moment of emergence of corporate rights is determined by the moment of acquisition of the ownership right to a share (shares, share) in the authorized capital of a legal entity. These provisions contain both several advantages and several disadvantages.

An unequivocal advantage is the elimination of the wording "share in the property of a legal entity" and the previous indistinction between the ownership rights of a legal entity and its participants.

Also, the legislator's decision to define corporate rights precisely through the relations of participation in a legal entity is correct, since such an understanding corresponds to the essence of corporate relations. The legislator also solved the problem of separation in time from the moment of acquisition of a negotiable object (share, shares, share), which conditions the emergence and certification of corporate rights and the acquisition of corporate rights - a problem present in both doctrine and law enforcement practice. From now on, the emergence of corporate rights together with the acquisition of the right of ownership of a negotiable object (share, shares, share) corresponds to the legal nature of the latter.

Unfortunately, the provisions of Art. 96-1, which was supplemented by the Central Committee of Ukraine, contain many shortcomings.

First, by using the wording "belong to the participant in accordance with the law and the company's charter" in the definition of corporate rights, the legislator creates grounds for different readings of the legislative norm. After all, for example, in general and limited partnerships, the founding document is not the statute, but the founding agreement. At the same time, the legislator definitely indicates that corporate rights belong to the participant from the moment of acquisition of a share in the authorized capital - the acquisition of a share in full and limited partnerships is not carried out "in

parentheses", and therefore there are reasons to believe that the provisions of Art. 96-1 do not provide for an exception for members of general and limited partnerships. Such a binding to the charter also causes the following deficiency of the legislative norm, which does not correspond to the reality of social relations, the regulation of which it is dedicated to - according to Part 4 of Art. 96-1 of the Civil Code of Ukraine, the legislator provided for the possibility of participants of legal entities to provide for other rights in the statute. The above, for example, does not correspond to Part 4 of Art. 79 of the Law of Ukraine "On Business Partnerships" regarding general and limited partnerships.

Secondly, despite linking the definition of corporate rights to participation relations as the basis for their occurrence, Part 2 of Art. 96-1 determines the moment of emergence of corporate rights upon the acquisition of a negotiable property object (shares, shares, shares), and therefore nullifies the achievement of Part 1 of Art. 96-1 - the question of the existence of corporate rights and corporate relations in non-business corporations will still be the subject of numerous doctrinal and law enforcement debates.

Thirdly, the moment of acquisition of corporate rights is determined by the acquisition of objects of circulation (shares, shares, units) in the authorized capital. At the same time, the amendments to the Civil Code of Ukraine repeat the error that existed in the legislation - they create grounds for determining the presence of corporate rights and legal relations by the presence of authorized capital as an accounting category, homogeneous with the joint capital. or mutual fund.

Thus, unfortunately, the changes to the Central Committee of Ukraine will not lead to a significant improvement in the legal regulation of corporate legal relations, as a significant part of the problems remain unresolved.

The grounds for a person's acquisition of corporate rights can be divided into original and derivative. Primary grounds are those on which corporate rights arise for the first time or regardless of the will of the previous bearer. Derivative grounds are those under which the owner's right arises in the new owner at the will of the previous one.

The original reasons include 1) the creation of a corporation and contributing; 2) joining a non-entrepreneurial corporation; 3) the purchase of shares of a new issue and

the making of additional contributions and the acquisition of a share in the authorized capital when the authorized capital of the company is increased - corporate rights and negotiable objects certifying them arise for the first time and originate from a legal entity.

Derivative bases include 1) assignment of shares, shares, shares; 2) their inheritance; 3) legal succession during the reorganization of a legal entity – corporate rights are acquired through legal succession, from previous holders. In non-entrepreneurial corporations, the absence of a negotiable object, which would testify and condition the emergence of corporate rights, determines the acquisition of corporate rights based on entry as a separate legal fact.

The content of corporate rights differs depending on the organizational and legal form of the corporate enterprise and the provisions of its founding document.

Corporate rights can be classified according to several features.

In terms of generality, corporate rights can be divided into:

- general, i.e. those that are characteristic of corporate enterprises of all organizational and legal forms;

- special - those that are characteristic of certain organizational and legal forms of corporate enterprises.

According to the sign of primacy, corporate rights can be distinguished:

– basic (primary);

- derivatives (concretizing, that is, those that reveal the content of basic rights).

According to the sign of the source, there are corporate rights:

- provided by law;

- enterprises provided for by local acts, among which, in turn, it is possible to single out:

a) rights contained in the founding documents of the respective corporate enterprises;

b) rights stipulated by other local acts of the relevant corporate enterprises (in particular, regulations).

Also, corporate rights are often shared by:

According to the nature of the rights to:

- property;

– organizational;

By convention on:

- unconditional;

- conditional.

However, the most important is, perhaps, the classification of corporate rights according to the legal content, according to which there are:

– a group of corporate rights for the management of a corporate enterprise;

– a group of corporate rights for obtaining profit and property of a corporate enterprise;

– a group of corporate rights for obtaining information about the activities of a corporate enterprise;

- a group of corporate rights to dispose of shares/parts/shares.

Speaking about the classifications and groups of corporate rights, it should be emphasized that, traditionally, the corporate rights of a participant (member) of a corporation are indivisible in terms of content and cannot be transferred to another person other than as a whole. All subjective possibilities included in this complex arise and cease in a person at the same time, by one legal fact. For members of non-entrepreneurial corporations, such a legal fact is the entry, while for entrepreneurial corporations it is the acquisition of a negotiable object (a share, shares, or stake), which determines the emergence of corporate rights and certifies them. Accordingly, without the alienation of the entire set of corporate rights of a participant of a business corporation, the termination of participation by one person and its acquisition by another, the corporate right to a dividend, to a liquidation quota cannot be an independent subject of the deed.

The legislation contains similar lists of general obligations of a participant (member) for all organizational and legal forms of corporate enterprises (Article 11 of the Law of Ukraine "On Business Societies", Article 6 of the Law on LLCs, Article 117 of the Civil Code of Ukraine, Article 33 of the Law on JSC, Article 12 of the Law of Ukraine "On Cooperation"), which include:

1. The obligation to comply with the founding document of a corporate enterprise, which is the first and direct consequence of a person's participation in such an enterprise, since the founding document itself contains local norms that are determined and changed by the will of the participants themselves and operate within the enterprise, creating its local legal field.

2. Obligation to implement decisions of general meetings and other management bodies of the enterprise. Decisions of general meetings are made in accordance with a certain corporate procedure provided for by legislation, the founding document of the relevant corporate enterprise and other local regulations, and embody the agreed expression of the will of the participants on specific issues of the enterprise's activities. Other bodies of the enterprise are formed by the participants themselves at the general meeting, or by bodies formed by the participants in the order agreed upon by them. Therefore, their powers are derived from the rights of the participants who elected them, so the legislator in most cases does not grant the management bodies of the enterprise, except for general meetings, the rights to make decisions that are binding on the participants.

3. The obligation to fulfill one's obligations to the corporate enterprise, including those related to property participation, as well as to make contributions (pay for shares) in the amount, order and means provided for in the founding document.

In addition to these duties, which are common to business partnerships and production cooperatives, the legislation of Ukraine also provides for other duties that are incumbent on the participants (members) of individual or several organizational and legal forms of corporate enterprises.

The obligation not to disclose commercial secrets and confidential information about the company's activities is provided by law for all types of business companies, but not for production cooperatives. The list of information that is confidential and/or constitutes a commercial secret must be determined by the body of the company, which is authorized to make relevant decisions. Participants must be familiar with such a list.

Participants in full partnerships and full participants in limited partnerships have additional obligations:

– not to enter into transactions without the consent of other participants on their own behalf and in their own interests or in the interests of third parties that are similar to those that constitute the subject of the company's activities (Article 70 of the Law of Ukraine "On Business Entities");

– jointly and severally with other participants (full participants) be liable for the company's obligations with all of their property that can be subject to collection, regardless of whether these debts arose before or after joining the company, including being liable for debts that arose before the participant's withdrawal or the transfer of his part within three years from the date of approval of the report on the company's activities for the year in which he withdrew from the company (Article 124 of the Civil Code of Ukraine, Article 74 of the Law of Ukraine "On Business Entities").

Participants of a limited liability company undertake, in the event of insufficient property of the company, to additionally match the property belonging to them in the same multiple of the contribution of each participant for all participants, as established by the constituent document (Article 151 of the Civil Code of Ukraine, Article 56 of the Law on LLCs).

The source of additional obligations of the participants of a corporate enterprise can be not only legislation, but also the founding document, in JSC - also the agreement concluded by shareholders, in LLC (TDV) - the corporate agreement.

It should also be noted that the legislation of Ukraine considers participation in general meetings of participants (members, shareholders) as their right, not their obligation.

Therefore, in the event that the size of the participant's share allows him, by his non-appearance at the meeting, to block its holding due to the lack of a quorum, such non-appearance of the participant cannot be considered as a violation of certain obligations by him, even if the meeting was disrupted (including repeatedly) issues of vital importance to society are included in the agenda.

The consequence of a participant (member) violation of his duties in most corporate enterprises (except joint-stock companies, corporate private enterprises, etc.) may be the exclusion of such a participant (member) by decision of the general meeting, with the

subsequent payment to him of a part of the value of the enterprise's property, proportional to its size. shares (return of shares).

Lecture 3: The concept and types of corporate enterprises in Ukraine. Legal characteristics of certain types of business entities. Legal characteristics of cooperative enterprises. Corporate governance

Concepts and signs of subjects of corporate legal relations. One of the most researched and at the same time most debated in legal science is the question of determining the subject composition of corporate relations. Despite the long-term and intensive development of the corporate sector of Ukraine's economy, legal science has not yet formed a single, coherent idea about the subjects of corporate relations. The issue of clearly defining the range of subjects of corporate relations, their legal nature, essential features remain insufficiently developed and require further scientific research.

The key figure with which the emergence and existence of corporate relations is usually associated in legal literature is the corporation. Along with the term "corporation", the terms "corporate organizations", "corporate structures", "corporate-type legal entities" and others are also used in legal literature. However, the term "corporation" is the most common in legal doctrine.

A corporation is the nucleus around which a system of corporate relations is formed. It is with the existence of such an entity that legal science connects the formation of other categories of corporate law, which are derived from the corporation: corporate relations, corporate management, corporate rights, corporate disputes, etc. In corporate law, a corporation is a collective concept for the designation of organizational and legal forms of entities in respect of which the participants of legal relations may have corporate rights.

When defining the circle of subjects of corporate relations, regarding which the term "corporation" is used in legal science, the opinions of scientists differ significantly.

Most often, in the legal literature, it is proposed to call corporations:

1) joint stock companies, limited liability companies (I. Lukacs);

2) joint stock companies, limited liability companies, companies with additional

liability (V. Shcherbina, N. Glus, Yu. Zhornokuy);

3) business associations (O. Kibenko, N. Kuznetsova, M. Oprisko);

4) economic societies, production cooperatives, farms of two or more founders (A. Smityukh), as well as private enterprises of two or more founders, consumer cooperative enterprises of two or more founders (V. Tsikalo);

5) corporate enterprises (O. Garagonich, Yu. Bysaga20);

6) legal entities created to obtain profit (V. Vasylieva, N. Butryn-Boka22);

7) all legal entities (V. Kravchuk).

In order to define the subjects of corporate law, which are covered by the concept of "corporation", first of all, it is necessary to name its features.

Signs of a corporation as a subject of corporate relations:

– firstly, a corporation is an association of persons that acts from the outside as a single entity on its own behalf, organizationally and property-wise. The emergence of a corporation is possible only as a result of the agreement of the will of all persons who create it. The manifestation of the will of the corporation itself is determined by the group interests of the persons united within such an entity. At the same time, for the recognition of a certain formation as a corporation, the union of two or more persons may be mandatory (full partnership, limited partnership, production cooperative, etc.) or possible (joint-stock company, limited liability company, company with additional liability). The change of paradigm regarding the possibility, but not the obligation, of the association of persons in corporations, is connected with the adoption of Directive 89/667/EC of the Council of the European Communities "On privatized enterprises with limited liability with one member" dated 12.21.1989. The provisions of this Directive regarding the possibility of formation of one-person companies were also implemented in national legislation;

- secondly, a corporation is an association of capitals. The result of such an association is the formation of authorized capital, compound capital or a mutual fund. At the stage of creation of a corporation, the capital pooling of its founders is carried out to form the property basis for the future activity of the newly created subject of legal relations. The circle of persons who provided their property for the formation of the

authorized (composite) capital or share fund of the corporation, as well as the total nominal value of the contributions made by such persons can be accurately determined at any moment of the existence of the corporation. A feature of capital pooling is that they are attached to the corporation on the right of ownership. Persons who have combined their capital within the corporation acquire corporate rights in exchange for their contributions;

- thirdly, in a corporation, individuals are united to carry out economic activities, in particular, activities in the field of social production, aimed at the manufacture and sale of products, the performance of works or the provision of services of a valuable nature, which have a price determination. At the same time, the corporation can carry out not only entrepreneurial but also non-commercial economic activities (for example, stock exchanges, commodity exchanges, etc.). For most European corporations, the nature of the common goal pursued by their members, material (in particular entrepreneurial) or "ideal" (non-commercial), is also irrelevant. One way or another, the capital united in the corporation must function, be used to achieve the goals set for the corporation and established in its founding documents. Due to the complexity of the effective use of the combined capital for the implementation of economic activity, structural divisions (departments, shops, divisions) may be formed within the corporation, the interaction between which is achieved with the help of management bodies or participants (full and limited partnerships);

- fourthly, an association of persons becomes a corporation under the condition of acquiring the status of an economic organization. Business organizations are legal entities created in accordance with the Civil Code of Ukraine, enterprises created in accordance with the Civil Code of Ukraine, as well as other legal entities that carry out economic activities and are registered in accordance with the procedure established by law. The corporation's acquisition of the status of an economic organization is evidenced by the fact of its state registration;

- fifthly, the statutory (composite) capital or share fund formed by the founders (participants, members) of the corporation is divided into certain parts, which can be expressed in shares, shares or shares. It is this feature that is one of the main ones by

which economic organizations of the corporate and unitary type are distinguished.

Taking into account the above characteristics, a corporation can be defined as an economic organization formed by means of an association (mandatory or possible) of persons on the basis of participation (membership) and their capital for economic activity.

Types of subjects of corporate legal relations. There is no legal definition of corporations in the sense considered in this topic in Ukraine. By its legal nature, the closest to the term "corporation" in national legislation is the concept of "corporate enterprise".

The definition of the term "corporate enterprise" is provided for in Part 5 of Article 63 of the Economic Code of Ukraine (GK of Ukraine), according to which a corporate enterprise is formed, as a rule, by two or more founders by their joint decision (agreement), operates based on the pooling of property and/or entrepreneurial or labor activity of the founders (participants), their joint management of affairs, based on corporate rights, including through bodies created by them, participation of founders (participants) in the distribution of income and risks of the enterprise. Corporate are cooperative enterprises, enterprises created in the form of a business partnership, as well as other enterprises, including those based on the private property of two or more persons.

That is, corporate enterprises of the Civil Code of Ukraine include business partnerships; cooperatives (production, agricultural, consumer, etc.); corporate private enterprises; collective agricultural enterprises; farms formed by two or more natural persons; corporate funds, etc.

The subject composition of corporate relations is not limited only to corporations. The largest group of subjects of corporate relations is the owners of corporate rights.

Founders, members, and other owners of corporate rights. The term "owners of corporate rights" is a collective term for persons who have provided their property for the formation of the authorized (composite) capital or share fund of corporations and in exchange for their contributions have acquired ownership of corporate rights. However, neither legislation nor legal literature provides an unequivocal answer to the question of who exactly belongs to this category of subjects.

Regarding the owners of corporate rights, the terms "founders", "participants", "members", "shareholders", "contributors", and "full participants" are used in legislation and legal literature, which are close in meaning, but not identical.

Usually, the legislator does not define these terms but only outlines the circle of persons about whom they can be used. In some cases, for persons who are covered by the relevant concept, the legislation establishes requirements that they must meet (for example, having the status of an entrepreneur, reaching a certain age, etc.). To find out the true meaning of each of the above terms, it is necessary to give their definition.

Participants are persons who own the corporate rights of a certain business association or corporate private enterprise. A participant in a business partnership can be an individual or a legal entity (Article 114 of the Civil Code of Ukraine (Civil Code of Ukraine). On their part, participants in a corporate private enterprise can be citizens, foreigners, and stateless persons (Article 113 of the Civil Code of Ukraine). The basis for the emergence of corporate relations between the corporation and the participants lies in the institution of participation.

Members are owners of corporate rights issued by a cooperative, collective agricultural enterprise or farm. Members of a cooperative can be natural persons (from the age of 16) or legal entities who have made an initial deposit and a share in the amounts determined by the charter of the cooperative, expressed a desire to participate in its activities, and comply with the requirements of the charter (Article 10 of the Law of Ukraine "On Cooperation"). In a collective agricultural enterprise, members can be citizens who have reached the age of 16, and recognize and comply with its charter (Article 5 of the Law of Ukraine "On Collective Agricultural Enterprise"). Every able-bodied citizen of Ukraine who has reached the age of 18 and expressed a desire to create a farm can be a member of a farm (Article 5 of the Law of Ukraine "On Farming"). The basis of the legal status of this category of owners of corporate rights is the institution of membership. In the legal literature, it is noted that the concept of "membership" is a special variety of the generic concept of "participation" and is related as special and general. A characteristic feature of the legal position of members as owners of corporate rights is the equality of rights in the management of the enterprise.

Founders are persons who made a decision to create a corporate enterprise and took other actions provided for by law aimed at creating such an economic organization. Founders are only those subjects who, based on legal norms, can be participants in legal relations from the foundation of the corporation - bearers of founding rights and have formalized their founding expression of will. Depending on the organizational and legal form, the type of activity carried out by the persons who can be the founders of the corporation differs. For example, the founders of a farm may be citizens of Ukraine who are relatives or family members (Part 2, Article 1 of the Law of Ukraine "On Farming"); of the stock exchange - securities traders who have a license for the right to conduct professional activities on the stock market (Part 2 of Article 21 of the Law of Ukraine "On Securities and the Stock Market"), of the cooperative - citizens of Ukraine, foreigners and stateless persons, as well as legal entities of Ukraine and foreign countries (Part 2 of Article 7 of the Law of Ukraine "On Cooperation").

The actions of the founders are of fundamental importance for the creation of a corporation as a business entity, its emergence as an economic legal entity. It is the founders, exercising their founding rights, who, at the stage of the foundation of the corporation, make fateful decisions for it regarding the determination of the purpose and subject of economic activity, approval of its founding document, formation of the property basis of economic legal personality, approval of the structure of corporate governance, formation of the personal composition of the company's bodies, etc. At the same time, violations of legislation committed by the founders in the process of creating a corporation may result in its liquidation or even denial of state registration of such an economic organization.

Unlike participants and members as subjects of corporate relations, founders: first, acquire corporate rights only in the primary way; secondly, endowed with the status of the founder during the entire period of the corporation's existence, regardless of the further alienation of their shares (shares, units); thirdly, in the process of establishing a corporation, fundamental decisions are made for its creation.

Shareholders are owners of shares and members of a joint-stock company. The

shareholders of the company are individuals and legal entities, as well as the state in the form of a body authorized to manage state property, or a territorial community in the form of a body authorized to manage communal property, who are owners of company shares (Article 5 of the Law of Ukraine "On Joint-Stock Companies"). The term "shareholder" may be used only for members of a joint-stock company. Currently, the number of such subjects of corporate relations in Ukraine is estimated at millions.

Contributors are members of a limited partnership, whose liability is limited to the contribution to the company's property, and who do not participate in the company's activities (Article 75 of the Law of Ukraine "On Business Partnerships").

Full members are members of a general partnership who carry out business activities on behalf of the partnership and bear additional joint and several liability for its obligations with all their property, which may be levied by law (Article 119 of the Civil Code of Ukraine).

Thus, the owners of corporate rights are persons who provided their property for the formation of the authorized (composite) capital or share fund of corporations and acquired corporate rights in exchange for their contributions.

Procedure for creation and state registration of corporate enterprises. Corporate enterprises, like all economic organizations, do not arise by themselves. Their creation is always based on the will of other people. They are the result of the conscious willful behavior of other subjects - the founders, who realize their interests in this way.

The founder's expression of will lead to the desired result - the emergence of a corporate enterprise - only when the founder has the subjective right to create a legal entity.

The right to create a corporate enterprise is a legally established opportunity for a subject to take actions provided for by law, which will result in the creation of a corporate enterprise.

The right to create a corporate enterprise is inherently close to the right to conclude contracts. It is part of the content of legal capacity.

The right to create a corporate enterprise includes several actual possibilities, which together constitute its content:

- the right to establish a corporate enterprise independently or jointly with other entities;

– the right to choose the organizational and legal form of a corporate enterprise;

- the right to choose the name of the corporate enterprise;

- the right to choose the location of the corporate enterprise;

- the right to form bodies of a corporate enterprise;

- the right to apply to the state registrar and demand that it be carried out state registration;

- the right to appeal the refusal of state registration.

The right to create a corporate enterprise is general and equal for all subjects of economic law. As a general rule, the right to create a corporate enterprise belongs to: natural persons; legal entities; the state; territorial community.

Natural persons are founders. Legal capacity of a natural person arises from birth, legal capacity depends on age and other circumstances directly provided for by law. According to Art. 32 of the Civil Code of Ukraine, an individual between the ages of 14 and 18 (a minor) has the right to: be a participant (founder) of legal entities, unless this is prohibited by law or the constituent documents of the legal entity; manage your earnings, stipend or other income independently. A minor has the right to perform these actions independently, without parental consent.

Since the creation of corporate enterprises is connected with the making of contributions, that is, the disposal of property, without the consent of parents, minors can participate in the creation of a corporate enterprise only within the limits of earnings, scholarships or other income. At the same time, in the creation of a cooperative in accordance with Part 2 of Art. 10 of the Law of Ukraine "On Cooperation", a minor may participate only if he has reached the age of 16.

The establishment of a corporate enterprise by a minor may take place without the consent of the parents if the minor has acquired full legal capacity before reaching the age of majority.

The participation of minors in the creation of corporate enterprises is possible only through parents (adoptive parents, guardians), who act on their behalf. In practice, the

participation of minors in the creation of corporate enterprises quite often occurred in cases when JSC, the shares of which they owned (for example, as a result of inheritance), decided to reorganize into an LLC or TDV. In such a case, his parents (adoptive parents, guardians) took part in the founding meetings of the company - the legal successor of the reorganized joint-stock company on behalf of the founder - a minor.

When creating a corporate enterprise with the participation of a minor, it is mandatory to take into account the requirements of Part 3 of Art. 17 of the Law of Ukraine "On the Protection of Childhood" dated 26.04.2001, according to which parents or persons who replace them do not have the right, without the permission of guardianship authorities, to enter into contracts that are subject to notarization or special registration, to renounce property rights belonging to the child.

Founding rights of spouses. If in order to establish a corporate enterprise, the founder transfers personal property as a contribution to the authorized (compounded) capital, the consent of the other spouse is not required. However, when disposing of their property, the wife and husband are obliged to take into account the interests of the child and other family members who, according to the law, have the right to use it (Article 59 of the Family Code of Ukraine). Failure to comply with this requirement is grounds for declaring the deed invalid (Part 1 of Article 215 of the Civil Code of Ukraine). If, for the establishment of a corporate enterprise, the founder transfers as a contribution to the statutory (composite) capital valuable property, which is jointly owned, then the consent of the other spouse must be expressed in writing.

Legal entities are founders. The founder of a corporate enterprise can be another legal entity. If the sole founder of a corporate enterprise is a legal entity, it will be considered a subsidiary of the legal entity.

The decision to create a corporate enterprise belongs, as a general rule, to the competence of the executive management bodies of a legal entity. The founding rights of individual legal entities may be limited by law. Thus, state enterprises (except construction organizations, enterprises of the construction industry, and building materials, which are founders of economic companies that carry out design and prospective construction abroad) cannot be founders of enterprises of any organizational

forms and types, economic companies, or cooperatives.

The state and territorial communities as founders. The founder of a corporate enterprise can be the state, ARC, territorial community.

According to Art. Art. 167–169 of the Civil Code of Ukraine, the state, ARC and territorial communities act in civil relations on equal rights with other participants in these relations.

The state, ARC and territorial communities can create corporate enterprises, participate in their activities on a general basis, unless otherwise established by law. In terms of founding rights, the state, ARC and territorial communities are actually equal to other entities. The state, ARC and territorial communities cannot create corporate enterprises only if it is expressly provided (prohibited) by law.

The right to create a corporate enterprise is exercised by the appropriate declaration of will of the founder and the taking of actions necessary for state registration of a legal entity. The founder's expression of will is expressed externally in the form of a deed or an administrative act of a regulatory nature (depending on the type of corporate enterprise).

The creation of corporate enterprises is a complex process that can be divided into four stages:

1) proactive. At the initiative stage, the purpose of creating a corporate enterprise is determined, the composition of the founders is formed, a business plan for future economic activity is developed, etc.

At this stage, no legal actions are taken yet, it takes place in the extra-legal sphere, so to speak;

2) organizational - aims to take legal actions aimed at establishing a corporate enterprise. In particular, the organizational and legal form is chosen, the founding document of the corporate enterprise is developed and approved, the premises for its location are searched, the name is chosen, the founding meetings are convened, and the management bodies are formed;

3) legalization - the goal of the stage - official recognition of the created corporate enterprise. Legalization is carried out through state registration. It is from this moment that a corporate enterprise emerges as a subject of legal relations, which is confirmed by

an extract from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (USR). At the same stage, the enterprise is registered with the bodies of the State Tax Service of Ukraine, the Pension Fund of Ukraine;

4) post-legalization. At the post-legalization stage, the corporate enterprise opens a current account. This action is necessary for the enterprise to operate.

A corporate enterprise becomes a legal entity due to the presence of a legal structure from two legal facts:

1) manifestation of the will of the founders. It is they who determine the purpose of the corporate enterprise, establish its organizational structure, approve the founding documents, and, in necessary cases, form the property base;

2) legalization (carried out through state registration).

State registration of a corporate enterprise - certification of the fact of creation or termination of a corporate enterprise, as well as the performance of other registration actions provided for by law, by making relevant entries in the EDR.

The procedure for state registration of corporate enterprises is regulated by the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations" (Law on State Registration).

The procedure for state registration of corporate enterprises includes, in particular:

- submission and verification of the completeness of the documents submitted to the state registrar and the completeness of the information specified in the registration card;

- verification of documents submitted to the state registrar for the absence of grounds for refusing state registration;

- entering information about a legal entity;

- registration and issuance of an extract from the EDR

By the provisions of Art. 17 of the Law on State Registration, the following documents are submitted by the applicant for state registration of the creation of a corporate enterprise:

1) application for state registration of the creation of a legal entity;

2) a copy of the original (notarized copy) of the decision of the founders, and in the cases provided for by law, the decision of the relevant state body on the creation of a

corporate enterprise;

3) founding document of a corporate enterprise - in case of creation of a legal entity based on its own founding document;

4) a document confirming the registration of a foreign person in the country of its location (excerpt from the trade, bank, court register, etc.) - in case of creation of a corporate enterprise, the founder(s) of which is a foreign legal entity;

5) a copy of the original (notarized copy) of the deed of transfer - in case of the creation of a corporate enterprise as a result of transformation or merger;

6) a copy of the original (notarized copy) of the distribution balance - in the case of the creation of a corporate enterprise as a result of division or spin-off;

7) documents for state registration of changes about a legal entity contained in the EDR, in case of the creation of a corporate enterprise as a result of a spin-off;

8) documents for state registration of the termination of a legal entity as a result of a merger and division - in case of creation of a corporate enterprise as a result of a merger and division;

9) documents containing information on the amount of mandatory payments and other mandatory expenses, the payment of which is necessary for starting the activities of a corporate company, in case of creation of a joint-stock company;

10) ownership structure according to the form and content determined in accordance with the legislation;

11) an extract, extract or other document from the trade, bank, court register, etc., confirming the registration of a non-resident legal entity in the country of its location, if the founder of the corporate enterprise is a non-resident legal entity;

12) a copy of a document certifying identity and confirming the citizenship (citizenship) of a person who is the ultimate beneficial owner of a corporate enterprise (notarized or certified by a qualified electronic signature of a person authorized to submit documents for state registration of the creation of a corporate enterprise, if such a document is issued without applying means of the Unified State Demographic Register, - for citizens of Ukraine).

State registration is carried out on the basis of:

1) documents submitted by the applicant for state registration;

2) court decisions that have entered into legal force and involve the change of information in the EDR, as well as those received in electronic form from a court or state executive service in accordance with the Law of Ukraine "On Executive Proceedings" regarding, for example, the recognition of decisions as completely or partially invalid founders (participants) of a legal entity or a body authorized by them; recognition of changes to the founding documents of a legal entity as completely or partially invalid; bans (revocation of bans) on registration actions; imposition/removal of seizure of corporate rights; cancellation of the registration action/entry in the UDR and others;

3) decisions made following the results of an administrative appeal.

The procedure for state registration and other registration actions based on the documents submitted by the applicant for state registration includes:

1) filling out the state registration application form - in case of submission of documents by the applicant personally (at the request of the applicant);

2) acceptance of documents by description - in case of submission of documents in paper form;

3) production of copies of documents in electronic form - in case of submission of documents in paper form;

4) submission of copies of documents in electronic form to the EDR;

5) checking of documents for the presence of grounds for stopping the consideration of documents;

6) verification of documents for the presence of grounds for refusal of state registration;

7) deciding to carry out a registration action;

8) carrying out the registration action (including taking into account the principle of tacit consent) in the absence of grounds for stopping the review of documents and refusal of state registration by making an entry in the EDR;

9) formation and publication on the portal of electronic services of the extract, the results of the provision of administrative services in the field of state registration and founding documents;

10) issuing, at the request of the applicant, an extract from the EDR in paper form based on the results of the registration process.

An extract from the UDR in paper form is provided with the signature and seal of the state registrar.

Consideration of documents submitted for state registration of a corporate enterprise is carried out within 24 hours after receipt of documents.

Constituent documents: charter, founding agreement. In the legal literature, it is noted that the procedure for creating a business entity is inextricably linked with the development of its constituent documents, to which the law includes the decision on the formation of a business entity or the founding agreement and statutes (regulations). The concept of "founding documents" is not defined in the current legislation of Ukraine, only their list and content requirements are given. However, in the scientific literature, it is customary to define them as documents of the legally prescribed form and content, on the basis of which business entities are created.

At the same time, the founding documents of legal entities differ depending on: the organizational and legal form of the legal entity, the type of partnership, the creation of a legal entity for the first time or as a result of reorganization, the number of participants. To this should be added the need to distinguish between the founding documents of a legal entity, documents on its foundation and documents submitted for state registration.

According to Clause 17, Part 1, Art. 1 of the Law on State Registration, the founding documents of a legal entity are the founding act, statute, program of a political party, model statute, founding agreement, individual statement (memorandum), regulations, etc.

The peculiarity of founding documents, which distinguishes them from other documents necessary for the creation and legalization of a corporate enterprise, is that they determine the legal status of a corporate enterprise and are by their nature a corporate normative act.

The founding document of a corporate enterprise is the charter approved by the founders or the founding agreement between the participants unless otherwise established by law.

Both scientists and judicial practice could not develop a unified position regarding

the legal essence and nature of the charter of a corporate enterprise. At the moment, the most common position in this regard is the position according to which the charter is recognized as a normative act of a local nature, which determines the legal status of the enterprise and regulates relations between the participants and the corporate enterprise itself. The charter is a local regulatory act, the purpose of which is to determine the individual legal status of a specific legal entity. The charter is the founding document of business associations, cooperatives, and public associations that have a corporate governance structure in the form of a system of bodies. Therefore, for these entities, the most important thing is to determine the order of creation and powers of such bodies, their decision-making and the exercise of their powers. It is this document that determines the legal position of a particular economic entity in economic turnover.

It is worth noting that the Constitutional Court of Ukraine considers the statute as a local legal act, which is mandatory for compliance and implementation by all participants (paragraph 3 of subsection 3.1 of clause 3 of the motivational part of the Decision of the Constitutional Court of Ukraine dated February 5, 2013 No. 1-рп/ 2013 in the case of the constitutional appeal of the Limited Liability Company "Lichtner Beton Lviv" regarding the official interpretation of the provisions of the fourth part of Article 58, the first part of Article 64 of the Law of Ukraine "On Business Companies").

In law enforcement practice, the position regarding the priority of the law over the statute, which is not brought in line with this law, is also defended. Thus, in the ruling of the Commercial Court of Cassation dated November 16, 2021, in case No. 912/947/20, it is indicated that, taking into account the existence of competition between the provisions of the Statute of the Defendant and the norms of the Law of Ukraine "On Joint Stock Companies", the Court notes that the Statute is a local regulatory act, while the Law has greater legal force, therefore, if the provisions of the statute conflict with the law, the provisions of the law should be governed.

Therefore, in the relationship between the provisions of the statute and the law, priority is undoubtedly given to the provisions of the law as a normative-legal act of higher legal force, the statute is a local act with a limited scope of action (local nature of action), although its provisions are normative because they are universally binding for

participants or shareholders of the company. At the same time, the provisions of the charter must meet the requirements of the law.

Signs of the charter of a corporate enterprise:

1) establishes the individual legal status of a specific corporate enterprise;

2) approved by the founders and changed by the highest management body of the corporate enterprise;

3) is valid throughout the entire period of activity of the corporate enterprise;

4) applies to all persons who are in legal relations with a legal entity;

5) may contain norms not provided for by current legislation;

6) must not contradict the norms of the law.

General requirements for the content of constituent documents of legal entities are contained in Art. 88 of the Central Committee of Ukraine. In particular, part 1 of this article states that the company's charter shall specify the name of the legal entity, the company's management bodies, their competence, the procedure for their decision-making, the procedure for joining the company and leaving it, if additional requirements regarding the content of the charter are not established by this code or other law.

The Commercial Code of Ukraine, the Civil Code of Ukraine, and the Laws of Ukraine "On Business Companies", "On Joint-Stock Companies", and "On Limited and Additional Liability Companies" define general requirements for the charter of legal entities (limited liability companies, limited liability companies, joint-stock partnerships), which are detailed in specific cases independently by the corporation's participants thanks to self-regulatory tools.

According to Art. 87 of the Civil Code of Ukraine and Art. 56 of the Civil Code of Ukraine, business entities may be created and operate based on a model charter approved by the Cabinet of Ministers of Ukraine, and in cases provided for by law, by the National Bank of Ukraine, which after its acceptance by the participants becomes the founding document.

The model charter is a typical founding document approved by the Cabinet of Ministers of Ukraine, which is used to create and carry out the activities of legal entities of the appropriate organizational and legal forms, contains the rules established by law

that regulate the legal status, rights, obligations, and relations that are related to creation, management, and conduct of an economic activity of the relevant legal entities.

Model statutes can be applied to any organizational and legal form. But at the same time, it should be noted that model charters can be used only by those legal entities acting on the basis of the charter.

If a corporate enterprise is created and operates based on a model charter, the decision on its formation, which is signed by all the founders, contains information about the type of corporate enterprise, its name, location, purpose and object of activity, the composition of participants, the size of the authorized capital, the size of the shares of each of participants, the procedure for their contributions.

To date, the model charter has been approved by the Cabinet of Ministers of Ukraine only for limited liability companies (CMU Resolution No. 1182 of November 16, 2011 "On approval of the model charter of a limited liability company").

The founding agreement is an agreement under which the parties (founders) undertake to create a corporate enterprise, determine the conditions of joint activity, transfer their property to the enterprise, and participate in its activities.

The purpose of the founding agreement is to record the founding will of the parties to the agreement and the conditions for the creation of a specific corporate enterprise.

The founding agreement is one of the forms in which the decision to create a corporate enterprise is recorded, and for some corporate enterprises (created in the form of a full or limited partnership) it is also their founding document.

The founding agreement should not be equated with an agreement on joint activities:

– in contrast to the joint activity agreement, the founding agreement aims to create a corporate enterprise and does not end with the achievement of the goal;

- the created corporate enterprise itself is the owner of the property transferred to it, while according to the agreement on joint activity, the property transferred by the parties for the implementation of joint activity belongs to them with the right of joint partial ownership.

The conclusion of founding agreements on the creation and operation of general and limited partnerships is a transaction of a personal nature, has a fiduciary nature, and

therefore it cannot be executed by natural persons through a representative.

The memorandum (single statement) should also be included in the founding documents. According to Art. 134 of the Civil Code, the memorandum is the founding document of a limited partnership created by one full member.

If, as a result of exit, exclusion, or elimination, one full member remains in the limited partnership, the founding agreement is redrafted into a one-person statement signed by the full member.

A variety of founding documents in accordance with Clause 17, Part 1, Art. 1 of the Law on State Registration can be provisions and the founding act.

The founding act is the founding document of institutions (Part 3 of Article 87 of the Civil Code of Ukraine). As for the provision, this type of founding document is mentioned in Art. 57 of the Civil Code of Ukraine, but when creating corporate enterprises, it is not used as a founding document. Thus, neither the founding act nor the regulations belong to the founding documents of the corporate enterprise.

The decision to create a corporate enterprise is close in its legal meaning to the founding documents. Although according to Art. 57 of the Civil Code of Ukraine, the decision on the formation of a business entity is noted as one of the types of constituent documents of business entities, but in corporate enterprises, it is not recognized as such by the legislator.

The decision to create a corporate enterprise records the will of the founder, but, unlike founding documents, does not establish its structure and legal status.

Depending on the organizational and legal form of a legal entity, the decision to create a corporate enterprise has a different form. For example, if a limited liability company is created by several persons, such persons, in the event of the need to determine the relationship between them regarding the creation of the company, may agree on the creation of the company in writing (Article 10 of the Law of Ukraine "On Limited and Additional Liability Companies"). Such an agreement on the establishment of a partnership may establish the procedure for the establishment of the partnership, the conditions for carrying out joint activities related to the establishment of the partnership, the amount of the authorized capital, the share in the authorized capital of each of the

participants, the terms and procedure for making contributions, and other conditions. The contract on the establishment of the company is valid until the day of state registration of the company, unless otherwise established by the contract or does not follow from the essence of the obligation.

If the founder is one, his founding will may be recorded in unilateral acts: decrees, resolutions, resolutions, orders, orders, etc.

When creating corporate enterprises, the most common decisions are the founding meetings. Such decisions are recorded in the minutes of these meetings. The decision to create a corporate enterprise is recorded, as a rule, by a separate document. There is an exception for a private enterprise: the approval of the charter by the founder in itself already indicates his will, and therefore in this case the legislator does not require the drafting of a decision on the creation of a legal entity as a separate document.

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In the decision to establish a corporate enterprise, it is recommended to specify:

– name of the corporate enterprise;

- on approval of the charter (if it is required for this type of corporate enterprise);

- on the appointment (election) of management bodies;

- on the formation of statutory (composite) capital or indivisible (unit) fund;

- other issues that arise in the process of creation.

Constituent documents of a corporate enterprise must contain information provided by law. The absence of information specified by law in the founding documents is grounds for refusal of state registration (Part 2 of Article 89 of the Civil Code of Ukraine).

The legislation establishes several general requirements for the execution of constituent documents of a corporate enterprise. Yes, according to Clause 9 Part 1 of Art. 15 of the Law on State Registration, the founding document is set out in writing, stitched, numbered and signed by the founders (participants), persons authorized by them or the chairman and secretary of the general meeting (in the case of such a decision by the general meeting, except for the establishment of a legal entity). The authenticity of the signatures on the founding document is notarized, except for cases provided by law.

