

Scientific and theoretical analysis of the nature of legal entities

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Abstract: *The article analyzes the understanding and interpretation of legal entities with a scientific-theoretical approach to the nature of legal entities. The laws of Uzbekistan and some states deal with the expression of legal entities concept and analyze the signs and legal capacity of legal entities. In addition, proposals will be made to improve the legislation of Uzbekistan based on the analysis of the liability of the legal entity, the share of founders and participants in the liability of the legal entity.*

Keywords. *Legal entity, civil law, property rights, founder, charter, liability, act on its behalf, rights and obligations.*

1. Introduction

The category of legal entity holds a special place in civil law and in the legal doctrine in general. From the time of the earliest conceptions of the legal entity were formed to the present day, there have been many opinions and theories on the concept, nature and content of the legal entity. In most cases, the views, approaches and assumptions of legal entities are rooted in the specifics of the laws, developed by the states, social regulations as well legal and political systems. In today's market economy, the legal entity has become the most important and widespread participant in civil service. This means the necessity of a new approach to the nature of the legal entity, changes in the understanding of its essence and, finally, improvement of the legal framework.

In modern jurisprudence, the problem of liability of legal entities is based primarily on the view about responsibility of the legal entity is exclusively its responsibility. However, such construction of the legal entity today is largely exceptional and in almost all cases relies on subsidiary liability of founders (participants) for its obligations. In most cases, the liability of the legal entity depends on the founder (owner) and the way in which the property is attached to the legal entity. For this reason, for analyze the liability of the legal entity it is also important to determine the legal nature of the monetary assets attributed to it by the public institutions.

Nowadays the terms “organizational-legal form of legal entity” and “organizational and legal form of business entities” are widely used in interpreting the nature of a legal entity. In the law, these two concepts are equally applicable to legal entities engaged in business activity and are equally interpreted by economists. From the legal point of view, however, there is a need to analyze the relationship between these concepts and to give scientific evaluation on the legal status of individual entities based on their similar and different aspects. At the same time, the legal status of entities with certain features of a legal entity such as a farm, a private enterprise, a family enterprise should be analyzed from the perspective of the legal entity structure.

1. SCIENTIFIC AND THEORETICAL ANALYSIS OF THEORIES ABOUT THE ESSENCE OF A LEGAL ENTITY

When talking about the specifics of legal entities, it is necessary to pay close attention to the analysis of theories in Civil Law with regard to legal entities and to determine which, by its nature, corresponds to the nature of legal entities.

Legal literature states that there are ideas about the origin and nature of legal entities, theories of fiction, community, administration or director, social reality¹. In addition, some literature indicates that there are theories about legal entities such as "personalized purpose", "organic", "realistic", "interest", "state", "personalized property", "social reality"².

Recent efforts by researchers to understand the nature of legal personality and to relate its theories to lawmaking and law enforcement practice show that by understanding the nature of the legal entity, it is possible to broaden the scope of legal regulation, to define specific directions and procedures for establishing civil rights and agreements, the category of expression of responsibility for obligations and the procedures for participation in civil procedure. In addition, it is important to understand the nature of the legal entity and its approach to its interpretation, which is also important in determining the status of certain types of legal entities. For example, in an private enterprise and LLC established by one person, in LLC the will of the legal entity and the will of the founder are one and the only business risk is within the property of a private company and LLC. In contrast, the expression of will in other types of business societies and partnerships and other legal entities is determined by the general consensus of the community, in which case such commonality may only be an offer made by one of the partners. However, this does not change the essence of the issue, and such an approach, that is, from the point of view of expression of will, is the legal entity being a "fictitious subject."

