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ENTERPRISE AS AN OBJECT OF CIVIL LAW

Today the term «enterprise» is used in various acts of legislation. The basic rules governing the relations arising about the enterprise as an object of civil rights today are contained in the rules of article of law 119 of the Civil Code of the Republic of Kazakhstan. The Law of RK from 17.01.2002, «On the Merchant Shipping» to claim 26 of article of law 1 under the marine adventure now is property (ship, freight, cargo), by which the costs are recoverable in general average.

The Law of RK from 01.03.2011, «On State Property» also includes the definition of the enterprise [1]. We will compare, according to item 1 of article 119 of Civil Code of the Republic of Kazakhstan the enterprise as object of the rights, the property complex used for implementation of entrepreneurial activity. A bit different definition of the enterprise as object is fixed in the sub-section 1 of article 136 of the Law of RK, "About the State Property", according to which, "in the state-owned enterprise as a property complex includes all types of property intended for its activities, including buildings, equipment, inventory, raw materials, products, the right to land, the right to demand, debts, as well as the right to designate, individualize its activity (trade name, trademark), and other exclusive rights. "

The enterprise as legal category was designated and studied along with development of the economic relations, from the beginning of industrial "splash" from the second half of the nineteenth century, since those times and so far the enterprise as the phenomenon was considered ambiguously in domestic and foreign science. Views of jurists on the enterprise were shared on two main groups:

- To the first group of authors are N.K. Klein, V.V. Chubarova, S.I. Klimkin and others, who consider that the company as a standalone economic independence, property separate participant, the subject of the enterprise relations; the enterprise is the legal entity entering independently the legal relations;
- 2) To the second group of authors are I.V. Amirkhanova, I.P. Greshnikov, R.A. Mametova, V.V. Vitryansky, etc. who consider that the enterprise, the isolated property complex means of extraction of the enterprise income, object of economic interests and the civil rights.

In the absence of the fixed structure of the enterprise as a property complex in practice there are situations when, without the presence of land (land rights) attempts to company registration.

For example: The company "Transtelekom" has on balance of the line of fiber-optical communication which have a dislocation both on the ground, and on the established land fastenings which don't admit real estate objects by the Kazakhstan legislation. In this connection, attempt to register the rights for the objects carriers having indissoluble communication

with the earth, not being real estate objects through registration of the enterprise as a property complex becomes. In our opinion, accurate definition of structure of the enterprise with maintaining as obligatory components (land and rights to land) and optional components – all other property is necessary.

Moreover, legislative determination of obligation of use of the enterprise in business activity (economic activity), i.e. the enterprise as operating, used, which is bringing in the income of object.

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