According to para. 2 p. 9 h. 1 art. 15 of the Law on State Registration, the requirement for notarization of signature authenticity does not apply to state registration of the creation of a corporate enterprise, as well as a corporate enterprise created based on

an administrative act of a state body, a local self-government body. At the same time, in accordance with the special requirements of the law, the authenticity of the signatures on the founding document must be notarized in the case of:

– state registration of the creation of limited or additional liability companies (Part 2 of Article 11 of the Law of Ukraine "On Limited and Additional Liability Companies");

- state registration of the creation of a corporate enterprise as a result of separation, merger, transformation or division (paragraph 2, clause 9, part 1, article 15 of the Law on State Registration).

Constituent documents of banks and other corporate enterprises, which according to the law are subject to approval (registration) by the National Bank of Ukraine and other state bodies, are submitted with a note of their approval by the relevant body (Clause 10, Part 1, Article 15 of the Law on State Registration).

Lecture 4. Business companies as subjects of corporate legal relations

Concepts, legal features, and types of business associations. Business associations, being legal entities under private law, are a type of entrepreneurial association, as they are created to obtain profit from entrepreneurial activity and its further distribution among participants. The legal status of business companies is determined by the relevant norms of the Central Committee of Ukraine, the Civil Code of Ukraine, as well as the laws of Ukraine "On business companies", "On joint-stock companies", "On companies with limited and additional liability", etc. The specified regulatory legal acts define the concepts, types, order of creation, and specifics of business partnerships, rights and obligations of their founders (participants), etc.

According to Art. 113 of the Central Committee of Ukraine, Art. 1 of the Law of Ukraine "On Business Partnerships", a business partnership is a legal entity, the authorized capital of which is divided into shares among participants.

Enterprises or other business entities created by legal entities and/or citizens by pooling their property and participating in the company's business activities for profit are recognized as business partnerships. In the cases provided for by law, a business partnership may operate as a member.

A business partnership is the most common organizational and legal form of corporate enterprises, which differs from others in a number of features.

Signs of a business partnership:

1) a business partnership is usually an association of persons called participants. At the same time, Part 2 of Art. 83 of the Civil Code of Ukraine stipulates that a company can be created by one person, unless otherwise established by law;

2) the company is created and terminated on the basis of an act of joint will of its founders, drawn up in the form of a founding agreement or a decision of the founding meeting (decision of a higher body);

3) the company acts in the interests of its members, has a goal defined by them - the achievement of a certain socio-economic result from joint activity, usually profit;

4) the presence of a business partnership as a legal entity allows it to act as an independent legal entity (including concluding contracts with third parties independently of individual participants and even concluding contracts with the participants themselves), to act in external relations on its own behalf, to be a plaintiff and a defendant in court. At the same time, the company as a legal entity is independent of changes in the composition of its members;

5) corporate legal relations arise between the company and its participants, as well as between the participants themselves, which give rise to corporate rights and obligations for each participant. By exercising their corporate rights, company members can to some extent influence the formation of the will of the company as a legal entity;

6) the company has an internal structure that ensures its organizational unity in economic relations;

7) management of the company's affairs is carried out in accordance with the procedure established in advance by the law and the constituent documents, which is mandatory for all participants;

8) separation of the company's property from the property of its members and consolidation of the property, formed at the expense of members' contributions and other sources not prohibited by law, under the ownership right of the company;

9) separation of the responsibility of the business association for its own obligations

from the responsibility of its participants;

10) establishment of restrictions on the withdrawal of a participant's share from the company's property in connection with his exit or enforcement of his property.

Business associations can be of various types and forms. The division of business associations into types is carried out according to certain characteristics, and into forms - according to a set of characteristics.

The classification of business associations is of practical importance: the legislation provides for the application of various principles of legal regulation about certain types of business associations.

One of the main criteria for economic classification is the organizational and legal form.

The organizational and legal form of a partnership is a legally established type of partnership for which a certain legal regime of creation, activity and termination is established.

Depending on the organizational and legal forms, business associations are divided into:

- full partnerships;
- limited partnerships;
- limited liability companies;
- companies with additional responsibility;
- joint stock companies.

Depending on the nature of participation in the activities of business associations, two main groups of associations are distinguished:

1) personal partnerships (association of persons) – business partnerships dominated by personal elements (full partnerships, limited partnerships).

Signs of personal partnerships:

– the founding document is the founding agreement (in limited partnerships with one full member – a one-person statement (memorandum));

- the obligation of not only property, but also personal participation in the partnership for all (full partnership) or for part of its participants (limited partnership);

– availability of all (full partnership) or part of the participants (limited partnership) full subsidiary liability for the obligations of the partnership;

- lack of requirements for the minimum amount of the company's capital and the order of its formation (this should be determined by the founding agreement);

– affairs are managed directly by the participants, who bear full responsibility;

- the procedure for managing the company's affairs is determined by the participants themselves, enshrining it in the founding agreement;

- prohibition for participants to compete with the company;

- the difficulty of exiting the partnership (prohibition or limitation of the possibility of the participant ceding his share to third parties, the need to notify the exit within a certain period and in the prescribed cases).

2) pooling of capitals - business companies in which property elements are dominant (joint-stock companies, limited liability companies, companies with additional liability).

Signs of capital mergers:

- limiting the risk of the company's participants for the results of the company's activity in the amount of paid contributions and their absence (joint-stock companies, limited liability companies) or limited (companies with additional liability) subsidiary liability for the company's obligations;

– legislative requirements for the minimum amount of authorized capital (for joint-stock companies), reserve capital, the order of their formation;

- the main founding document - the charter;

- the participation of participants in the management of affairs and distribution of profits, as a rule, depends on the size of their shares in the authorized capital of the company;

– management of the company is carried out with the help of its bodies, the formation procedure and requirements for which are established by legislation and the company's charter;

- mandatory property ownership and optional personal participation (with some exceptions) in the company for its members;

- the possibility of the participant leaving the company at any time at his wish, in

compliance with the procedure established by law and the company's charter;

- the possibility of creating such companies by one person and functioning as a member of one person.

Depending on the legal basis for the formation of companies, the following are distinguished:

1) contractual partnerships - their creation is based on the founding agreement, which is concluded between the participants and is the founding document of the partnership. Contractual partnerships include a general partnership and a limited partnership;

2) statutory companies – the main domestic regulatory act regulating the company's activities is its charter. Statutory companies include joint-stock companies, limited liability companies and additional liability companies. The founders of such companies may conclude an agreement (in joint-stock companies – a founding contract, in limited liability companies and companies with additional liability – on the creation of the company), which loses its validity after the state registration of the company (in joint-stock companies – after the registration of the report on results by the NKCPFR closed (private) placement of shares).

According to the nature of the property responsibility of the participants, the following are distinguished:

– companies, the members of which bear limited liability - within the limits of the contribution to the authorized capital - for the company's obligations (limited liability companies, joint-stock companies);

– companies whose members risk not only their contributions to the authorized capital but also bear additional responsibility for the company's obligations (companies with additional liability);

- partnerships, the members of which bear full responsibility for the obligations of the partnership with all property belonging to them (full partnerships, limited partnerships).

According to the purpose of the activity, the companies are divided into:

- commercial - these are companies that carry out business activities to obtain profit

and its subsequent distribution among participants;

- non-commercial - these are companies that do not aim to obtain profit for its subsequent distribution among participants (for example, the stock exchange, the National Depository of Ukraine).

According to the sign of dependence, economic companies can be classified as associated. Associated business companies are a group of business companies connected by relations of economic and/or organizational dependence in the form of participation in the authorized capital and/or management. Dependence between associated economic companies can be simple and decisive.

A simple dependence between associated economic companies occurs if one of them can block the adoption of decisions by another (dependent) company, which must be made by the law and/or the founding documents of this company by a qualified majority of votes. Decisive dependence between associated economic companies occurs if a control-subordination relationship is established between the companies due to the majority participation of the controlling company in the authorized capital and/or general meetings or other management bodies of another (subsidiary) company, in particular, ownership of a controlling block of shares. Relationships of decisive dependence may be established subject to obtaining the consent of the relevant bodies of the Antimonopoly Committee of Ukraine. The legislation provides for certain features of the activities of economic companies, the charter capital of which includes the corporate rights of the state.

These features relate to the payment of dividends, directions for the use of net profit, the procedure for making purchases, etc. Full company. According to Art. 119 of the Civil Code of Ukraine, a full company is a company whose members, in accordance with the agreement concluded between them, carry out business activities on behalf of the company and jointly and severally bear additional (subsidiary) responsibility for its obligations with all the property they own.

Since each member of a general partnership has the opportunity to significantly influence its activities, such an association of persons is based on trust.

A person can be a member of only one general partnership (Part 2 of Article 119 of

the Civil Code of Ukraine, Part 2 of Article 66 of the Law of Ukraine "On Business Partnerships").

The name of a general partnership must contain the names (names) of all its members, the words "full partnership" or contain the name (names) of one or more members with the addition of the words "and company", as well as the words "full partnership" (Part 4 of Art. 119 of the Civil Code of Ukraine, Part 3 of Article 66 of the Law of Ukraine "On Business Societies").

The founding document of a general partnership is the founding agreement. The funding agreement is signed by all its participants.

To ensure the financial and economic activity of the general partnership, the accumulated capital is formed at the expense of the contributions of its participants. The legislation does not provide for the minimum amount of the accumulated capital, since the unlimited and joint liability of the company's members for its debts is in itself a sufficient guarantee for the fulfillment of its obligations.

Features of managing a general partnership:

- lack of management bodies of the company;

- the management of the activities of the general partnership is carried out by the joint consent of all participants, that is, decisions are considered adopted if they were voted for by participants who own 100% of the votes. The founding agreement of the company may provide for cases when the decision is taken by a majority of the participants' votes (Part 1 of Article 121 of the Civil Code of Ukraine);

- when making decisions, each member of a general partnership has one vote regardless of the share of his property or personal participation, unless the founding agreement provides otherwise (part 2 of Article 121 of the Civil Code of Ukraine);

- each participant of a general partnership has the right to act on behalf of the partnership if the founding agreement does not specify that all participants manage affairs jointly or that the management of affairs is entrusted to individual participants;

- in the case of joint management of company affairs by members, the consent of all members of the company is necessary for the execution of each transaction. If the management of affairs is entrusted to individual members of a general partnership, other

members may perform transactions on behalf of the partnership if they have a power of attorney issued by the members who are entrusted with the management of partnership affairs (part 1 of Article 122 of the Civil Code of Ukraine).

Profits and losses of a general partnership are distributed among its participants in proportion to their shares in the total capital unless otherwise provided by the founding agreement or agreement of the participants.

Certain features are inherent in the liability of members of a general partnership. If the property of the general partnership is insufficient to meet the demands of creditors in full, the members of the general partnership are jointly and severally liable for the obligations of the partnership with all their property.

Thus, the liability of members of a general partnership can be characterized by two criteria:

1) by volume – unlimited. Although the company has separate property, which it is responsible for its obligations, in the event of its insufficiency, the collection of creditors can also be applied to the property of the participants.

2) by nature – solidarity. The demand for recovery can be addressed to any of the members of the company, to one or more at once.

Foreclosure on a participant's share in the total capital of a general partnership based on his obligations is allowed only in the case of insufficient other property to satisfy the demands of creditors. If the property of a member of a general partnership is insufficient to fulfill his obligations to creditors, they may demand, following the established procedure, the allocation of a part of the property of the general partnership, proportional to the share of the member-debtor in the total capital of the partnership (Part 1 of Article 131 of the Civil Code of Ukraine).

Members of a general partnership are prohibited from competing with the partnership. A member of a general partnership does not have the right, without the consent of other members, to perform transactions on his behalf and in his interests or in the interests of third parties, which are identical to those that constitute the subject of the partnership's activities (Part 3, Article 119 of the Civil Code of Ukraine). In case of violation of this rule, the company has the right, at its discretion, to demand from such a

participant either compensation for the losses caused to the company or transfer to the company of all the benefits acquired as a result of such transactions.

A member of a general partnership has the right, with the consent of its other members, to transfer his share in the accumulated capital or its part to another member of the partnership or to a third party (Part 1 of Article 127 of the Civil Code of Ukraine). In case of transfer of a share (its part) to a new participant, the rights that belonged to the participant who transferred the share (its part) are transferred to him in full or in the corresponding part.

The order of withdrawal of participants from the general partnership depends on the term for which the partnership was established. In case of creation of a company for an indefinite period, the participant's right to withdraw from the company is not limited. The participant only needs to submit a notarized application no later than three months in advance. Withdrawal from the company, which was created for a certain period, is allowed only if there are good reasons and on the condition that a warning about this has been received no later than 6 months in advance. If when a participant withdraws from a general partnership, this partnership is preserved, then the participant is paid the value of his contribution in accordance with the balance compiled on the day of withdrawal. At the request of the participant and with the consent of the company, the contribution can be returned in full or in part in kind. The part of the profit received by the company in a given year is paid to the participant who dropped out. Property transferred to members of the partnership for use only shall be returned in kind without remuneration (Article 71 of the Law of Ukraine "On Business Partnerships").

A general partnership is liquidated on the grounds established by Article 110 of the Civil Code of Ukraine, as well as if there is only one member remaining in the partnership. This member has the right within six months from the moment when he became the sole member of the company, to transform such a company into another business company in accordance with the procedure established by the Central Committee of Ukraine.

In case of withdrawal of a member from a general partnership, exclusion of one of its members from the partnership, death of a member of the partnership, liquidation of a

legal entity - a member of the partnership, or a request by a creditor of one of the participants for foreclosure on a part of the property, proportional to his share in the capital, the partnership may continue its activity, if it is stipulated by the founding agreement of the company or by an agreement between the remaining participants.

Unlike other types of business partnerships, general partnerships, like limited partnerships, ultimately did not gain popularity. This is caused primarily by the lack of balance between the unlimited liability of the participants for the company's debts and the advantages of management in this organizational and legal form.

As a result, general partnerships are usually created only when required by the legislator to carry out certain types of activities.

Limited partnership. A limited partnership is a partnership in which, together with the participants who carry out business activities on behalf of the partnership and jointly bear additional (subsidiary) responsibility for the obligations of the partnership with all their property (full partners), there is one or more participants (contributors) who bear the risk of losses related to the company's activities, within the limits of the amounts of contributions made by them, and do not participate in the company's activities (Article 133 of the Civil Code of Ukraine).

The name of a limited partnership must contain the names (names) of all full members, the words "limited partnership" or contain the name (name) of at least one full member with the addition of the words "and company", as well as the words "limited partnership".

If the name of the limited partnership includes the name of the contributor, such contributor becomes a full member of the partnership (Part 2 of Article 135 of the Civil Code of Ukraine).

A limited partnership is created and operates on the basis of the founding agreement, which is signed by all full members of the partnership. If there is only one full member in the limited partnership, the founding document is a one-person application (memorandum).

The characteristic features of a limited partnership are:

- the management of affairs by full members is carried out by general agreement and

with the full trust of all full members of the limited partnership (the principle of one for all and all for one applies);

- nature of responsibility of its full participants;
- the presence of two groups with different legal status among its members.

The main difference between a limited partnership is the presence of two types of participants:

- full participants;
- depositors.

The legal status of full members is regulated by the provisions of the law established for members of a full partnership.

A person can be a full member in only one limited partnership. At the same time, she cannot be a depositor of this same limited partnership and a member of a general partnership (Part 2 of Article 135 of the Civil Code of Ukraine).

Full members manage the limited partnership in the manner established for a full partnership.

Contributors do not have the right to participate in the management of the activities of the limited partnership and to object to the actions of the full members regarding the management of the activities of the partnership. Investors can act on behalf of a limited partnership only by proxy (Part 2 of Article 136 of the Civil Code of Ukraine).

The depositor of the limited partnership is obliged to make a contribution to the accumulated capital (Part 1 of Article 137 of the Civil Code of Ukraine). The aggregate amount of depositors' contributions should not exceed fifty percent of the total capital of the limited partnership (Part 3 of Article 135 of the Civil Code of Ukraine).

The scope of corporate rights of a member of a limited partnership depends on his status. The legal position of the depositors of a limited partnership is defined by Art. 135–138 of the Civil Code of Ukraine, as well as Art. 79, 80 of the Law of Ukraine "On Business Societies". On the one hand, depositors are completely excluded from participation in the management of the company's affairs. For example, they can act on behalf of the company only by proxy. On the other hand, depositors manage their deposits independently of full members.

A depositor of a limited partnership has the right (Part 2 of Article 137 of the Civil Code of Ukraine):

1) receive part of the company's profit in accordance with its share in the company's capital in accordance with the procedure established by the founding agreement (memorandum);

2) to act on behalf of the company in case of issuing it a power of attorney and in accordance with it;

3) preferably before third parties to acquire an alienable share (part thereof) in the registered capital of the company. This right of the depositor is provided only in the case of paid alienation of the share. If the desire to buy back a share (part of it) is expressed by several investors, the specified share is distributed among them by their shares in the combined capital of the company;

4) demand priority return of the deposit in case of liquidation of the company;

5) get acquainted with the company's annual reports and balance sheets;

6) after the end of the financial year, withdraw from the company and receive your contribution by the procedure established by the founding agreement (memorandum);

7) transfer your share (part thereof) in the accumulated capital to another depositor or a third person, notifying the company.

When all depositors withdraw, the limited partnership is liquidated. However, the full partners have the right to convert the limited partnership into a full partnership in case of withdrawal of all contributors.

To ensure the financial and economic activity of a limited partnership, capital is formed at the expense of the contributions of its members. The minimum amount of capital of a limited partnership is not established by law. This is due primarily to the fact that the creditworthiness of partnerships is based not only on the property of the partnership, but also on the sum of all property belonging to each of the full members of such a limited partnership. The accumulated capital must be paid by the members of the limited partnership within the first year from the day of state registration of the partnership.

General and limited partnerships as legal entities are characterized by certain

features. First of all, such companies do not meet the main purpose of the institution of a legal entity - limiting the entrepreneurial risk of the participants. In addition, general and limited partnerships are characterized by the absence of partnership bodies, since the management of the partnership's affairs is carried out by the participants in the manner determined by the partnership's founding agreement. This indicates some leveling of such a sign of a legal entity as organizational unity, the components of which are a clear internal structure of the organization, the presence of hierarchy, and subordination of management bodies, which constitute such a structure. At the same time, despite the absence of management bodies in the company, the joint will of its members is not autonomous of the legal entity. It is transformed into the will of the latter. Such a mechanism is traditional for the institution of a legal entity.

Limited liability company. The legal status of limited liability companies (LLCs), the procedure for their creation, operation and termination, rights and obligations of their participants are determined by the Law of Ukraine "On Limited and Additional Liability Companies" (LLC Law), however, this law does not contain a legislative definition such societies.

The concept of LLC is given in Art. 140 of the Civil Code of Ukraine, according to which a limited liability company is a company founded by one or more persons, the authorized capital of which is divided into shares.

The legal status of an LLC is characterized by the following main features:

- limitation of liability of participants for the company's obligations. The participants of the LLC are not responsible for its obligations and bear the risk of losses related to the activities of the company within the value of their contributions. Participants of the company who have not fully contributed are jointly and severally liable for its obligations within the value of the unpaid part of the contribution of each participant (Article 2 of the Law on LLCs);

- LLC can be founded by one person. At the same time, the maximum number of members of the company is not limited by the legislator;

- the founding document of the LLC is the charter. An LLC may be established and operate on the basis of a model statute in the manner determined by law. The model

charter of the LLC was approved by the resolution of the Cabinet of Ministers of Ukraine dated November 16, 2011 No. 118285. The contract on the establishment of the company, which can be concluded between the founders in accordance with Part 2 of Art. 10 of the Law on LLCs, the founding document is not recognized and is valid until the day of state registration of the company, unless otherwise established by the contract or does not follow from the essence of the obligation;

- mandatory formation of authorized capital. The size of the authorized capital of the company consists of the nominal value of the shares of its participants, expressed in the national currency of Ukraine. The size of the company participant's share in the authorized capital of the company can be additionally determined as a percentage. In this case, he must correspond to the ratio of the nominal value of his share and the authorized capital of the company. The minimum size of the authorized capital of the LLC is not determined by law. Reserve capital can also be formed in an LLC. Only in the presence of formed reserve capital, the company has the right to purchase shares in its own authorized capital without reducing it by the size of such share (Part 1, Article 25 of the Law on LLCs);

- the possibility of installment payments of participants' contributions to the authorized capital of the LLC. Each member of the company must make a full contribution within six months from the date of state registration of the company unless otherwise provided by the statute (Part 1 of Article 14 of the Law on LLCs). If the participant is late in making the contribution or its part, the executive body of the company must send him a written warning about the delay, which should contain an additional period given for repayment of the debt, which cannot exceed 30 days. If a member of the company has not repaid the debt within the given additional period, the executive body of the company must convene a general meeting of members, which can make one of the following decisions: to exclude a member of the company who has arrears from contributing; on the reduction of the authorized capital of the company by the amount of the unpaid part of the share of the participant of the company; on the redistribution of the unpaid share (part of the share) among other members of the company without changing the size of the authorized capital of the company and the

payment of such debt by the relevant members; on the liquidation of the company; - management of the LLC through a system of bodies. The system of the company's bodies includes the general meeting of participants, the supervisory board (if established) and the executive body (Article 28 of the Law on LLCs). The general meeting of participants is the highest body of the company, which can resolve any issues of the company's activities. The supervisory board controls and regulates the activities of the executive body of the company within the scope of competence defined by the company's charter. The executive body of the company manages the current activities of the company;

- the possibility of forming the composition of the supervisory board and the executive body of the LLC from among persons who are not members of the company. Persons elected to the supervisory board and executive body of the LLC acquire the status of an official of the company;

- the procedure for a participant's exit from an LLC depends on the size of his share in the authorized capital of the company. A member of the company with a share of less than 50 percent can withdraw from the company at any time without the consent of other members. A participant whose share is 50 percent or more may withdraw from the partnership with the consent of other participants. The decision to give consent for the withdrawal of a participant from the company can be taken within one month from the date of submission of the application by the participant, unless another period is provided by the statute. A participant is considered to have left the company from the day of state registration of his exit. The withdrawal of a member from the company, as a result of which no member will remain in the company, is prohibited.

The only founding document of the LLC, based on which it operates, is the charter. The charter of a legal entity is an act that determines the legal status of a legal entity, as it contains norms that are mandatory for members of the company, its officials and other employees, and also determines the procedure for approving and making changes to the charter. This is an act of local rule-making that regulates intra-corporate relations, relations between members of business associations and management bodies. The first edition of the company's charter is signed by all members of the company, the authenticity of whose signatures is notarized.

Following Part 5 of Art. 11 of the LLC Law, the company's charter contains information on:

1) full and abbreviated (if available) name of the company (yes, according to Article 9 of the Law on LLCs, the name of the company must contain the name of the company, as well as the organizational and legal form (limited liability company). The company can have an abbreviated name in Ukrainian, full and abbreviated name in foreign languages);

2) the company's management bodies, their competence, their decision-making procedure;

3) the procedure for joining and leaving the company.

The articles of association may contain other information that does not contradict the law. The financial and economic activity of a legal entity begins with the formation of authorized capital, the order of creation and amount of which is regulated by the relevant provisions of the Law on LLCs.

Company with additional responsibility. According to Art. 56 of the Law on LLCs, members of a limited liability company jointly bear additional (subsidiary) liability for its obligations with their property in the amount established by the charter of the limited liability company and which is the same multiple for all participants to the value contributed by each of them contribution

In terms of its legal status, the TDV is similar to an LLC. According to Part 3 of Art. 56 of the Law on LLCs expressly provides that the provisions of the legislation on LLCs, which do not contradict the provisions of this article, apply to VAT.

The legal status of TDV is characterized by the following main features:

- additional responsibility of participants for the company's obligations. The participants of the TDV jointly bear additional (subsidiary) responsibility for its obligations with their property in the amount established by the charter of the company with additional liability and which is the same multiple for all participants to the value of the contribution made by each of them. In the event that one of the members of the limited liability company is declared bankrupt, his responsibility for the obligations of the limited liability company is distributed among the other members of this company in proportion to the size of their shares in the authorized capital (Article 56 of the Law on

LLCs);

- TDV can be founded by one person. The maximum number of members of the society is not limited by the legislator;

- the charter is the founding document of the TDV. The contract on the creation of a company, which can be concluded between the founders in accordance with Part 2 of Art. 10 of the Law on LLCs, the founding document is not recognized and is valid until the day of state registration of the company, unless otherwise established by the contract or does not follow from the essence of the obligation;

- mandatory formation of authorized capital. The minimum size of the authorized capital of TTV is not determined by law. Reserve capital can also be formed in the TDV, the presence of which is a necessary condition for the company to exercise the right to purchase a share in its own authorized capital without reducing it by the size of such share (Part 1, Article 25 of the Law on LLCs);

- the possibility of installment payments of participants' contributions to the authorized capital of the TTV. Each member of the company must make a full contribution within six months from the date of state registration of the company, unless otherwise provided by the statute (Part 1 of Article 14 of the Law on LLCs). If the participant is late in making the contribution or its part, the executive body of the company must send him a written warning about the delay, which should contain an additional period given for repayment of the debt, which cannot exceed 30 days. If a member of the company has not repaid the debt within the given additional period, the executive body of the company must convene a general meeting of members, which can make one of the following decisions: to exclude a member of the company who has arrears from making a contribution; on the reduction of the authorized capital of the company by the amount of the unpaid part of the share of the participant of the company; on the redistribution of the unpaid share (part of the share) among other members of the company without changing the size of the authorized capital of the company and the payment of such debt by the relevant members; on the liquidation of the company;

- implementation of VAT management through a system of bodies. The system of

the company's bodies includes the general meeting of participants, the supervisory board (if it is created) and the executive body (Article 28 of the Law on LLCs). The general meeting of participants is the highest body of the company, which can resolve any issues of the company's activities. The supervisory board controls and regulates the activities of the executive body of the company within the scope of competence defined by the company's charter. The executive body of the company manages the current activities of the company;

- the possibility of forming the composition of the supervisory board and the executive body of the TDV from among persons who are not members of the company. Persons elected to the supervisory board and executive body of TDV acquire the status of an official of the company;

- the procedure for the exit of a participant from the TDV depends on the size of his share in the authorized capital of the company. A member of the company with a share of less than 50 percent may leave the company at any time without the consent of other members. A participant whose share is 50 percent or more may withdraw from the partnership with the consent of other participants. The decision to give consent for the withdrawal of a participant from the company can be taken within one month from the date of submission of the application by the participant unless another period is provided by the statute. A participant is considered to have left the company from the date of state registration of his exit. The withdrawal of a member from the company, as a result of which no member will remain in the company, is prohibited.

- implementation of VAT management through a system of bodies. The system of the company's bodies includes the general meeting of participants, the supervisory board (if it is created) and the executive body (Article 28 of the Law on LLCs). The general meeting of participants is the highest body of the company, which can resolve any issues of the company's activities. The supervisory board controls and regulates the activities of the executive body of the company within the scope of competence defined by the company's charter. The executive body of the company manages the current activities of the company;

- the possibility of forming the composition of the supervisory board and the

executive body of the TDV from among persons who are not members of the company. Persons elected to the supervisory board and executive body of TDV acquire the status of an official of the company;

- the procedure for the exit of a participant from the TDV depends on the size of his share in the authorized capital of the company. A member of the company with a share of less than 50 percent may leave the company at any time without the consent of other members. A participant whose share is 50 percent or more may withdraw from the partnership with the consent of other participants. The decision to give consent for the withdrawal of a participant from the company can be taken within one month from the date of submission of the application by the participant unless another period is provided by the statute. A participant is considered to have left the company from the date of state registration of his exit. The withdrawal of a member from the company, as a result of which no member will remain in the company, is prohibited.

If there are two or more founders of a joint-stock company, they can enter into a founding agreement, which defines the procedure for conducting joint activities regarding the establishment of the company, the number, type and class of shares to be purchased by each founder, the nominal value and cost of purchasing shares, the term and form of payment of the value shares The founding agreement is not a founding document of the company and is valid until the date of registration by the National Securities and Stock Market Commission of the report on the results of the share issue. The founding agreement is concluded in writing. If a joint-stock company is founded with the participation of natural persons, the authenticity of the signatures on the founding agreement is subject to notarization.

To establish a joint-stock company, the founders issue its shares, hold constituent meetings and carry out state registration of the joint-stock company.

When a joint-stock company is founded, its shares are subject to placement exclusively among its founders. The public offering of the company's shares can be carried out after receiving the certificate of registration of the first issue of shares.

Creation of JSC by establishment is carried out in the following stages:

1) adoption by the meeting of founders of a decision on the establishment of a joint-

stock company and on the issue of shares;

2) submission of an application and all necessary documents for the registration of the issue of shares to the National Securities and Stock Market Commission through the official communication channel;

3) registration by the National Securities and Stock Market Commission of the issue of shares and issuance of a temporary certificate of registration of the issue of shares;

4) conclusion of an agreement with the Central Securities Depository on the servicing of securities issues;

5) assignment of international securities identification number to shares;

6) placement of shares among the founders of the joint-stock company;

7) payment by the founders of the full value of the shares;

8) approval by the constituent assembly of the results of the issue of shares, approval of the charter of the joint-stock company, adoption of other decisions provided for by law;

9) registration of a joint-stock company in the state registration authorities;

10) submission of a report on the results of the share issue to the National Securities and Stock Market Commission through the official communication channel;

11) registration by the National Securities and Stock Market Commission of the report on the results of the share issue;

12) obtaining a certificate of registration of the issue of shares.

The procedure for issuing shares upon founding a joint-stock company is established by the National Securities and Stock Market Commission. Actions that violate the procedure for founding a joint-stock company established by the Law on JSC are the basis for the National Securities and Stock Market Commission to decide to refuse registration of the report on the results of the share issue. In the event of such a decision, the National Commission for Securities and the Stock Market applies to the court with a claim for the liquidation of the joint-stock company.

The founders of JSC bear joint and several liabilities for the obligations related to its establishment, which arose before its state registration. JSC is responsible for the obligations of the founders related to its establishment only if their actions are approved

by the general meeting of shareholders, which must be held within six months after the state registration of the company (Article 13 of the JSC Law).

The minimum amount of the authorized capital of a joint-stock company is 200 amounts of the minimum wage, based on the amount of the minimum wage effective on the day of creation (registration) of the joint-stock company.

Article 15 of the JSC Law stipulates that the founding document of a joint-stock company is its charter. The charter of JSC must contain information about:

1) full and abbreviated name of the company in Ukrainian;

2) type of company;

3) purpose and subject of activity;

4) the size of the authorized capital;

5) the amount of reserve capital (if it is formed);

6) nominal value and total number of shares, the number of each type of shares placed by the company, including the number of each class of preferred shares (in case of issue of preferred shares);

7) the amount of dividends on preferred shares of each class (in case of issue of preferred shares);

8) conditions and procedure for conversion of preferred shares of a certain class into ordinary shares of the company or into preferred shares of another class (in case of issue of preferred shares);

9) rights of shareholders – owners of preferred shares of each class (in case of issue of preferred shares);

10) procedure for convening and conducting general meetings;

11) competence of general meetings;

12) the management structure, the order of formation, the quantitative composition of the company's bodies and their competence, the procedure for electing and terminating the powers of their members, the procedure for making decisions by the company's bodies;

13) the procedure for making changes to the charter;

14) procedure for termination of partnership;

15) the possibility of the company repurchasing its shares by decision of the general meeting.

The articles of association of JSC cannot provide for the granting of additional rights or powers to the company's founding shareholders compared to other company shareholders.

The JSC management structure can be one-level or two-level.

Under the one-level management structure, JSC's management bodies include general meetings and a board of directors. The board of directors includes executive directors and may include non-executive directors, except for the cases provided for in the second part of Article 64 of this Law. Some of the non-executive directors may be independent non-executive directors. The one-level management structure provides for the performance of the functions of control and management of the activities of the joint-stock company by a single collegial body - the board of directors.

In a private joint-stock company with up to 10 shareholders, instead of a board of directors, a one-person executive body may be formed that exercises the powers of the board of directors, to which the provisions of Chapter X of the Law on JSCs apply.

Management of the JSC's current activities is carried out by the executive directors. Functions of risk management and control over the activities of executive directors and the company as a whole are performed by non-executive directors.

Under the two-level management structure, JSC's management bodies have a general meeting, a body responsible for supervision (supervisory board), and an executive body (collegial or individual). The two-level management structure provides for a clear division of the functions of direct management of the JSC's current (operational) activities, which are performed by the executive body, and the functions of monitoring the work of the executive body and other heads of the joint-stock company (including control and internal audit units), which are performed by the supervisory board. The composition of the supervisory board includes members of the supervisory board, some of whom are independent directors in the cases established by law.

The management structure of JSC is determined by the charter of the joint-stock company. Requirements for the application of a one-level or two-level management

structure of a joint-stock company are established by a special law.

A joint-stock company created with a two-level management structure has the right to decide to switch to a one-level management structure, except for cases provided by the relevant special law. A joint-stock company created with a one-level management structure has the right to decide on the transition to a two-level management structure, except for cases provided by law.

A change in the type of management structure is not a reorganization or transformation of JSC.

JSC can issue shares of two types - common and preferred. The charter of JSC may provide for the issue of one or more classes of preferred shares, which grant their owners different rights. The company cannot set limits on the number of shares or the number of votes per share owned by one shareholder. Ordinary shares of the company are not subject to conversion into preferred shares or other securities of the joint-stock company. The purchase and sale of company shares can be carried out on the organized capital market. A public joint-stock company is obliged to go through the procedure for admitting shares to trading on a regulated stock market or stock multilateral trading platform in accordance with the procedure established by law and to remain on at least one of such organized capital markets in Ukraine. JSC has the right to pledge its own securities, and its own shares - only on the condition that the number of such shares, together with the shares that are considered redeemed or otherwise acquired by the company, will not exceed 20 percent of the total number of shares of the company, the report on the results of the issue of which is registered in the established order. Actions regarding shares are made in writing. A legal entity that is under the control of a joint-stock company does not have the right to purchase shares of such JSC.

Lecture 5. Property basis of entrepreneurial activity

Production, service, consumer, and agricultural cooperatives. The legal status of a production cooperative is determined by the provisions of Art. Art. 163–166 of the Central Committee of Ukraine, Art. Art. 94–110 of the Civil Code of Ukraine, the Law of Ukraine "On Cooperation". According to Part 1 of Art. 95 of the Civil Code of Ukraine, a

production cooperative is recognized as a voluntary association of citizens on the basis of membership for the purpose of joint production or other economic activity, based on their personal labor participation and pooling of property share contributions, participation in the management of the enterprise and distribution of income among the members of the cooperative in accordance with their participation in its activities. A similar definition is contained in Part 1 of Art. 163 of the Central Committee of Ukraine. According to the Law of Ukraine "On Cooperation", a production cooperative is a cooperative formed by uniting individuals for joint production or other economic activity on the basis of their mandatory labor participation with the aim of obtaining profit (Article 2 of the Law of Ukraine "On Cooperation ").

General characteristics of a production cooperative:

1. only natural persons belong to the circle of their participants;

2. the purpose is joint production or other economic activity;

3. it is assumed that the members of the cooperative will receive a profit from such activities.

The GC of Ukraine additionally emphasizes the participation of all members in managing the activities of the cooperative.

A production cooperative is created by its founders on a voluntary basis. The number of members of a production cooperative cannot be less than three people. The decision to create a cooperative is made by its constituent assembly. The founding document of a production cooperative is its charter, which is adopted by the founders at the founding meeting.

According to Part 1 of Art. 100 of the Civil Code of Ukraine, the property of a production cooperative is the collective property of the cooperative. The sources of the formation of the property of a production cooperative by the Law of Ukraine "On Cooperation" are: initial, membership and target contributions of its members, shares, and additional shares; property voluntarily transferred to the cooperative by its members; funds received from conducting business activities; funds received from enterprises, institutions, and organizations created by the cooperative; monetary and property donations, charitable contributions, grants, free technical assistance of legal entities and

individuals, including foreign ones; other revenues not prohibited by law (Article 19 of the Law of Ukraine "On Cooperation").

To carry out economic and other activities, a production cooperative forms appropriate property funds at the expense of its own property (Part 3, Article 100 of the Civil Code of Ukraine). The share fund of the cooperative is formed at the expense of the shares (including additional) of the members of the cooperative during the creation of the cooperative and is one of the sources of the formation of the property of the cooperative.

Individual scientists distinguish between legal categories - share and share contribution, paying attention that the share, in addition to the share contribution, includes additional contributions, if any, and the share of the cooperative's property, which was distributed among members' shares

The indivisible fund is formed at the expense of entrance fees and deductions from the income of the cooperative (Article 20 of the Law of Ukraine "On Cooperation"). The legal regime of the indivisible fund is regulated by the provisions of Art. Art. 2, 20 and 29 of the Law of Ukraine "On Cooperation", between which there are some inconsistencies, which relate to the possibility of distributing this fund among the members of the production cooperative. Yes, Art. 2 and Art. 29 of the Law of Ukraine "On Cooperation" indicates the impossibility of distributing the indivisible fund between members of the cooperative. At the same time, Art. 20 of this Law allows the possibility of such distribution, if it is provided by law.

The reserve fund is created at the expense of deductions from the income of the cooperative, redistribution of the indivisible fund, donations, irrevocable financial assistance and at the expense of other revenues not prohibited by law. Funds of the reserve fund are used to cover possible losses (damages), including to cover damage from emergencies (Articles 2, 20 of the Law of Ukraine "On Cooperation").

The special fund is created at the expense of the targeted contributions of the members of the cooperative and other revenues to ensure its statutory activities. A special fund, as a rule, is created for the implementation of individual programs

Obtaining part of the profit from the activities of the cooperative is one of the important forms of realization by members of production cooperatives of their property

rights. These payments are made at the expense of part of the income remaining after paying taxes and fees (mandatory payments) to the relevant budgets, repaying loans, covering losses, making deductions to cooperative funds (Article 25 of the Law of Ukraine "On Cooperation"). The income intended for distribution among the members of the cooperative is divided into two parts - cooperative payments and payments on shares.

Cooperative payments are accrued to members of the cooperative in proportion to their participation in the economic activity of the cooperative in the manner determined by the decision of the higher governing body of the cooperative. General criteria for calculating the labor participation of a member of a production cooperative are not established by law. In practice, such criteria can be the length of service in this cooperative, the amount of work or other participation, etc. It is advisable to prescribe them in detail in the charter of the cooperative.

Members of a production cooperative can exercise their right to receive payments under the following conditions:

1) availability of net profit in the cooperative based on the results of the financial year;

2) deduction of mandatory funds for the formation and replenishment of cooperative funds;

3) adoption by the general meeting of cooperative members of a decision on the distribution of a part of the received profit among them.

One of the characteristic features of production cooperatives is the membership nature of their formation and functioning. The right to membership has a personal, individual character; it is inseparable from a person and cannot be transferred to other citizens, nor does it pass to heirs.

Members of a production cooperative have property (receiving cooperative payments and share payments; receiving a share in case of leaving the cooperative) and non-property (participation in management, the right to vote at general meetings, the right to elect and be elected to management bodies; the right to use the services of the cooperative; receiving reliable and complete information about the financial and economic activity of the cooperative) right.

Membership in the cooperative is terminated on the basis of specific legal facts. The first group of grounds includes cases when membership is terminated as a result of voluntary withdrawal from the cooperative. The second group of reasons includes cases when the membership relationship is terminated at the initiative of the cooperative.

The basis of the construction of the management bodies of the production cooperative is the equal right of each member to participate in the management and decision-making on the issues of its activity.

The right to manage a cooperative is exercised through voting at general meetings of cooperative members (meetings of cooperative representatives) and through participation in elected management bodies, the system of which consists of: executive body (board), control and audit bodies (supervisory board and audit commission), as well as individual officials persons (chairman of the cooperative, executive director, heads of structural divisions).