On the other hand, a legal entity is a method of transferring the property to a separate mode by the legislature, for example, a citizen can divide his or her entire property into several parts and participate in civil transactions through various forms. For example, keeping a part of a citizen's property in his hands without having to deal with it for his own needs, formation of a legal entity in the form of LLC on the basis of a certain part, acquiring a share of another and becoming a partner in the JSC, spend the other part in production cooperative and production or trading activities, the other part can be put into business based on the servicing enterprise. In all these cases, income from property belongs to that citizen. However, the risks associated with the operation of such property shall also apply to the property and all shall not be affected by the property retained by a citizen for their own needs, except as provided by law.

At the same time, it is desirable approaching to understanding the legal entity based on modern market laws from today's point of view. Since the main purpose of a legal entity in market relations is to carry out a specific activity on the basis of separate property, its essence also comes from this purpose and it must also be interpreted in this context. In our view, the analysis of the legal entity as a distinct legal construct³ in this regard can yield the expected result. Of course, this approach seems to contradict the interpretation of a legal entity's substrate in terms of subjectivity or expression of will, but by its practical nature it seems to be closer to the modern reality.

According to S. Alekseev, legal construct is a right, obligation, responsibility, model of action on this "legal material", a model, a specific device of "bone"⁴. Continuing his view,

S. Alekseev represents legal constructions at the level of basic legal activity and expresses the following:

It is these legal constructions that allow to put in a rigid, mathematically accurate and adaptable device by integrating demands of life, wealth of experience, and wisdom are brought to the rights, obligations, guarantees and responsibilities of certain persons for future improvement, and through it, translate important ideas and values into reality⁵.

According to A. Ananeva, civil law legal constructions - the result of the intellectual (mental) connection of legal means (their elements) or elements of legal relations on standard drawings established for the purpose of solving a specific civil-legal situation⁶.

While exploring "the role and importance of legal constructions as a unit of legal thinking in the context of legal issues"⁷, N. Tarasov means: the legal constructions, preserved from the ancient Roman right period and increased in the course of historical development of the right, provide an irreplaceable core of legal knowledge, preserving its value in the legal profession at any time⁸. Continuing his commentary, N. Tarasov points out "the role of legal constructions as a method of research of law"⁹.

Agree with these points, legal construction is the participation of legal entities in legal relations, based on certain laws and regulations, which define a specific "scheme" of the determination, movement and consequence of their rights and obligations, and resemble a flexible and flexible "template", a device that produces a specific "rigidity", on this basis legal relations, legal categories, legal institutions are represented and the legislation is systematized according to the specific legal contract. For example, contracts in the Civil Code are based on "transfer of property", "execution of works", "services" and other such legal constructions. The function and purpose of legal constructions are to represent the basic elements of existing legal reality: subjects, objects of legal relations, rights and obligations, application and interpretation of schemes, directions and models of action and "drawing", "direction", "model" is a product of the legal thinking of experts.

From this point of view, the structure of the legal entity in civil law theory and practice is based on a specific model as one of the key realities of this field of law and the legal science. In consideration of this issue, S. Stepanov expresses the following opinion: the civil-legal doctrine focuses on one of the main structural constructs - the legal entity, which has a high degree of abstraction¹⁰ and aspiration for universality, which fully and clearly describes the separation of theoretical and legal ideas from the individual¹¹.

V. Boldyrev notes, the legal entity is a stable, wider in size and had been investigated for a long time civil-law construction¹².

But these opinions does not imply, that civil law has only "legal person construction" and no other legal constructions, that the authors above support. In addition, legal scholars point out that there are many legal structures in the subject of legal jurisprudence, particularly in civil law. In particular, according to S.Alekseev, in many cases there are legal structures

⁵ Alekseev S.S. The circle is closed // same place. T. 4: The line of law. Concept: Op. 1990s - 2009 years. P.219.

⁶ Ananyeva A.A. Methodological approaches to the study of civil structures // Bulletin of Perm University. Jurisprudence. 2015. Issue 4 (30). - 29 p.

⁷ Tarasov N. N. Jurisprudence Constructions in the Law and Methods of Issuing (Methodological Problems) // Russian Law Magazine. 2000. - No. 3. - S. 27.

⁸ There. P.30-31.

