ЦИВІЛЬНЕ ПРАВО УКРАЇНИ: НОВІ ВИКЛИКИ І ПЕРСПЕКТИВИ РОЗВИТКУ

Матеріали ХVІІІ міжнародної науково-практичної конференції, присвячені 98-й річниці з дня народження доктора юридичних наук, професора, члена-кореспондента АН УРСР В. П. Маслова

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28 лютого 2020 року кафедрами цивільного права Національного юридичного університету імені Ярослава Мудрого разом із Національною академією правових наук України (відділенням цивільно-правових дисциплін) і Харківським обласним осередком Всеукраїнської громадської організації «Асоціація цивілістів України» проведена міжнародна науково-практична конференція, присвячена 98-й річниці з дня народження доктора юридичних наук, професора, члена-кореспондента АН УРСР Василя Пилиповича Маслова.

Цей захід започаткований у 2003 році і відтоді традиційно відбувається кожного року, збираючи вчених-цивілістів закладів вищої освіти, провідних наукових установ й практичних працівників як України, так і інших держав.

У матеріалах збірника представлені результати наукових досліджень учених, присвячених актуальним проблемам приватного права (цивільного, житлового, сімейного, права інтелектуальної власності), а також проблемам господарського права.

Видання адресоване науковим співробітникам, аспірантам, викладачам закладів юридичної вищої освіти (факультетів ЗВО), а також працівникам суду, адвокатури, органів юстиції, юристам-практикам, іншим особам, які вивчають і застосовують цивільне, сімейне, житлове, цивільно-процесуальне та господарське законодавство.

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ISSUE OF LEGAL STATUS OF INTEGRATED CORPORATE STRUCTURES

1. Nature of an legal person has an integral component. A legal aspect of this issue consists in theoretical modeling of a construction which assumes certain personalized characteristics of a natural person in a result of what its individuality and independence is shaped. Another factor of influence on a nature of a legal person is a social aspect. Finally, a third one, which influences a nature of a legal person, is an economic aspect. A concentration of capital and production, combination of separate phases of production process are principle tendencies of a modern economic development and enterprises integration is one of the techniques, at which these tendencies find their manifestation. Such integrations of legal persons are performed with the goal of interests’ satisfaction of a non-monetary nature.

2. It is well-known that an association of interests or of a capital of natural persons leads up to creation of a new subject of the right, which unites the elements of latter in it. A natural person transforms his/her legal standing into a new formation – legal person, through his/her personal will. Vice versa, a consolidation of several legal persons around a common goal for them doesn’t create new fiction, different from a known one.

Nature of a legal person is exhausted by a transformation of exclusively individual properties of a natural person. A legal person is not able to create a new fiction individually. A transformation of an individuality of a legal person leads to a creation of solely known fiction – another legal person. This way, having a certain level of individuality, a legal person realizes his/her will of a founder. It is deprived of a personal natural will and consciousness, which
might be transformed into a «body» of a principally new, different from a legal person, subject of the right.

3. An association of legal persons leads to a creation of a new legal person. Its functioning in a civilian circulation is realized through known legal organizational forms of corporations. In a result of association of legal persons, there won’t be a deformation of neither organizational structure nor of a structure of a legal person which is in the process of creation. Such an association of legal persons, according to the grounds of its appearance, receives a statutory form of preservation.

4. From another side, the consolidation process of legal may not be accompanied by a creation of a legal person. Development of market relations is a reason for different types of entrepreneurial associations, participants of which have to coordinate their activity, preserving their legal autonomy at the same time. Such a consolidation of legal persons is exercised on the base of a contractual construction of a simple partnership (another common activity). Correspondent associations don’t have a status of a legal person, they are not invested by a separate property, but being a structure of a system management, they receive full powers for control of respecting the association’s corporate interests. The difference of a stated from the first version consists in a degree of self-sufficiency of participants as well as regarding a legal result of such an association.

*In a result of the integration process implementation, relations are established between its participants, that is, a certain corporate structure is formed, which we call integrated.*

This way, a legal person, a participant of the association, transfers a limited amount of its rights and powers in favor of such an appropriate legal structure. In this case, each participant of the association maintains its own organizational unity, ring fenced assets and independence of participation in a civilian circulation.

Integrated corporate structures, due to the differentiated nature of their activities, have not only an entrepreneurial component. The purpose of association of legal persons is also ensuring such a common interest, which is deprived of a commercial component.

This way, under an agreement of common activity, the parties undertake to act together without creating a legal person in order to achieve a certain goal, on the basis of combining the contributions of participants (simple partnership) or without combining the contributions of participants (article 1130 of the Civil Code of Ukraine).
5. A model for organization of legal relations between legal persons in their group is a concern, consortium, association, union etc. Such models are a means of legal technology, which confirm the complex of relations between the participants of a corresponding group. The indicated models are not a legal person. According to a legal nature of relations inside the group, a legal bound appears, the form of which is an agreement of common activity, as specified above.

With such a position, we continue a continental legal tradition, set in the laws of France, Austria, Germany, etc, according to which the integrated corporate structures do not have the status of legal persons.

6. Variable constructions of such integrated corporate structures are developed in the theory of civil law, which express the organizational and economic content component of the model of relations between them. Among them: 1. Concern (corporation); 2. Consortium; 3. Association (union); 4. Syndicate; 5. Conglomerate (financial and industrial group, alliance) 6. Trust; 7. Pool.

The classification criterion for such integrated corporate structures is the nature of corporate interaction and their focus area.

Such a nature is determined by the coordination of relations (consortium, association (union), conglomerate (financial and industrial group, alliance, pool etc) in the middle of the group or their subordination (concern (corporation), trust, syndicate etc), in relation to the head of the group’s structure, defined by the agreement between the participants of the integrated corporate structure, as well as by an entrepreneurial or non-entrepreneurial nature of their activities.

7. The practical significance of the specified classification is disclosed through the determination of the nature of the liability of legal persons, who are in a subordination relationship.

We can see from the stated above, that the integration processes differ by variety and level of their organization, as well as by the target orientation, and a number of other criteria, which require its adjustment and further research.

It is undoubtedly, that the dependence of one legal person from another, when it makes its own management decisions, changes the format of liability for the management impact on decision-making. It is not individualized. An indicator of an independent liability of a legal person, which is dependent on another one, is deformed. The «parent» company assumes liability of subordinate control over the activities of related companies in integrated corporate structures, including the liability for taken decisions.