The general meeting of the members of the cooperative (meeting of the representatives of the cooperative) is the highest governing body that decides the most important issues of the activity of the production cooperative. The higher body has the right to make decisions both on issues that belong to its exclusive competence and on all other issues related to the statutory activities of the cooperative (Part 2 of Article 102 of the Civil Code of Ukraine; Article 15 of the Law of Ukraine "On Cooperation").

Participation in general meetings and voting at them is a right, not an obligation, of a cooperative member.

The current legislation does not provide for the right of members of the cooperative, who are less than a third of their total number, to call an extraordinary general meeting or to demand from the executive body of a legal entity to convene an extraordinary meeting, including in case of refusal of the executive body of a legal entity or the impossibility of convening a general meeting.

In accordance with Part 5 of Art. 15 of the Law of Ukraine "On Cooperation", cooperative members must be notified of the date, place, time and agenda of general meetings of cooperative members (meetings of cooperative representatives). A mandatory condition for the notification of the convening of the general meeting of cooperative

members (meeting of the cooperative's representatives) is the simultaneous presence in such a notification of information about the time and place of the meeting and information about the issues to be considered at the meeting (agenda).

The board of the production cooperative is a collegial executive body that is accountable to the general meeting. The board manages the day-to-day activities of the cooperative in the period between general meetings and ensures the implementation of their decisions. The board is elected by the general meeting of the cooperative, which includes at least ten members (parts 6, and 7 of Article 103 of the Civil Code of Ukraine).

For the operative management of the activities of the cooperative, the board has the right to hire an executive director who is not a member of the cooperative. The supervisory board is formed in a production cooperative if the number of its members exceeds 50 people. It is elected at the general meeting in the number of 3-5 people and is accountable to the general meeting. The supervisory board is responsible for monitoring the activities of the executive body of the cooperative, compliance with the charter, and activities of the executive director.

An audit commission is elected to control the financial and economic activities of the cooperative (or an auditor – in a cooperative with less than ten members). Members of the audit commission (auditor) are elected by the general meeting by the procedure established by the statute. The audit commission is accountable to the general meeting. Its main function is to control the financial and economic activities of the cooperative.

In accordance with the tasks and nature of activity, in addition to production cooperatives, service and consumer cooperatives operate in Ukraine. According to the directions of their activity, the indicated types of cooperatives can be agricultural, housing and construction, horticultural, garage, trade and purchase, transport, educational, tourist, medical, etc. The legal, organizational, economic and social functions of service and consumer cooperatives are regulated by the Law of Ukraine "On Cooperation".

The approach that service and consumer cooperatives are subjects of corporate legal relations is established and consistently followed by the courts. In particular, such a position was formed in the resolutions of the Grand Chamber of the Supreme Court dated 24.04.2019 in case No. 509/577/18 and dated 05.11.2019 in case No. 922/80/18, in

particular the court noted that "members of the service cooperative regardless of the direction of its activity are the bearers of corporate rights, and the relations between its members and the cooperative, which are related to the creation, activity, management or termination of the activity of such a legal entity, are corporate".

Also, in the resolution of the KGS of the Supreme Court dated 23.06.2021 in case No. 920/26/21, the position was expressed that disputes in legal relations relating to the order of creation, registration, reorganization, activity and liquidation of associations of owners of residential and non-residential premises of an apartment building are considered by commercial courts , since such disputes arise in the exercise of the right to manage a legal entity, and therefore are the closest to disputes related to the activity or termination of the activity of a legal entity, regardless of the subject composition of such a dispute.

The peculiarities of the activity of consumer cooperatives are defined by the Law of Ukraine "On Consumer Cooperation" and Art. 111 of the Civil Code of Ukraine. According to Art. 1 of the Law of Ukraine "On Consumer Cooperation", consumer cooperation in Ukraine is a voluntary association of citizens for joint economic activity with the aim of improving their economic and social condition. It carries out trade, procurement, production and other activities not prohibited by the current legislation of Ukraine, contributes to the social and cultural development of the village, folk crafts and crafts, participates in the international cooperative movement.

The service provider is a cooperative, which is formed by uniting individuals and/or legal entities to provide services mainly to members of the cooperative, as well as to other persons for the purpose of carrying out their economic activities. Service cooperatives can provide services to other persons in volumes not exceeding 20 percent of the total turnover of the cooperative.

A consumer is a cooperative that is formed by uniting individuals and/or legal entities for the organization of trade services, procurement of agricultural products, raw materials, production of products and the provision of other services in order to meet the needs of its members (Article 2 of the Law of Ukraine "On Cooperation") .

The order of formation, principles of activity, legal regime of property, membership,

and management in service and consumer cooperatives are almost no different from production cooperatives. However, certain features are unique only to service and consumer cooperatives.

First: if personal labor participation is a necessary condition for membership in a production cooperative, and its termination according to the provisions of Art. 13 of the Law of Ukraine "On Cooperation" entails the termination of membership, then membership in service and consumer cooperatives is not associated with mandatory labor participation in them.

Secondly: members of service and consumer cooperatives can be not only individuals but also legal entities that participate in the activities of these cooperatives through their representatives (Article 7 of the Law of Ukraine "On Cooperation").

Thirdly: Art. 14 of the Law of Ukraine "On Cooperation" provides for the possibility of associate membership in service and consumer cooperatives. An associate member can be a natural or legal person who has made a share contribution and enjoys only the right of an advisory vote. At the same time, in case of liquidation of the cooperative, the associated member has a priority right to receive a share compared to other members of the cooperative. The Institute of Associate Membership allows service and consumer cooperatives to attract additional funds and direct them to their development.

Fourthly: in contrast to production cooperatives, which conduct their economic activities only for the purpose of making a profit, service and consumer cooperatives are formed and carry out their activities without this goal (Article 23 of the Law of Ukraine "On Cooperation").

Agricultural cooperatives are separated by the legislator into a separate group of cooperative organizations, and their legal and organizational conditions of activity are determined by a special law - the Law of Ukraine "On Agricultural Cooperation". Article 1 of this law defines that an agricultural cooperative is a legal entity formed by individuals and/or legal entities that are producers of goods based on voluntary membership and pooling of property shares for joint production activities in agriculture and service mainly to the members of the cooperative.

A member of an agricultural cooperative is a special subject - an agricultural

producer, who can be both a natural person and a legal entity, regardless of the forms of ownership and management. A condition for membership in an agricultural cooperative is the payment of entry and share fees in the amounts determined by its charter.

Associate membership is allowed in an agricultural cooperative. An associate member can be a natural or legal person who has made a shared contribution and enjoys the right of an advisory vote in the cooperative.

Based on the goals, objectives, and nature of the activity, agricultural cooperatives are divided into production and service cooperatives (Article 2 of the Law of Ukraine "On Agricultural Cooperation").

Agricultural production cooperatives are formed for the joint production of agricultural, fishery, and forestry products based on mandatory labor participation in the production process.

Agricultural service cooperatives are created only to provide a range of services related to the processing and sale of plant, animal, forestry, and fishery products mainly to members of the cooperative, as well as to other persons to carry out their agricultural activities.

Only natural persons can be members of a production agricultural cooperative, and both natural and legal persons can be members of a service cooperative.

Otherwise, the economic and legal status of agricultural cooperatives does not differ from ordinary production and service cooperatives.

Corporate private enterprise. According to the content of Art. 113 of the Civil Code of Ukraine, a corporate private enterprise is an enterprise operating on the basis of the private property of one or more citizens, foreigners, stateless persons and his/her labor or using hired labor. An enterprise operating on the basis of the private property of a business entity - a legal entity - is also private.

There is no separate law that would establish the legal and organizational basis for the activity of corporate private enterprises, and therefore their economic activity is regulated by the provisions of Chapter 7 of the Civil Code of Ukraine, which defines the general basis of the functioning of enterprises of all forms of ownership (Articles 62-72 of the Civil Code of Ukraine).

A corporate private enterprise (private enterprise) is an independent business entity created by one or more natural persons to meet public and personal needs through the systematic implementation of production, research, trade, and other economic activities not prohibited by law.

A private enterprise is a legal entity that is created to carry out both entrepreneurial and non-commercial economic activities. A private enterprise is a legal entity, has separate property, an independent balance sheet, accounts in bank institutions, a seal with its name and identification code. The founding document of a private enterprise is the charter.

As part of a private enterprise, production structural subdivisions (production facilities, workshops, branches, divisions, teams, bureaus, laboratories, etc.) can be formed, as well as functional structural subdivisions of the management apparatus (management, departments, bureaus, services, etc.). The functions, rights and obligations of the specified structural subdivisions are determined by the regulations on them, which are approved in the manner determined by the company's charter. The enterprise has the right to create branches, representative offices, branches and other separate subdivisions, the location of which is carried out in accordance with the mandatory agreement with the relevant local self-government bodies. Separate subdivisions do not have the status of a legal entity and operate on the basis of a provision approved by the enterprise.

The legal regime of property of a private enterprise depends on its type. For a unitary private enterprise, property can be attached to any of the main legal titles - ownership rights, economic management rights, operational management rights. In turn, for a private enterprise of the corporate type, the property is fixed on the right of joint partial private ownership.

The property of the enterprise consists of production and non-production funds, as well as other values, the value of which is reflected in the independent balance sheet. The sources of formation of the company's property are: monetary and material contributions of the founders; income received from the sale of products, services, other types of economic activity; income from securities; loans from banks and other creditors; capital investments and subsidies from budgets; property acquired from other business entities,

organizations and citizens in accordance with the procedure established by law; other sources not prohibited by the legislation of Ukraine. The integral property complex of the enterprise is recognized as real estate and can be the object of sale and other transactions.

A private enterprise is responsible for its obligations with all property belonging to it, which can be levied according to the law. The owner is not liable with his property for the obligations of the private enterprise founded by him, and the enterprise is not responsible for the obligations of the owner.

The management of a private enterprise is carried out by the owner (owners) of the enterprise or a director appointed by him. The director can perform his official duties both on a paid and unpaid basis.

The relations of a private enterprise with other business entities are carried out on the basis of business contracts. At the same time, the company is free to choose the subject of the contract, define obligations, and other terms of economic relations that do not contradict the legislation of Ukraine.

Farming. Farming is a form of entrepreneurial activity of citizens who have expressed a desire to produce marketable agricultural products, to carry out their processing and sale for the purpose of obtaining profit on land plots provided to them for ownership and/or use, including for rent, for farming, commercial agricultural production, personal peasant farming in accordance with the law (Article 1 of the Law on Farming).

The legal basis for the creation and operation of farms is determined by the Law of Ukraine "On Farming".

A farm can be created by one citizen of Ukraine or several citizens of Ukraine who are relatives or family members. A farm is subject to state registration as a legal entity or an individual entrepreneur.

A farm registered as a legal entity has the status of a family farm, provided that its business activities use the labor of members of such a farm, who are exclusively members of one family in accordance with Art. 3 of the Family Code of Ukraine.

A mandatory prerequisite for state registration of a farm is the acquisition by a citizen of Ukraine or several citizens of Ukraine who have expressed a desire to create a

farm, ownership rights or use of a land plot.

A farm registered as a legal entity operates on the basis of a charter.

The farm independently determines the directions of its activity and specialization, organizes the production of agricultural products, their processing and sale, and at its own discretion and risk selects partners for economic relations in all spheres of activity, including foreign ones.

When carrying out economic activity, the farm has the right to enter into contractual relations with any legal or natural persons, state authorities and local self-government bodies; to create service agricultural cooperatives, cooperative banks, unions, other associations together with other agricultural producers; to be founders (participants) of business associations.

The property of the farm belongs to him by right of ownership. The property of a farm (composite capital) may include buildings, structures, equipment, material assets, securities, products produced by the farm as a result of economic activity, received income, other property acquired on legal grounds, the right to use land, water and other natural resources, buildings, structures, equipment, as well as other property rights, money transferred by its members. Property rights, which are included in the accumulated capital of the farm, are transferred to it only for the term specified in the charter.

The head of the farm is its founder or another person specified in the charter. The head of a family farm can only be a member of the relevant family.

The right to create a farm belongs to a citizen of Ukraine who has reached the age of 18, has the necessary civil capacity and the desire to create a farm. The head of the farm represents the farm before state authorities, enterprises, institutions, organizations and individual citizens or their associations; concludes agreements on behalf of the farm; has the right to perform other legally significant actions.

Members of a farm can be spouses, their parents, children who have reached the age of 14, other family members, relatives who have joined together to run a farm. Family members and relatives of the head of the farm include: wife (husband), parents, children, grandmother, grandfather, great-grandmother, great-grandfather, grandchildren, great-

grandchildren, stepmother, stepfather, stepdaughter, stepson, relatives and cousins, uncle, aunt, nephews of both the head of the farm and his wife (her husband), as well as persons who are in family relations of the first degree of consanguinity with all the above-mentioned family members and relatives (the parents of such a person and the parents of the husband or wife, her husband or wife, children of both such a person and his or her husband or wife, including children adopted by them), recognize and comply with the provisions of the farm charter.

Members of the farm cannot be persons who work in it under an employment contract (contract). In the case of the creation of a farm by one of the family members, other family members, as well as relatives, can become members of this farm only after making changes to its charter. A member of a farm has the right to receive a share of the property of the farm upon its liquidation or in the event of termination of membership in the farm (the size of the share and the procedure for obtaining it are determined by the statute).

The farm is responsible for its obligations within the property owned by the farm. Foreclosure of land plots granted ownership for farming is allowed in cases where the farm has no other property that can be foreclosed upon.

Farming activity is terminated in the event of:

1) reorganization of the farm by the decision of the owner;

2) liquidation of the farm by the decision of the owner;

3) recognition of the farm as insolvent (bankruptcy) in accordance with the procedure established by law;

4) if there is no member of the farm or an heir who wishes to continue the operation of the farm.

Collective agricultural enterprise. The legal and organizational conditions of the collective agricultural enterprise are determined by the Law of Ukraine "On Collective Agricultural Enterprise".

According to Art. 1 of the above-mentioned law, a collective agricultural enterprise (CAE) is a voluntary association of citizens in an independent enterprise for the joint production of agricultural products and goods and operates on the basis of

entrepreneurship and self-governance.

CAE is a legal entity, has current and deposit accounts in bank institutions and may have seals. The enterprise is created on a voluntary basis and is considered created and acquires the rights of a legal entity from the day of its state registration.

The main tasks of the enterprise are the production of commercial products of plant and animal husbandry, as well as its processing and other types of activities aimed at satisfying the interests of the members of the enterprise, the workforce and the population. CAE has the right to independently determine the direction of agricultural production; to cooperate with industrial enterprises and institutions in the processing of agricultural products and the manufacture of other consumer goods; enter into contractual relations with any enterprises, institutions and organizations, with individual citizens; independently determine prices and tariffs for manufactured products and provided services; issue securities; buy stocks, government bonds, savings certificates and other securities.

CAE is a subject of a collective form of ownership. The objects of collective ownership of the enterprise are land, other fixed and circulating means of production, monetary and property contributions of its members, manufactured products, received income and legally acquired property. CAE independently owns, uses and disposes of its property objects. The right of collective ownership is exercised by the general meeting of the members of the enterprise, the meeting of the authorized representatives or the management body of the enterprise created by them, which has been assigned certain functions for the economic management of collective property.

In the CAE, a joint fund of the property of the members of the enterprise is formed, which includes the value of the main production and working capital, created at the expense of the enterprise's activities, securities, shares, money and the corresponding share from participation in the activities of other enterprises and organizations.

The right of CAE members to the property share fund depends on their labor contribution. A member of the enterprise is annually credited with a part of the profit depending on the share in the mutual fund, which can be paid out or credited to the increase of the share in the mutual fund at his wish. These relations are regulated by the

statute.

A share is the property of a member of the KSP, but the latter acquires the right to dispose of his share after termination of membership in the enterprise. A share may be inherited in accordance with the procedure established by the Central Committee of Ukraine.

Citizens who have reached the age of 16 and who recognize and comply with its charter can be members of the CAE. Membership is based on the right of voluntary admission to the members of the CAE and unhindered withdrawal from its membership. The highest body of self-government in the CAE is the general meeting of members or the meeting of commissioners, which is empowered to adopt the charter, make changes and additions to it; to elect the board, its chairman and the audit commission of the enterprise; to make decisions on the reorganization and liquidation of the CAE, on its participation in joint-stock companies, corporations, associations, concerns and other associations; to solve other important issues of the enterprise. In the period between general meetings, the affairs of the CAE are managed by the board, whose powers are determined by the statute.

Liquidation and reorganization (merger, merger, division, separation, transformation) of the enterprise is carried out by decision of the general meeting (meeting of authorized representatives) of its members or by court decision. CAE can be liquidated in the event of its being declared bankrupt and on other grounds provided for by the legislation of Ukraine. The enterprise is considered to have ceased from the date of entry of the state registration of its termination into the State Register of Enterprises.

It should be noted that in the resolution of April 6, 2021, in case No. 910/10011/19, the Supreme Court recognized the existence of corporate relations in religious organizations, noting that: "The Grand Chamber of the Supreme Court draws attention to the fact that in accordance with the third part of Article 8 of the Law No. 987-XII, the state recognizes the right of a religious community to be subservient in canonical and organizational matters to any religious centers (management) operating in Ukraine and abroad and to freely change this subordination by making appropriate changes to the charter (regulations) of the religious community. The decision to change the

subordination and introduce the relevant changes or additions to the charter expires from the moment such changes or additions are made to the charter (adoption of the new version of the charter). At the same time, the Grand Chamber of the Supreme Court once again draws attention to the fact that disputes related to the creation, activity, management or termination of the activity of a legal entity are corporate within the meaning of paragraph 3 of the first part of Article 20 of the Civil Procedure Code, regardless of whether the plaintiff and other participants in the case are shareholders (participants) of a legal entity, and must be considered according to the rules of the Civil Procedure Code. Conclusions similar in content are formulated, in particular, in the resolutions of the Great Chamber of the Supreme Court dated September 10, 2019 in case No. 921/36/18, dated March 18, 2020 in case No. 466/6221/16-a, dated April 15, 2020 in case No. 804/14471/15, dated November 3, 2020 in case No. 922/88/20".

Thus, taking into account the practice of the Supreme Court, the subjects of corporate relations should include legal entities registered in accordance with the procedure established by law, based on the principles of membership. The nature of the activities carried out, the number of participants, the type of founding document, the name of the accounting category to indicate the totality of the contributions of the participants of the corporation or the presence of management bodies are optional features of corporations and can only indicate the specifics of membership (corporate) relations in them. Business partnerships (including full and limited partnerships), cooperatives, credit unions, farms, public associations, religious and charitable organizations, political parties, associations of co-owners of apartment buildings, etc. should be considered as subjects of corporate relations.

Lecture 6. Contracts in business activity

Legal status of the commodity exchange. A commodity exchange in the classical sense is one of the forms of an organized market, where wholesale trade of qualitatively homogeneous and interchangeable raw and food products takes place.

From the organizational point of view, it is a well-equipped "market place" provided to the participants of stock exchange trading.

In the economic interpretation, it is a wholesale market organized in a certain place, regularly operating according to established rules, where agreements for the purchase and sale of goods according to samples and standards and contracts for their future supply at prices officially established on the basis of supply and demand are concluded.

From a legal point of view, it is an organization that unites individuals and legal entities that own separate property and have corresponding rights and obligations.

According to Art. 3 of the Law of Ukraine "On the Commodity Exchange", a commodity exchange is a legal entity that functions in the form of a joint-stock company, a limited liability company or a company with additional liability and conducts professional activities in the organization of trade in products on commodity exchanges, professional activities in the organization of concluding derivative contracts on commodity exchanges, as well as other types of activities provided for by this Law.

Exchange contracts are concluded exclusively on the commodity exchange on the terms of spot contracts, the terms of which provide that the actual delivery of the exchange goods is planned to be carried out within the largest of the following time intervals: - two working days; - the period of time defined

A legal entity acquires the status of a commodity exchange from the date of obtaining a license to conduct activities for the organization of trade in products on commodity exchanges and/or a license to conduct activities for the organization of concluding derivative contracts on commodity exchanges, issued by the National Commission for Securities and the Stock Market.

A legal entity that has received a license to conduct activities for the organization of trade in products on commodity exchanges and/or a license to conduct activities for the organization of concluding derivative contracts on commodity exchanges is a professional participant in organized commodity markets.

The commodity exchange begins to function after the registration of the commodity exchange rules by the National Securities and Stock Market Commission.

A commodity exchange, in addition to a license to conduct activities for the organization of trade in products on a commodity exchange, a license to conduct activities for the organization of concluding derivative contracts on commodity

exchanges, has the right to obtain a license in accordance with the procedure established by the Law of Ukraine "On Capital Markets and Organized Commodity Markets" (licenses) for carrying out the following types of activities on the capital markets:

1) clearing activities for determining obligations;

2) activities related to the organization of conclusion of derivative contracts on the regulated market of derivative contracts;

3) activity on the organization of conclusion of derivative contracts on MTP (A multilateral trading platform) of derivative contracts;

4) activities related to the organization of the conclusion of derivative financial instruments on UN of derivative contracts.

A commodity exchange cannot be a participant in exchange trading and carry out trade in exchange goods at its own expense or at the expense of third parties and be a party to an exchange agreement (exchange contract) regarding the purchase and sale of exchange goods concluded on such a commodity exchange.

The Commodity Exchange may carry out over-the-counter transactions with exchange or other goods in the cases provided for by law.

The words "commodity exchange", "organized market operator", "organized market" and their derivatives are allowed to be used in the title only by legal entities that have received a license to conduct activities for the organization of trade in products on commodity exchanges, in accordance with the requirements of the Law of Ukraine "On Commodity stock exchange".

Article 4 of the Law of Ukraine "On Commodity Exchanges" defines that a commodity exchange carries out business activities, aims to make a profit and conducts its activities in accordance with the legislation of Ukraine, taking into account the features defined by this Law.

The founders and shareholders (participants) of the commodity exchange can be individuals and legal entities - residents and non-residents.

The National Commission for Securities and the Stock Market determines the conditions for foreign legal entities to obtain a license to conduct activities related to the organization of trade in products on commodity exchanges.

The Law of Ukraine "On Commodity Exchanges" establishes the conditions under which a legal entity cannot be a commodity exchange, in particular when:

1) the legal entity is created in accordance with the legislation of the state carrying out armed aggression against Ukraine in the meaning specified in Article 1 of the Law of Ukraine "On the Defense of Ukraine";

2) sanctions have been applied to the legal entity in accordance with the Law of Ukraine "On Sanctions";

3) the legal entity is included in the list of persons associated with the conduct of terrorist activities or in respect of whom international sanctions have been applied;

4) the person is under the control of the persons specified in points 1-3 or has such persons in his ownership structure;

5) the legal entity does not meet the requirements established by the legislation on commodity exchanges.

The founding document of the commodity exchange is the charter, which is approved by its highest governing body. The charter of the commodity exchange must meet the requirements established by law. The charter of the commodity exchange defines its name, the procedure for management and formation of bodies and their competence, the purpose of activity, the grounds and procedure for terminating the activity of the commodity exchange, the distribution of the property of the commodity exchange in the event of its liquidation, and also specifies other information provided by the legislation regulating the activities of economic companies of the appropriate organizational and legal form. The procedure for the formation and operation of the commodity exchange management bodies, their competence and powers are determined by the statute, taking into account the requirements of the legislation established for the organizational and legal form of the business partnership in which the commodity exchange was formed.

The minimum initial capital of a commodity exchange cannot be less than 20 million hryvnias.

Members of the commodity exchange can be legal entities - founders (shareholders, participants - depending on the organizational and legal form in which the commodity

exchange was formed), as well as other legal entities - residents and non-residents. The procedure for admission to and removal from the membership of the exchange is determined by the rules of the commodity exchange. Natural persons - entrepreneurs can be members of the commodity exchange, if it is stipulated by the charter of the commodity exchange.

Article 14 of the Law of Ukraine "On Commodity Exchanges" establishes that a member of a commodity exchange cannot be a foreign person who is a resident of a state that carries out armed aggression against Ukraine in the sense given in Article 1 of the Law of Ukraine "On the Defense of Ukraine", as well as a person , to which sanctions have been applied in accordance with the resolutions of the Security Council of the United Nations, other international organizations, decisions of the Council of the European Union, other intergovernmental associations of which Ukraine is a member (participant), which provide for the restriction or prohibition of trade and/or financial transactions .

A person who intends to acquire the status of a commodity exchange, as well as a commodity exchange during the entire period of its activity, must comply with the license conditions for conducting activities for the organization of trade in products on commodity exchanges and/or the license conditions for conducting activities for the organization of concluding derivative contracts on commodity exchanges, namely : organizational and operational requirements, requirements for the size of the authorized and equity capital, the procedure for its determination, liquidity, qualification requirements for commodity exchange specialists, requirements for technical and software, requirements for the sources of funds, at the expense of which the authorized capital of the commodity exchange is formed, others to the requirements and indicators limiting the risks of commodity exchange activity, which are established by this Law and regulations of the National Commission for Securities and the Stock Market.

A legal entity or an individual who intends to acquire participation in a commodity exchange or to increase it in such a way that such a person directly and/or indirectly, independently or jointly with other persons, will own 10, 25, 50, 75 or more percent of

the authorized capital of the commodity exchange or with the right to vote shares (shares) in the authorized capital of a commodity exchange and/or regardless of formal ownership, intends to acquire the right to exert significant influence on the management or activity of the commodity exchange, is obliged to agree on the intention of such acquisition with the National Commission for Securities and the Stock Market in the established she is in order.

The owner of a significant participation in the commodity exchange cannot be a legal entity or an individual who meets at least one of the following criteria:

1) is a resident of a state that carries out armed aggression against Ukraine in the meaning specified in Article 1 of the Law of Ukraine "On the Defense of Ukraine";

2) sanctions have been applied to the person or his officials in accordance with the resolutions of the Security Council of the United Nations, other international organizations, decisions of the Council of the European Union, other intergovernmental associations of which Ukraine is a member (participant), which provide for restrictions or prohibition trade and/or financial transactions;

3) sanctions have been applied to the person or his officials in accordance with the Law of Ukraine "On Sanctions";

4) the person or his officials are included in the list of persons connected with the conduct of terrorist activities or in respect of whom international sanctions have been applied;

5) the person is under the control of the persons specified in points 1-4, or has such persons in his ownership structure;

6) does not meet the requirements established by law.

The Commodity Exchange and its employees are prohibited from providing individuals or legal entities with recommendations for applying for services to specific participants in stock exchange trading, as well as recommendations for the purchase of one or another exchange product.

Commodity exchange employees do not have the right to participate in exchange or off-exchange transactions with exchange goods, to perform work related to participation in exchange trading on the basis of labor and civil law contracts with participants in

exchange trading and their related persons, to use, divulge, in their own interests or in the interests of third parties, non-disclosure information about stock market participants, their clients, and their activities.

The Commodity Exchange on its website discloses, in accordance with the requirements established by the National Commission for Securities and the Stock Market, information regarding stock market trading, in particular: regarding the description of the stock market, the number of concluded and executed stock market agreements (stock market contracts), the price of the market stock. The Commodity Exchange stores paper and/or electronic documents regarding the conclusion (execution) of exchange agreements (exchange contracts) for a period of at least three years, unless otherwise provided by law.

State regulation of commodity exchanges is carried out by the National Securities and Stock Market Commission through:

1) development of normative legal acts regarding commodity exchanges;

2) licensing of commodity exchanges regarding the organization of trade in products on commodity exchanges;

3) registration of commodity exchange rules and changes to them;

4) establishment of requirements for regulatory capital and other indicators limiting the risks of their activity for commodity exchanges;

5) determination of requirements for the procedure of reporting and disclosure of information by the commodity exchange;

6) establishing the presence of signs of manipulation and other abuses on the commodity exchange;

7) establishing, in agreement with the central body of executive power, which ensures the formation and implementation of state policy in the relevant field, the criteria for price volatility of a commodity on the commodity exchange depending on the type, liquidity and/or market price of such commodity;

8) supervision and control over compliance by commodity exchanges with the requirements established by law regarding their activity and the application of appropriate sanctions for their violation;

9) performance of other powers provided for by law.

Participants of capital markets and organized commodity markets. The legal basis for the functioning of capital markets and organized commodity markets is the Constitution of Ukraine, the Law of Ukraine "On Capital Markets and Organized Commodity Markets", the Laws of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets", "On the Depository System of Ukraine", "On Institutions of Joint investment", other laws of Ukraine related to the specified area, as well as international treaties of Ukraine, the binding consent of which was given by the Verkhovna Rada of Ukraine, and other acts of Ukrainian legislation.

According to Art. 4 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" (Law on Capital Markets), capital markets are the stock market, the market of derivative financial instruments and the money market.

The stock market (securities market) is a set of stock market participants and legal relations between them regarding the emission (issuance), circulation, fulfillment of obligations, redemption and accounting of securities (including derivative securities).

The market of derivative financial instruments is a set of participants in the market of derivative financial instruments and the legal relations between them that arise during the issuance of derivative securities, the conclusion of derivative contracts, the execution and execution of transactions related to derivative securities, the conclusion and execution of contracts on the replacement of parties to derivative contracts, execution obligations under derivative financial instruments. The money market is a set of money market participants and legal relations between them that arise during the execution of transactions regarding money market instruments and currency values.

Capital market participants are stock market participants, derivatives market participants, and money market participants.

Participants of the stock market are issuers, including foreign ones, or persons who have issued non-issued securities, persons who provide security, investors in financial instruments who have acquired ownership rights to securities, administrators, professional participants of capital markets, persons who carry out activities related to capital markets and organized commodity markets, associations of professional

participants of capital markets.

Participants of the market of derivative financial instruments are issuers of derivative securities, investors in financial instruments who are parties to derivative contracts, investors in financial instruments who have acquired ownership rights to derivative securities, professional participants of capital markets, persons who conduct activities, associated with capital markets and organized commodity markets, associations of professional participants of capital markets, as well as legal entities engaged in trading in financial instruments.

Money market participants are issuers of money market instruments, persons who have issued non-issued money market instruments, persons who provide collateral, investors in financial instruments who have acquired ownership rights to money market instruments, professional capital market participants and persons who conduct activities, associated with capital markets and organized commodity markets.

Professional participants of the capital markets are legal entities operating in the organizational and legal form of a joint-stock company, a limited liability company or a company with additional liability, conducting professional activities on the capital markets, the types of which are defined by law.

A legal entity that meets at least one of the following criteria cannot be a professional capital market participant:

1) the legal entity is created in accordance with the legislation of the state carrying out armed aggression against Ukraine in the meaning specified in Article 1 of the Law of Ukraine "On the Defense of Ukraine";

2) sanctions have been applied to the legal entity in accordance with the Law of Ukraine "On Sanctions";

3) the legal entity is included in the list of persons associated with the conduct of terrorist activities or in respect of whom international sanctions have been applied;

4) the legal entity is under the control of the persons specified in points 1-3, or has such persons among the owners of a significant participation;

5) the legal entity does not meet the requirements established by law for professional capital market participants.

Article 41 of the Law on Capital Markets defines that professional activity on the capital markets is the activity of joint-stock companies, limited liability companies or companies with additional responsibility for the provision of financial and other services on the capital markets during professional activity, in particular:

1) financial instruments trading activities;

2) activities related to the organization of trade in financial instruments;

3) clearing activities;

4) depository activities;

5) asset management activities of institutional investors;

6) property management activities for the financing of construction objects and/or real estate transactions;

7) activities in the administration of non-state pension funds.

The combination of professional activity on the capital markets with other types of activity is allowed only in the following cases:

1) combining banking activities with financial instruments trading activities, depository activities, property management activities for the financing of construction objects and/or real estate transactions and mortgage coverage management activities;

2) the combination of the professional participant of the capital markets of his activity with the activity of providing information services on the capital markets and organized commodity markets;

3) the combination of a professional capital market participant's activities with the activities of a trade repository;

4) combination of proceedings by a professional capital market participant of clearing activities to determine obligations with activities related to the organization of trade in products and/or activities related to the organization of concluding derivative contracts on commodity exchanges;

5) the combination of the organized capital market operator's activities with activities related to the organization of trade in products;

6) combining the National Bank of Ukraine's activities with professional activities on the capital markets in cases established by law;

7) the Central Depository of Securities and depository institutions combine their professional activities with the activities of ensuring the functioning of the accounting system of shares of limited liability companies and companies with additional liability.

Professional participants of capital markets and organized commodity markets are divided by types into:

1) professional participants of capital markets and organized commodity markets, which are enterprises of public interest in accordance with the Law of Ukraine "On Accounting and Financial Reporting in Ukraine";

2) professional participants of capital markets and organized commodity markets, who are systemically important professional participants in accordance with the Law on Capital Markets;

3) other professional participants of capital markets and organized commodity markets.

A systemically important professional participant of the capital markets and organized commodity markets is a professional participant of the capital markets whose activities affect the stability of the functioning of the capital markets.

Systemically important professional participants of capital markets and organized commodity markets are:

1) parent institutions;

2) parent financial holdings;

3) mixed parent financial holdings;

4) professional participants of capital markets and organized commodity markets, whose insolvency or disruptions in their activities may pose a systemic risk to the functioning of capital markets.

The parent institution is:

1) a professional participant of capital markets and organized commodity markets, whose subsidiary is a professional participant of capital markets and organized commodity markets, a credit institution, a financial company or an enterprise providing additional services, and which is not a subsidiary of another professional participant of capital markets and organized commodity markets commodity markets, credit institution,

financial holding company or mixed financial holding;

2) a professional participant of the capital markets and organized commodity markets, who directly or indirectly owns a stake in the amount exceeding 20 percent of the capital (voting rights) of a professional participant of the capital markets and organized commodity markets, a credit institution, a financial company or an enterprise that provides additional services , and which is not a subsidiary of another professional participant of the capital markets and organized commodity markets, a credit institution, a financial holding company or a mixed financial holding.

A subsidiary is a legal entity in which another legal entity (parent company):

1) has the majority of voting rights; or

2) has the right to form the composition of management bodies as a participant (shareholder); or

3) has the ability to exert a decisive influence on the management of activities based on the agreement; or

4) is a participant (shareholder) and provided that at least one of the following conditions is met:

a) the majority of the members of the management bodies of the subsidiary company, who held positions during the current and previous fiscal year, were appointed solely based on the results of the parent company's vote, if such company owned 20 percent or more of the voting rights and no other legal entities (who correspond requirements of the parent or subsidiary company);

b) on the basis of the contract concluded with other participants (shareholders), independently controls the majority of voting rights.

A financial company is a financial institution, a mixed financial holding, a payment organization.

An enterprise is one that provides additional services, if its activities involve the ownership or provision of real estate, the provision of information processing services or similar services to one or more professional participants in the capital markets and organized commodity markets or to one or more consumer credit institutions by such participants or institutions in the conduct of the main type of activity.

A parent financial holding is a financial holding that is not a subsidiary of a professional participant in capital markets and organized commodity markets, a credit institution, a financial holding company or a mixed financial holding.

A financial holding is a financial company, the majority or all of whose subsidiaries are professional participants in the capital markets and organized commodity markets, credit institutions or financial companies and which is not a mixed financial holding.

The majority of subsidiaries of a financial holding company are professional participants in capital markets and organized commodity markets, credit institutions or financial companies, if at least one of such subsidiaries is a professional participant in capital markets and organized commodity markets or a credit institution, subject to at least one of the following conditions:

1) more than 50 percent of the corporate rights belonging to the financial holding are corporate rights issued by its subsidiaries, which are professional participants in capital markets and organized commodity markets, credit institutions or financial companies;

2) more than 50 percent of the assets, according to the consolidated financial statements of the financial holding, are the assets of subsidiaries that are professional participants in capital markets and organized commodity markets, credit institutions or financial companies;

3) more than 50 percent of the revenues received by the financial holding during the reporting period are those received from subsidiaries that are professional participants in the capital markets and organized commodity markets, credit institutions or financial companies;

4) more than 50 percent of the financial holding's employees work part-time, provide services or perform work under civil law contracts with subsidiary companies that are professional participants in capital markets and organized commodity markets, credit institutions or financial companies;

5) more than 50 percent of the values of another indicator established by the National Securities and Stock Market Commission are related to its subsidiaries that are professional participants in the capital markets and organized commodity markets, credit

institutions or financial companies.

A mixed financial holding is a parent company (except for credit institutions, professional participants of capital markets and organized commodity markets, insurers (reinsurers), insurance (reinsurance) brokers), which, together with subsidiaries, at least one of which is a credit institution, a professional participant of capital markets and organized commodity markets or an insurer (reinsurer), an insurance (reinsurance) broker, forms a financial conglomerate.

A financial conglomerate is a group or subgroup of legal entities in which the head of the group or subgroup is a credit institution, a professional participant in capital markets and organized commodity markets, an insurer (reinsurer) or an insurance (reinsurance) broker, or in which at least one of the subsidiaries of this group or subgroup is a credit institution, a professional participant in capital markets and organized commodity markets, an insurer (reinsurer) or an insurance (reinsurance) broker and which meets one of the following conditions:

1) if the head of the group or subgroup is a credit institution, a professional participant of capital markets and organized commodity markets, an insurer (reinsurer) or an insurance (reinsurance) broker:

a) such manager is the parent company of: an enterprise that provides financial services; an enterprise that owns a stake exceeding 20 percent of the capital (voting rights) of an enterprise providing financial services; an enterprise that is under joint control with an enterprise providing financial services or has more than half of the joint members of the management bodies and prepares consolidated financial statements according to international financial reporting standards, or prepares combined financial statements in compliance with international financial reporting standards;

b) at least one of the members of the group or subgroup provides services in the field of insurance (reinsurance), at least one of the members of the group or subgroup is a bank or a professional participant of capital markets and organized commodity markets;

c) the activities of group or subgroup enterprises in the field of insurance (reinsurance) and in the field of providing professional banking services on the capital markets and organized commodity markets are significant;

2) if the head of the group or subgroup is not a credit institution, a professional participant of capital markets and organized commodity markets, an insurer (reinsurer) or an insurance (reinsurance) broker:

a) the ratio of the balance sheet of members of the group providing financial services to the total balance sheet exceeds 40 percent;

b) at least one of the members of the group or subgroup provides services in the field of insurance (reinsurance), at least one of the members of the group or subgroup is a bank or a professional participant of capital markets and organized commodity markets;

c) the activity of group or subgroup enterprises in the field of insurance (reinsurance) and in the field of providing banking services or professional activity on capital markets and organized commodity markets is significant.

The activity is significant if, for each field of activity, the average ratio of the total balance sheet of the enterprises of this field to the total balance sheet of the group exceeds 10 percent, as well as the ratio of the solvency requirements of the enterprises of this field of activity to the total solvency requirements of the subjects of the group exceeds 10 percent.

The procedure for determining the head of a group (subgroup) is established by regulations of the National Securities and Stock Market Commission.

A mixed parent financial holding is a mixed financial holding that is not a subsidiary of a professional participant in the capital markets and organized commodity markets, a credit institution, a financial holding or a mixed financial holding.

Systemic risk for the functioning of capital markets is the risk of disruptions in the financial system, which can have significant negative consequences for it and the real sector of the economy.

The National Securities and Stock Market Commission is developing a methodology for determining the risk of failure in the work of a professional participant as systemic based on the following criteria:

1) volume of financial services provided by individual professional participant of capital markets and organized commodity markets;

2) the possibility of substituting services provided by a professional participant with

the services of other participants;

3) the connection of the activity of a professional participant with the activities of other professional participants and enterprises of the real sector of the economy.

Professional activity in the capital markets is carried out exclusively on the basis of a license issued by the National Securities and Stock Market Commission.