⁹ There. P.36.

¹⁰ Abstract (abstractio is a Latin word and distraction) is a call to exclude the main, true characters from the object (subject or reality) that are not present in the cognitive process.

¹¹ Stepanov S.A. Classical and postclassical civilization // Development of the main ideas of the Civil Code of Russia in modern legislation and judicial practice. Sat Art. dedicated to the 70th anniversary of S.A. Khokhlov / rev. ed. S. S. Alekseev. - M.: 2011. - P. 92.

¹² Boldyrev V.A. Civil law construction of the legal entity of the non-owner // Jurisprudence, 2014, No. 2 (313). - P. 131.

that are ready to be used by the person in the solution of specific issues related to certain life events and are the basis for starting a business¹³.

Consequently, in recent years, research on different types of civil law constructions supports this view. In particular, the authors include investment¹⁴, ownership¹⁵, securities¹⁶, commercial representation¹⁷, public contract¹⁸, mortgage agreement¹⁹, acquisition of property rights for real estate²⁰.

The legal structure of the legal entity provides for its founders and participants the opportunity to participate in civil relations and thereby consolidate their investments and actions, thereby distributing the risks of entrepreneurship among the participants and limiting their property liability for liability arising from entrepreneurial activity. This means that the main purpose of the legal structure is the accumulation of capital for entrepreneurial activity, thus maximizing by this way the profit and limiting the responsibility of each participant. If we analyze this situation in the case of JSC, the joint-stock company is a commercial organization whose authorized capital (authorized fund) is divided into a certain number of shares certifying the rights of shareholders in relation to the company, where shareholders are not liable for the obligations of the company and bear the risk of losses associated with its activities, to the extent of the value of their shares (Part 1 of Article 3 and Part 2 of Article 4 of the Law of the Republic of Uzbekistan "On Joint Stock Companies and Protection of Shareholders' Rights").

According to J. Yuldashev, the essence of the joint-stock company is the ability to concentrate capital in the short term for entrepreneurship, limited shareholder responsibility, and the use of medium and large businesses²¹.

According to experts, joint-stock companies are the leaders in the system of economic relations in the modern market economy. It is the joint-stock companies that allow to accumulate the investments of many individuals with the aim of establishing independent participants in civil society as an important legal form of business. The classic function of the joint-stock company is to attract capital and long-term accumulation. In addition, the form of stock is an anonymous optimization method for many participants, allowing them to attract additional investment through the issue of shares, "eliminating" the diversity between different forms of capital, thereby facilitating their transfer from one network to another. Advantages such as high capital accumulation, limited liability of participants (shareholders), simplified system of control over the company are represented in the form of business shareholding²².

A. Kudachkin touches upon the nature of US law corporations and states: the popularity of the corporate form of doing business is that the corporations are separate from their founders, that is, the longevity of the existence of the corporation's owner, limited liability (the shareholders are solely responsible for the obligations of the corporation), the

¹³ Alekseev S.S. Mystery and the power of law // *Sobr. Op.* In 10 vol. T. 4: The line of law. Concept: Op. 1990s - 2009 years. P.219.

¹⁴ Mayfat A.V. Civil-law investment designs. Author's abstract ... Yekaterinburg, 2006.P. 17.

¹⁵ Zubareva O.G. Ownership and its construction in the civil legislation of the Russian Federation. Dis. ... PhD Rostov, 2003.

¹⁶ Murzin D.V. Securities as legal constructions of civil law. Dis. ... PhD. n Yekaterinburg, 2011..

¹⁷ Sergeeva-Levitan M.V. Commercial representation as a legal construction in civil law. Dis. ... PhD Yekaterinburg, 2008.

¹⁸ Levchenko, O.S. Construction of a public contract in Russian civil law. Dis. ... PhD. Rostov, 2003..

¹⁹ Viktorova R.N. Legal construction of a mortgage agreement in Russian law. Dis. ...PhD. Ryazan, 2011.