Licensing conditions for carrying out professional activity on the capital markets and organized commodity markets according to its individual types, including organizational and operational requirements, requirements for the amount of initial and equity capital, the procedure for its determination, liquidity, requirements for persons performing managerial functions, and others specialists of a professional participant of the capital markets and organized commodity markets, requirements for premises, technical and software, requirements regarding the sources of funds, at the expense of which the initial capital of a professional participant of the capital markets and organized commodity markets is formed, other requirements and indicators that limit the risks of professional activity on the capital markets and organized commodity markets, are established by the National Securities and Stock Market Commission, taking into account the requirements stipulated by law.

Initial capital is capital accumulated by a legal entity that intends to carry out professional activities on capital markets and/or organized commodity markets, consisting of one or more of the following elements:

1) capital instruments (shares, bonds or other securities, as well as borrowings and any other transactions resulting in an increase in the legal entity's equity) provided that they meet the requirements established by the National Securities and Stock Market Commission;

2) emission income belonging to capital instruments;

3) accumulated profits or losses;

4) accumulated other aggregate income;

5) other reserves.

Professional participants of capital markets and organized commodity markets are obliged to:

1) comply with prudential standards and other indicators and requirements that limit the risks of operations related to the direct conduct of professional activity, in accordance with the license obtained, the list, sizes and calculation methods of which are established by the National Commission for Securities and the Stock Market. Prudential standards and other indicators and requirements are established for each type of professional activity on capital markets and organized commodity markets;

2) submit to the National Commission for Securities and the Stock Market the calculation of indicators that confirm the fulfillment of the established prudential standards for the relevant type of professional activity, in the manner and within the terms determined by the National Commission for Securities and the Stock Market in accordance with the law.

Officials of a professional stock market participant must have an impeccable business reputation, professional suitability, relevant knowledge, skills and experience, as well as meet other requirements established by the National Securities and Stock Market Commission.

Article 76 of the Law on Capital Markets defines that the purpose of the organization of corporate governance in professional participants of capital markets and organized commodity markets is to ensure the prevention of harm to the clients of such a professional participant or the creation of a threat to investments, to prevent non-compliance by a professional participant with the requirements of the legislation on capital markets and organized commodity markets and prevention of acceptance by a professional participant of risks, the implementation of which creates a threat to the integrity of capital markets and organized commodity markets and the stability of their functioning.

Principles of organization of the internal structure of professional participants of capital markets and organized commodity markets:

1) effective management of the professional participant, including through the appropriate distribution of responsibilities;

2) supervising the operational activities of a professional participant;

3) prevention and settlement of conflicts of interest;

4) responsibility for the improper organization of corporate governance.

All professional participants of capital markets and organized commodity markets are obliged to create a comprehensive, effective system of internal control, which includes subsystems of compliance, risk management and internal audit. Such a system is created taking into account the specifics of the type of professional activity on the capital markets and organized commodity markets, the nature and volume of operations carried out by them during the conduct of such activity, and the risks inherent in such activity. Professional participants of capital markets and organized commodity markets are obliged to monitor the functioning of such a system.

Structural divisions or individual officials included in the internal control system are subordinate to the body responsible for supervision and reporting to it.

In all professional participants of capital markets and organized commodity markets, regardless of their organizational and legal form, a body responsible for supervision is created. Members of the body responsible for supervision must meet the qualification requirements regarding business reputation and professional suitability established by the National Securities and Stock Market Commission.

The professional suitability of a member of the body responsible for supervision is defined as the totality of knowledge, professional and management experience of a person necessary for the proper performance of official duties, taking into account the business plan (business strategy) of a professional participant of capital markets and organized commodity markets.

The procedure for forming a body responsible for supervision is established by the charter of a professional participant of capital markets and organized commodity markets.

The body responsible for supervision must establish strategic goals of a professional participant of capital markets and organized commodity markets, monitor the relevance of such goals and periodically assess progress in their achievement. The body responsible for supervision must approve the internal provisions regulating the activities of the management bodies of a professional participant (except for those assigned to the exclusive competence of the general meeting of shareholders (participants) of such professional participant), the functioning of the internal control system, as well as internal

policies regarding the provision services to clients (except for regulatory and technical documents), monitor the adequacy and effectiveness of meeting their requirements. The body responsible for supervision must take appropriate measures to eliminate any deficiencies identified during the supervision.

The following additional requirements regarding corporate governance are established for professional participants of capital markets and organized commodity markets that are enterprises of public interest or systemically important professional participants (except banks):

1) the body responsible for supervision is the supervisory board. The supervisory board of such a professional participant must consist of at least five people, unless a larger number is established by law;

2) the supervisory board creates permanent committees:

a) audit committee (audit committee);

b) the committee on determining the remuneration of officials of the professional participant (committee on remuneration);

c) appointment committee;

d) risk management committee.

The Supervisory Board may create other permanent and temporary committees;

3) the supervisory board from among the members of the supervisory board necessarily determines the responsible person who is entrusted with the responsibility of ensuring the implementation of the compliance function.

Each committee includes at least three members of the supervisory board.

The Audit Committee, the Remuneration Committee, and the Appointments Committee are headed by members of the Company's Supervisory Board who are independent. The majority of the members of the said committees should be independent members.

Lecture 7. General provisions of labor law applicable to business activities. Legal status of officials of business companies

Securities and their types. A security is a document of the established form with the relevant details, which certifies a monetary or other property right, defines the relationship between the issuer of the security (the person who issued the security) and

the person who has rights to the security, and provides for the fulfillment of obligations under such security paper, as well as the possibility of transferring rights to securities and rights to securities to other persons.

According to the order of their placement or issue, securities are divided into emission or non-emission securities.

Issuable securities are securities that certify the same rights of their owners within one issue of securities in relation to the person who assumes the relevant obligations (issuer).

Issued securities include:

1) shares;

2) shares of corporate investment funds;

3) corporate bonds;

4) local loan bonds;

5) government bonds of Ukraine;

6) bonds of international financial organizations;

7) deposit certificates of banks;

8) mortgage bonds;

9) certificates of funds for real estate operations (hereinafter referred to as FON certificates);

10) investment certificates;

11) treasury obligations of Ukraine;

12) government derivatives;

13) optional certificates;

14) stock warrants;

15) credit notes;

16) depository receipts.

Securities exist in electronic (electronic securities) and paper (paper securities) forms. The electronic security is displayed as an account in the securities account in the securities depository accounting system.

A paper security is issued on a physical medium as a document containing the name

of the type of security, as well as the requisites specified by law.

Securities in the form of issue (issuance) can be bearer, registered or warrant.

Rights to a security and rights to a security existing in paper form belong to:

1) bearer securities (bearer securities);

2) to the person specified in the security (registered security);

3) to the person specified in the security, who can exercise such rights himself or appoint another authorized person by his order (warrant security). At the same time, such an order (endorsement) can be complete (indicating the name of the person to whom the rights under such warrant security are transferred) or blank (without specifying the name of the person to whom rights are transferred under such warrant security).

Rights to securities and rights to securities that exist in electronic form belong to the holder of a securities account opened in a depository institution, or to another person in cases established by law.

The issuer of bearer securities does not have the right to receive from the securities depository accounting system information about the owners of such securities in any form, except for the cases stipulated by the National Securities and Stock Market Commission.

The issuer of registered securities has the right to receive from the securities depository accounting system information about the owners of such securities in the form of a register of owners of registered securities.

Warrant securities can exist exclusively in paper form.

Issuable securities can be exclusively registered or bearer in the form of issue.

Registered emission securities exist exclusively in electronic form.

Issued bearer securities can exist in paper and electronic forms. Issued bearer securities that exist in paper form can be immobilized - transferred to an electronic form of existence by depositing such securities in securities accounts at the Central Securities Depository or the National Bank of Ukraine in accordance with the competence established by the Law of Ukraine " On the depository system of Ukraine" in accordance with the procedure established by the National Securities and Stock Market Commission. Issued bearer securities that exist in electronic form cannot be transferred to paper form.

Non-issued securities can exist in paper or electronic form.

The following groups of securities may be in civil circulation in Ukraine:

1) equity securities - securities certifying the participation of the owner of such securities (investor) in the authorized capital and/or assets of the issuer (including assets under the issuer's management) and giving their owner (investor) the right to receive a part profit (income), in particular in the form of dividends, and other rights established by legislation, as well as by the prospectus or issue decision, and for securities of joint investment institutes - by the prospectus (issue decision) of the joint investment institute. Equity securities include:

a) shares;

b) investment certificates;

c) background certificates;

d) shares of corporate investment funds;

2) debt securities - securities evidencing a loan relationship and providing for the obligation of the issuer or the person who issued the non-issued security to pay funds within a specified period, transfer goods or provide services, as well as other rights of the owner and obligations of the issuer and persons who provide security for bonds. Debt securities include:

a) corporate bonds;

b) government bonds of Ukraine;

c) bonds of local loans;

d) treasury obligations of Ukraine;

e) bank savings certificates;

e) deposit certificates of banks;

f) promissory notes;

g) bonds of international financial organizations;

3) mortgage securities – securities, the issue of which is secured by mortgage coverage and which certify the right of the owners to receive from the issuer the funds due to them. Mortgage securities include:

a) mortgage bonds;

b) collateral;

4) derivative securities – securities certifying the right of the owner in the cases and procedure determined by the prospectus (decision on the issue of securities) to demand from the issuer the purchase or sale of the underlying asset and/or the realization of the rights established by the prospectus (decision on the issue of securities) in relation to the underlying asset asset, and/or making payment(s) depending on the value of the basic indicator. Derivative securities include:

a) option certificates;

b) stock warrants;

c) credit notes;

d) depository receipts;

e) government derivatives.

The requirements for derivative securities (except state derivatives), as well as the procedure for their emission, accounting, circulation, redemption and repayment are determined by the regulations of the National Securities and Stock Market Commission;

5) commercial securities - securities that give their holder the right to dispose of the property specified in these documents.

The state may place foreign state loan bonds of Ukraine and state derivatives on international capital markets.

Concepts and types of joint investment institutions. Investment funds began operating in Ukraine in 1994, but the concept of a corporate investment fund was defined by the legislator later. The term "Corporate Investment Fund" appeared in the legislation of Ukraine in 2001 with the entry into force of the Law of Ukraine "On Joint Investment Institutions (Unit and Corporate Investment Funds)".

To date, the activities of corporate investment funds are regulated by the Law of Ukraine "On Joint Investment Institutions" dated July 5, 2012, which entered into force on January 1, 2014.

Mutual investment institutions (MIIs) are investment funds in which investors' funds are accumulated for further profit by investing them in securities of other issuers, corporate rights, and real estate. In Ukraine, CII (the Joint investment institution) includes

mutual and corporate investment funds.

CII, depending on the order of activity, can be of open, interval and closed type.

CII belongs to the open type, if the institute (the company managing its assets) undertakes to carry out at any time, at the request of the participants of this institute, the purchase of securities issued by such an institute (the company managing its assets).

CII belongs to the interval type, if the institute (the company managing its assets) undertakes to carry out, at the request of the participants of this institute, the purchase of securities issued by such an institute (the company managing its assets) during the period specified in the prospectus (interval).

The CII belongs to the closed type if the institution (its asset management company) does not undertake to buy back the securities issued by such an institution (its asset management company) before its termination.

CII can be fixed-term or indefinite. Term CII is created for a certain period established in its regulations, after which the specified joint investment institution is terminated unless a decision is made to extend the period of activity of such joint investment institution. A closed-type CII can only be short-term.

The period of activity of a fixed-term corporate fund can be extended by the decision of the general meeting of fund participants.

The term of operation of a fixed-term mutual fund may be extended by the decision of the fund's asset management body, which is authorized to make changes to its regulations.

In the case of an extension of the period of activity of a fixed-term CII (institute of joint investment), the securities of such an institute must be repurchased from its participants, who submitted a written application for the repurchase of their securities within three months from the date of the adoption of the said decision, and from the participant of the corporate investment fund - also on the condition that this participant did not vote for the relevant decision. Such redemption is carried out at the estimated value as of the day of the decision to extend the term of the fixed-term ISI, and the number of securities that are redeemed from the participant cannot exceed the number of securities that he was the owner of on the day of the said decision.

The period for which the activity of a fixed-term CII is continued cannot exceed the period of activity of such an institute, provided for by its regulations on the day of registration of these regulations. There is no limit to the number of decisions on extending the period of activity of the fixed-term JII.

An open-ended CII is created for an indefinite period.

CII can be diversified, non-diversified, specialized or qualifying.

CII is considered diversified if it simultaneously meets the following requirements:

1) the total value of the securities of one issuer in the assets of the CII does not exceed 10 percent of the total volume of securities of the corresponding issue of securities of such issuer;

2) the total value of the securities that constitute the assets of the CII in an amount exceeding 5 percent of the total volume of securities issuance, at the time of their acquisition, does not exceed 40 percent of the value of net assets;

3) at least 70 percent of the total value of CII assets are funds, including in bank deposit accounts, bank savings certificates, bank deposit certificates, bank metals, corporate bonds and bonds of local loans, government securities, bonds of international financial organizations, which placed on the territory of Ukraine, as well as securities admitted to trading on the regulated stock market.

A CII is considered specialized if it invests assets exclusively in assets defined by the Law of Ukraine "On Joint Investment Institutions" (Law on CII).

Specialized CIIs include investment funds of the following classes:

1) money market funds;

2) state securities funds;

3) bond funds;

4) stock funds;

5) index funds;

6) funds of banking metals.

A CII is considered qualifying if it invests assets exclusively in one of the qualifying asset classes and funds and does not have any asset structure requirements.

Qualifying asset classes include:

1) combined class of securities;

2) real estate class;

3) class of rental assets;

4) class of credit assets;

5) class of commodity assets admitted to trading on multilateral trading platforms;

6) other asset classes that the National Securities and Stock Market Commission may introduce and classify as qualifying assets.

CIIs that do not meet the requirements of the Law on CIIs and the regulations of the Commission on Securities of the stock market to be diversified, specialized, or qualifying collective investment institutions are non-diversified.

Open CII can only be diversified JIIs and specialized CIIs.

Interval JIIs can only be diversified JIIs, specialized CIIs and qualifying JIIs.

Specialized investment funds of the classes specified in clauses 5 and 6 of the fifth part of the article may be opened by exchange CII. 7 of the Law on JII. An exchange CII is an institute whose securities issue prospectus stipulates that:

1) the securities of such an institute are subject to compulsory circulation on the regulated stock market, determined by the issue prospectus;

2) acquisition of securities during their initial placement or sale by the issuer of previously purchased securities or presentation of securities of such an institution for redemption is carried out by participants of such an institution or investors through the underwriter of such securities or by the underwriter at its own expense or at the expense of its clients;

3) an investment firm that has underwritten the securities of such an institution is obliged to perform the function of a market maker about such CII securities by the procedure established by the National Securities and Stock Market Commission;

4) payment for the securities of such an institution during their sale or redemption by the issuer may be made in the appropriate proportion with the assets specified in the investment declaration of the said institution.

The prospectus for the issue of securities of the exchange CII may set requirements regarding the minimum number or value of securities that can be purchased during their

placement or presented for redemption.

The order of interaction between the company managing the assets of the exchange CII and the underwriter of securities of such an institution is established by the National Securities and Stock Market Commission.

The non-diversified CII of the closed type, which carries out exclusively private placement of securities of the joint investment institute among legal entities and individuals, is a venture fund.

It is forbidden to change the type and type of CII, the class of specialized or qualifying CII, and whether the CII belongs to exchange or venture companies.

Interval CIIs can only be diversified JIIs, specialized CIIs and qualifying CIIs.

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3) an investment firm that has underwritten the securities of such an institution is obliged to perform the function of a market maker in relation to such CII securities in accordance with the procedure established by the National Securities and Stock Market Commission;

4) payment for the securities of such an institution during their sale or redemption by the issuer may be made in the appropriate proportion with the assets specified in the investment declaration of the said institution.

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The non-diversified CII of the closed type, which carries out exclusively private placement of securities of the joint investment institute among legal entities and individuals, is a venture fund.

It is forbidden to change the type and type of CII, the class of specialized or qualifying CII, and whether the CII belongs to exchange or venture companies.

Legal grounds for formation, activity and termination of a corporate fund. A corporate fund is a legal entity that is formed in the form of a joint-stock company and conducts exclusively joint investment activities.

A corporate fund can be created exclusively by incorporation. The Law on CII prohibits the merger, division, separation, merger or transformation of a corporate fund, separation from the corporate fund of another legal entity, as well as joining the corporate fund of another legal entity.

A corporate fund is considered created and acquires the status of a legal entity from the date of its state registration in accordance with the procedure established by law. The corporate fund acquires the status of CII from the day of entering information about it into the Register.

In the period between registration in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations and the entry of information into the Register, the corporate foundation has no right to take any actions other than those aimed at its creation and entry of information about it into the Register.

The founders (founder) of the corporate fund are the persons (person) who made the decision to create it.

A corporate fund may not be established by legal entities in which the share of state or communal property in the authorized capital exceeds 25 percent.

The founders of a corporate fund may enter into a founding agreement, which defines the procedure for conducting joint activities related to the creation of a corporate fund, the number of shares of the corporate fund to be purchased by each founder, the

nominal value and the cost of acquiring such shares, the term and form of payment for the shares of the corporate fund, and the term of this contract

The funding agreement is not the founding document of the corporate fund and is valid until the day of registration of the corporate fund as a legal entity.

The funding agreement is concluded in writing. If a corporate fund is created with the participation of individuals, their signatures on the founding agreement are subject to notarization. In the case of the establishment of a corporate fund by one person, a founding agreement is not concluded.

If a corporate fund is established, its shares are subject to private placement. Payment by the founders of shares of the corporate fund is made exclusively with funds.

Before the state registration of the corporate fund and its charter in the state registration authorities, the founders of the corporate fund must pay 100 percent of the amount of the initial authorized capital.

The creation of a corporate fund is carried out in the following stages: 1) adoption by the meeting of founders of a decision on the creation of a corporate fund, approval of the draft of its charter and on the private placement of shares of the corporate fund;

2) submission to the National Securities and Stock Market Commission of the application and all documents necessary for approval of the draft charter of the corporate fund and registration of the issue of shares for the purpose of forming the initial authorized capital of the corporate fund;

3) registration by the National Securities and Stock Market Commission of the issue of shares of a corporate fund, approval of the draft of its charter and issuance of a temporary certificate of registration of the issue of shares;

4) assignment of international securities identification number to shares of the corporate fund;

5) conclusion of an agreement with the securities depository on servicing the issue of corporate fund shares and issuing a global certificate;

6) private placement of shares among the founders of the corporate fund;

7) payment of the full nominal value of shares of the corporate fund for the purpose

of forming the initial authorized capital;

8) approval by the constituent assembly of the corporate fund of the results of the private placement of shares among the founders of the corporate fund, approval of the charter, election of members of the supervisory board of the corporate fund, approval of draft contracts with the asset management company and the custodian of the assets of the corporate fund;

9) state registration of the corporate fund and its charter in state registration bodies;

10) conclusion of contracts with the asset management company and the custodian of the assets of the corporate fund;

11) submission to the National Commission for Securities and the Stock Market of all documents necessary for the registration of the report on the results of the private placement of shares among the founders of the corporate fund, the regulations and the entry of information about the corporate fund into the Register;

12) obtaining a certificate of registration of the issue of shares of a corporate fund, registered regulations, a certificate of entry into the Register and a registered report on the results of the private placement of shares among the founders of the corporate fund.

Violation of the stages of creation of a corporate fund is the reason for the refusal of the National Securities and Stock Market Commission to issue a certificate of registration of the issue of shares of a corporate fund, registration of regulations and a report on the results of private placement of shares among the founders of a corporate fund.

If the National Commission for Securities and the Stock Market refuses to issue a certificate of registration of the issue of corporate fund shares, registration of regulations and a report on the results of private placement of shares among the founders of the corporate fund, all funds raised by the corporate fund must be returned to the participants of the corporate fund within 30 working days from the date of receipt of such refusal.

The registration of the report on the results of the private placement of shares among the founders of the corporate fund for the purpose of forming the initial authorized capital of the corporate fund is carried out within 30 working days from the date of receipt of the relevant documents to the National Securities and Stock Market Commission, the list of which is established by the commission.

The founding document of a corporate fund is its charter. According to Art. 11 of the Law on CII, the charter of a corporate fund must contain information about:

1) the full name of the corporate fund in Ukrainian;

2) type of corporate fund (open, interval, closed);

3) type of corporate fund (diversified, non-diversified, specialized, qualifying);

4) investment fund class if the corporate fund is specialized or qualified;

5) belonging of the corporate fund to a venture or exchange fund;

6) joint investment as an exclusive activity of the corporate fund;

7) restrictions on activity;

8) term of operation of the corporate fund in case such corporate fund is temporary;

9) the size of the authorized capital;

10) nominal value and total number of shares of the corporate fund;

11) the procedure for paying dividends to members of a corporate fund (for a closed corporate fund), except in cases where the statute provides that dividends are not paid;

12) procedure for convening and conducting general meetings;

13) the competence of general meetings and the procedure for their decision-making;

14) method of notifying participants of the corporate fund about changes in the agenda of the general meeting;

15) quantitative composition, the competence of the supervisory board, and its decision-making procedure;

16) the procedure for making changes to the charter;

17) procedure for termination of the corporate fund.

The charter of a corporate fund cannot provide for the granting of additional rights or powers to its founders in relation to other participants of such a corporate fund.

The charter of the corporate fund may contain other provisions that do not contradict the law.

Changes to the charter of a corporate fund are made in accordance with the procedure established by law with mandatory notification of the National Securities and Stock Market Commission through the official communication channel within five

working days from the date of state registration of such changes in the prescribed manner.

In the name of the corporate fund, given in its charter, the words "corporate investment fund", the type, type, class (if the fund is specialized or qualified) of the fund and its belonging to an exchange or venture fund must be indicated.

The corporate fund is terminated exclusively by liquidation. Voluntary liquidation of the corporate fund is carried out by the decision of the general meeting of the participants of the corporate fund in accordance with the procedure provided for by the Law on CII, in compliance with the requirements of the Civil Code of Ukraine.

The corporate fund is compulsorily liquidated if:

1) as a result of the repurchase of shares of a corporate fund, the value of its assets has become less than the legally established minimum amount of the authorized capital of a corporate fund;

2) the period of activity of the corporate fund has expired (for a fixed-term corporate fund);

3) the prospectus for the issue of shares of the corporate fund, issued for the purpose of joint investment, has not been registered within one year from the date of entering information about the corporate fund into the Register;

4) within one month after the expiration of the contract with the asset management company and/or the custodian of the assets of the corporate fund, the validity period of such contract has not been extended or the contract has not been concluded with another company for the management of assets and/or the custodian of the assets of the corporate fund;

5) the license issued to the asset management company for the management of institutional investors' assets has been revoked, and no contract with another asset management company has been concluded within 30 working days;

6) the license issued to the custodian of the assets of the corporate fund to carry out depository activities of the custodian of securities has been canceled, and the contract with another custodian of the assets of the joint investment institute has not been concluded within 30 working days;

7) in other cases provided by law.

Liquidation on these grounds is carried out by the decision of the general meeting of the participants of the corporate fund. If they do not accept such a decision, the liquidation is carried out based on a court decision, in particular, at the request of the National Securities and Stock Market Commission or another authorized state body.

If within one month from the date of expiry of the term stipulated by the charter and regulations of the term corporate fund, the general meeting of the members of the corporate fund has not adopted a decision on liquidation, the liquidation of such fund shall be carried out by decision of the supervisory board.

Liquidation of a fixed-term corporate fund before the end of the period established by the regulation is possible subject to the consent of all its participants.

From the moment of the decision on the liquidation of the corporate fund, placement and circulation of shares of such a fund are prohibited.

The corporate fund is liquidated in accordance with the procedure and within the terms established by the regulations of the National Securities and Stock Market Commission.

The liquidation commission of the corporate fund must necessarily include representatives of the asset management company and the custodian of the assets of the corporate fund

The procedure for the liquidation of the corporate fund is carried out in the following order:

1) adoption by the general meeting of a decision on the liquidation of the corporate fund, on the election of the liquidation commission, on the suspension of placement and circulation of shares of the corporate fund (except for operations related to the redemption of shares of the corporate fund), on settlements with the participants of the corporate fund other than funds, assets fund;

2) meeting the demands of creditors, including the corporate fund asset management company, the custodian of corporate fund assets, the depository, the auditor (auditing firm) and the corporate fund property appraiser;

3) realization of corporate fund assets;

4) drawing up by the liquidation commission of the interim liquidation balance

sheet;

5) approval of the interim liquidation balance sheet by the supervisory board;

6) distribution of assets of the corporate fund by the liquidation commission;

7) drawing up the liquidation balance sheet by the liquidation commission;

8) submission by the liquidation commission to the National Securities and Stock Market Commission of documents to cancel the registration of the issue of shares of the corporate fund, cancel the prospectus of the issue of shares of the corporate fund and cancel the certificate of registration of the issue of shares of the corporate fund;

9) cancellation by the National Securities and Stock Market Commission of the registration of the issue of shares of a corporate fund, the prospectus of the issue of shares of a corporate fund and cancellation of the certificate of registration of the issue of shares of a corporate fund;

10) submission by the liquidation commission to the National Securities and Stock Market Commission of documents for canceling the registration of the regulation, canceling the certificate of entry into the Register and excluding information about the corporate fund from the Register;

11) exclusion of information about the corporate fund from the Register by the National Securities and Stock Market Commission;

12) state registration of termination of the corporate fund.

The distribution by the liquidation commission of assets of the corporate fund other than funds is carried out subject to the consent of all participants of the corporate fund and is formalized by an agreement on the distribution of assets of the corporate fund other than funds concluded between the liquidation commission and all participants of the corporate fund, in this case, the sale of such assets is not carried out.

The corporate fund, after removing information about it from the Register, is obliged to take all actions related to its liquidation as a legal entity.

After the sale of the assets of the corporate fund by the liquidation commission, the funds received from the sale are distributed in the following order:

1) payments are made to the participants of the corporate fund who submitted applications for the redemption of shares of the corporate fund before the decision on the

liquidation of the corporate fund (except for closed corporate funds);

2) mandatory payments are made to the State Budget of Ukraine;

3) the demands of creditors are satisfied;

4) funds are distributed among the participants of the corporate fund in proportion to the number of shares of the corporate fund owned by them.

Distribution of assets is carried out after full satisfaction of the requirements of the previous round.

Settlements with the participants of the corporate fund in the process of liquidation of the corporate fund may be carried out with assets of the corporate fund other than funds, if:

1) shares of the corporate fund were placed only through private placement;

2) the regulation provides for the possibility of making settlements with the participants of the corporate fund with assets of the corporate fund other than funds;

3) consent to make settlements with the participants of the corporate fund with other than funds, assets of the corporate fund has been given by all participants of the corporate fund;

4) the funds available in the assets of the corporate fund at the time of the decision on liquidation are sufficient to make mandatory payments to the State Budget of Ukraine and satisfy the demands of creditors and will be used exclusively for such purposes.

In the case of settlements with the participants of the corporate fund with assets other than funds, the distribution of such assets among the participants of the corporate fund is carried out in proportion to the number of shares owned by them, by the procedure approved by the general meeting of the participants of the corporate fund.

Asset management company. An asset management company is a business partnership established in accordance with legislation in the form of a joint-stock company or a limited liability company, which carries out professional activities in the management of assets of institutional investors based on a license issued by the National Securities and Stock Market Commission.

The asset management company manages the assets of CII.

The size of the authorized capital of the asset management company must be at least

7 million hryvnias. In the asset management company, a reserve fund is created in the amount determined by the founding documents, but not less than 25 percent of the authorized capital. The amount of annual deductions to the reserve fund is determined by the founding documents of the asset management company, but cannot be less than 5 percent of the amount of net profit. Funds of the reserve fund are used in the manner determined by the National Securities and Stock Market Commission.

The state's share in the authorized capital of an asset management company cannot exceed 10 percent.

The combination of asset management activities with other types of professional activity on the capital markets is prohibited, except in cases provided for by law.

An asset management company may conduct mortgage coverage management activities.

The asset management company participates in the management of the activities of the legal entity whose shares (parts, units) belong to the composition of the assets of the CII, the assets of which the company manages.

An asset management company can manage the assets of several CIIs at the same time.

In relations with third parties, the asset management company of a corporate fund must act on behalf and in the interests of such a fund on the basis of an asset management agreement.

The CII asset management company notifies the CII asset custodian about operations to debit funds from accounts and dispose of other assets of the corporate fund or the mutual fund asset management company, except for assets that are kept by the CII asset custodian, no later than three working days from the day of the operation.

The asset management company during the implementation of asset management activities of the joint investment institute does not have the right to:

1) acquire property and securities of those types not provided for in the investment declaration of the joint investment institute at the expense of the assets of the CII;

2) carry out transactions with the assets of the ISI, which it manages, at its own expense;

3) alienate the assets of ISI free of charge;

4) take a loan or credit, repayable at the expense of CII assets, in the amount of more than 10 percent of the value of CII's net assets for a period of more than three months for a purpose other than using these funds to buy back CII securities;

5) grant a loan at the expense of the assets of the CII;

6) use the assets of the CII to ensure the fulfillment of obligations to which such an institution is not a party;

7) to purchase promissory notes at the expense of ISI assets, unless otherwise established by the regulations of the National Securities and Stock Market Commission;

8) to place securities of other issuers, except for securities of CII, the assets of which it manages;

9) enter into purchase and sale agreements with related parties of such a company, except for agreements with investment firms regarding placement and redemption of CII securities;

10) conclude loan agreements (interest-bearing and interest-free) with related parties of such a company;

11) sell ISI securities to the custodian of ISI assets, the depository, the appraiser of ISI property and the auditor (auditing firm) of such institute, as well as to state authorities and local self-government bodies;

12) alienate the property constituting the assets of the relevant CII to the assets of the company itself;

13) enter into contracts on behalf of ISI, which by their nature can only be concluded on behalf of the asset management company;

14) enter into contracts on behalf of ISI, which by their nature can only be concluded by ISI;

15) alienate the property belonging to the company to the assets of ISI;

16) alienate the property, which constitutes the assets of the CII, for the benefit of another CII, which it manages, except in the case of transferring funds from the account of one CII to the account of another CII when converting the securities of the CII;

17) provide loans at the expense of the assets of the CII.

CII asset management activities are carried out by an asset management company on the basis of a license issued by the National Securities and Stock Market Commission in accordance with the procedure established by law.

The asset management company bears property liability for violating the requirements of legislation, regulations, the prospectus for the issuance of CII securities, the investment declaration, the contract on the management of assets of the corporate fund.

An asset management company that has exceeded its authority or entered into a contract not on behalf of a corporate fund shall be liable for obligations arising from the performance of such contracts only with property owned by it, unless otherwise provided by law.

In the event that the asset management company is declared bankrupt, the assets of ISI are not included in the liquidation mass of the asset management company.

Lecture 8. Intellectual property in the field of entrepreneurial activity

The concept and functions of the authorized capital of corporate enterprises. The term "authorized capital" is used in economic, civil, tax legislation and in accounting. Common in the legal literature is the definition of the authorized capital as a set of contributions recorded by the founding documents and assessed by the participants, united by the participants during the creation of the company to ensure its activities; as the monetary equivalent of property, which must be transferred to the company in the form of contributions to ensure its activities and payment by its participants of the property rights received by them; as sums of participants' contributions, which function as a source of company funds. Some scientists believe that the authorized capital under modern conditions is needed only to cover the costs associated with the state registration of the enterprise and to ensure its activity in the initial period of existence.

At the initial creation of a corporate enterprise, its statutory (JSC, LLC, TDV) or accumulated capital (full and limited partnerships) or share fund (cooperatives) is formed. Authorized capital is directly related to corporate rights, because according to Art. 96-1 of the Civil Code of Ukraine, the rights of participants of legal entities (corporate rights) are a set of powers that belong to a person as a participant (founder, shareholder, shareholder)

of a legal entity in accordance with the law and the company's charter. Corporate rights are acquired by a person from the moment of acquiring ownership of a share (a share, share or other object of civil rights certifying the participation of a person in a legal entity) in the authorized capital of a legal entity.

Thus, the concept of authorized capital concentrates an accounting approach with a legal aspect, and through it the connection between the legal regime of the property of the participants, which is contributed by them as contributions (payment for shares) when creating a corporate enterprise, the property of this enterprise and the corporate rights of the participants of the corporate enterprise is traced. First, it is formed due to contributions made by participants in the form of money or property.

Secondly, the authorized capital is an indicator (or expression) of the property of a corporate enterprise. After the participants make all contributions to the authorized capital (that is, after attracting property in an amount equal to the total amount of the authorized capital), the latter is considered formed and is reflected as such in the financial statements of the enterprise, regardless of the method and order of further use of the contributions by the enterprise.

Thirdly, in the charter capital of all companies, except for joint-stock companies, the shares of participants are determined, which by their nature represent property rights, because they can be alienated. The authorized capital of JSC is defined as that which is divided into a certain number of shares of equal nominal value. The authorized capital itself, not being an object, cannot be alienated.

Authorized capital performs certain functions, through which its essence and purpose are revealed:

1) investment (start-up). This function assumes that the funds, property, and property rights contributed by the founders (participants) to the authorized capital serve as the basis for starting the activities of a newly created or for financing the activities of an already established enterprise. In order to implement this function, the legislator established that participants' contributions to the authorized capital are not subject to income tax and are not included in the value added tax tax base.

The authorized capital must be an effective mechanism for attracting investments

during the formation of the initial material base of the enterprise and its subsequent increase through additional issues of shares or additional contributions of participants. The investment function is also manifested in the fact that contributions to the authorized capital, as a rule, limit the risk of economic losses of the participants. They risk losing only what they have transferred as a contribution to the authorized capital. Their personal property liability for the obligations of the established corporate enterprise is allowed only in cases provided for by law and the founding documents of the enterprise;

2) informative. Information about the authorized capital, first of all, about its size, the order of formation, the distribution of contributions among participants has an important information value. The size of the authorized capital and the division into shares among participants makes it possible to assess the amount of risk of all participants and each of them, in particular, the distribution of votes between them and the impact on the company's activities. This function of authorized capital does not depend on its size;

3) regulatory. Authorized capital is also used as a tool to determine the share of each member of a corporate enterprise. The size of the participant's share in the authorized capital of the enterprise reflects: a) the degree of influence of the participant on the management of the enterprise (the number of votes that the participant has during voting depends on the size of his share in the authorized capital); b) the amount of dividends received by him (interest, payments); c) a share in the property of the enterprise, which is allocated during the division of property between participants during the liquidation of the enterprise;

4) warranty. The size of the authorized capital indicates the minimum value of the net assets of the corporate enterprise. In accordance with the authorized capital, the minimum size of the company's property is determined, which guarantees the interests of its creditors. The law establishes the relationship between the authorized capital and the value of net assets. The equity (net asset value) of a corporate enterprise is the difference between the total value of the enterprise's assets and the value of its liabilities to other persons.

The guarantee function of authorized capital is especially evident in enterprises engaged in banking, financial activities or professional activities in the capital markets.

The importance of this function is enhanced by additional requirements regarding the size and order of formation of the authorized capital of such business entities, the need to comply with economic standards and control by the National Bank of Ukraine, the National Commission for State Regulation in the Field of Financial Services Markets, or the National Financial Market Regulatory Commission.

The guarantee function is related to the investment function, as both characterize the property aspects of the legal status of the enterprise. However, if the investment function reveals the value of the authorized capital for the enterprise itself, then the guarantee function - for third parties, primarily creditors.

Along with the generally accepted ones in the literature, proposals are made regarding other functions of the authorized capital of a corporate enterprise - control, institutional, economic, accounting, sovereignty, and legal protection (basic and derivative).

The size of the authorized capital of corporate enterprises. The issue of mandatory authorized capital is directly related to the issue of its size. Fixing the maximum size of the authorized capital of a particular enterprise, the legislator proceeds from four criteria: organizational and legal form; the number of participants; state ownership of participants; spheres of activity of the enterprise.

The organizational and legal form allows taking into account the specifics of the responsibility of the participants for the obligations of the enterprise being created. According to this criterion, the minimum amount of authorized capital for JSC is established - 200 minimum wages, based on the minimum wage rate in effect at the time of creation (registration) of JSC. For other types of corporate enterprises, the minimum amount of authorized capital is not established by law. The legislator leaves this issue to the discretion of the participants.

The number of participants as a criterion for determining the size of the authorized capital is not taken into account by the current national legislation. There is no difference between the minimum capital of a corporate enterprise with one or two members and an enterprise with fifty members. A large number of participants, on the one hand, minimizes their initial costs, since the amount needed to create an enterprise is shared

among all. This makes participation in corporate ventures accessible to many individuals. On the other hand, a small amount of possible losses from an unsuccessful investment can make the participant indifferent to the fate of the enterprise created by him.

In addition, from an economic point of view, small investments are expensive to maintain, because the costs associated with exercising the participant's rights can exceed the cost of the investment.

The economic activity of enterprises has different importance and influence on other participants of the economic turnover. In order to minimize the negative consequences of inefficient economic activity of enterprises that are important from the point of view of public and state interests, the legislation establishes increased requirements for such economic entities and the conditions for their economic activity, in particular, this concerns the size and order of formation of their authorized capital. For example, the following increased requirements are established for commercial banks: the minimum amount of authorized capital at the time of state registration of a legal entity that intends to carry out banking activities cannot be less than 200 million hryvnias (Article 31 of the Law of Ukraine "On Banks and Banking Activities").

The National Bank of Ukraine has the right to establish for individual legal entities that intend to carry out banking activities, depending on their specialization, a differentiated minimum amount of authorized capital at the time of their state registration, but not lower than the amount established by law.

According to Art. 44 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets", the amount of the initial capital of an investment firm engaged in professional activity in the trading of financial instruments cannot be less than 22 million hryvnias, except for the cases provided for in parts four and five of this article.

In particular, Part 4 of Art. 44 of this law establishes that the size of the initial capital of an investment firm engaged in professional activity in the trading of financial instruments, namely: sub-brokerage activity; brokerage activity and activity of managing a portfolio of financial instruments, provided that such an investment firm has the right to receive on its own account and dispose of funds and financial instruments of clients, must meet the requirements regarding its size and the procedure for its calculation, established

by the National Commission for Securities and Stock Market and cannot be less than 4 million hryvnias.

In accordance with Part 5 of Art. 44 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets", the size of the initial capital of an investment firm engaged in professional activity in the trading of financial instruments, namely: sub-brokerage activity; brokerage activity; financial instruments portfolio management activity; investment consulting and placement activity without providing a guarantee, provided that such an investment firm does not have the right to receive on its own account and dispose of funds and financial instruments of clients, must meet the requirements regarding its size and the procedure for its calculation, established by the National Securities Commission and of the stock market, and cannot be less than 1.5 million hryvnias.

The Law of Ukraine "On Insurance" establishes that the size of the minimum capital of the insurer cannot be less than the minimum absolute value:

1) 32 million hryvnias – for an insurer that has received a license to carry out direct insurance activities under one or more classes of insurance other than life insurance;

2) 48 million hryvnias – for an insurer that has received a license to carry out direct insurance activities under one or more of insurance classes 10, 11, 12, 13, 14, 15;

3) 48 million hryvnias – for an insurer that has received a license to carry out direct insurance activities under one or more of the life insurance classes;

4) 48 million hryvnias – for an insurer whose license includes the right to carry out inward reinsurance activities.

The minimum amount of authorized capital is the minimum amount required to establish an enterprise. According to some scientists, the minimum authorized capital should be defined as a balance of two principles: the availability of establishing an enterprise (therefore, the minimum capital should not be too large) and the sufficiency to ensure the start of economic activity (therefore, the minimum capital should not be too small). A decrease in the value of the company's equity capital below the legally established minimum size of the authorized capital is an unconditional basis for the liquidation of the business entity.

Contributions to the authorized capital of corporate enterprises. The authorized capital of a corporate enterprise is formed at the expense of participants' contributions. According to Art. 115 of the Civil Code of Ukraine, money, securities, other things or property, or other alienable rights that have a monetary value can be a contribution to the authorized (compounded) capital of a business company unless otherwise established by law. The monetary assessment of the contribution of a member of a business partnership is carried out with the consent of other members, and in the cases established by Art. 7 of the Law of Ukraine "On Valuation of Property, Property Rights and Professional Appraisal Activity in Ukraine", it is subject to independent expert verification.

It is prohibited to use budget funds, promissory notes, property of state (communal) enterprises, which in accordance with the law (decision of the local self-government body) is not subject to privatization, and property under the operational management of budget institutions, for the formation of the authorized (composite) capital of a business association, unless otherwise not provided for by law (Article 86 of the Civil Code of Ukraine).

The property of a corporate enterprise is a set of things, its property rights and property obligations. It is formed at the expense of participants' contributions and from other sources, in particular, as a result of the enterprise's economic activity, conclusion of contracts, etc. Property contributed as a contribution to the authorized capital of a corporate enterprise becomes the property of this enterprise.

As a general rule, founders and participants of a corporate enterprise can make their contributions in the form of property objects (houses, structures, equipment, etc.), securities, property rights (including the use of land, water and other natural resources, houses, structures , on objects of intellectual property), cash in national and foreign currency.

So, in fact, any property can be the subject of a contribution to the authorized capital of a corporate enterprise under two conditions: it has a monetary value and can be alienated.

Special requirements for the formation of authorized capital are established for insurance organizations, banks, investment institutes, professional participants in the

securities market, etc. Yes, according to Art. 32 of the Law of Ukraine "On Banks and Banking Activities", the formation and capitalization of a bank is carried out mainly through cash contributions. Cash contributions for the formation and increase of the authorized capital of the bank are made by residents of Ukraine in hryvnias, and non-residents - in freely convertible foreign currency or in hryvnias. The authorized capital of the bank should not be formed from unconfirmed sources. It is also prohibited to use budget funds for the formation of the bank's authorized capital, if such funds have a different purpose. A legal entity that intends to carry out banking activities, before obtaining a banking license and entering information about it in the State Register of Banks, has the right to spend the funds contributed by the founders for the formation of its authorized capital, exclusively for the purpose of preparing for its implementation of banking activities.

In accordance with the requirements of the Law of Ukraine "On Institutions of Joint Investment", before the state registration of a corporate investment fund in the state registration authorities, its founders must pay 100 percent of the amount of the initial authorized capital, while payment by the founders of shares of the corporate investment fund is made exclusively with funds (Article 9).

A joint-stock company is the only organizational and legal form of economic organizations, the formation of the authorized capital of which is carried out using the appropriate financial instrument - shares. The procedure for the formation of the authorized capital of a joint-stock company established by the legislator is significantly different from the procedure for its formation in other economic organizations. Because of this, in the process of establishing a joint-stock company, the founders, independently determining the main content of their relations with the formation of the company's authorized capital, are obliged to follow the procedure established by economic legislation for the implementation of these relations, to perform special procedures defined by law.

Thus, the legislation on joint-stock companies establishes the specifics of payment for shares when forming the authorized capital of JSC. Thus, the payment of the value of the shares placed during the establishment of JSC is carried out in cash, as well as in

other property, if such a possibility is provided for in the decision on the issue of the relevant securities. (Article 12 of the JSC Law). According to Art. 25 of the JSC Law, it is not allowed to pay for the securities of a joint-stock company by: 1) alienation by the investor in favor of the issuer of debt emission securities issued by the investor (except for government bonds that are exchanged for shares of companies whose shareholder is the state, in cases provided for by law on the State Budget of Ukraine); 2) promissory notes; 3) other types of obligations, in particular, assuming obligations to perform works or provide services for the company. The charter of a joint-stock company may also establish other restrictions on forms of payment for securities. The company cannot impose restrictions or prohibitions on the payment of securities in cash. By the time the results of the securities issue are approved by the issuer's body authorized to make such a decision, the placed securities must be paid in full. If property (including claims against the company that arose before the issuance of securities) is paid as a fee for securities, the value of such property must correspond to its market value, determined by Art. 9 of the JSC Law.

The trend of recent years shows that contributions to the authorized capital in the form of intellectual property rights are gaining more and more popularity. According to Part 1 of Art. 424 of the Civil Code of Ukraine, property rights of intellectual property include: the right to use the object of intellectual property rights; the exclusive right to allow the use of the object of intellectual property rights; the exclusive right to prevent improper use of the object of intellectual property rights, including prohibit such use; other intellectual property rights. Contribution in kind, including property rights to IP must have a monetary value, which is approved by a unanimous decision of the general meeting, in which all members of the company must participate. When creating a company, this assessment is determined by the decision of the founders to create the company.

Formation of the authorized capital of corporate enterprises. The authorized capital is formed in several stages. At the first stage, participants are determined by the size of the authorized capital and the size of each participant's contribution. When solving this issue, an objective and/or subjective (formal) approach is used. Objective - involves

the formation of authorized capital in the amount necessary to achieve a certain goal. With an objective approach, the size of the authorized capital is, as a rule, high, and the shares reflect the real property investments of the participants. Therefore, as a rule, an objective approach is characteristic for determining the size of the authorized capital of so-called capital companies.

The subjective approach is the formation of authorized capital in the amount that ensures the pre-agreed distribution of shares between participants. Here, the main consideration is not what amount of funds is needed to achieve the company's goals and effective economic activity, but what capital structure suits the participants. After all, the distribution of profits will eventually depend on this, and most importantly, votes in the highest management body of the corporate enterprise. A subjective approach to the size and distribution of the authorized capital allows to take into account not only, and not even so much, the property contribution of the participant, but the personal importance of this or that participant in achieving the goal of the enterprise being created.

Of course, when creating an enterprise and determining the necessary capital, participants can and should take into account both approaches. Sources of funding for future activities, in particular participants' contributions, are important, but the degree of influence of each participant on the decisions of the corporate enterprise is no less important. Therefore, it seems optimal to take into account both objective and subjective factors.

For individual corporate enterprises (for example, created by members of the same family), the authorized capital plays a purely formal role: the participants are not interested in the distribution of votes and are not interested in the size of the authorized capital and contributions. But all the same, the participants are obliged to determine the size of the authorized capital and form it in order to comply with the requirements of the legislation on the creation of corporate enterprises. Therefore, in order to minimize the costs of creating an enterprise, participants form the authorized capital in the smallest amount allowed by law. This procedure for determining the size of the authorized capital is called formal.

At the second stage, when the issue of the size and distribution of shares in the

authorized capital is resolved, participants are determined with the subject of the contribution and its assessment. The subject of the contribution is the property that the participant transfers to the authorized capital of the enterprise in exchange for corporate rights. The subject of the contribution is determined by the agreement of all participants, because it is equally important for all of them that this property can be used in the future activities of the enterprise. The procedure for evaluating participants' contributions is determined in the constituent documents of the corporate enterprise, unless otherwise provided by law. The property that is the subject of the contribution must meet the following requirements: be owned by the participant, have a monetary value, be alienable, belong to property that can be used to form the authorized capital of the corporate enterprise being created. It is also necessary to take into account the special requirements for the formation of the authorized capital of individual enterprises, determined by the sphere of their activity. These include, in particular, insurance companies, banks, holding companies, corporate investment funds, other financial institutions, professional securities market participants, etc. For example, according to Art. 17 of the Law of Ukraine "On Insurance", the authorized capital of the insurer is formed and/or increased exclusively in monetary form and credited to bank accounts in accordance with the legislation. Cash contributions for the formation and increase of the authorized capital are made by residents of Ukraine in hryvnia, and non-residents - in foreign currency or in hryvnia.

At the third stage, the participants must agree on the terms of payment (transfer) of deposits. If we analyze the norms of the Civil Code of Ukraine, the Central Committee of Ukraine, the Law on GT, the Law on JSCs, the Law on LLCs, etc., we can come to the conclusion that the legislator does not establish a common term for the formation of authorized capital for all corporate enterprises. The deadlines for full payment by participants of their contributions to the authorized capital are established by laws on certain types of enterprises. At the same time, such terms can be specified in the founding documents of the enterprise, early fulfillment of obligations by participants is also allowed.

Yes, according to Art. 14 of the Law on LLCs, each member of the company must

make a full contribution within six months from the date of state registration of the company, unless otherwise provided by the statute. Relevant provisions may be included in the charter, changed or excluded from it by unanimous decision of the general meeting of participants, in which all members of the company participated. The value of the contribution of each member of the company must not be less than the nominal value of his share.

A member of a production cooperative is obliged to pay at least 10 percent of the share contribution by the day of state registration of the cooperative, and the remaining part - within a year from the day of its state registration, unless another term is established by the statute of the cooperative (Article 165 of the Civil Code of Ukraine).

In turn, the accumulated capital of a limited partnership is subject to payment by its participants within the first year from the day of state registration of the partnership (Part 4 of Article 135 of the Civil Code of Ukraine, Article 80 of the Law on Trade).

Each JSC founder must pay the full value of the purchased shares before the date of approval of the results of the placement of the first issue of shares. In case of non-payment (incomplete payment) of the value of the purchased shares by the date of approval of the results of the placement of the first issue of shares, JSC is considered unfounded. (Article 12 of the JSC Law).

Improper fulfillment of the obligation to form the authorized capital contradicts the interests of the corporate enterprise, creditors, conscientious participants, therefore it is a corporate offense and grounds for liability. First, it is the joint responsibility of the participants for the company's obligations. Yes, according to Art. 2 of the LLC Law, participants who have not fully paid their contributions are jointly and severally liable for its obligations within the value of the unpaid part of the contribution of each participant. In turn, the founders of the JSC are jointly and severally liable for the obligations related to its establishment that arose before its state registration (Article 13 of the JSC Law).

Secondly, if a member of an LLC or a joint stock company is late in making a contribution or its part, the executive body of the company must send him a written warning about the delay. The warning must contain information about the late payment or part of it and the additional term given for repaying the debt. The additional period

granted for debt repayment is established by the company's executive body or the company's charter, but may not exceed 30 days. If the member of the company did not make a contribution to repay the debt during the additional period provided term, the executive body of the company must convene a general meeting of participants, which can make one of the following decisions: 1) on the exclusion of a member of the company who is in arrears from making a contribution; 2) on the reduction of the authorized capital of the company by the amount of the unpaid part of the share of the participant of the company; 3) on the redistribution of the unpaid share (part of the share) among other members of the company without changing the size of the authorized capital of the company and the payment of such debt by the relevant members; 4) on the liquidation of the company (Article 15 of the LLC Law). At the same time, votes falling on the share of a participant who owes money to the company are not taken into account when determining the results of voting for the adoption of one of the above decisions. According to Art. 13 of the Law of Ukraine "On Cooperatives", non-payment of contributions in accordance with the procedure defined by the charter of the cooperative is grounds for termination of membership in the cooperative. In turn, shareholders who have not fully paid for their shares, in the cases specified by the company's charter, are responsible for the company's obligations within the unpaid part of the value of their shares (Article 152 of the Civil Code of Ukraine). The agreement of the participants on the formation of the authorized capital is a central issue in the creation of corporate enterprises. Regarding the investors of the limited partnership, only the aggregate size of their shares in the company's property and the size, composition and order of their contributions are specified in the founding agreement. In contrast to the founding documents of joint-stock companies, general and limited partnerships, the charter of LLCs and TDVs may, but not necessarily, contain information on the size of the authorized capital (Part 5, Article 11 of the Law on LLCs). Also, the statutes of LLCs and TDVs may establish the procedure for determining the size of participants' shares depending on changes in the value of property contributed as a contribution and additional contributions of participants. The size of the share of the participant of the company in percentage must correspond to the ratio of the nominal value of his share and

the authorized capital of the company. The Law on LLCs provides for the possibility of establishing restrictions on changing the ratio of participants' shares in the company's charter. Such provisions can be included in the charter, changed or excluded from it only by unanimous decision of the general meeting of participants, in which all participants of the company participated.

According to Art. 8 of the Law of Ukraine "On Cooperation", the charter of the cooperative, among other things, must contain information on the procedure for establishing the amounts and payment of contributions and shares by the members of the cooperative and responsibility for breach of obligations regarding their payment; the procedure for forming the property of the cooperative.

The last important moment during the formation of the authorized capital of a corporate enterprise is the formalization of the contributions of the participants, which is of significant importance, as it certifies the fulfillment of the relevant obligations of the participants, determines the moment of ownership of the corporate enterprise and entails the consequences established by public law. Current legislation, in particular the Central Committee of Ukraine and the Civil Code of Ukraine, do not establish special requirements in this regard. Obviously, when making a contribution to the authorized capital of a corporate enterprise, you should be guided by the general rules on the fulfillment of obligations (Chapter 48 of the Civil Code of Ukraine, Chapter 22 of the Civil Code of Ukraine). Also, the legislation does not establish a specific procedure for monetary assessment of participants' contributions to the authorized capital. The participants of the enterprise independently determine the assessment of contributions in the founding agreement, the decision of the founders on the establishment of the enterprise, the agreement on the establishment of the company or in the founding documents.

A further change in the value of the property that was contributed to the authorized capital does not affect the size of the participant's share in the authorized capital. For LLCs and TDVs, the monetary value of the contribution to the authorized capital must be approved by a unanimous decision of the general meeting of participants, in which all members of the company participated (Part 3, Article 13 of the Law on LLCs).

Usually, registration of the acceptance of contributions to the authorized capital is carried out with the help of an act of acceptance and transfer, drawn up in an arbitrary form, while the mandatory details regarding the primary documents, defined in Part 2 of Art. 9 of the Law of Ukraine "On Accounting and Financial Reporting in Ukraine". The deed must contain a detailed description of the transferred property and a reference to the relevant documents. The act must be signed by the participant who transfers the deposit and the authorized representative of the corporate enterprise. The deed may also record the transfer of accompanying documents to the property (for example, real estate documents, vehicle registration documents, etc.). Signatures in the deed of acceptance and transfer must be notarized if, in the future, registration of ownership rights to the received property will take place by the law. Property rights can be transferred in different ways, in particular with compliance with the norms on the assignment of the right of claim (Articles 512-519 of the Civil Code of Ukraine). Monetary contributions of participants can be made to the authorized capital in three ways: through the company's cash register, the bank's cash register, or through non-cash settlement; at the same time, all these methods can be combined.

The procedure for increasing and decreasing the authorized capital of corporate enterprises. The authorized capital of a corporate enterprise can be changed both upwards and downwards.

The main reasons for the reduction of the authorized capital are, in particular, the following:

• non-payment by the participants of the LLC or VAT of their contributions to the authorized capital of the company within the given additional period for debt repayment (Article 15 of the Law on LLCs);

• redemption of shares (shares) belonging to the company;

• obtaining control over the company in connection with an increase in the nominal size of the shares;

• withdrawal from circulation and return to the participant of part of the property or funds.

In some cases, the legislator requires the members of the company to reduce the

authorized capital, for example, in case of withdrawal, exclusion of the member of the company, foreclosure on the share of the member of the company.

As a general rule, a reduction of the company's authorized capital is allowed after notifying its creditors whose claims on the company are not secured by a pledge, surety or guarantee.

The procedure for reducing the authorized capital involves the following stages:

1. adoption of a decision to reduce the authorized capital. The resolution of the issue of the reduction of the authorized capital belongs to the competence of the higher management body of the enterprise. Consideration of this issue at the general meeting is mandatory due to the need to fulfill the requirements of Art. 157 of the Central Committee of Ukraine, Art. 30 of the Law on LLCs. The initiative for convening a general meeting and putting such an issue on the agenda can come from the members of the society. The decisive part of the decision of the general meeting of participants must contain information about the amount by which the authorized capital is reduced and the method of reduction;

2. state registration of changes to information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Organizations, including changes to constituent documents. A reduction in the authorized capital of a corporate enterprise must be accompanied by state registration of changes to the information on the size of the authorized (composite) capital as changes to the information on the legal entity contained in the UDR. The term of state registration of changes to information about a legal entity contained in the EDR should not exceed 24 hours after the receipt of the necessary documents by the state registration body (Article 26 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations") ;

3. notification of creditors. A reduction in the authorized capital of a corporate enterprise may affect the interests of its creditors, especially if the enterprise's property will be seized as a result. Therefore, the legislator establishes protective measures to ensure their interests by granting creditors special rights. The first of them is the right to receive information, which corresponds to the obligation to inform creditors about the reduction of the authorized capital of the company. According to Art. 157 of the Civil

Code of Ukraine, Part 3 of Art. 19 of the Law on LLCs, after passing a decision on the reduction of the authorized capital, the company is obliged to personally notify creditors whose claims against the company are not secured, about the reduction of the authorized capital, so that they have the opportunity to exercise their rights;

4. Settlement of creditors' claims. According to Art. 157 of the Civil Code of Ukraine, in the event of a decrease in the authorized capital, creditors have the right to demand early termination or fulfillment of the corresponding obligations by the company. If the creditor intends to use his own rights, he declares this by sending the company a corresponding statement (claim), in which he states his requirements for: a) early termination of the obligation; b) early fulfillment of the obligation to the creditor; c) ensuring the fulfillment of the obligation. The list of these requirements is exhaustive.

The main legal consequences of a decrease in the authorized capital of corporate enterprises include: 1) a change in the nominal value of shares. This consequence occurs when the authorized capital is reduced by proportional or disproportionate reduction of the nominal value of contributions of all participants and reduction of the nominal value of contributions of individual participants; 2) change in the percentage value (size) of the share. This happens in the case of a disproportionate decrease in the authorized capital; 3) seizure of part of the enterprise's property (reduction of its assets). This consequence can occur when the value of the company's net assets exceeds the amount of the reduced authorized capital. Withdrawal of property is possible for the amount by which the authorized capital is reduced, and after the completion of the entire capital reduction procedure, in particular, the settlement of creditors' claims.

The operation to increase the authorized capital is more common. The following are recognized as the most popular reasons for increasing the authorized capital:

• increase in working capital of the enterprise;

• acceptance of new participants;

• obtaining control over the enterprise due to a change in the capital structure;

• the need to meet special requirements for authorized capital and economic regulations (for example, for commercial banks);

• mergers and acquisitions of other enterprises;

• optimization of taxation (contributions to the authorized capital are not taxed).

The law establishes special requirements for increasing the authorized capital of JSC, LLC and VAT (Article 17 of the JSC Law, Article 16 of the LLC Law).

Yes, JSC has the right to increase the authorized capital after registration of reports on the results of placement of all previous issues of shares. The increase of the JSC's authorized capital with the involvement of additional contributions is carried out through the additional issue of shares. An increase in the size of the JSC's authorized capital without the involvement of additional contributions is carried out by increasing the nominal value of shares. An increase in the size of the JSC's authorized capital is not allowed if, on the date of adoption of such a decision, there are shares purchased by the company or otherwise acquired. A mandatory condition for increasing the authorized capital of JSC is compliance of the amount of the authorized capital after its increase with the legal requirements regarding its minimum size, on the date of registration of changes to the company's charter.

In turn, an increase in the authorized capital of LLCs and TDVs is allowed only after all members of the company have made their contributions in full. At the same time, an increase in the authorized capital is not allowed if the company owns a share in its own authorized capital. The condition of full payment of deposits must be fulfilled on the day of adoption by the general meeting of the decision to increase the authorized capital. This is important in view of the time required for convening the general meeting of participants. Therefore, if on the day of the notification of the convening of the general meeting, the participants are in arrears for their contributions, but on the day of the general meeting the debt is repaid, the meeting has the right to decide on increasing the authorized capital of the corporate enterprise.

The procedure for increasing the authorized capital due to additional contributions includes three consecutive stages:

1. making a decision to increase the authorized capital. As a general rule, such an issue belongs to the competence of the highest management body of the enterprise, that is, the general meeting of participants/shareholders (Article 156 of the Civil Code of Ukraine, Article 30 of the Law on LLCs). The decisive part of such a decision must

contain information on at least the amount by which the authorized capital is increased, the method of increase, terms and procedure for payment of additional contributions, etc. Thus, LLC and TDV participants can increase the authorized capital of the company: a) without additional contributions at the expense of the company's retained earnings; b) at the expense of additional contributions of participants and/or third parties by decision of the general meeting of participants (Articles 17, 18 of the Law on LLCs). The authorized capital of JSC is increased by increasing the nominal value of shares or placing additional shares of the existing nominal value in accordance with the procedure established by the NKCPFR (Article 17 of the Law on JSC). An increase in the authorized capital of the JSC with the involvement of additional contributions is carried out by placing additional shares;

2. making additional contributions to the authorized capital. Payment of additional contributions is carried out within the period established by law and/or by decision of the general meeting. This term is fixed, that is, such that it cannot be renewed or extended by a corporate enterprise or a court. After the expiration of the period for making additional contributions, the general meeting of the company's participants must approve the results of such an increase in the authorized capital and its size, as well as the size of the shares of the company's participants and their nominal value, taking into account the additional contributions actually made, after which the corporate company submits documents for state registration of changes to information on the size of the authorized capital contained in the EDR, including changes to the founding documents. Each member of the LLC and TDV has a preferential right to make an additional contribution within the amount of the increase in the authorized capital in proportion to his share in the authorized capital. Third parties and members of the company may make additional contributions after each member exercises his or her preferential right or refuses to exercise such right within the limits of the difference between the amount of the increase in the authorized capital and the amount of additional contributions made by the participants, only if this is provided for by the decision of the general meeting of participants to attract additional contributions. Also, in such a decision of the general meeting, the total amount of the increase in the authorized capital of the company, the ratio of the amount of the increase

to the size of the share of each participant in the authorized capital and the planned amount of the authorized capital are determined. The members of the company may make additional contributions during the period established by the decision of the general meeting of members, but not more than one year from the date of adoption of the decision to attract additional contributions. Third parties and members of the company may make additional contributions within six months after the expiration of the period for making additional contributions by participants who intend to exercise their preferential right, unless a shorter period is established by the decision of the general meeting of participants to attract additional contributions. Within one month from the expiry of the deadline for making additional contributions, the general meeting of the company's members shall make a decision on: 1) approval of the results of making additional contributions by the company's members or third parties; 2) approval of the size of shares of company participants and their nominal value, taking into account the additional contributions made by them; 3) approval of the increased size of the authorized capital of the company;

3. state registration of changes to the information contained in the EDR, including changes to the constituent documents. An increase in the authorized capital of a corporate enterprise must be accompanied by state registration of such changes, because according to Art. Part 2 of Art. 9 of the Law of Ukraine "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations", information on the size of the authorized (compounded) capital (unit fund) and the size of the share of each of the founders (participants) belong to the information on the legal entity contained in the UDR . The deadline for state registration of changes to information about a legal entity contained in the EDR, including an increase in authorized capital, should not exceed 24 hours after receipt of the necessary documents by the state registration body (Article 26 of the Law of Ukraine "On State Registration of Legal Entities , natural persons - entrepreneurs and public organizations").

The authorized capital can be increased in several ways:

a) acceptance of new participants. A new participant is admitted to the corporate enterprise by decision of the general meeting of participants. One of the questions that

accompany the participant's entry is the question of the size of the deposit, the procedure for making it. This way of increasing the size of the capital, as a rule, leads to a decrease in the size of the participants' shares in percentage terms;

b) reinvestment of profit. The participants of the enterprise can increase the authorized capital without additional contributions at the expense of the undistributed profit of the enterprise. This method of increasing the authorized capital is possible only in enterprises that, based on the results of economic activity for the year, have a profit. Each participant has the right to receive a part of the profit from the company's activities, but the participants have the right to direct the part of the profit due to them to the development of their company, that is, to reinvest. This method is characterized by the fact that the nominal value of the shares of all participants increases, while their percentage value remains the same. Yes, according to Art. 17 of the Law on LLCs in the case of an increase in the authorized capital at the expense of the undistributed profit of the company, the composition of the company's participants and the ratio of the sizes of their shares in the authorized capital do not change;

c) additional contributions of all participants. The participants agree on the amount of their initial contributions during the creation of the enterprise. Abroad, there is a practice of preliminary determination of maximum additional contributions in case the initial investment turns out to be insufficient. When the capital is increased in this way, all participants make additional contributions in proportion to their shares or in another amount agreed between them. In Ukrainian realities, the provisions of Art. 16 of the Law on LLCs, according to which when the authorized capital of the company is increased due to additional contributions, the nominal value of the share of a participant in the company can be increased by an amount equal to or less than the value of the additional contribution of such a participant;

d) additional contributions of individual participants. The initiative to increase the authorized capital can come from one of the participants of the enterprise, who notes the size, subject of the contribution, the order of its contribution and other relevant conditions. The general meeting of participants can make a decision to increase the authorized capital at the expense of an additional contribution of the participant at his

request and, in the cases provided for by law, approve changes to the founding documents of the enterprise related to the increase of the authorized capital of the enterprise and the nominal value of the share of such a participant.

National legislation currently does not provide for the possibility of increasing the authorized capital at the expense of the property of a corporate enterprise. Article 16 of the LLC Law even contains a direct prohibition: an increase in the authorized capital of a company that owns a share in its own authorized capital is not allowed. But such a method is known to foreign law, when the company increases the authorized capital at the expense of its property by an amount that does not exceed the difference between the value of the company's net assets and the amount of the authorized capital and the reserve fund. During such an increase in the authorized capital, the nominal value of the shares of all members of the company increases proportionally, without changing the size of their shares.

Right to dividends. The term "dividend" comes from the Latin dividendus - that which is subject to distribution and in the legislation of Ukraine is always used in connection with the distribution of profits. The right to participate in the distribution of profits is established by the following norms of corporate law: Art. 116 of the Central Committee of Ukraine, Art. 10 of the Law of Ukraine "On Business Societies", Art. 34 of the JSC Law, Art. 26 of the Law on LLCs.

According to clause 14.1.49 of the Tax Code of Ukraine, in the context of corporate relations, a dividend appears as a payment made by a legal entity, including the issuer of corporate rights, investment certificates or other securities, in favor of the owner of such corporate rights, investment certificates and other securities certifying the investor's ownership right to a share (share) in the property (assets) of the issuer, in connection with the distribution of part of its profit, calculated according to accounting rules.

Article 34 of the Law on JSC defines a dividend as part of the net profit of a joint-stock company, which is paid to a shareholder based on one share of a certain type and/or class owned by him. The same amount of dividends is accrued for shares of the same type and class.

Doctrinal definitions of this concept are, in fact, variations of the legal definition: a

dividend is understood as a part of the amount of net profit of the organization, which is distributed among shareholders according to the number, value and type of shares owned by them; as a payment made by a legal entity in favor of the owners of corporate rights issued by such legal entity in connection with the distribution of part of its profits; as the income received by the owner of the share at the expense of the profit of the joint-stock company, a part of the profit that is annually distributed among the shareholders depending on the number of purchased shares; or as a part of the net profit of the joint-stock company, which is distributed annually among the shareholders in accordance with the share of their participation in the equity capital of the company. Dividends are paid in any case at the expense of profit, which can be the profit of the relevant reporting period, the undistributed profit of previous reporting periods, or, in the case of preferred shares, from the funds of the reserve capital formed in past periods at the expense of the profit of the reserve capital or a special fund for the payment of dividends for preferred shares. The absence of these funds makes the payment of dividends impossible.

According to Art. 34 of the Law on JSC, payment of dividends to owners of shares of the same type and class must be carried out in proportion to the number of securities owned by them. The conditions for the payment of dividends, in particular regarding the terms, method and amount of dividends, must be the same for all owners of shares of the same type and class. The company pays dividends exclusively in cash. Dividends are paid for shares, the report on the results of the issue of which is registered in accordance with the procedure established by law. The decision on the payment of dividends and their amount on ordinary shares is made by the general meeting. The amount of dividends on preferred shares of all classes is determined in the charter of the joint-stock company. Dividends on ordinary shares are paid out of the net profit for the reporting year and/or undistributed profit and/or reserve capital based on the decision of the general meeting within six months from the date of the decision on the payment of dividends by the general meeting. Payment of dividends on preferred shares is made from the net profit for the reporting year and/or retained earnings, and/or reserve capital formed for the payment of dividends on preferred shares, by the charter of the joint-stock company within six months after the end of the reporting year. Analysis of the provisions of Articles

26 and 27 of the Law on LLCs on the right to dividends of the participants of the respective companies allows us to draw a certain parallel in the legal approaches with JSCs. According to the norms of Art. 26 of the Law, dividends are paid at the expense of the company's net profit to persons who were members of the company on the day of the decision on the payment of dividends, in proportion to the size of their shares. The right to dividends, thus, depends (as in JSC) on: 1) availability of net profit; and 2) the decision of the general meeting of the company to allocate this profit to the payment of dividends.

In this way, the payment of dividends to the participants is not carried out unconditionally, but according to the decision of the higher body of the relevant corporate enterprise, which, in turn, can make a decision both on the payment of the entire amount of profit as dividends, and on the increase due to this entire amount of corporate capital, or on directing part of the profit to increase the corporate capital, and the rest to the payment of dividends.

However, if the corporate capital of an economic organization has corporate rights of the state, such an organization is obliged in accordance with Art. 11 of the Law of Ukraine "On the Management of State-Owned Objects" to direct part of the net profit at the end of the calendar year to the payment of dividends.

Finally, a corporate enterprise may not make a profit at all in a certain reporting period and may not have retained earnings or, on the contrary, suffer losses, which makes it impossible for all categories of participants to receive dividends, except JSC shareholders - owners of preferred shares, who receive dividends on the basis of a decision other than the general meeting , and a direct indication in the statute of JSC in the amount stipulated by the statute. In the absence of earnings, dividends to holders of preferred shares are paid from the funds of the reserve capital or a special fund for the payment of dividends on preferred shares, which, in turn, was once formed from earnings or retained earnings.

Article 35 of the Law on JSC determines that JSC does not have the right to decide on the payment of dividends and to pay dividends on ordinary shares, if:

1) the report on the results of the issue of shares is not registered in accordance with the procedure established by law;

2) the company's equity capital is less or, as a result of such payment, will become less than the sum of its authorized capital, reserve capital and the excess of the liquidation value of preferred shares over their nominal value (the provisions of this clause do not apply to banks);

3) the company's property is insufficient to satisfy the demands of creditors for obligations whose fulfilment period has expired, or as a result of such a decision, it will become insufficient to satisfy such demands.

JSC does not have the right to pay dividends on ordinary shares if: 1) the company has an obligation to buy back shares in accordance with Article 102 of this Law on JSC;

2) dividends on preferred shares were not paid in full.

JSC does not have the right to pay dividends on preferred shares of a certain class before the payment of current dividends on preferred shares, the owners of which have an advantage in terms of the sequence of receiving dividends.

Similarly, Art. 27 of the Law of Ukraine on LLCs establishes that a decision on the payment of dividends cannot be made, and dividends cannot be paid, if:

1) the company did not make settlements with the members of the company in connection with the termination of their participation in the company or with the legal successors of the members of the company;

2) the assets of the company are insufficient to satisfy the demands of creditors for obligations whose performance period has expired or which will be insufficient as a result of a decision to pay dividends or make a payment.

Also Art. 27 of the Law on LLCs specifies that the articles of association of the company may additionally provide for other conditions under which the general meeting of participants cannot make a decision on the payment of dividends or for which dividends cannot be paid, and contains a prohibition to pay dividends to a participant who has not fully or partially contributed.

Lecture 9. Concept and ways to protect the rights of business entities

Concepts, principles and features of corporate management.

Corporate governance is a system of legally regulated relations that arise in the process of interaction between the bodies of a corporate enterprise, participants (members) and other interested persons regarding their coordinated participation in ensuring the effective operation of the enterprise, balance of influence and balance of interests of participants in corporate relations.

In a broad sense, corporate governance is considered as a system that directs and controls the activities of a corporate enterprise. In the framework of corporate governance, it is determined how the owners of corporate rights as investors exercise control over the activities of managers (officials) and company bodies, as well as what responsibility managers bear to investors for the results of the company's activities.

A proper system of corporate governance allows participants (members) to be sure that the company's management uses their investments wisely for financial and economic activities and thus increases the value of the participant's (member's) share in the company's capital. At the same time, proper corporate governance is not limited exclusively to relations between investors and managers, but also involves consideration of legitimate interests and active cooperation with interested parties who have a legitimate interest in the activities of a corporate enterprise (employees, consumers, creditors, the state, the public, etc.). This is because a corporate enterprise cannot exist independently of the society in which it operates, and the ultimate success of its operations depends on the contribution of all stakeholders.

Signs of corporate governance:

- corporate management is possible only where joint activities of people are carried out in certain organizations (corporate enterprises);
- the main purpose of corporate governance is the organizing influence on the members of the society as participants (members) of the corporate enterprise and participants (employees) of joint activities, which gives organization to the interaction of people. Corporate governance organizes both the participants themselves in matters of regulating their relations within a single organization, and persons who are related to employees, but carry out activities within the framework of the goals for which a corporate enterprise is created;

- corporate management as a regulator of people's behavior achieves the specified goals within social relations, which are essentially management relations. They arise between the subject and the object as part of the management process in connection with the practical implementation of corporate management functions;
- corporate governance requires a special mechanism of implementation, which is used by subjects of corporate governance.

The process of corporate management is the activity of the bodies of corporate enterprises for the development (preparation and adoption) of a specific management decision, its implementation (implementation) and verification of its implementation.

The purpose of corporate governance is to ensure the profitable activity of a business company or to achieve other goals defined by law for individual business entities. Corporate governance is based on methods and means that primarily determine the formation and functioning of the organizational structure of a corporate enterprise, as well as the rights and obligations of the subjects of corporate law and the bodies of the corporate enterprise created by them, the main principles of which are determined by the legislation of Ukraine.

The analysis of scientific research on issues of corporate governance allows us to outline the system of principles of corporate governance.

1. The principle of subordination of the majority to the minority. This is the main principle of building any corporate system. He lays down differences between classic civil contractual relations, built on equality, autonomy and freedom of expression of the parties, and corporate relations, in which the will of the majority is not the will of a specific individual, but the will of the majority.

2. The principle of dependence of the degree of influence of the participant on the management of the corporate enterprise on the size (share) of his contribution to the capital of the corporate enterprise. Thus, a person who is the owner of a controlling block of shares has much greater opportunities to influence JSC than, for example, a minority shareholder who owns a small number of shares. This principle does not apply to the management of a cooperative, which in accordance with Art. 4 of the Law of Ukraine "On Cooperation" carries out its activities according to the principle of equal voting rights

during decision-making (one cooperative member - one vote).

3. The principle of general management and control of the participants (members) of the corporate enterprise over its activities. A corporate enterprise is, as a rule, a pool of capital. Investing in the capital of a corporate enterprise certain tangible or intangible values in exchange for corporate rights, the participant (member) acquires rather broad management and control powers in relation to the enterprise in whose activity the investment is made. Since corporate enterprises usually have several participants (members), the activities of enterprises are managed and controlled on the basis of the joint (collective) will of the participants (members).

4. The principle of centralization of management and demarcation of competence of bodies of a corporate enterprise. This principle, on the one hand, involves both the concentration of powers to make important, strategic decisions on the activities of the corporate enterprise in one hand (the highest body), and the weakening of centralization by transferring certain issues to lower bodies, structural divisions. The activity of the highest body is aimed at the formation and external expression of the will of the corporate enterprise, other bodies ensure the implementation of this will in the relations of the enterprise with other legal subjects. The presence in a corporate enterprise of bodies that perform different functions and are endowed with different competences is due to the need for: legitimate expression by the corporate enterprise as a subject of the right of its will (occurring through decision-making by the enterprise's bodies); representation of a corporate enterprise in external relations; effective organization of the enterprise's economic activity.

5. The principle of the possibility of involvement in the management of a corporate enterprise by persons who are not its participants (members). Sometimes the participants (members) do not have the qualities necessary to manage the activities of the enterprise created by them. Their goal may not be personal management of a corporate enterprise or other participation in its activities, but only in receiving a certain property benefit from their capital investments. Therefore, executive bodies are often formed not from participants (members) of a corporate enterprise, but from management specialists.

Principles of corporate enterprise management are not something immutable and

dogmatic. They can and should be reconsidered and adjusted. At the same time, the state has been trying to offer a certain unified model of corporate governance to the market for a long time. Although there is no single model of corporate governance in the world, there are generally accepted principles (standards) that underlie effective corporate governance and can be applied in a wide range of legal, economic and political conditions.

The emergence of generally accepted standards of corporate governance is due primarily to the growing attention to corporate governance issues in the context of the globalization of financial markets and the liberalization of capital movements. This is an attempt to establish generally accepted, transparent and globally understood "rules of the game" in the financial market. The development of international standards of corporate governance is also society's response to global financial crises and the desire for financial market stability.

On the basis of the generally accepted international standards of corporate governance of the NSSMC, taking into account national characteristics, the Principles of Corporate Governance were developed, approved by the decision of the NSSMC dated July 22, 2014 No. 955. They do not have the force of a regulatory act and are a recommendation act. One of the mechanisms of transformation of these norms from optional to mandatory was their introduction into the internal acts of a specific corporate enterprise.

Legal status of officials of a corporate enterprise. Officials have a special place in the system of corporate management of a corporate enterprise. Officials of a corporate enterprise are natural persons elected (appointed) to the enterprise's bodies, who perform actions to fulfill the functions of such bodies within their competence.

At the legislative level, the list of entities that have the status of officials is defined for business associations and their individual types. Yes, according to Art. 42 of the Law on LLCs, the members of the executive body, the supervisory board, and other persons provided for by the company's charter are officials in the LLC. In turn, JSC in accordance with Clause 23 Part 1 of Art. 2 of the JSC Law, officials of JSC bodies include natural persons - the chairman and members of the supervisory board or board of directors, the

executive body, the head of the internal audit unit (internal auditor), the head of the budget department or another unit whose competence is the issue of budgeting of the joint-stock company, the corporate secretary of the joint-stock company, as well as the chairman and members of another body of the joint-stock company (except the advisory one), if the formation of such a body is provided for by law or the charter of the joint-stock company.

The list of officials of a particular corporate enterprise is defined in the charter of such enterprise. Officials perform their functions within the established management hierarchy. This explains the purposefulness in the actions of officials, which is dictated by the strict logic of the existing systems of corporate management in corporate enterprises.

At the same time, the bodies of corporate enterprises should not be equated with officials as specific natural persons of which they are composed, since the fact of changing the personal composition of the body in itself does not affect the validity or invalidity of legal actions previously performed by the business association through its bodies. Therefore, any official is not the body of the business association itself, but only the entity that performs actions to perform the functions of such a body in strict accordance with its competence.

As soon as the actions of a natural person go beyond the competence of the body of the economic company, of which he is an official, they can no longer be identified with the actions of the body itself and must be considered exclusively as the actions of the natural person himself.

The possibility of acquiring the status of an official of a corporate enterprise may be limited for certain categories of individuals (for example, for persons authorized to perform the functions of the state or local self-government). Yes, according to Clause 2 Part 1 of Art. 25 of the Law of Ukraine "On the Prevention of Corruption" by officials of the board, other executive or control bodies, the supervisory board of a corporate enterprise whose purpose is to obtain profit, unless otherwise provided by the Constitution or laws of Ukraine, persons authorized to carry out may not be elected (appointed) functions of the state or local self-government.

Such restrictions regarding the above-mentioned persons do not apply in cases when

persons perform functions of managing shares (parts, units) belonging to the state or territorial community, and represent the interests of the state or territorial community in the board (supervisory board), audit commission of a corporate enterprise.

In accordance with Part 4 of Art. 5 of the Law of Ukraine "On Joint Investment Institutions", persons who have outstanding or unexpunged convictions for crimes against property, crimes in the field of official or economic activity, or have committed more than three administrative offenses on the stock market, cannot be officials of a corporate fund or a company with asset management of the joint investment institute.

In addition to the law, restrictions on the possibility of being elected as an official of a corporate enterprise may be established by a court verdict. In practice, this is possible if a person is sentenced to a criminal penalty for committing a crime in the form of deprivation of the right to hold certain positions or engage in certain activities (Article 55 of the Criminal Code of Ukraine). In such a case, a person who has been prohibited by the court from engaging in a certain activity cannot be an official of those corporate enterprises that carry out this type of activity.

When solving many practical situations involving officials of a corporate enterprise, the question of determining the legal nature of the legal relationship between the enterprise and its officials often arises. The relevance of this issue is given by the fact that officials, as subjects who perform the functions of bodies of a corporate enterprise, have an important role. It is with their participation that the corporate enterprise forms and expresses its will as a legal entity, realizes economic competence in the field of management, acquires economic rights and obligations, with the help of their actions legal relations arise, change and terminate, in which the enterprise itself is a participant.

Subjects who have acquired the status of an official and perform the functions of a body of a corporate enterprise exercise their powers in the field of managerial activity within the limits of corporate, not labor relations. The Constitutional Court of Ukraine emphasizes this in its decision. Yes, in para. 5 point 3.2 of the motivational part of the decision of the Constitutional Court of Ukraine dated January 12, 2010 No. 1-рп/2010 states that within the limits of corporate relations with the company, members of the executive body exercise powers in the field of management activities. And the specific

status of a member of the executive body is determined by obtaining the right to manage from the authorized body of the company.

A similar approach is used to distinguish the grounds for the emergence and termination of related legal relations between a corporate enterprise and its officials. If the decision of the competent body of the enterprise concerns the granting or deprivation of a person with authority to manage the enterprise, such decisions should be considered as the basis for the emergence or termination of corporate legal relations arising between the corporate enterprise and its officials. In the case of issuing an order to hire or dismiss a person, concluding an employment contract (contract) with an official of a body of a corporate enterprise, it may be about the grounds for the creation or termination of employment relationships only. In this regard, in the decision of January 12, 2010 No. 1-рп/2010, the Constitutional Court of Ukraine emphasizes that the realization by the members of the company of their corporate rights to participate in its management through the adoption by a competent body of decisions on the election (appointment), removal, suspension, recall of members of the executive the body of this association also concerns the granting or deprivation of their powers to manage the company. Such decisions of the body authorized for this should be considered not within the scope of labor, but corporate legal relations arising between the company and the persons entrusted with the authority to manage it.

The nature of the legal relationship between the corporate enterprise and its officials directly affects the type of liability applied to the offender. Thus, for offenses committed in the field of corporate governance, officials bear economic and legal responsibility in the form of compensation for damages caused by them to the corporate enterprise.

The body of a corporate enterprise, the functions of which are performed by officials, has a set of powers, the implementation of which is carried out within the limits of the corporate enterprise's own economic competence. As long as the body of the enterprise acts within the framework of the powers defined by the law and the company's charter, until then its actions are presumed to be the actions of the corporate enterprise itself as an economic organization. On the other hand, when an official of an enterprise body begins to act outside these powers, his actions will be considered the actions of such

a natural person as an independent entity, and not the actions of a corporate enterprise. In accordance with Part 2 of Art. 89 of the Civil Code of Ukraine, officials bear civil, administrative, financial and criminal liability for damage and losses caused by them to the economic company, in the manner and in the cases provided for by law.

Additional grounds and forms of economic and legal responsibility of officials of corporate enterprises may be established by the norms of special laws (Law on JSC; Law on LLC; Law of Ukraine "On Joint Investment Institutions"). This approach of the legislator is fully consistent with the provisions of the First Directive 68/151/EEC of the Council of the EU "On coordination of guarantees (precautionary measures) required by member countries from companies within the context of the second paragraph of Art. 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 March 9, 1968. Yes, according to p.p. 1, 2 Art. 9 of the First EU Directive, the actions of the company's bodies impose obligations on the company, even if those actions go beyond the company's goals, provided that such actions do not go beyond the competence of the specified bodies, provided for or permitted by law.

Instead, in the field of labor relations, officials of a corporate enterprise can be held liable only for offenses committed by them as employees. To such persons as employees, in accordance with Art. 147 of the Labor Code of Ukraine, disciplinary measures (reprimand, dismissal) may be applied in case of violation of labor discipline by them.

Jurisdiction of disputes arising with their participation directly depends on the nature of the legal relationship between the corporate enterprise and its officials. Thus, the economic and legal nature of the legal relationship between a corporate enterprise and its officials determines the assignment to the jurisdiction of commercial courts. Instead, labor disputes between a corporate enterprise and its officials arising from labor relations are considered by courts of general jurisdiction in the manner of civil proceedings.

Higher management bodies of the corporate enterprise. The highest governing body of a corporate enterprise is the general assembly, unless otherwise provided by law or the company's charter. Depending on the organizational and legal form of the corporate enterprise, the name of the higher body may differ. Thus, in JSC, the highest body is

called "general meeting of shareholders3" (Article 36 of the Law on JSC), in LLCs - "general meeting of participants" (Article 29 of the Law on LLC), in a cooperative - "general meeting of members of the cooperative" (Article 15 of the Law of Ukraine "On Cooperation"), in a collective agricultural enterprise - "general meetings of members" or "meetings of authorized persons" (Article 23 of the Law of Ukraine "On Collective Agricultural Enterprise"), in a corporate fund - "general meetings" (Article 16 of the Law of Ukraine "On Joint Investment Institutions").

In a JSC with one shareholder, the powers of the general meeting are exercised by the shareholder alone (Article 60 of the JSC Law).

The managerial nature of the general meeting is manifested in the fact that this body makes decisions on the most significant issues of the organization and activities of the corporate enterprise. An important feature of general meetings in the implementation of the economic competence of a corporate enterprise is their position as a will-forming body. Within the limits of its competence, the general meeting makes decisions, which are a recorded expression of the will of the corporate enterprise. Only the general meeting has the right to determine the legal fate of the legal entity: to exist in this form or to cease its activity due to impracticality. It is the general meeting that creates the basic legal framework for the activities of other bodies of the company. Yes, according to Art. 39 of the JSC Law, the approval of regulations on company bodies is within the competence of the higher body.

In judicial practice, it is emphasized that the general meeting is neither a subject of law nor a body that represents the company (par. 4, item 14 of the Resolution of the Plenum of the Supreme Court of Ukraine dated October 24, 2008 No. 13).

The importance of the general meeting in the system of corporate governance is manifested through its following characteristics:

– the general meeting is the highest body in the system of corporate management of a corporate enterprise;

- the general assembly is the collegial and most representative body of the enterprise - all participants (members) of the corporate enterprise can participate in its work;

– through the general meeting, the will and interests of the corporate enterprise as a

legal entity are expressed, which are not identical to the simple set of interests of its participants (members);

- general meetings are the main form of exercise by participants (members) of the right to participate in the management of a corporate enterprise;

- a special order of formation - unlike other bodies of a corporate enterprise, whose members are elected (appointed), general meetings are formed by drawing up a list of persons who have the right to participate in them;

- the maximum scope of powers - they can solve any issues of the corporate enterprise's activity;

- a special procedure for convening and making decisions - the rules for convening meetings and making decisions are strictly formalized. Violation of these rules is grounds for invalidating decisions of meetings.

The question of the effective functioning of the general meeting of a corporate enterprise as a body that realizes the full power of owners of corporate rights is extremely urgent. This is primarily due to the legal status of the participants (shareholders, members) as persons who have the right to participate in the management of the affairs of the corporate enterprise. It is through general meetings that the owners of corporate rights can exercise their right to participate in the management of the affairs of the corporate enterprise. The general meeting is a body that fully implements the principle of public conduct of affairs, "transparency" of information.

The competence of the general meeting as the highest management body of a corporate enterprise is characterized by the following features:

- firstly, the presence of this body with a certain set of rights regarding the resolution of the most important issues of the corporate enterprise's activity;

- secondly, the condition of the emergence of these rights by their fixation in the law or in other legal acts, including the founding document of the corporate enterprise - the charter;

- thirdly, the exercise of competence by the general meeting is aimed at forming the will of the corporate enterprise.

Issues that belong to the competence of the highest body of the corporate enterprise

are divided into two groups. The first group consists of questions belonging to exclusive competence. Their decision cannot be transferred (delegated) to other bodies of the enterprise. Issues of exclusive competence are, as a rule, cornerstones for the activities of a corporate enterprise, and decisions on them are in most cases made for a long-term perspective. At the same time, not only permanent, but also temporary delegation of such powers by a higher body to other bodies is impossible.

Issues of exclusive competence of the higher body are divided into two groups:

1) provided by law;

2) provided by the statute.

The exclusive competence of the higher authority provided for by law includes the powers provided for by the Civil Code of Ukraine (Article 102), the Central Committee of Ukraine (Article 98, Part 2 of Article 159), the Law on LLCs (Article 30), the Law on JSCs (Art. 39), the Law of Ukraine "On Cooperation" (Part 2 of Article 15), other legal acts.

In addition to the powers specified in the legislation, additional issues that fall within the exclusive competence of the general meeting may be enshrined in the charter of the corporate enterprise. For example, the charter of a private JSC (except for companies in which 50% or more of the shares in the charter capital belong to the state, as well as JSCs in which 50% or more of the shares are in the charter capital of economic companies in which the state's share is 100%) may provide that the general meeting can resolve any issues, including those within the exclusive competence of the supervisory board and the board of directors. At the same time, if the number of shareholders of a private JSC exceeds 100, the decision to include the corresponding provision in the charter of such a private JSC must be adopted by more than 95% of the votes of the total number of shareholders.

The second group includes issues of general competence. The general meeting can delegate these powers to the supervisory (supervisory) board or the executive body of the corporate enterprise by adopting appropriate decisions. The authority of this group includes all other issues. Even if certain issues are attributed by law or statute to the competence of another body of the corporate enterprise (for example, the supervisory

board of JSC), the general meeting can make a decision on such issues. At the same time, such decision-making does not require the subsequent adoption of an additional decision by the supervisory board, since the general meeting is the highest body and can resolve any issues of the JSC's activities.

Depending on the periodicity of holding general meetings, there are regular (annual) and extraordinary meetings. Regular (annual) general meetings are characterized by the periodicity of convening, regularity of holding periods and a constant range of issues included in the agenda. It is at the annual general meeting that the evaluation of the activities of the bodies of the corporate enterprise is carried out and the results of the operation of the enterprise for the year are summed up. Only annual general meetings are recognized as ordinary. The frequency of convening such meetings is determined by the legislator:

- in JSCs and cooperatives - at least once a year (Article 37 of the Law on JSCs, Part 5 of Article 159 of the Civil Code of Ukraine, Part 4 of Article 15 of the Law of Ukraine "On Cooperation"). Moreover, the annual general meeting of JSC is held no later than April 30 following the reporting year;

- in LLCs, annual general meetings of participants are convened within six months of the following reporting year, unless otherwise established by law (Article 31 of the Law on LLCs). All other general meetings, except annual ones, are considered extraordinary with the corresponding consequences (regarding the procedure, terms of their convening, reimbursement of expenses related to their convening and holding, features of the formation of the agenda of the general meeting). The peculiarity of this type of general meeting is that they are convened, as a rule, to resolve extraordinary issues of the corporate enterprise's activity, which require the fastest possible manifestation of the will of the higher body of the company.

The authority of the higher body to decide the issues included in the agenda in business associations depends on the number of votes belonging to the participants (representatives of the participants) present at the meeting, and in the cooperative - on the number of members present. Thus, JSC general meetings have a quorum provided that shareholders who collectively own more than 50 percent of the voting shares are

registered to participate in them (Part 1, Article 40 of the JSC Law).

The quorum required for decision-making by the highest body in LLCs and TDVs depends on the issues included in the agenda, as well as on the method of decision-making. In the Law on LLCs, the legislator established several approaches to determining the quorum of the general meeting of participants and the number of votes necessary to make a decision. In LLCs and VAT in accordance with the provisions of Art. 34 of the Law on LLCs, decisions of general meetings of participants are made by open voting, unless otherwise provided by the company's charter. Decisions on such issues as: a) making changes to the company's charter, making a decision on the company's activities on the basis of the model charter; b) changes in the size of the authorized capital of the company; c) making decisions on separation, merger, division, merger, liquidation and transformation of the company, election of the commission for termination (liquidation commission), approval of the order of termination of the company, the order of distribution among the members of the company in the event of its liquidation, the property remaining after meeting the demands of creditors, approval of the company's liquidation balance sheet is adopted by three-quarters of the votes of all members of the company who have the right to vote on the relevant issues.

Regarding certain issues (approving the monetary value of a participant's non-monetary contribution; redistribution of shares among company members; creation of other company bodies, determination of the order of their activities; decision-making on the company's acquisition of a participant's share (part of a share)) decisions are taken unanimously by all members of the company who have the right to vote on relevant issues. The same number of votes is required for decision-making by the higher body by means of polls (Part 10 of Article 35 of the Law on LLCs).

According to the provisions of Part 4 of Art. 34 of the Law on LLCs, decisions of general meetings of participants on all other issues are made by a majority vote of all participants of the company who have the right to vote on the relevant issues.

In addition, the legislator provided an opportunity for the society itself to determine other requirements regarding the number of votes necessary for making a decision. Yes, according to Part 5 of Art. 34 of the Law on LLCs, the charter of the company may

establish a different number of votes of the members of the company (but not less than the majority of votes), necessary for making decisions on the agenda of the general meeting of members, except for decisions that, in accordance with this Law, are adopted unanimously. Relevant provisions may be included in the charter, changed or excluded from it by unanimous decision of the general meeting of participants, in which all members of the company participated.

Each member of the company has the right to be present at the general meeting of members. Each member of the company at the general meeting of members has the number of votes proportional to the size of his share in the authorized capital of the company, unless otherwise provided by the statute. The Law on LLCs provides for the possibility of holding general meetings in videoconference mode and the possibility of absentee voting at meetings, as well as decision-making by means of a written survey. In turn, the general meeting of members of the cooperative is authorized to resolve issues if more than half of its members are present, and the meeting of authorized representatives - if at least two-thirds of the authorized representatives are present.

As a general rule, decisions by the higher body are made in accordance with the charter of the corporate enterprise by open or secret voting by a simple majority of the votes of the participants (members) of the enterprise present at its general meeting. In the cases stipulated by the legislation or the charter, a greater number of votes may be set for the adoption of decisions by the general meeting.

In conclusion, it should be noted that although the highest body has the maximum scope of powers and is the most representative body of a corporate enterprise, the expression of the will of the enterprise in the implementation of its economic competence through direct contact with other participants in economic relations is entrusted by the legislator to other bodies of the corporate enterprise, primarily the executive body.

Executive management bodies of corporate enterprises. The executive body of a corporate enterprise is a key link in the structure of corporate governance, as it is entrusted with the current management of the enterprise's activities, which involves the implementation of the enterprise's economic goals, strategy and policy. It is through him that the corporate enterprise realizes economic legal personality in the field of

management, acquires subjective rights and obligations as a participant in the relevant relations and carries them out, including in the field of management.

The executive body of a corporate enterprise is one of the management bodies. As a rule, when making a decision to create a corporate enterprise, its founders simultaneously decide on the creation of an executive body, its composition, competence, and the procedure for removing the executive body from performing its duties. This is due to the fact that such an election takes place at a stage when the corporate enterprise itself as a legal entity and subject of economic relations, acting through its bodies, does not yet exist.

Instead, in already existing corporate enterprises, the creation of an executive body is assigned to the competence of the higher body of the enterprise. An exception is JSC, in which the election of the chairman and members of the executive body in accordance with Clause 9 Part 2 of Art. 71 of the JSC Law is assigned to the competence of the supervisory board. At the same time, the charter of the election of members of the executive body of JSC can also be assigned to the competence of general meetings of JSC (clause 24, part 2, article 39 of the JSC Law).

In a corporate enterprise, the executive body can be collegial, that is, consist of several people, or single-person - this is the executive body of the enterprise, which consists of one person. At the same time, only one executive body can exist in a corporate enterprise at the same time.

The name of the collegial executive body in a corporate enterprise, in accordance with the founding documents or the law, may be "board", "directorate", etc. In turn, a one-person executive body can be created with the title "director", "general director", and in a cooperative - "chairman of the cooperative".

The quantitative composition of the executive body, the procedure for appointing its members are determined by the company's charter. The procedure for convening and conducting meetings of the collegial executive body is established by the statute or regulation on the executive body of the corporate enterprise. The procedure for convening and determining the quorum at a meeting of the collegial executive body of a corporate enterprise must be provided for in the founding documents of the company. If they are not

settled, it is necessary to apply by analogy the provisions of the legislation establishing the quorum and other issues regarding the general meetings of the relevant enterprise (mandatory notification of all members of the collegial executive body about the meeting, provision of information on the agenda, jurisdiction, decision-making procedure).

According to the systematic analysis of corporate legislation, the executive body of a corporate enterprise resolves all issues related to the management of the current activities of the enterprise, except for issues that are the competence of a higher or other body of the enterprise.

The Constitutional Court of Ukraine in its decision dated January 12, 2010 No. 1-рп/2010 emphasizes that the executive body of the company resolves all issues related to the management of the current activities of the company, except for issues that are the competence of the general meeting of the company's participants or another of its bodies . By carrying out management activities, the executive body implements the collective will of the company's members, who are the bearers of corporate rights. That is, the executive body is a management body that implements the economic competence of a corporate enterprise, expressing its will in relations with other subjects of economic law.

In contrast to the higher and supervisory bodies, the powers of the executive body regarding the implementation of the economic competence of the corporate enterprise are not specified by the legislator. The legislator provides the opportunity to detail such powers to the corporate enterprise itself in its charter and/or in the provision on the executive body.

By carrying out management activities, the executive body implements the collective will of the participants (members) of the corporate enterprise, who are the bearers of corporate rights. The chairman and other members of the executive body, managing the corporate enterprise within the limits of the rules established by the founding documents, are obliged to act exclusively in the interests of the enterprise and its participants (members), in good faith and reasonably and not to exceed their powers (Part 3 of Article 92 of the Civil Code of Ukraine).

In the event that the charter of a corporate enterprise stipulates that its executive body acts in the composition of several persons, and therefore the head of the collegial

executive body is not an independent governing body, therefore, for the acquisition of civil rights and obligations by the enterprise, on the basis of Part 2 of Art. . 99 of the Central Committee of Ukraine must submit relevant issues for consideration at a meeting of the executive body or general assembly.

The executive body of a corporate enterprise is accountable to the general assembly, and in JSC, LLC and cooperative and the supervisory (supervisory) council, organizes the implementation of their decisions. The executive body acts on behalf of the corporate enterprise within the limits established by the statute and law. A member of the executive body can be any natural person who has full civil legal capacity and is not a member of the supervisory board or audit commission of a corporate enterprise. At the same time, members of the executive body may also be persons who are not participants (members) of the corporate enterprise. Members of the executive body of a corporate enterprise may be removed from the performance of their duties at any time, if the founding documents do not specify the grounds for the removal of members of the executive body from the performance of their duties.

Supervisory board. Current legislation provides for the possibility of creating a supervisory body in some corporate enterprises (JSC, LLC, TDV, cooperative).

Depending on the organizational and legal form of the corporate enterprise, this body may be called:

- supervisory board - in joint-stock companies (Article 69 of the Law on Joint-Stock Companies), in LLCs (Article 38 of the Law on LLCs);

- supervisory board - in a cooperative (Part 3 of Articles 101, 105 of the Civil Code of Ukraine, Article 17 of the Law of Ukraine "On Cooperation").

In practice, the creation of such a body in a corporate enterprise is conditioned by the need for constant control over the activities of the executive body, as well as protection of the rights and interests of the participants (members) of the corporate enterprise in the period between general meetings. The issue of creation and activity of the supervisory (supervisory) board in JSC, LLC and cooperative is regulated by the legislator in different ways.

The JSC Supervisory Board is a collegial body that protects the rights of all

shareholders of the company and, within the scope of competence defined by the charter of the joint-stock company and this Law, manages the company, as well as controls and regulates the activities of its executive body.

It should be noted that the law requires a member of the supervisory board to personally perform his duties.

Members of the supervisory board may be remunerated for their activities. The procedure for payment of remuneration to members of the supervisory board is established: 1) for a public joint-stock company and a bank - by the regulation on remuneration of members of the supervisory board; 2) for a private joint-stock company - by the charter of such a company or by the regulation on the supervisory board, or by the regulation on remuneration of the members of the supervisory board.

According to the provisions of Art. 70 of the JSC Law, the activity of the supervisory board is transparent, which is externally reflected in the fact that the supervisory board of a public JSC, a JSC in which more than 50 percent of the shares belong to the state, and the supervisory board of a bank must prepare a report on its work every year. The report of the supervisory board of a public joint-stock company is a separate component of the company's annual report and is subject to publication in accordance with the requirements of the law, provided for the order and terms of publication of the company's annual report. The preparation of a report by the supervisory board of a private joint-stock company on its activities is its right, not its obligation.

The competence of the supervisory board is to resolve issues stipulated by the JSC Law and the statute.

According to Art. 71 of the JSC Law, the exclusive competence of the supervisory board includes:

1) approval of the internal provisions regulating the activity of the company, except for those that belong to the exclusive competence of the general meeting in accordance with this Law, and those referred to the executive body of the company for approval by the decision of the supervisory board;

1-1) approval of the joint-stock company's strategic development plan and performance indicators, annual financial plan and report on its implementation, annual

investment plan, medium-term investment plan (three to five years);

1-2) submission of proposals to the general meetings of the joint-stock company, in the authorized capital of which more than 50 percent of the shares belong to the state, regarding short- and medium-term financial, operational and non-financial goals of the activity, which are included in the letter of expectations of the owner, in particular, but not exclusively, regarding individual financial indicators, namely coefficients of profitability, liquidity and solvency, as well as volumes of payments to the state, budget financing and quasi-fiscal operations;

2) preparation and approval of the draft agenda and the agenda of the general meeting, making a decision on the date of their holding and on the inclusion of proposals in the draft agenda, except in cases where the shareholders convene an extraordinary general meeting;

3) formation of a temporary counting commission in case of convening a general meeting by the supervisory board, unless otherwise established by the charter of the joint-stock company;

4) approval of the form and text of the ballot for voting;

5) making a decision to hold annual or extraordinary general meetings in accordance with the charter of the joint-stock company and in the cases established by this Law;

6) making a decision on the placement by the company of securities other than shares;

7) making a decision on the redemption of securities other than shares placed by the company;

8) approval of the market value of property in the cases provided for by this Law;

9) election and termination of the powers of the chairman and members of the executive body of the company;

10) approval of the terms of contracts concluded with members of the executive body of the company; setting the size of their remuneration; determination of the person who will sign contracts (agreements) on behalf of the company with the chairman and members of the executive body of the company;

11) making a decision to remove the chairman or a member of the executive body of

the company from exercising powers, to elect a person who will temporarily exercise the powers of the chairman of the executive body;

12) election and termination of powers of the chairman and members of other bodies of the company;

13) appointment and dismissal of the head of the internal audit unit (internal auditor);

14) approving the terms of employment contracts concluded with employees of the internal audit unit (with the internal auditor), establishing the amount of their remuneration, including incentive and compensation payments;

14-1) approval of the report and conclusions of the internal audit unit (internal auditor);

14-2) approval of the declaration of susceptibility to risks of the joint-stock company;

15) control over the timeliness of the company's provision (publication) of reliable information about its activities in accordance with the legislation, the company's publication of information about the company's corporate governance code used by the company;

16) consideration of the report of the executive body and approval of measures based on the results of its consideration in the event that the charter of the joint-stock company assigns the issue of election and termination of the powers of the chairman and members of the executive body to the exclusive competence of the supervisory board;

17) election of members of the registration commission, except for the cases provided for by this Law;

18) agreement on the terms of the contract for the provision of audit services and the selection of a person authorized to sign such a contract with the subject of audit activity;

19) approving and providing recommendations to the general meeting based on the results of the review of the audit report of the subject of audit activity regarding the financial statements of the company in order to make a decision on it;

20) determination of the date of drawing up the list of persons who have the right to receive dividends, the procedure and terms of payment of dividends within the time limit

specified by parts three and four of Article 34 of this Law;

21) determination of the date of compilation of the list of shareholders who must be notified of the general meeting in accordance with the first part of Article 47 of this Law and who have the right to participate in the general meeting in accordance with the first part of Article 41 of this Law;

22) resolving questions about the company's participation in industrial and financial groups and other associations;

23) resolving issues of creation and/or participation in any legal entities, their reorganization and liquidation;

24) resolution of issues related to the creation, reorganization and/or liquidation of structural and/or separate divisions of the company, except for cases when, by decision of the supervisory board, the resolution of these issues is delegated to the executive body of the company;

25) resolution of issues within the competence of the supervisory board in accordance with Chapter XVIII of this Law, in the event of a merger, merger, division, separation or transformation of the company;

26) making a decision to increase the amount of the company's authorized capital in the cases provided for by the fourth part of Article 119 and Article 121 of this Law;

27) adoption of a decision to amend the charter of a joint-stock company in the cases provided for in the fourth part of Article 119, Articles 121 and 132 of this Law;

28) making a decision to commit significant transactions or transactions involving interest in the cases provided for in Articles 107 and 108 of this Law;

29) determination of the probability of declaring the company insolvent as a result of its assumption of obligations or their fulfillment, including as a result of the payment of dividends or the redemption of shares;

30) making a decision on the election of an appraiser of the company's property and approving the terms of the contract concluded with him, establishing the amount of payment for his services;

31) making a decision on choosing (replacing) a depository institution that provides additional services to a joint-stock company, approving the terms of the contract

concluded with it, establishing the amount of payment for its services;

32) sending an offer to shareholders in accordance with Articles 93 and 94 of this Law;

33) approval of the regulations on the committees of the supervisory board, which regulate the formation and activities of the said committees;

34) solving other issues, except for those that belong to the exclusive competence of the general meeting in accordance with the law and the charter of the joint-stock company.

Issues that belong to the exclusive competence of the supervisory board cannot be resolved by other bodies of the company, except for general meetings in the cases expressly provided for by this Law. Officials of the bodies of the joint-stock company provide members of the supervisory board with access to information within the limits provided for by this Law and the charter of the joint-stock company. If the number of members of the supervisory board, whose powers are valid, is half or less than half of its total composition, determined in accordance with the requirements of the law, the supervisory board cannot make decisions, except for decisions on holding a general meeting to elect the remaining members of the supervisory board, and in case of election members of the supervisory board by cumulative voting - to elect the entire composition of the supervisory board.

A characteristic feature of will-making, in which the supervisory board participates, is the direction of this will. The will formed by the supervisory board is aimed primarily at the executive body, and not at third parties outside of corporate relations. This is due to the fact that the presence of a supervisory board in the system of JSC bodies should contribute to the balance of interests in the company, as it weakens the position of the executive body. That is why a member of the JSC supervisory board cannot be a member of the company's executive body at the same time.

Carrying out strategic management, the supervisory board itself monitors compliance by the executive body with the strategy of implementing JSC's economic competence and, if necessary, regulates the activities of the executive body.

Members of JSC's supervisory board are elected by shareholders during the

company's general meeting for a term of no more than three years. The charter of a private JSC may provide for a different term of office of the supervisory board, but such term may not exceed three years.

Shareholders or persons representing their interests (hereinafter - shareholder representatives) and/or independent directors are elected to the Supervisory Board. Members of the supervisory board cannot hold other positions in the respective company. At least one-third of the composition of the supervisory board of a public joint-stock company must be independent directors, while the number of independent directors cannot be less than two persons. The number of independent directors in the supervisory board of a joint-stock company, in the charter capital of which the share of the state is 50 percent or more, must be the majority of the members of the supervisory board.

The powers of a member of the supervisory board elected by cumulative voting may be terminated early by the decision of the general meeting only if the powers of the entire supervisory board are simultaneously terminated. In such a case, the decision to terminate the powers of the members of the supervisory board is adopted by the general meeting by a simple majority of the shareholders who have registered to participate in the general meeting and are the owners of shares voting on the relevant issue. A member of the supervisory board elected as a representative of a shareholder or group of shareholders may be replaced by such shareholder or group of shareholders at any time. The powers of a member of the supervisory board are valid from the day of his election by the general meeting. In case of replacement of a member of the supervisory board - a representative of the shareholder, the powers of the recalled member of the supervisory board are terminated, and the new member of the supervisory board acquires powers from the day JSC receives a written notice from the shareholder(s), whose representative is the corresponding member of the supervisory board.

The method of electing members of the supervisory board depends on the type of JSC. The members of the supervisory board of a public JSC are elected exclusively by cumulative voting. The members of the supervisory board of a private JSC are elected by cumulative voting, unless another method is established by the statute of the JSC.

Quantitative composition of the supervisory board in accordance with Part 11 of Art.

72 of the JSC Law is determined by the charter of the joint-stock company. The minimum number of members of the supervisory board of a public joint-stock company cannot be less than five people. If the number of members of the supervisory board, whose powers are valid, is less than half of its total composition, determined in accordance with the requirements of the law, the company must convene a general meeting within three months to elect the remaining members of the supervisory board, and in the case of electing the members of the supervisory board by cumulative voting - for the election of the full composition of the supervisory board of the joint-stock company.

The chairman of the supervisory board is elected by members of the supervisory board from their number by a simple majority of votes from the total composition of the supervisory board, unless otherwise provided by the charter of the joint-stock company. The chairman of the supervisory board, which is an enterprise of public interest, cannot be elected a member of the supervisory board who during the previous year was the chairman of the collegial executive body of such a company (a person who exercised the powers of a sole executive body). The supervisory board has the right to elect a new chairman of the supervisory board at any time.

Meetings of the supervisory board are convened at the initiative of the chairman of the supervisory board or at the request of a member of the supervisory board. Meetings of the supervisory board are also convened at the request of the executive body of the company or its member, the head of the internal audit unit (internal auditor), other persons determined by the charter and/or regulations on the supervisory board of the joint-stock company. Persons who convened a meeting of the supervisory board have the right to participate in such a meeting of the supervisory board. At the request of the supervisory board, members of the company's executive body and other persons designated by the supervisory board participate in its meeting or in consideration of individual issues on the agenda of the meeting in the manner established by the regulations on the supervisory board. Meetings of the supervisory board are held as needed with the frequency determined by the JSC charter. Representatives of the trade union or other body authorized by the labor collective, which signed the collective agreement on behalf of the labor collective, may participate in the meeting of the

supervisory board at its invitation with the right of an advisory vote. A meeting of the supervisory board is authorized if more than half of its members participate in it, provided that the charter of the joint-stock company does not provide otherwise. In the case of early termination of the powers of one or more members of the supervisory board and before the election of the full composition of the supervisory board, the meetings of the supervisory board are authorized to resolve issues in accordance with its competence, provided that the number of members of the supervisory board whose powers are valid is more than half of its total composition.

The decision of the supervisory board is adopted by a simple majority of votes of the members of the supervisory board from the total number of them who have the right to vote, if the charter of the JSC does not provide for a greater number of votes to make such a decision. At the meeting of the supervisory board, each member of the supervisory board has one vote. The articles of association of JSC may provide for the right of the chairman of the supervisory board to have a casting vote in case of equal distribution of votes of members of the supervisory board during decision-making.

The articles of association of JSC or the regulations on the supervisory board may provide for the possibility of holding a meeting of the supervisory board and/or making decisions by it through polls, in particular through the use of a software and technical complex, or by conducting an audio or video conference, as well as determine the procedure for holding such meetings.

The Supervisory Board of JSC may form permanent or temporary committees from among its members to study and prepare issues that belong to the competence of the Supervisory Board. An audit committee, a committee on matters of determining the remuneration of officials of the joint-stock company (hereinafter referred to as the remuneration committee) and the appointment committee. At the same time, the remuneration committee and the nomination committee may be combined. The Audit Committee, the Remuneration Committee and the Nomination Committee are headed by members of the Company's Supervisory Board who are independent directors. The majority of the members of said committees should be independent directors. Committees of the Supervisory Board perform duties in accordance with their subject matter and, in

accordance with the procedure determined by the Supervisory Board, report to it on the results of their activities at least once a year, except for the Audit Committee, which must report on the results of its activities at least once every six months

In accordance with Part 1 of Art. 86 of the JSC Law, the supervisory board or the board of directors appoints *the corporate secretary*. The competence of the corporate secretary includes: 1) providing information to shareholders and/or investors, other interested parties about the activities of the company; 2) provision of the charter of the joint-stock company and its internal provisions, including amendments thereto, for perusal to persons who have the right to do so; 3) performing the functions of the head of the counting commission in accordance with Art. 55 of the JSC Law; 4) ensuring the preparation, convening and holding of general meetings, performing the functions of the secretary of general meetings and drawing up minutes of general meetings; 5) preparation and holding of meetings of the supervisory board or the board of directors, committees of the supervisory board or the board of directors, performing the functions of the secretary of the supervisory board or the board of directors, drawing up minutes of the meetings of the supervisory board or the board of directors; 6) participation in the preparation or preparation of drafts of explanations for shareholders or investors regarding the exercise of their rights, providing answers to the requests of shareholders or investors; 7) preparation of extracts from the minutes of meetings of the management bodies of the company and their certification; 8) performance of other functions provided for by this Law, the charter of the joint-stock company. The corporate secretary has the right of access to any company documents within the scope of his competence.

Supervisory Board of LLC. By analogy with JSC provisions of Art. 38 of the new Law on LLCs also provides for the possibility of creating a supervisory board for these organizational and legal forms. The establishment of such a body should be provided for in the statute. The Supervisory Board, within the scope of competence defined by this document, controls and regulates the activities of the executive body of the company. In particular, the competence of the supervisory board may include the election of the sole executive body of the company or members of the collegial executive body of the company (all or one or several of them separately), the suspension and termination of

their powers, and the determination of the amount of remuneration for the members of the executive body of the company. The procedure of activity of the supervisory board, its competence, the number of members and the procedure for their election, including independent members of the supervisory board, the amount of remuneration of members of the supervisory board, as well as the procedure for electing and terminating their powers are also determined by the company's charter. The supervisory board of the company may be delegated the powers of the general meeting of participants, except for those assigned to the exclusive competence of the general meeting of participants. A civil law contract or an employment contract is concluded with each member of the supervisory board. A civil law contract can be paid or unpaid.

Supervisory board of the cooperative. In corporate enterprises operating in the organizational and legal form of a cooperative, the functions of the supervisory body are performed by the supervisory board. The procedure for electing the supervisory board and its chairman, as well as the procedure for the supervisory board's activities, are established by Art. 17 of the Law of Ukraine "On Cooperation", Article 105 of the Civil Code of Ukraine, as well as the charter of the cooperative. The Supervisory Board, as the corporate management body of the cooperative, supervises compliance with the charter of the cooperative and the activities of the executive management body (executive director) of the cooperative. The formation of a supervisory board in a cooperative is allowed only under certain conditions and in a certain quantitative composition. Yes, the supervisory board can be created only in a cooperative in which the number of members exceeds 50 people. At the same time, the supervisory board of the cooperative is elected in the number of 3-5 people. The Supervisory Board is elected by the general meeting from among the members of the cooperative. Members of the cooperative work in the supervisory board on public grounds. The supervisory board of the cooperative may not include members of the board or members of the audit commission (auditor) of the cooperative. The supervisory board of the cooperative in its activities is accountable to the general meeting of the members of the cooperative. The powers of the members of the supervisory board of the cooperative may be prematurely terminated by the decision of the general meeting of the members of the cooperative.

Lecture 10. General provisions of labor law applicable to entrepreneurial activity applicable to entrepreneurial activity. Legal status of officials of entrepreneurial companies.

General provisions on termination of corporate enterprises. The concept of "termination of a corporate enterprise" includes legal grounds, acts and procedural legal actions regarding the termination of a corporate enterprise as a legal entity. In particular, the termination of corporate enterprises is regulated by a significant number of regulatory acts, which primarily include the Central Committee of Ukraine, the Civil Code of Ukraine, the Law on GT, the Law on JSCs, the Law on LLCs, the Law on State Registration and other regulatory acts.

The provisions of Art. 59 of the Civil Code of Ukraine stipulates that the termination of a business entity is carried out in accordance with the law. The norms governing relations related to the termination of a legal entity are contained in Art. Art. 104–112 of the Central Committee of Ukraine. In the case of bankruptcy of a corporate enterprise, relations regarding its termination are regulated by the Code of Ukraine on Bankruptcy Procedures.

In accordance with the provisions of Art. 104 of the Civil Code of Ukraine, termination of a legal entity, which is a corporate enterprise, is carried out through its reorganization or liquidation. Science also traditionally distinguishes two forms (methods) of termination of corporate enterprises, firstly, relative termination of the subject of law - reorganization and, secondly, their absolute termination - liquidation. The forms (methods) of termination of enterprises are universal and do not depend on the type and organizational and legal form. Depending on whether there is succession to the company's obligations, these two methods of terminating corporate enterprises are distinguished: reorganization and liquidation. If, as a result of the reorganization of a corporate enterprise, all its property, rights and obligations are transferred to other economic entities - legal successors, then in the event of liquidation - the rights and obligations of the enterprise are terminated, and the property is distributed among creditors.

In addition to the absence of legal succession during the liquidation of a corporate

enterprise and its presence during reorganization, the following are distinguished in the legal literature as distinguishing features of liquidation from reorganization:

1) the originality of the purpose (reason) for the liquidation of the corporate enterprise. The purpose of liquidation is the final termination of the subject as a legal entity, while there is no such purpose in reorganization;

2) upon liquidation, all business ties (including business contracts), termination of horizontal and vertical legal relations, in contrast to reorganization, in which the parties to the obligation are replaced, take place;

3) the liquidation of a corporate enterprise involves the complete cessation of its activity, while in the case of reorganization the entity itself ceases to exist, however, the property that passed to the legal successor continues to participate in the implementation of economic activity, which gives grounds to talk about the relative cessation of the activity of the sub business entity;

4) there are also differences in terminology, for example, the commission for the termination of a legal entity during reorganization has the name - reorganization commission, and in case of liquidation - liquidation commission.

In science, additional signs of reorganization are singled out, in particular, the following are identified as such signs: - change in the composition of participants and the amount of their corporate rights of the reorganized enterprise; - lack of legal connection between the reorganized enterprise and business entities created as a result of the reorganization; - absence of binding relations between the legal successor and the reorganized enterprise.

The main meaning of the reorganization is the transfer of the company's property to other corporate enterprises in the order of legal succession. From an economic point of view, reorganization is a method of consolidation or distribution of property (business) by the participants of a legal entity based on their subjective interests, and from a formal and legal point of view, it is a process of replacing persons in property and other legal relations in the order of universal legal succession.

The legislation defines four forms of reorganization as a way of terminating a business entity: merger, merger, division and transformation (Part 1 of Article 104 of the

Civil Code of Ukraine). From a legal point of view, these methods differ depending on the legal entity to which all property rights and obligations of the reorganized enterprise are transferred.

The merger of two or more enterprises means the transfer of property, rights and obligations of each of them to the successor enterprise formed as a result of the merger. In this case, a new business entity is created, and the merging companies are terminated. In the event of a merger of legal entities, the state registration of the newly formed legal entity and the state registration of the termination of the legal entities terminated as a result of the merger are carried out. In the provisions of Part 4 of Art. 4 of the Law on State Registration states that the merger is considered completed from the date of state registration of termination of legal entities terminated as a result of the merger.

When one or more enterprises join another corporate enterprise, all property, rights and obligations of the joined enterprises are transferred to the latter. A new business entity does not arise as a result of such reorganization, but the joined business entities are terminated. An enterprise to which other enterprises have joined retains its name and legal status. Changes to the founding documents of the enterprise that is not terminated as a result of the merger shall be subject to state registration after the state registration of the termination of the enterprise as a result of the merger. When joining corporate enterprises, the state registration of the termination of legal entities terminated as a result of the merger, and the state registration of changes to the information contained in the EDR regarding the legal succession of the legal entity to which they are joined, are carried out. Joining is considered completed from the date of state registration of changes to the information contained in the EDR regarding the legal succession of the legal entity to which they join (Part 7, Article 4 of the Law on State Registration).

The termination of an enterprise in which all its property, rights and obligations are divided between two or more newly created economic entities is considered a division. This form of reorganization of a corporate enterprise involves the approval by the participants (a body authorized by them) of the distribution balance sheet (act), according to which part of the property and the corresponding rights and obligations of the reorganized enterprise are transferred to the business entities created as a result of the

division. The legal successor entity formed as a result of the division bears subsidiary responsibility for the obligations of the terminated enterprise, which, according to the distribution balance sheet, were transferred to another legal successor entity. If there are more than two economic entities - legal successors formed as a result of the division, they bear such subsidiary responsibility jointly. In the case of division of corporate enterprises, state registration of newly formed legal entities and state registration of the termination of a legal entity terminated as a result of division is carried out. The division is considered completed from the date of the state registration of the termination of the legal entity that is terminated as a result of the division (Part 7, Article 4 of the Law on State Registration).

The transformation of a corporate enterprise is a change in its organizational and legal form, for example, the transformation of a general partnership into another business partnership (Part 1 of Article 132 of the Civil Code of Ukraine). In case of transformation, all property, rights and obligations of the previous enterprise are transferred to the new enterprise. After the state registration of the enterprise - successor, a deed of transfer is drawn up. The initial balance sheet of the newly created enterprise must coincide with the balance sheet data of the transformed enterprise. Rights and obligations that were not known at the time of termination and arose after the transformation are also transferred to the legal successor. In case of transformation of corporate enterprises, the state registration of the termination of the legal entity terminated as a result of the transformation and the state registration of the newly created legal entity are carried out. The transformation is considered completed from the date of state registration of the newly formed legal entity (Part 5 of Article 4 of the Law on State Registration).

The legal grounds for the termination of a corporate enterprise are the circumstances established by the norms of material law, which are sufficient for the authorized subject to make a decision on the termination of the subject.

A decision to terminate a corporate enterprise is an individual legal act of a competent authority (a court decision, a decision of a general meeting), which is adopted on the basis of the legal grounds established by the norms of substantive law on the

termination of a business entity.

Termination of a corporate enterprise on legal grounds can be of two types: voluntary and forced. Voluntary termination of a corporate enterprise takes place by the decision of its participants or the body of such an enterprise authorized to do so by the founding documents, for example, in connection with the expiration of the term for which the enterprise was created, the achievement of the purpose for which it was created, as well as in other cases , provided by the constituent documents. Compulsory termination of a corporate enterprise takes place by a court decision (the basis may be, for example, deficiencies admitted during its creation that cannot be eliminated), while a lawsuit for the termination of an enterprise may be filed in court by a participant of a corporate enterprise or a relevant state authority in the cases established by law (clauses 2, 3, part 1 of Article 110 of the Civil Code of Ukraine).

In accordance with Part 3 of Art. 105 of the Civil Code of Ukraine, the participants of a corporate enterprise, the court or the body that made the decision to terminate the enterprise, appoint the commission for the termination of the legal entity (reorganization commission, liquidation commission), the chairman of the commission or the liquidator, and establish the procedure and deadline for creditors to declare their claims to the enterprise, which ceases.

According to the provisions of Part 5 of Art. 105 of the Civil Code of Ukraine, the deadline for creditors to declare their claims to a legal entity that is being terminated cannot be less than two and more than six months from the date of publication of the notice of the decision to terminate the corporate enterprise.

The provisions of Part 1 of Art. 105 of the Civil Code of Ukraine stipulates that the participants of a legal entity, which is also a corporate enterprise, a court or a body that made a decision to terminate the enterprise, are obliged to notify the state registration body in writing within three working days from the date of the decision. After the mentioned notification, it can be said that the corporate enterprise is in a special legal state - a state of termination, because in accordance with the provisions of clause 26 of Art. 9 of the Law on State Registration, data on the stay of a legal entity in the process of termination, including data on the decision to terminate the legal entity, information on

the termination commission (liquidator, liquidation commission, etc.) and the period determined by the founders (participants) of the legal entity are entered into the EDR , by a court or body that made a decision on the termination of a legal entity, for creditors to declare their claims.

The commission for termination of a legal entity (reorganization commission, liquidation commission) or the liquidator from the moment of appointment transfers the authority to manage the affairs of the legal entity. The performance of the functions of the commission for the termination of a corporate enterprise may be entrusted to the management body of the enterprise. The chairman of the commission, its members or the liquidator of the corporate enterprise represent it in relations with third parties and appear in court on behalf of the entity that is being terminated. The scope of powers of the termination commission, the procedure for its work are determined by the law and the body that made the decision to terminate the enterprise. The members of the termination commission are obliged to act in the interests of the enterprise, in good faith and reasonably, and not to exceed their powers. The composition of the commission is changed by the decision of the body that formed it.

According to the provisions of Part 7 of Art. 15 of the Law on State Registration, the decision to terminate a legal entity must contain information about the personal composition of the termination commission (reorganization commission, liquidation commission), its chairman or liquidator, registration numbers of the payers' registration cards, the procedure and deadline for creditors to declare their claims.

Each separate claim of the creditor, in particular, regarding the payment of taxes, fees, a single contribution to mandatory state social insurance, insurance funds to the Pension Fund of Ukraine, social insurance funds, is considered, after which an appropriate decision is made, which is sent to the creditor no later than thirty days from on the date of receipt by the terminating legal entity of the corresponding claim of the creditor.

In accordance with Part 9 of Art. 17 of the Law on State Registration, for state registration of the decision to terminate a legal entity, made by its participants or by the relevant body of the legal entity, and in the cases provided by law, by the relevant state

body, the following documents are submitted: 1) a copy of the original (notarized copy) of the decision of the participants of the legal entity of a person or a relevant body of a legal entity, and in the cases provided for by law - a decision of a relevant state body to terminate a legal entity; 2) a copy of the original (notarized copy) of the document that approves the personal composition of the termination commission (reorganization commission, liquidation commission) or the liquidator, the registration numbers of taxpayers' accounting cards, the deadline for creditors to declare their claims, etc.

The provisions of Part 12 of Art. 17 of the Law on State Registration, it is determined that for state registration of the termination of a corporate enterprise as a result of its liquidation on the basis of a decision on the termination of a legal entity, adopted by the participants of such a corporate enterprise or its relevant body, and in cases provided for by law - a decision of the relevant state bodies or a court a decision on the termination of a corporate enterprise, not related to its bankruptcy, after the end of the termination procedure, but not before the end of the deadline for filing claims by creditors, the following documents are submitted: 1) an application for state registration of the termination of a legal entity as a result of its liquidation; 2) a certificate of the archival institution on the acceptance of documents that, according to the law, are subject to long-term storage.

In part 13 of Art. 17 of the Law on State Registration establishes that the following documents must be submitted for state registration of the termination of a corporate enterprise as a result of its reorganization after the end of the termination procedure, but not before the end of the deadline for filing claims by creditors: 1) an application for state registration of the termination of a legal entity as a result of its reorganization; 2) a copy of the original (notarized copy) of the distribution balance - in case of termination of the legal entity as a result of division; 3) a copy of the original (notarized copy) of the deed of transfer - in case of termination of the legal entity as a result of transformation, merger or merger; 4) a certificate from an archival institution on the acceptance of documents subject to long-term storage in accordance with the law, in case of termination of a legal entity as a result of division, merger or merger; 5) documents for state registration of the creation of a legal entity, defined by the provisions of this law (part 1, p. 17) - in case of

termination of a legal entity as a result of transformation; 6) documents for state registration of changes to information about a legal entity contained in the EDR, specified in Part 4 of Article 13 of the Law - in case of termination of a legal entity as a result of joining.

Review of documents submitted for state registration and other registration actions for legal entities is carried out within 24 hours after receipt of documents submitted for state registration (Article 26 of the Law on State Registration). The state registrar may refuse state registration of the termination of a legal entity, including a corporate enterprise, if the documents for state registration of the termination of a legal entity are submitted:

– earlier than the term established by law;

– in relation to a legal entity that is terminated as a result of its liquidation and is a founder (participant) of other legal entities and/or has separate subdivisions that have not been closed, and/or is a founder of an arbitration court;

– there is no record of state registration of a legal entity formed by reorganization as a result of a merger, merger or division in the UDR;

- regarding the joint-stock company, in respect of which information was received about the existence of an uncancelled registration of the issue of shares;

- regarding the legal entity - the issuer of securities, in respect of which information has been received about the existence of uncancelled issues of securities;

- regarding a legal entity that is being liquidated or reorganized, in respect of which information has been received about the existence of arrears for the payment of mandatory payments (in particular, taxes, fees, a single contribution to mandatory state social insurance; insurance funds to the Pension Fund of Ukraine and social insurance funds);

– in relation to a reorganizing legal entity, in respect of which there is no agreed plan for the reorganization of the legal entity;

– regarding a legal entity terminated as a result of liquidation, in respect of which information about an open enforcement proceeding has been received;

- in relation to a legal entity in respect of which bankruptcy proceedings have been

opened (Clause 11 of Article 28 of the Law on State Registration).

The most important consequence of the termination of the enterprise is the termination of its legal capacity. A corporate enterprise is one that has ceased, both upon reorganization and upon liquidation, from the date of entry into the UDR of the state registration of the termination of the legal entity.

Reorganization of corporate enterprises. The traditional position in legal science is that reorganization is defined as a procedure (a set of legal actions and decisions) resulting in the termination of one or more corporate enterprises with the transfer of all or part of the property, rights and obligations in the order of legal succession to one created on their basis or to several economic organizations or an existing economic organization, or the creation of one or more economic organizations with the transfer to them of part of the property, rights and obligations of the corporate enterprise - legal predecessor in the order of legal succession.

In accordance with Part 1 of Art. 104 of the Civil Code of Ukraine, a legal entity is terminated as a result of reorganization (merger, merger, division, transformation) or liquidation. According to the content of this article, the list of types of reorganization is exhaustive.

At the same time, it is noted in the legal literature that the procedure of reorganization of a legal entity, regardless of the form of such reorganization, consists of four stages: 1) the stage of initiation of reorganization; 2) stage of implementation of reorganization measures; 3) the stage of drawing up and approving the final reorganization document; 4) stage of state registration.

From the content of Art. 105 – 109 of the Civil Code of Ukraine, it follows that at the first stage a discussion and decision on the reorganization of a legal entity takes place, at the second stage a reorganization commission is appointed, property is recorded, creditors are notified about the reorganization and satisfaction of their demands, at the third stage a deed of transfer is drawn up (distributive balance sheet), which confirms the final stage of the reorganization regarding the legal fate of the property of the legal entity and the fourth stage, which, in fact, completes the reorganization of the legal entity, which is reflected in the Unified State Register of Legal Entities, Individuals - Entrepreneurs,

and Public Organizations.

However, the above-mentioned stages of reorganization, fixed at the level of the Central Committee of Ukraine, are universal and can be applied by any legal entities under private law, which can be both business and non-business organizations, societies or institutions.

According to Art. 106 of the Civil Code of Ukraine, the merger, merger, division and transformation of a corporate enterprise are carried out by the decision of its participants or the body of a legal entity authorized to do so by the constituent documents, and in cases provided for by law - by the decision of the court or relevant state authorities. The law may provide for obtaining the consent of the relevant state authorities for the termination of a corporate enterprise through a merger or merger.

The combination of enterprises (merger, merger) is the combination of separate enterprises into one enterprise with the purpose of obtaining income, reducing costs or obtaining economic benefits in another way. A merger may take place by joining one enterprise with another, acquiring all the net assets, assuming liabilities or acquiring the capital of another enterprise in order to obtain control by one enterprise over the net assets and activities of another enterprise. In the cases established by law, the permission of the state authorities is required for the merger of enterprises. Yes, according to Art. 22 of the Law of Ukraine "On the Protection of Economic Competition", the merger of business entities or the joining of one business entity to another is recognized as a type of economic concentration and must be carried out in compliance with the requirements of antimonopoly legislation. If the financial and economic indicators of the concentration of business entities (including mergers, mergers of enterprises) meet the threshold indicators established by Art. 24 of the Law of Ukraine "On the Protection of Economic Competition", such a concentration can be carried out only with the prior permission of the Antimonopoly Committee of Ukraine. Before granting such permission, the participants of the concentration undertake to refrain from actions that may lead to the restriction of competition and the impossibility of restoring the initial state.

AMCU bodies grant permission for concentration if it does not lead to monopolization or significant restriction of competition in the entire market or in a

significant part of it. In turn, the Cabinet of Ministers of Ukraine may allow a concentration for which AMCU did not grant permission, if the positive effect for the public interests of the said concentration outweighs the negative consequences of limiting competition. At the same time, if the restrictions of competition caused by the concentration are not necessary to achieve the goal of the concentration or pose a threat to the system of the market economy, the CMU does not grant permission for such concentration.

The legislation provides for the possibility of forced division of an enterprise in case of violation of the requirements of antimonopoly legislation. Yes, according to Art. 53 of the Law of Ukraine "On the Protection of Economic Competition", if a business entity abuses a monopoly (dominant) position on the market, the bodies of the AMCU have the right to make a decision on the forced division of the business entity occupying a monopoly position. Forced division is not applied in the case of: 1) the impossibility of organizational or territorial separation of enterprises, structural subdivisions or structural units; 2) the presence of a close technological connection of enterprises, structural subdivisions or structural units (if the volume of products used by the business entity exceeds 30% of the gross volume of production of the enterprise, structural subdivision or structural unit). The decision of the AMCU bodies on the forced division of the enterprise is subject to execution within the prescribed period, which cannot be less than six months. Reorganization of an enterprise subject to forced division is carried out at its discretion, provided that the monopoly (dominant) position of this enterprise on the market is eliminated.

In accordance with the provisions of Art. 107 of the Civil Code of Ukraine, within the time limit for presenting creditors' claims, a creditor may demand from an enterprise that is terminated through reorganization and the fulfillment of its obligations is not ensured, the termination or early fulfillment of an obligation, or the provision of the fulfillment of an obligation, except for cases provided for by law . After the expiration of the term for presenting claims by creditors and the satisfaction or rejection of these claims, the enterprise termination commission draws up a transfer deed (in the case of a merger, merger or transformation) or a distribution balance sheet (in the case of a

division), which must contain provisions on the succession to all obligations obligations of the enterprise in liquidation in relation to all its creditors and debtors, including obligations disputed by the parties.

In the event of a merger or acquisition, the deed of transfer must contain information about the property, rights and obligations of each enterprise that is being terminated, as well as the value of the property, rights and obligations of the business entity - the legal successor. On the basis of the deed of transfer, the balance sheet of the legal successor is drawn up. The indicators of this balance sheet are determined by summing up homogeneous balance sheet items of discontinued enterprises. The deed of transfer in the event of a merger or acquisition is signed by the chairman of the commission for the termination of the enterprise and the head of the executive body of the business entity - the legal successor and is approved by the above-mentioned bodies (participants) of all enterprises participating in the termination (both those that are terminated and those that become legal successors).

The distributive balance sheet must contain information on the distribution of property, rights and obligations (balance sheet items) between legal successors in value form. On the basis of the distribution balance, an act on the distribution of individual items of the balance sheet between the legal successors is drawn up, which contains data on the specific property transferred to each legal successor, the names of creditors and debtors, the grounds for the emergence of obligations. The distribution balance sheet is signed by the chairman and members of the enterprise termination commission.

Approved by the participants of the corporate enterprise or the body that made the decision to terminate the enterprise, copies of the transfer act and the distribution balance sheet are submitted to the body that carries out the state registration of the enterprise that is being terminated, at the place of its state registration, as well as to the body that carries out the state registration of the sub of the business entity – the legal successor, at the place of its state registration.

If the legal successors of a corporate enterprise are several business entities and it is impossible to accurately determine the legal successor with regard to the specific duties of the terminated enterprise, the legal successors are jointly and severally liable to the

creditors of the terminated enterprise.

As for joint-stock companies, the law provides for peculiarities in the legal regulation of the reorganization of such corporate enterprises. In accordance with Part 1 of Art. 114 of the Law on JSC, the JSC is terminated as a result of the transfer of all its property, rights and obligations to other entrepreneurial companies - successors (through merger, merger, division, transformation) or as a result of liquidation.

Article 115 of the JSC Law stipulates that mergers, acquisitions, divisions, spin-offs , the transformation of a joint-stock company is carried out by the decision of the general meeting, and in the cases provided for by law - by the decision of the court or relevant state bodies. The law may provide for obtaining consent from the relevant state authorities for the termination of a joint-stock company through a merger or merger. JSC cannot simultaneously perform mergers, acquisitions, divisions, spin-offs and/or transformations.

Issuable securities (except for shares) of joint-stock companies participating in a merger, merger, division, separation or transformation must provide their owners with a volume of rights not less than that granted by them before the merger, merger, division, separation or transformation. A reduction in the scope of the rights of the owners of such securities is not allowed, unless the corresponding decision is adopted by the general meeting of shareholders or if the owners of such securities have given their consent to this personally.

At the meeting of the members of the entrepreneurial company - the legal successor, each participant receives the number of votes that will be granted to him by the shares (parts, units) of the entrepreneurial company - the legal successor, the owner of which he can become as a result of a merger, accession, division, separation or transformation of JSC. The merger, merger, division, transformation of JSC is considered completed from the date of entering the record of termination of the partnership into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations. The spin-off of JSC is considered completed from the date of entry into the Unified State Register of the creation of the spin-off joint-stock company.

In order to protect the rights of creditors in the event of a merger, merger, division or

transformation of JSC, the legislation provides for the following measures:

- within 30 days from the date of publication of the minutes of the general meeting, at which a decision was made to terminate the joint-stock company through division, transformation, as well as spin-off, and in the case of termination by merger or merger - from the date of publication of the minutes of the general meeting, at which the decision was made by the general by the meeting of the last joint-stock company participating in the merger or merger, the company is obliged to notify the company's creditors in writing and to place a notice of the adopted decision in the database of the person engaged in the activity of publicizing regulated information on behalf of capital market participants and professional participants organized commodity markets. The company is also obliged to notify every operator of the organized capital market that manages the organized market on which the company's shares are admitted to trading on the adoption of such a decision.

- a creditor whose claims against a joint-stock company, the activity of which is terminated as a result of a merger, merger, division, transformation, or from which a division is carried out, are not secured by pledge, guarantee or surety contracts, within 20 days from the day of sending him a notice of termination of the company, may apply in writing a requirement to carry out one of the following actions at the company's choice: 1) ensuring the fulfillment of obligations by concluding pledge, guarantee or surety contracts; 2) early termination or fulfillment of obligations to the creditor, unless otherwise stipulated by the deed between the company and the creditor.

If the creditor does not apply to the company with a written demand within the above-mentioned period, it is considered that he does not require the company to take additional actions regarding the obligations to him.

Merger, merger, division, spin-off, transformation of the company cannot be completed until the demands declared by the creditors are met.

If the distribution balance sheet or the deed of transfer does not make it possible to determine to which of the successors the obligation has passed or whether the company from which the division was made remains obligated to it, the successors and the company from which the division was made are jointly and severally liable for such an obligation knitting

Owners of debt securities (regardless of the terms of the prospectus or the issue decision) in the event of termination of the partnership have the right to:

1) early redemption (repayment);

2) conversion of securities belonging to them into securities of the company - the legal successor, to which the rights and obligations of the terminated company are transferred, on the same terms, including with security.

The legal successor company shall issue debt securities for the purpose of conversion, unless all owners of the legal predecessor company have agreed to the mandatory repurchase of their securities by the joint-stock company.

Reorganization of a corporate enterprise in most cases is a long and rather complicated process, but with the right approach, it provides an opportunity to improve the company's work and make it more productive.

Liquidation of corporate enterprises. There is no definition of the term "liquidation of a legal entity" in the legislation of Ukraine. Article 110 of the Civil Code of Ukraine "Liquidation of a legal entity" does not contain a definition of such a legal category, but only regulates its grounds. Traditionally, it is considered that a corporate enterprise in the event of its liquidation ceases to be a legal entity without legal succession. At the same time, there are other positions on this matter, in particular, that legal succession is also possible during liquidation, but it differs from legal succession in the process of reorganization:

firstly, legal succession in case of liquidation of a corporate enterprise occurs only in the presence of property remaining after satisfying the demands of all creditors in accordance with the procedure established by law;

secondly, the successors in this case are the founders, i.e. individuals and legal entities, except for exceptions provided by law. Such an exception, for example, is established by the Law of Ukraine "On Charitable Activities and Charitable Organizations". In accordance with Part 5 of Art. 18 of this Law, the assets of the liquidated charitable organization, which remained after the satisfaction of all creditors' claims, must be transferred to one or more active charitable organizations;

thirdly, legal succession takes place only with respect to that part of the property that

remained after the repayment of the payables, and not with respect to the entire set of proper property. At the same time, there is no legal succession in terms of the right of claim, as well as the debts of the liquidated legal entity;

fourth, the transfer of property rights takes place in accordance with the procedure provided for by law, constituent documents or a court decision.

Corporate enterprises differ among themselves in terms of various legal parameters that affect, in particular, the grounds and procedure for terminating these entities.

Traditionally, general, common to almost all legal entities, and special grounds for the liquidation of legal entities are distinguished.

The general grounds for the liquidation of legal entities are enshrined in Art. 110 of the Civil Code of Ukraine, according to which a legal entity is liquidated: 1) by a decision of its participants or a body of a legal entity authorized to do so by the founding documents, in particular in connection with the expiration of the term for which the legal entity was created, the achievement of the purpose for which it was created , as well as in other cases stipulated by the founding documents; 2) by a court decision on the liquidation of a legal entity due to violations committed during its creation that cannot be eliminated, at the request of a participant of a legal entity or a relevant state authority. In paragraph 3, part 1 of Art. 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 norm corresponds to the provisions of the Civil Code of Ukraine. Yes, in Art. 59 of the Civil Code of Ukraine stipulates that the termination of a business entity is carried out in accordance with the law.

At the same time, the grounds for the liquidation of legal entities are established for almost all types and organizational and legal forms of legal entities in separate norms of the Central Committee of Ukraine or legislative acts and depend on the purpose of their creation, subject of activity and other characteristics.

One of the problems of the current legislation is the lack of clarity in the legislator's formulation of the legal grounds for forced liquidation of a corporate enterprise, as well as the lack of an exhaustive list of them. The grounds for forced liquidation are contained

in various regulatory acts and, as a result, are not mutually agreed upon.

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

1) in Art. 55-1 of the Civil 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, lost) and forged documents;

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

- registered (re-registered) in the state registration authorities by natural persons with subsequent transfer (registration) to 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 State Regulation of Capital Markets and Organized Commodity Markets", which defines the authority of the NKCPFR to apply to the court with a claim (application) for the termination of JSC as a result of:

- making violations during its creation that cannot be eliminated;

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

- non-establishment of JSC bodies 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 JSC by the NCCPFR;

- non-convening of JSC general meetings of shareholders for two consecutive years;

- absence of a share issue registered in the established manner in JSC;

3) in clause 20.1.37, part 20.1. Art. 20 and clause 67.2 of Art. 67 of the Criminal Code of Ukraine, 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 the constituent (founding) documents of economic entities;

4) in Part 4 of Art. 58 of the Law of Ukraine "On the Protection of Economic Competition", 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, 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 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.

According to some scientists, only a court can make a decision on forced liquidation of corporate enterprises. 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 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.

Some courts consider the liquidation of a legal entity as a sanction - a measure of responsibility for violations of tax laws and requirements established by other legislation by taxpayers, their officials and officials of supervisory bodies, 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 Economic 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 provisions of Clause 20.1.37 Clause 20.1 of Art. 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.

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. That is, the court's decision is 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.

In Art. 238 of the Economic Code of Ukraine stipulates that administrative and economic sanctions, i.e. measures of an organizational, legal or property nature, aimed at stopping the offense, may be applied to economic entities by authorized bodies of state

power or local self-government bodies for violations of the rules of economic activity established by legislative acts business entity and liquidation of its consequences. In Art. 239 of the Economic Code of Ukraine contains a list of such administrative and economic sanctions, one of which is the liquidation of a legal entity.

In accordance with 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. 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.

Regarding the order of liquidation, it should be noted that the liquidation process of the enterprise is complex and long-term and consists of many stages. It is understood that the procedure for voluntary and forced liquidation of the enterprise is established by Art. 111 of the Civil Code of Ukraine, except for the first stage - initiation and adoption of a decision on termination, is the same, with the exception of the liquidation of an enterprise declared bankrupt by the court. In the literature, in particular, the following stages of liquidation are distinguished: appointment of a liquidation commission, publication of an announcement about liquidation, identification of creditors and debtors; drawing up an interim balance sheet; satisfaction of creditors' demands; preparation of the final liquidation balance sheet and distribution of the remaining property.

In view of the general provisions defined in Art. 105 of the Civil Code of Ukraine, the first stage of the liquidation procedure is the adoption of a decision on the liquidation of a corporate enterprise, which has as a consequence the transfer of powers regarding the management of a legal entity. In particular, part 4 of this article of the Central Committee of Ukraine establishes that the authority to manage the affairs of a legal entity passes to the termination commission (reorganization commission, liquidation commission) or liquidator from the moment of appointment. The head of the commission, its members or

the liquidator of a legal entity represent it in relations with third parties and appear in court on behalf of a legal entity that is being terminated.

From the date of entry into the EDR of the decision of the founders (participants) of the legal entity, the court or the body authorized by them regarding the liquidation of the legal entity, the liquidation commission (liquidator) is obliged to take all necessary measures to collect the receivables of the liquidated legal entity and to notify in writing each from debtors on the termination of a legal entity within the terms established by law.

During the liquidation of a legal entity, before the end of the deadline for presenting creditors' claims, the liquidation commission (liquidator) closes the accounts opened in financial institutions, except for the account used for settlements with creditors during the liquidation of the legal entity. The liquidation commission (liquidator) takes measures to inventory the property of a legal entity that is being terminated, as well as the property of its branches and representative offices, subsidiaries, business associations, as well as property that confirms its corporate rights in other legal entities, identifies and takes measures to return property owned by third parties.

According to the provisions of Part 5 of Art. 111 of the Civil Code of Ukraine, the liquidation commission (liquidator) takes measures to close the separate subdivisions of the legal entity (branches, representative offices) and dismisses the employees of the terminated legal entity.

The liquidation commission (liquidator) after the expiration of the term for presenting claims by creditors draws 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 presented by creditors and the result of their consideration, which is approved by the participants of the legal entity, the court or the body that made the decision to liquidate the legal entity. In the event that the liquidated legal entity does not have enough funds to meet the demands of creditors, the liquidation commission (liquidator) organizes the sale of the legal entity's property.

In the case of liquidation of a solvent enterprise, the demands of its creditors are satisfied in the order of precedence established by Art. 112 of the Central Committee of Ukraine:

– first of all, claims for compensation for damage caused by mutilation, other health damage or death, and claims of creditors, secured by collateral or in another way, are satisfied;

- secondly, the demands of employees related to labor relations, the author's demands for payment for the use of the result of his intellectual, creative activity are satisfied;

– in the third place, requirements regarding taxes, fees (mandatory payments) are satisfied;

- in the fourth place, all other requirements are satisfied.

Claims of one queue are satisfied in proportion to the sum of claims belonging to each creditor of this queue.

After completing settlements with creditors, the liquidation commission (liquidator) draws up the liquidation balance sheet, ensures its approval by the participants of the legal entity, the court or the body that made the decision to terminate the legal entity, and ensures submission to the revenue and tax authorities.

The property of a legal entity remaining after satisfying the demands of creditors (including taxes, fees, a single contribution to mandatory state social insurance and other funds due to be paid to the state or local budget, the Pension Fund of Ukraine, social insurance funds), is transferred to the participants of the legal entity, unless otherwise established by the founding documents of the legal entity or the law.

According to the provisions of Part 1 of Art. 25 of the Law on State Registration, state registration, including the termination of a legal entity, is carried out on the basis of: 1) documents submitted by the applicant for state registration; 2) court decisions that have entered into legal force and entail a change of information in the EDR, as well as those received in electronic form from a court or state executive service in accordance with the Law of Ukraine "On Executive Proceedings", in particular, regarding proceedings in cases of restoration of solvency the debtor or declaring him bankrupt, adopted in accordance with the Law of Ukraine "On restoring the debtor's solvency or declaring him bankrupt"; termination of the legal entity, which is not related to the bankruptcy of the legal entity.

Part 4 of the same article establishes a list of documents and circumstances on the basis of which a simplified procedure for terminating the state registration of a legal entity by liquidating it is carried out, namely: 1) a court decision to cancel (invalidate) the state registration of a legal entity in cases provided for by law, if such a decision was made by the court before July 1, 2004, except for a court decision on declaring a legal entity bankrupt; 2) a court decision on the termination of a legal entity, not related to the bankruptcy of a legal entity, if such a decision was adopted by the court after July 1, 2004, and if the chairman of the liquidation commission for the termination of a legal entity or the liquidator of a legal entity within three years from the date of publication notification of a court decision on the termination of a legal entity, not related to the bankruptcy of a legal entity, did not provide the subject of state registration with the documents necessary for state registration of the termination of a legal entity as a result of its liquidation; 3) failure to submit the documents required for state registration of the termination of a legal entity as a result of its liquidation by the head of the liquidation commission for the termination of a legal entity or by the liquidator of a legal entity within one year from the date of entry into the UDR of the entry on the suspension of the simplified procedure of state registration of the termination of a legal entity as a result of its liquidation .

After receiving the above-mentioned documents, both for the usual procedure of state registration of the termination of a legal entity through its liquidation, and for the simplified one, the point in this process is to make a record of the state registration of the termination of a legal entity in the EDR. In accordance with the provisions of Clause 10, Part 3 of Art. 7 of the Law on State Registration, the storage of information about legal entities takes place for 75 years from the date of entry of the state registration of the termination of the legal entity. The peculiarities of the termination of a corporate enterprise in connection with its bankruptcy are determined by the Code of Ukraine on bankruptcy procedures.

Lecture 11. Concept and methods of protection of the rights of business entities.

Concept of legal responsibility for violation of norms of corporate law. The concept of a legal entity is enshrined in the legal systems of many countries of the world, based on the principles of separation of a legal entity (independent legal entity) and the property of a corporation from the person and property of its participants ("separate legal entity doctrine") and limited liability (risk of incurring losses) of company participants for its obligations within the limits of their contributions to the authorized capital. At the same time, the need to balance the interests of participants in corporate relations, creditors and other stakeholders necessitates the creation of a mechanism to protect their rights and legitimate interests through the development of a special legal institution in corporate law - the institution of corporate responsibility. The Institute of Corporate Responsibility has not received proper legal regulation. As a result, members and officers are rarely held legally responsible for corporate wrongdoing.

Corporate responsibility has the same general features as legal responsibility in general: provision of state coercion, the offender suffering adverse property and non-property (organizational) consequences, the presence of guilt, which is presumed in corporate relations.

Responsibility in corporate law has its own institutional characteristics and features, determined by the legal nature of corporate relations, which make it possible to recognize corporate responsibility as an independent type of legal responsibility. Such signs should include:

1. grounds of occurrence: legal basis (law, statute, internal document (regulations, rules), contract (founding agreement, civil law agreement (contract), corporate agreement) and factual basis (corporate offense – violation of corporate rights or interests protected by law) other participants, non-performance or improper performance of corporate duties of participants or fiduciary duties of officials, the implementation of such a method of protection in corporate relations, such as compensation for losses, is possible only if the actions of an official of the company constitute a corporate offense, the elements of which are: wrongful conduct; cause-and-effect relationship; this approach is based on the general grounds of civil liability, defined in Articles 22, 614, 1166 of the

Civil Code of Ukraine , that damage caused to the property of a legal entity shall be compensated in full by the person who caused it (clause 5.7 of the resolution of the Commercial Court of Cassation as part of the Supreme Court dated February 17, 2021 in case No. 905/1926/185, paragraph 55 of the resolution of the Grand Chamber of the Supreme Court of November 26, 2019 in case No. 910/20261/166). Article 614 of the Civil Code of Ukraine provides: "A person who has breached an obligation is liable for his fault (intention or negligence), unless otherwise established by contract or law. A person is innocent if he proves that he has taken all the measures dependent on him for the proper fulfillment of the obligation."

In the legal literature and judicial practice, the prevailing opinion is that the presence of the composition of the offense is the basis for any type of liability and is the subject of proof in cases of compensation for damages caused to the company by its officials. At the same time, negative consequences (damage) from corporate offenses can have both property and non-property nature. They can be expressed not only in causing losses, but also in failure to receive profit (dividends), impossibility to sell shares at a fair price, impossibility or obstacles in the exercise of corporate rights, deprivation or restriction of individual corporate rights. A corporate offense may cause the loss of corporate control as an independent property value, the loss of rights to shares (shares), the impossibility or limitation of the legal entity's performance of its activities, or the impossibility of achieving the goals of such activities. The behavior of an official or a member of the company can be considered illegal if it violates the terms of current corporate legislation, the provisions of the contract concluded by it with the company. Such behavior can be expressed in the form of actions or inaction.

2. Special subject composition. At the same time, damage arising as a result of a corporate offense can be caused both to other participants in corporate relations and to third parties who are not in such a relationship with the perpetrator of the damage. Subjects of corporate responsibility, in addition to participants in corporate relations - a corporate-type organization, its participants (shareholders, members) and officials of management bodies, should include: founders, persons who have the right to give binding instructions for the company (debtor) or have the opportunity to determine his actions in

another way (for example, the chairman and members of the liquidation commission, the arbitration manager (property manager, rehabilitation manager, liquidator), temporary officials, persons who are part of illegitimate management bodies, former members of management bodies, "shadow" directors); persons who bear subsidiary responsibility for the debtor's obligations under the law; ultimate beneficial owners (controllers); persons connected with the bank.

3. Content – restriction or deprivation of corporate rights, imposition of an additional obligation on the offender or a negative consequence aimed at the property base or the person of the offender. The main form of corporate liability is compensation for damages. Special forms of corporate liability are: restriction of corporate rights (voting rights, right to receive dividends), exclusion of a participant from the company (forced termination of the right to participate in the company), invalidation of the founding agreement or statute, forced division or liquidation of the company.

At the same time, it is necessary to distinguish:

– legal responsibility, which involves the imposition of new, burdensome obligations on the violator, in particular in the form of an obligation to cause damage in the form of compensation for damages, payment of fines, 3% annual inflationary losses;

– measures to enforce the violated obligation and corporate duties are intended to restore the violated rights of the victim in such ways as protection, such as awarding the obligation in kind, collection of declared dividends, recognition of the disputed decision of the management body (general meeting of shareholders, supervisory board) or the deed is invalid, recognition of the right (for example, the right to receive information, dividends), restoration of the situation that existed before the violation (non-recognition, dispute) of the right and termination of actions that violate the right or create a threat of its violation (for example, due to the collection of the value of the participant's share in case of his exit or exclusion, determination of the size of participants' shares, recovery of property acquired without sufficient legal basis (conditional obligation), etc.;

- corporate social responsibility as a conscious and responsible attitude of a corporate-type business organization to the direct and indirect impact of its activities on the economic, environmental and social systems of doing business, which is not a legal

responsibility.

4. Application in accordance with the procedure established by law, local regulatory act, civil law or corporate agreement.

5. Functions: ensuring the fulfillment of the obligations of participants in corporate relations, protecting the rights of participants in corporate relations, creditors and other stakeholders, and punishing the violator for the offense committed.

Classification of types and forms of corporate responsibility. Corporate responsibility can be classified according to the following criteria.

1. Depending on the participants of corporate legal relations:

- liability of officials to the legal entity, its participants and the owner of the legal entity's property for causing damages;

- liability of the legal entity, its participants and other persons to creditors for the obligations of the legal entity;

- liability of founders and participants of a legal entity (shareholders) before the legal entity and before other participants.

2. Depending on the stages of formation and functioning of JSCs, the following are distinguished:

a) responsibility at the stage of establishment of JSC;

b) in connection with the placement of JSC securities (responsibility of the company, founders, persons who signed the issue prospectus);

c) liability arising as a result of decisions made by the management bodies of the company in the course of JSC activities;

d) liability arising from the liquidation of JSC (for example, subsidiary liability of shareholders, related persons of the bank in case of bankruptcy).

3. According to the reasons for the occurrence of liability caused by a breach of contract or causing damage: contractual from a corporate, civil law or labor contract and non-contractual (tortious) from a corporate tort. The forms and amount of contractual liability are determined both by law and by the terms of the contract, which allows determining the ratio of contractual and non-contractual liability, in particular, of company officials, shareholders who have concluded a corporate agreement, etc. An

official must adhere to the principles defined by the law, properly perform the fiduciary duties defined by the law, the charter and internal documents of the legal entity. A contract concluded between a legal entity and an official cannot change the general conditions of civil liability.

4. Depending on the nature of adverse consequences:

a) of a personal nature (removal from office, early termination of powers, prohibition to hold certain positions for a period determined by law);

b) of a property nature (fines, compensation for damages, forced sale/seizure, payment of compensation);

c) of an organizational nature (forced division, liquidation of the company).

5. According to the degree of influence on the JSC management process, responsibility for will (instructions, orders) and for actions (inaction) is allocated.

The legislator enshrines the principle of full compensation for damages (Article 22, Article 1166 of the Civil Code of Ukraine), which is designed to perform a compensatory function that ensures the restoration of violated rights, and educational by means of property influence on the participants of the relationship. Partial liability applies when the law or contract does not provide for full joint or subsidiary liability.

Forms of corporate responsibility should include pecuniary and non-pecuniary corporate sanctions.

Property forms of corporate liability (property corporate sanctions) include: 1) compensation for damages as a universal form of liability. Thus, on April 28, 2021, the KGS of the Supreme Court in case No. 910/12591/18 indicated that the violated rights to receive compensation for compulsorily purchased shares in the squeeze-out procedure are renewed by awarding the claimed amount of damages or compensation, as well as by recognition of such a right as a way of achieving legal certainty in the relations between the company, the majority and the minority, which believes that the redemption price is undervalued; 2) return of income illegally received by the director or other official; 3) compensation defined as the difference between the income of the company, which it would have received if the transaction had not taken place, and the actually received income, and in other cases determined by law and/or the corporate agreement, in the case

when the amount of losses cannot be determined, or restitution by agreement is impossible. The independence of such a form of contractual liability as compensation (one-time monetary recovery instead of compensation for damages - Article 432 of the Civil Code of Ukraine) is substantiated in science, which has a special nature and differs from compensation for damages and penalties. Compensation is applied in cases provided for by law; it does not serve the purpose of full compensation for damages; its application does not require calculation and proof of the amount of damages; applied at the option of the creditor instead of compensation for damages or collection of income; the lower limit cannot decrease, the upper limit cannot increase; the amount of compensation is established by the court taking into account the scope of the violation, the defendant's intentions and other significant circumstances; its application does not depend on the payment of a penalty. 4) forced seizure (confiscation) of objects of ownership - movable and immovable property, including securities, deposits in banks, funds, assets, corporate rights located (registered) on the territory of Ukraine and directly or through affiliated persons belongs to to the Russian Federation and its residents (Law of Ukraine dated March 3, 2022 "On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Ownership of the Russian Federation and its Residents." Property can be seized from legal entities in respect of which citizens of the Russian Federation through other legal persons performed management functions and exercised control over the activities of the legal entity until February 24, 2022. 5) forced alienation of shares (shares) of the bank (Article 34-2 of the Law "On Banks and Banking Activity").

Non-property forms of corporate responsibility (non-property corporate sanctions) include: 1) deprivation or limitation of corporate rights (including limitation of the right to manage the company, limitation or deprivation of the right to vote at general meetings of shareholders, early termination of management powers of JSC bodies); 2) removal of a member of the company's executive body from performing duties (Part 3 of Article 99 of the Civil Code of Ukraine); 3) assignment of additional duties (provision of information, participation and/or voting in a certain way at general meetings, sale of shares (parts), etc.); 4) recognition as invalid of constituent documents, corporate acts, decisions, transactions for violation of the requirements of the law when committing transactions

with interest, significant transactions; 5) exclusion of a participant from a legal entity in the cases and in the manner established by law. Exclusion of a participant from a legal entity is a form of corporate responsibility of this participant to the company and a way to protect the civil (corporate) rights (legal interests) of the participants of the company and the company itself. This form of liability is aimed at the unilateral termination of corporate legal relations due to the failure of the participant to fulfill corporate duties or the creation of obstacles by his actions (inaction) in the achievement of the company's goals], that is, it is a consequence of the participant's misconduct; 6) disqualification – prohibition of an official by a judicial or administrative decision to hold relevant positions in the corporation, if the person has violated legislative acts or requirements for the protection of creditors; 7) deprivation of a legal entity of a special right (license) or termination of membership; 8) forced reorganization or liquidation of the company as a legal entity; 9) temporary prohibition/prohibition of the use of the voting rights of the owners of a significant participation in respect of shares (parts) of a bank (Article 34, Article 34-2, Article 73 of the Law "On Banks and Banking Activities"), a non-banking financial institution (Decision of the Board of the NBU of December 24 2021 No. 153 "On approval of the Regulation on licensing and registration of financial services providers and the conditions for their activities in the provision of financial services", as amended from May 4, 2022), a professional participant in capital markets and organized commodity markets (Article 75 of the Law of Ukraine "On capital markets and organized commodity markets").

Concept, content and participants in corporate disputes. The protection of corporate rights is currently one of the most relevant topics in both the scientific and practical spheres. Over the past few years, the processes of modernization of corporate and business procedural legislation have been intensified, mechanisms and procedures established abroad, such as corporate contracts, squeeze-out and sell-out procedures, etc., have been implemented. Corporate disputes remain one of the most common and complex categories of disputes considered in commercial litigation. Taking into account the development and complication of corporate relations, the methods of protecting

corporate rights and corporate disputes, respectively, are becoming more complicated.

Despite the fact that corporate disputes are almost the most common category of cases considered by commercial courts, and the term "corporate dispute" is established in legal literature, law enforcement and judicial practice, legislation and legal doctrine still lack a unified approach to understanding its content and qualifying signs. A corporate dispute or a dispute arising from corporate legal relations is, in its essence, a type of economic-legal dispute, given the economic-legal nature of corporate relations, which have organizational and property elements, arise in the sphere of business and are related to the implementation of economic activity. On the basis of Clause 3, Part 1, Art. 20 of the Code of Civil Procedure of Ukraine, corporate disputes are most often defined as cases in disputes arising from corporate relations, including disputes between participants (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), in including by a participant who dropped out, related to the creation, operation, management or termination of the activity of such a legal entity, except for labor disputes. Thus, according to the conclusion of the Grand Chamber of the Supreme Court in the resolution of October 30, 2018 in case No. 905/2445/17, corporate disputes are understood to mean disputes regarding the creation, activity, management and termination of a legal entity - a business entity, if a party in the case is a participant (founder, shareholder, member) of such a legal entity.

In order to form a comprehensive understanding of the concept of "corporate dispute", it is necessary to determine the qualifying features by which such disputes can be distinguished from other types of legal disputes: content, subject composition, grounds for occurrence, and others.

The content of a corporate dispute is the nature of disputed legal relations, namely, corporate legal relations. According to Part 6 of Art. 96-1 of the Civil Code of Ukraine, corporate relations are defined as relations between participants (founders, shareholders, shareholders) of legal entities, including those that arise between them before the state registration of a legal entity, as well as relations between a legal entity and its participants (founders, shareholders, shareholders) regarding the emergence, exercise, change and termination of corporate rights.

The next qualifying feature of corporate disputes is their special subject composition. Legislation in Art. 20 of the Civil Procedure Code of Ukraine defines the composition of participants in a corporate dispute in a rather formalized way: reviewing the wording of the article, they are a legal entity and its participant (founder, shareholder, member), in particular, a participant who has dropped out. The spectrum of legal entities that can be participants in a corporate dispute is quite wide: business partnerships, private enterprises, cooperatives of various types, business associations, farms, lawyers' associations/bureaus (as confirmed by the decision of the Grand Chamber of the Supreme Court dated 26.02.2020 in case No. 750/3192/14), consumer associations (as reflected in the resolution of the Grand Chamber of the Supreme Court dated 09.04.2019 in case No. 916/1295/18), public associations (in the context of protecting the right of a member of such an association to participation in its management - resolutions of the Grand Chamber of the Supreme Court dated 22.01.2019 in case No. 915/1674/15, dated 12.01.2021 in case No. 127/21764/17). In all of the listed legal entities, mutual rights and obligations, which are corporate in nature, also arise between such a person and its participant (member, founder).

As one of the qualifying signs of corporate disputes, it is worth highlighting the reasons for their occurrence. The key reason is traditionally called the violation, non-recognition or challenge of subjective corporate law. The presence of a violated corporate law indicates that the dispute is corporate. As noted by the Grand Chamber of the Supreme Court in the ruling dated 04/09/2019 in case No. 916/1295/18, if a participant of a legal entity substantiates the claim by violating the corporate rights of such a participant, then this dispute is a dispute about the right to manage a legal entity and belongs to the jurisdiction of commercial courts regardless of whether the other defendant in the case is a natural person as a party to the disputed contract. In addition to the violation of corporate law and corporate interest, it is proposed to consider also the violation of fiduciary duties as the basis of a corporate dispute. The concept of fiduciary duties (fiduciary duties) originates from the common law system and has been enshrined in the legislation of many countries. The main fiduciary duties are the duty of loyalty and the duty of care, which apply mainly to directors of corporations, officials (for example,

members of the board, supervisory boards), sometimes also on shareholders. In Ukrainian law, the concept of fiduciary duties is not new, although the practice of its application, in particular by the courts, is only being formed. The general provision in the legislation, which establishes this concept, is Art. 92 of the Central Committee of Ukraine. According to it, a body or a person who, according to the founding documents of a legal entity or the law, acts on its behalf, is obliged to act in the interests of the legal entity, in good faith and reasonably, and not to exceed its powers. If the members of the body of a legal entity and other persons acting on behalf of the legal entity in accordance with the law or constituent documents violate their duties regarding representation, they shall be jointly and severally liable for the damages they have caused to the legal entity. Yes, Art. 40 of the LLC Law enshrines the duties of the members of the executive body and the supervisory board of the company to act in good faith and reasonably in the interests of the company, as well as their responsibility for damages caused to the company by culpable actions or inaction. In this context, the position of the Grand Chamber of the Supreme Court, set out in the resolution dated 22.10.2019 in case No. 911/2129/17, is worthy of attention, according to which the legal relationship between an entrepreneur (company) and its official is of a fiduciary nature, the illegal behavior of the official consists in improper and unscrupulous performance of certain actions, without observing the limits of normal economic risk, with personal interest or abuse of official duties at one's own will (discretion), obviously imprudent, wasteful and obviously self-serving decisions in favor of such an official were made. The stated provisions of Art. 92 of the Civil Code of Ukraine provides for the liability of members of the body of a legal entity, its officials, in particular its manager, if he acted contrary to the interests of this entity. This approach was applied by the Grand Chamber of the Supreme Court in the decision dated November 26, 2019 in case No. 910/20261/16.

In addition to the special content, subject composition, grounds, corporate disputes have other qualifying features. Among such features, the doctrine often singles out the private law nature of relations and the legal equality of the parties to a corporate dispute. Also, a feature of corporate disputes is the exceptional nature and multiplicity of defense methods. In corporate disputes, the following claims may be made: invalidation of

decisions of the management bodies of the company, founding documents, transfer of rights and obligations of the buyer of shares, share in the authorized capital, collection of dividends, unpaid contributions, invalidation of a significant transaction, a transaction related to the commission who is interested, etc. Accordingly, corporate disputes are characterized by a variety of exclusive methods of protection, which are not characteristic of other categories of disputes.

Ways of protecting corporate rights. The methods of protection of corporate rights are derived from the general methods of protection of rights specified in Art. 16 of the Civil Code of Ukraine and Art. 20 of the Civil Code of Ukraine.

The following requirements are the most common in corporate disputes.

I. On recognition of founding documents as invalid. The grounds for invalidating the founding documents are summarized in Clause 13 of Resolution No. 13 of the Plenum of the Armed Forces of Ukraine dated October 24, 2008, according to which the courts have the right to declare the founding documents of the company invalid if the following conditions are simultaneously present: - at the time of the hearing, the founding documents do not meet the requirements of the law; - violations committed during the acceptance and approval of the constituent documents cannot be eliminated; – relevant provisions of the constituent documents violate the rights or legally protected interests of the plaintiff.

If before the court made a decision to declare the constitutive documents invalid, they were brought into compliance with the law, the court has no grounds for making a decision to declare the constitutive documents invalid. In the court decision on the invalidation of certain provisions of the founding documents, it must be specified which provisions of the law these provisions contradict and which rights of the plaintiff are violated or challenged by them.

II. About the calculation and collection of dividends. During the consideration of cases in disputes about the collection of dividends, commercial courts must proceed from the fact that in accordance with Art. 41, Article 59 of the Law of Ukraine "On Business Societies", Art. 39 of the Law of Ukraine "On Joint Stock Companies", Art. 15 of the Law of Ukraine "On Cooperation", the approval of the annual results of the activity of a legal

entity, the order of profit distribution, the term and order of payment of a share of the profit (dividends) belongs to the exclusive competence of the general meeting. The court has the right to make a decision on the collection of dividends only if there is a decision of the general meeting of the legal entity to direct the profit to the payment of dividends, on the basis of which the amount of dividends due to the plaintiff - participant (shareholder, member), terms and the procedure for their payment are determined. The adoption of a decision by the commercial court regarding the allocation of the profit (part of the profit) of a legal entity to the payment of dividends is beyond the competence of the commercial court.

III. On the invalidation of decisions of management bodies of business associations, as a rule - of general meetings. Commercial courts must take into account that the law proceeds from the presumption of legitimacy of the decisions of the management bodies of the legal entity, that is, the said decisions are considered to be in accordance with the law, unless the court determines otherwise. Demands for recognition of decisions of general meetings or other bodies as valid are not subject to satisfaction. Grounds for invalidating decisions of general meetings of participants (shareholders, members) of a legal entity may be:

- inconsistency of the decisions of the general meetings with the norms of the law;

– violation of the requirements of the law and/or constituent documents during the convening and holding of general meetings;

– depriving a participant (shareholder, member) of a legal entity of the opportunity to participate in general meetings.

During consideration of relevant cases, commercial courts must take into account that not all violations of legislation committed during the convening of a general meeting of a legal entity are grounds for invalidating their decisions. Unconditional grounds for invalidating decisions of general meetings in connection with violation of direct instructions of the law are: - adoption of a decision by the general meeting in the absence of a quorum for holding a general meeting or making a decision or in the case of impossibility of establishing the presence of a quorum; - adoption of decisions by the general meeting on issues not included in the agenda of the general meeting of the

company; - adoption of decisions by the general meeting on issues not included in the agenda, for consideration of which the consent of all those present at the general meeting was not obtained; - lack of minutes of the general meeting of the LLC; - absence of minutes of JSC general meetings, signed by the chairman and secretary of meetings. In addition to identifying violations of the formal requirements of the law, in order to invalidate the decision of the general meeting of the company, the court must also establish the fact that this decision violated the rights and legitimate interests of the participant (shareholder) of the company. If this fact is not established based on the results of the case review, the court has no grounds to satisfy the claim.

The KGS indicated safeguards when appealing the decisions of the general meetings of the business association on the grounds of non-notification of the participant about the holding of such meetings in the resolution dated September 1, 2023 (case No. 909/1154/21). Taking into account the previous conclusions, the court divided the violations committed during the convening and holding of the general meeting of the members of the business association into: those that have as a consequence the mandatory recognition of the decisions made at these meetings as invalid; such, which, although allowed, do not always lead to the invalidity of the decisions of the general meeting. Non-notification of a member of a business association about the convening of a general meeting may be grounds for invalidating the decisions of the general meeting if the member of the association proved not only the fact of his non-notification, but also: the existence of other grounds for invalidating the decision of the general meeting; the fact that he did not participate in such meetings, did not have the opportunity to participate in these meetings; decisions made at such meetings contradict the requirements of legislation and/or the charter of the business association, made in violation of the voting procedure; decisions relate directly to his rights and interests and violate them.

IV. On acquisition, transfer and termination of corporate rights. Clause 4, Part 1, Art. 116 of the Civil Code of Ukraine provides for the right of a member of an economic partnership to alienate his share in the statutory (compounded) capital of the partnership. The procedure for alienating a share in the authorized capital depends on the type of business company. Commercial courts should take into account that the general legal

norms that determine the procedure for a person to become a member of a commercial company, the exit and exclusion of a participant from a commercial company cannot be applied to legal relations related to the acquisition, transfer and termination of corporate rights in commercial companies. . As a result, commercial courts do not have legal grounds for satisfying claims for withdrawal or exclusion of the plaintiff from the business partnership and allocating him a share of the partnership's property (except in the case of liquidation of the partnership). Current legislation also does not provide for the possibility of excluding investors from limited partnerships.

In the resolution dated 03.16.2023 in case No. 915/1172/20 of the KGS, a dispute was considered regarding the sale by a member of the company of his share to a third party without proper notification of his intention to the other participants, and the issue of the method of granting permission to one of the participants to alienate the third share was also resolved person.

With this decision, the panel of judges reminded that in the specified legal relationship, in the event of a violation of the procedure for notifying other participants, the appropriate method of protection will be a claim for the transfer of the buyer's rights and obligations under the relevant contract for the purchase and sale of a share in the company's authorized capital. The board also noted that although the law provides for the obligation of a participant to notify other members of the company in advance in writing about the intention to sell his share to a third party, but in the event of a violation of the established procedure, the court must check the presence of the refusal of each participant to exercise his preferential right, if this fact claims the participating seller and provides relevant evidence. If the participant in writing refused to exercise his pre-emptive right to purchase a share, including by giving his consent to the entry into the company of a third party - the buyer of the share, then the fact of his awareness of the intention to sell the share and the terms of the sale of the share is presumed, unless otherwise is proven (for example, that the participant was misled about the essential terms of the share purchase agreement, etc.).

V. On the obligation to make changes to the constituent documents. Such lawsuits can be filed against a business partnership in the event of a company's withdrawal from

the partnership, alienation of a share (part thereof) in the company's statutory (compounded) capital, in connection with the entry of a legal successor (heir) of a participant, that is, in connection with a change in the composition participants However, Clause 16 of the resolution of the Plenum of the Armed Forces of Ukraine No. 13 of October 24, 2008 clarifies that when considering lawsuits about the obligation of the company to make changes to the constituent documents, the courts are not entitled to make changes to them themselves (that is, to make a decision on the final presentation of the charter in a certain version) in connection with the fact that this authority belongs to the exclusive competence of the general meeting of the company.

It should also be noted that Clause 10 of the Resolution of the Plenum of the Armed Forces of Ukraine No. 13 of October 24, 2008 draws attention to the impossibility of applying methods of protecting the rights and legitimate interests of persons not provided for by current legislation, in particular, claims for recognition of the reorganization of a company such that took place, the decisions of the general meeting are valid or enforceable, and the meeting itself is valid or held. In the same way, the current legislation does not provide for the possibility of submitting a lawsuit to the commercial court with a demand for the court to change the venue of the general meeting of the commercial company. Having established that the subject of the lawsuit does not correspond to the methods of protection of rights established by law, the commercial court must reject the lawsuit, and not stop the proceedings in the case due to the fact that the dispute cannot be resolved in the commercial courts of Ukraine.

Peculiarities of consideration of corporate disputes. The most important procedural feature of corporate disputes are additional, compared to other categories of disputes, restrictions on the means of securing claims. In particular, the current version of Part 5 of Art. 137 of the Civil Procedure Code of Ukraine expressly prohibits securing claims in corporate disputes due to the prohibition:

1) hold general meetings of shareholders or members of a business partnership and make decisions with them, except for the prohibition to make specific decisions determined by the court that directly relate to the subject of the dispute;

2) The Central Depository of Securities and the depository institution shall provide

the issuer with a register of owners of registered securities for holding general meetings of shareholders;

3) participation (registration for participation) or non-participation of shareholders or participants in the general meeting of the company, determining the eligibility of the general meeting of shareholders or participants of the business company;

4) to exercise the powers of the state authorities, local self-government bodies, and the Deposit Guarantee Fund of natural persons assigned to them in accordance with the law, except for the prohibition to make specific decisions determined by the court, to take specific actions directly related to the subject of the dispute.

Part 9 of Article 137 of the EPC of Ukraine determines that a court that resolves a dispute about the right to ownership of shares (parts, units) of a company, the rights of a shareholder (participant), the realization of which depends on the relative value of shares (the size of the share) in the authorized capital of the company, may to pass a resolution on securing the claim by establishing a ban on making changes to the charter of this company regarding the size of the authorized capital.

Measures to ensure the claim should not violate the rights of other shareholders (participants) of the business partnership. In particular, except for the cases provided for in part nine of this article, the prohibition to take actions should only apply to shares or corporate rights directly related to the subject of the dispute. If the applicant justifies the necessity of taking a measure to ensure the claim by the fact that in the event of failure to take such a measure, he will suffer significant damage, he must justify the possibility of causing such damage, its size, the connection of the possible damage with the subject of the dispute, as well as the necessity and sufficiency for it preventing the use of this very measure to secure the claim. When deciding on the issue of taking measures to secure a lawsuit in commercial courts, it should be taken into account that such measures should not block the economic activity of a legal entity, violate the rights of persons who are not participants in the legal process, and apply restrictions unrelated to the subject of the dispute.

The analysis of court statistics for 2021 and 2022 showed a significant increase in the number of cases regarding corporate disputes and corporate rights pending in

commercial courts. According to the legal positions of the cassation economic court the supreme court:

The prerequisite for the securing of a claim is the selection of an appropriate measure for securing a claim that is appropriate to the subject of the dispute, which guarantees compliance with the principle of correlation between the type of measure for securing a claim and the requirements stated by the plaintiff, which ultimately makes it possible to achieve a balance of the interests of the parties and other participants in the legal process during the resolution of the dispute, and contributes to the actual execution of the court decision in case of satisfaction of the claim and, as a result, provides effective protection or renewal of violated or disputed rights or interests of the plaintiff (applicant). Resolution of the Supreme Court of Cassation of the Commercial Court of Cassation dated December 21, 2021 in case N 910/10598/21

The substantiation of the need to secure a claim consists in proving the circumstances with which the decision to secure a claim is connected.

The purpose of securing a claim is for the court in which the case is pending to take measures to protect the material and legal interests of the plaintiff from possible dishonest actions on the part of the defendant in order to ensure the plaintiff real and effective execution of the court decision, if it is adopted in favor of the plaintiff, in including to prevent potential difficulties in the further implementation of such a decision.

When deciding the issue of taking measures to secure a claim, the commercial court must assess the validity of the applicant's arguments regarding the need to take appropriate measures, taking into account: the reasonableness, validity, adequacy and proportionality of the applicant's requirements for securing the claim; ensuring the balance of the interests of the parties, as well as other participants in the legal process; the presence of a connection between a specific measure to secure a claim and the subject of a claim; the likelihood of difficulty in enforcing or non-fulfillment of the decision of the commercial court, the likelihood of complication or non-restoration of the plaintiff's violated or contested rights or interests, in the event of failure to take such measures; prevention of violation in connection with the adoption of such measures of the rights and legally protected interests of persons who are not participants in this legal process.

Sufficiently justified for securing a claim is the presence of factual circumstances, which are connected with the application of a certain type of securing a claim, confirmed by evidence. Adequacy of a measure to secure a claim applied by a commercial court is determined by its compliance with the requirements for which it is used.

If the plaintiff appealed to the court with claims of a non-property nature, such a basis for taking measures to secure the claim should be applied and investigated, as a sufficiently substantiated assumption that the failure to take such measures may significantly complicate or make impossible the effective protection or restoration of the plaintiff's violated or contested rights or interests, under the protection which he appealed to the court. It should also be investigated whether the failure to take the stated measure to ensure the claim will not lead to a violation of the requirement for fair and effective protection of the violated rights, in particular, whether the plaintiff will be able to protect them within the limits of this one court proceeding for his claim without new appeals to the court.

Proportionality involves taking into account by the commercial court the ratio of negative consequences from taking measures to ensure the claim with those negative consequences that may occur as a result of not taking these measures, taking into account the right or legal interest for the protection of which the applicant turns to the court, and the property consequences of prohibiting the defendant from carrying out certain actions

The Supreme Court states that measures to ensure the claim can be taken by the court only within the scope of the subject of the claim and must not violate the rights of other participants (shareholders) of the legal entity.

When deciding on the issue of taking measures to secure a claim in commercial courts, it should be taken into account that such measures should not block the economic activity of a legal entity, violate the rights of persons who are not participants in the legal process, and apply restrictions unrelated to the subject of the dispute. Resolutions of the Cassation Economic Court of the Supreme Court dated 13.01.2021 in case N 910/9855/20, dated 19.01.2021 in case N 902/774/20, dated 25.01.2021 in case N 902/775/20, dated 31.08.2021 in in case N 910/5116/21, dated 07.09.2021 in case N 910/6481/21, dated 08.12.2021 in case N 927/481/21, dated 21.12.2021 in case N

910/10598/21, dated 11.02. 2022 in case N 927/893/21, dated 04/15/2022 in case N 904/7930/21.

In the decision in case No. 910/3915/20, the panel of judges of the Cassation Economic Court of the Supreme Court emphasized that when filing a lawsuit, a person must justify the existence of a violation of his corporate rights by the defendant at the time of filing the lawsuit, instead, courts, resolving a corporate dispute, must it is necessary to check whether the plaintiff has a subjective material right or a legal interest, for the protection of which the lawsuit is filed, as well as to clarify the issue of the presence or absence of the fact of their violation or dispute. At the same time, it is necessary to take into account that the right that has already been violated is subject to legal protection, and not the right that may be violated in the future, and for which it is not known whether it will be violated or not. The clarification of the violated corporate law, for the protection of which a person applied, is primary in relation to the establishment of the factual circumstances of the case.

Thus, during the consideration of corporate disputes, the courts should find out whether there has really been a violation of the plaintiff's corporate law, or whether the latter is only using his right to appeal the decision of the management body of the company to harm his activity or achieve personal interests. If it is established that the lawsuit was filed precisely in connection with the abuse of corporate law, and there is no violation of such a right of the plaintiff, the courts should refuse to grant the lawsuit.

TOPICS OF SEMINARS

Content module 1.

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

1. The essence and types of entrepreneurship. 2. The concept and essence of business law. 3. Subject method, principles of business law. 4. The system of business law. 5. Business law and its features. 6. Business law as a sub-branch of law, a sub-branch of legislation, an academic discipline and as a branch of law.

Topic 2. Sources of business law.

1. Basic approaches to the definition of "source of law". 2. Types of sources of law and their structure. 3. Normative acts and their types. 4. The system of legislation. 5. The concept of business legislation. 6. The system of sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity

1. Legal relations in entrepreneurial activity. 2. General characteristics of a business entity. 3. An individual as a business entity. 4. The right to engage in entrepreneurial activity. 5. Legal entities of public and private law. 6. The concept of "legal entity" in business law. 7. Classification of business entities.

Topic 4. The concept and types of corporate enterprises in Ukraine. Corporate governance

1. The concept and characteristics of business entities. 2. Legal regulation of a general partnership. 3. Legal regulation of a limited partnership. 4. Legal regulation of a limited liability company. 5. Legal regulation of a company with additional liability. 6. Legal regulation of a joint stock company. 7. Legal regulation of production cooperatives. Other types of corporate enterprises. 8. Corporate governance. 9. The concept and principles of corporate governance. 10. The highest governing bodies of a corporate enterprise. 11. Executive management bodies of corporate

enterprises. 12.Supervisory board. 13.Audit commission (auditor). 14.Corporate Secretary. 15.Features of corporate governance in personal business companies.

Topic 5. Legitimization of a business entity

1. The procedure for establishing business entities. 2. State registration of business entities. 3. Legislative regulation of business entities.

Topic 6. Termination of a business entity

1. General provisions on the termination of the subject of corporate law - a corporate enterprise. 2. Reorganization as a form of termination. 3. Liquidation as a form of termination. 4. The concept of bankruptcy, parties to the bankruptcy case, the procedure of bankruptcy proceedings.

Module 2

Topic 1: Property basis of entrepreneurial activity

1. The concept of property rights. Forms of ownership. 2. Property and property rights as the basis of entrepreneurial activity. 3. Rights and obligations of the owner of the property. 4. Formation of the property basis of entrepreneurial activity. 5. Ownership of business entities. 6. The concept and types of property in business. 7. The use of natural resources in business. 8. Securities in business activity. 9. Corporate rights of business entities.

Topic 2. Contracts in business activity

1. The concept and characteristics of a business contract. 2. Types of business contracts. 3. Functions of a business contract. 4. The content and form of the business contract. 5. Stages of concluding a business contract. 6. Rights, obligations and responsibilities of the parties under the relevant contract of entrepreneurial activity. 7. Procedure for amendment and termination of business contracts. 8. Consequences of non-compliance with the terms of a business contract.

Topic 3: Intellectual property in the field of entrepreneurship.

1. General provisions of intellectual property law. 2. Use of intellectual property rights in business activities property rights in business activity. 3. General conditions for the protection of intellectual property rights under special legislation.

Topic 4. General provisions of labor law applicable to in entrepreneurial activity. Legal status of officials of entrepreneurial companies.

1. The concept of labor relations. 2. Subjects of labor relations. 3. Rights and obligations of employers. 4. Rights and obligations of employees. 5. Social guarantees of employees. 6. Employment contract. 7. The concept of officials of a corporate enterprise. 8. Restrictions on the acquisition of the status of an official of a corporate of a corporate enterprise. 9. Responsibility of officials of a corporate body. 10. Legal status of the chairman of the executive body of the company.

Topic 5. Concept and methods of protection of the rights of business entities

1.The concept and methods of protecting the rights of business entities. 2.Protection and defense of trade secrets. 3.Protection of honor, dignity and business reputation. 4.General principles of liability of participants in economic relations. Contractual liability, compensation for damages. 5.Concept, signs and principles of economic and legal liability. 6.Administrative and economic sanctions in business activities.

INDEPENDENT WORK

Questions for independent work

1. Causes and conditions that lead to violations of anti-corruption legislation and measures to eliminate them.
2. Constitutional principles of legal regulation of economic processes in Ukraine.
3. The main directions of organizational and legal influence on economic activity.
4. Legal support of public administration in the field of education and science, health care, social protection and culture.
5. Legal support of public administration in the field of health care, social protection and culture.
6. Administrative and legal regulation of public administration in the field of defense.
7. State regulation of the Ukrainian economy in the transition period.
8. Control in the field of state regulation.
9. Anglo-American model of corporate governance.
10. Western European model of corporate governance.
11. Japanese model of corporate governance.
12. Entrepreneurial models of corporate governance.
13. Features of the application of corporate governance models
14. Corporate culture.
15. Legal status of corporations in Ukraine.
16. Legal status of joint stock companies.
17. The procedure for establishing a joint stock company.
18. General meeting of shareholders.
19. Management Board of a joint stock company.
20. The Supervisory Board is the management body of a joint-stock company.
21. Rights and obligations of the founders of a joint stock company.
22. Legal regulation of rights and obligations of shareholders.

23.Procedure for issuing shares.

24.Liquidation of a joint stock company.

25.Characteristics of the stock market in Ukraine.

26.Management of the stock exchange.

27.Models of corporate control.

28.Forms of corporate control.

29.Audit: concept and types.

30.Controlling audit service.

31.Confidential information.

32.The emergence and evolution of the concept of entrepreneurship.

33.General characteristics of the concepts of “entrepreneur” and “entrepreneurship”.

34. The relationship between the concepts of “entrepreneurship” and “business”.

35. Characteristics of the branch of business law.

36.Subject, method and system of business law.

37.Entrepreneurial activity: concept, features and correlation with economic activity .

38.Features of the legislation of Ukraine on entrepreneurship.

39.The concept and types of sources of business law.

40.The system of entrepreneurial legislation.

41.Laws of Ukraine as sources of business law.

42.By-laws as sources of business law.

43. Local acts as sources of business law.

44.Entrepreneurial legal capacity and its relationship with civil legal capacity legal capacity and its correlation with civil legal capacity.

45. The moment of emergence of entrepreneurial legal personality.

46.The concept and classification of business entities.

47.Object of business legal relations.

48.Content of business legal relations.

49.General characteristics of corporate enterprises.

50.Characterize small, medium and large enterprises.

51.General characteristics of business associations. Types of associations of enterprises of enterprises.

52.The concept and legal status of holding companies

53.General characteristics of the legal regime of property in business in entrepreneurial activity.

54.The concept of immovable and movable things according to the Civil Code of Ukraine.

55. The concept of tangible and intangible assets.

56. Fixed assets for production and non-production purposes.

57. General conditions for the protection of intellectual property rights under special of intellectual property rights under special legislation.

58. General characteristics of securities in business.

59. General characteristics of the system of depository accounting of securities

60. General characteristics of corporate rights of business entities.

61.Rights, obligations and responsibilities of the parties under the relevant contract of entrepreneurial activity.

62. Procedure for amendment and termination of business contracts.

63.Contractual liability, compensation for damages.

64.General characteristics of economic and legal liability.

65.Compensation for losses, penalties and operational and economic sanctions.

66.General characteristics of administrative and economic sanctions in entrepreneurial activity.

67.Responsibility for violation of antitrust and competition law legislation.

68. Types of violations of antitrust and competition law for which liability arises liability.

69.Features of criminal liability in entrepreneurial activity.

70.General characteristics of the concept: “contract” “economic contract”.

4. METHODS OF TRAINING

A teaching method is a certain way of purposefully implementing the learning process and achieving the goal. The correct selection of methods in accordance with the purpose and content of training, age characteristics of students contributes to the development of cognitive abilities, mastery of their skills and abilities to use the acquired knowledge in practice, prepares students for independent acquisition of knowledge, and shapes their worldview.

Verbal teaching methods

A **lecture -** is a teaching method that involves the disclosure in verbal form of the essence of phenomena, scientific concepts, processes that are logically related to each other and united by a common theme.

Storytelling - a teaching method that involves narrative and descriptive forms of disclosure of educational material in order to encourage students to create a certain image in their minds.

Explanation - is a verbal teaching method that involves revealing the essence of a certain phenomenon, process, or law. It is based not so much on imagination as on logical thinking using students' previous experience.

Conversation - is a dialogic teaching method that involves using students' previous experience in a particular area of knowledge and, on this basis, engaging them in a dialogue to understand new phenomena, concepts, or reproduce existing knowledge.

Working with a textbook

This method of teaching involves students working independently with a printed text, which allows them to comprehend the material, consolidate it, and demonstrate independence in learning.

Methods of stimulating and motivating learning and cognitive activity

Practical control checks - involve the practical solution of control tasks.

Test methods of knowledge testing - involve the student choosing one of the correct answers.

An **exam** is a test of students' performance, the purpose of which is to determine the level of knowledge and mastery of the material.

The exam can be in the form of written work, testing, and defense of research papers.

5. FORMS OF CONTROL

The types of control over the knowledge of higher education students are current control, intermediate and final certification.

Current control is carried out during practical, laboratory and seminar classes and is aimed at checking the level of readiness of higher education students to perform specific work.

Intermediate certification is carried out after studying the program material of each content module. The educational material of the disciplines taught during one semester - autumn or spring - is divided by lecturers into two or three content modules.

Intermediate certification should determine the level of knowledge of higher education students on the program material of the content module (rating assessment of the content module), obtained during all types of classes and independent work.

Forms and methods of intermediate certification, mastering the program material of the content module are developed by the lecturer of the discipline and approved by the relevant department in the form of testing, written test, colloquium, the result of an experiment that can be evaluated numerically, calculation or calculation-graphic work, etc.

The mastery of the program material of the content module by the higher education applicant is considered successful if the rating is not less than 60 points on a 100-point scale.

A student's academic performance rating is rounded to the nearest whole number.

The academic performance rating may be affected by the additional work rating and the penalty rating.

The rating for additional work is added to the rating for academic work and may not exceed 20 points. It is determined by the lecturer and given to higher education students by the decision of the department for performing work that is not provided for in the curriculum, but contributes to improving their knowledge of the discipline.

The maximum number of points (20) is given to the applicant for higher education for:

- obtaining a diploma of the first degree of the winner of the student scientific conference of an educational and research institute or faculty (college) in the the relevant discipline;

-receiving a diploma of the winner (I, II or III place) of the second stage of the All-Ukrainian Student Olympiad in the discipline or specialty (field of study) in the current academic year;

-receiving a diploma (I, II or III degree) of the winner of the All-Ukrainian competition of student research papers in the relevant discipline in the current the current academic year;

-Authorship (co-authorship) in the submitted application for an invention or received patent of Ukraine in the relevant discipline;

-authorship (co-authorship) in a published scientific article in the relevant discipline;

-production of a personal training stand, model, device, instrument; development of a computer program (provided that the above is used in the educational process in teaching the relevant discipline).

The penalty rating does not exceed 5 points and is deducted from the academic performance. It is determined by the lecturer and introduced by the decision of the department for higher education applicants who have not mastered the materials of the content modules, did not adhere to the work schedule, missed classes, etc.

The final certification includes semester and state certification of higher education students.

Semester certification is conducted in the form of a semester exam or a semester test in a particular academic discipline.

A semester exam (hereinafter referred to as the exam) is a form of final certification mastery by a higher education student of theoretical and practical material in of the academic discipline for the semester.

Semester credit (hereinafter referred to as credit) is a form of final certification that consists in assessing the mastery of theoretical and practical material by a higher education applicant practical material (performed by him certain types of work in practical, seminars or laboratory classes and during independent work) in the academic discipline per semester.

Differentiated credit is a form of certification that allows you to evaluate the implementation and mastery of the program of industrial practice, preparation and defense of course work (project).

Applicants for higher education are required to take exams and tests in accordance with the requirements of the working curriculum within the timeframe provided by the schedule of the educational process. The content of examinations and tests is determined by the working curricula of the disciplines.

Procedure for admission of higher education students to examination sessions. Full-time higher education students are admitted to to the examination session if they have fulfilled all the requirements of the working curriculum for the current semester.

A higher education applicant is allowed to take an exam or test in discipline, if they have fully completed all types of work in this discipline, provided by the working curriculum and the working curriculum, and his/her rating for academic work in this discipline is not less than 42 points (60 points x 0,7 = 42 points).

Applicants for higher education who have missed classes in the current semester and did not master the material of the missed topics and sections of content modules of academic disciplines in additional classes (have a rating of less

than 42 points in academic work), to the semesterare not allowed to take part in the semester certification in the relevant discipline. In the list against the names of higher education students who are not admitted to (test), the lecturer of the discipline makes an entry “Not admitted” and puts his/her signature.

In case of disputes regarding the non-admission of higher education students to the semester education to the semester certification, they are resolved by the lecturer of the discipline together with the head of the relevant department.

Applicants for higher education by correspondence are admitted to to the examination session if they have no academic debt for tthe previous semester and have timely completed the tasks of independent work on academic disciplines that are submitted for the current examination session. Applicants for higher education of part-time study who are admitted to the to the examination session, the deans of the faculties (directorate of the other structural subdivisions) issue certificates of challenge of the established sample.

Part-time higher education students who have not fulfilled the requirements of the of the curriculum and are not entitled to additional paid leave can come to the examination session to eliminate academic to eliminate academic debt on their own.

Part-time higher education students are allowed to exams (tests) if they have successfully mastered the program material of the content modules of academic disciplines and their rating in academic work is not less than 42 points in each discipline, which are submitted for the current examination session.

Table of the distribution of evaluation points for the implementation of various types of educational activities for each module and the “weight” of each module in the overall rating assessment.

Table of correlations between national and ECTS grades.

Rating of higher education applicants, points	National grade for the results of the examination	
	examinations	credits
90-100	Excellent	Enrolled
74-89	Okay	
60-73	Satisfactory	
0-59	Unsatisfactory	Not credited

METHODOLOGICAL SUPPORT

1. Tsyrfa H. O., Kukharchuk A. M. Work program of the discipline "Entrepreneurial. law". 2021: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjOkpzui5_0AhWD-yoKHR2XCXwQFnoECAIQAQ&url=https%3A%2F%2Farb.kpi.ua%2Ffiles%2F124%2Fsil_b%2F320%2FPidpryiemnytske-pravo.pdf&usg=AOvVaw2PPQyXtUBgZsGlrY53PM8r.

Regulatory and legal acts

1. Civil Code of Ukraine of January 16, 2003

2.Law of Ukraine "On Mortgage" of June 5, 2003.

3. Law of Ukraine "On Limited Liability Companies and Additional Liability Companies" of February 06, 2018.

4.The Law of Ukraine "On Joint Stock Companies" dated September 17, 2008.

5. Judgment of the European Court of Human Rights in the case of Feldman and Bank Slavyansky v. Ukraine (Application no. 42758/05) of December 21, 2017.

6.Judgment of the European Court of Human Rights in the case of Industrial and Financial Consortium "Investment and Metallurgical Union" v. Ukraine (Application no. 10640/05) of June 26, 2018.

7. Resolution of the Plenum of the Supreme Economic Court of Ukraine "On Certain Issues of the Practice of Dispute Resolution Arising from Corporate Legal Relations" of February 25, 2016.

Literature for the course Basic:

1. Fundamentals of Business Law of Ukraine (General Part): a textbook / V. A. Dovbysh - Vinnytsia: VNTU, 2015. 219 p. - UFL:http://dovbysh.vk.vntu.edu.ua/file/5382e412bcee12a2d56ef914b52f4aeb.p

2. Business Law of Ukraine: Study guide / Y. V. Korneev. - K. : Center for Educational Literature, 2019. - 120 p.

3. Commercial Law of Ukraine: textbook: in 2 parts. Part 1 [Andreeva O. B., Zhornokuy Y. M., Hetmanets O. P. et al.

Additional:

1. Vynnyk O.M. Commercial law: a course of lectures (general part). - Kyiv: Lira-K Publishing House, 2017. - 240 p.

2. Corporate law in schemes: a textbook / A. V. Smityukh.Odesa: I. I. Mechnikov Odesa National University, 2017. - 322 c.

3. Corporate Law: a textbook / O.V. Pushkina, S.V. Nesinova, T.M. Lezhneva, I.B. Probko, T.A. Todoroshko; under the editorship of S.V. Nesynova - Dnipro: Alfred Nobel University, 2018. 276 p.

4.Theory of State and Law. Study guide. [E.V. Biloziorov, V.P. Vlasenko, O. Horova, A. Zavalnyi, N. Zayats, etc. C. D. Husarev, O. D. Tikhomirov - K. : NAIA, Education of Ukraine, 2017 320 c.

5.Theory of State and Law: a textbook / [E. V. Biloziorov, V. P. Vlasenko, O. B. Horova, A. M. Zavalnyi, N. V. Zayats, et al.Husarev, O. D. Tikhomirov. - Kyiv: NAIA, Education of Ukraine, 2017. 320 p.

Internet sources:

1. https://rada.gov.ua;

2. https://www.kmu.gov.ua;

3. https://minjust.gov.ua;

4. https://mon.gov.ua;

5. http://www.me.gov.ua.

6. Kuznetsova Natalia Semenivna: Evolution of doctrinal views on legal entity as a subject of civil law as a subject of civil law An individual entrepreneur Individual entrepreneur taxes 2020 | 1, 2, 3 groups and taxes on minimum wage