²⁰ Volochay Yu. A. Civil construction of the acquisition of ownership of real estate under an agreement: a comparative legal analysis of the laws of Russia and Germany. Dis. ... PhD Yekaterinburg, 2010.

²¹ Yuldashev J.I. Joint Stock Company as a subject of civil law. - Tashkent: TSIL, 2004. - 31 p.

²² Maldonado Popova A.A. Civil status of joint stock companies in the Russian Federation and the Republic of Colombia: author. dis. ... PhD. - M.: 2012. - 3-4 b.

ability to attract large investments by issuing shares; the possibility of changing the ownership of the company from one person to another²³.

O. Fomina also reflects on the essence of US corporations: The legal model of entrepreneurial corporations, on the one hand, has a number of things in common with the construction and establishment of joint stock companies. However, unlike joint-stock companies, US corporations are distinguished by their flexible system. Corporations have their own peculiarities in terms of the distribution of rights and responsibilities among the participants, property rights, and organization management²⁴.

In our opinion, the construction of the joint-stock company, as mentioned above, includes factors such as the accumulation of capital owned by most individuals, the determination of the share of each participant, the emergence of an independent legal entity independent of the holders, and generating income based solely on property participation. However, this situation does not fully reflect the nature of the JSC structure. After all, in the JSC, the will of the legal entity is determined by the will of the majority, not the will of each shareholder (shareholder), and it is similar to the category of "collective will". However, this also becomes meaningless when the control packet is in the hands of one person. This is because a person holding a controlling stake decides on behalf of the JSC, ignoring the will and will of all other shareholders, and thus demonstrates that the expression of will in the JSC is based on a mixed method.

In addition, it is necessary to note that the JSC's structure means that any person has the opportunity to make a profit under certain conditions established by law. The fact is that when the JSC freely sells its shareholder, any person becomes a shareholder (shareholder) of the JSC by acquiring it and participates in a certain way in determining the will of the JSC, regardless of whether or not it is the same as the decision of the JSC. receive dividends. However, it is important to remember that if the JSC does not make a profit, the shareholder (shareholder) will not receive dividends. In any case, the JSC is based on the scheme - participation in entrepreneurial activity (directly or indirectly) by means of consolidation of funds, limitation of the participant's participation, participation in the expression of will, creation of a new legal entity and profit.

In general, many of the theories of the past (the nineteenth century) concerning the understanding of legal entities should not be a matter of correctness or completeness, but it would be desirable to formulate a theory of "legal entity construction" based on modernity. Because, in the modern system of economic relations, the legal entity is a structure for the achievement of economic and social goals, and the "organization" is directly based on human activity and administrative procedures, the question is not of what structure and essence of a legal entity, but on what criteria a legal entity is formed and how it is organized and operated, and on which legal structure and scheme it is based, it is important to improve the consistency and improvement of legal mechanisms for legal entities, as well as businesses.

2. CONCEPT OF LEGAL ENTITY AND DESCRIPTION OF ITS LEGAL SIGNS

The notion of a legal entity is viewed as one of the doctrines that civilization has long been deeply and comprehensively studied and finally concluded. However, this is not always the case. Because the legal entity is the "artificial (fake, fictitious) subject" of the legal entity, the main and primary subject of the invention is the human, enlarging, enriching and

²³ Kudachkin A.A. A corporation in the United States and a joint stock company in Russia as subjects of joint-stock relations: a comparative legal analysis: author. dis. ... PhD. - M.: 2007. - 23 b.

²⁴ Fomina O.N. The legal status of an entrepreneurial corporation in the United States and a joint stock company in the Russian Federation: a comparative legal analysis: author. dis. ... PhD. - M.: 2011. -- 13-14 p.

developing the types of the legal entity, their rights and obligations. the doctrine of understanding of the individual also needs to evolve and continue to improve. Of course, the interpretation of the concept of a legal entity is limited by its legal definition and within it the status of a legal entity, its legal capacity is not always effective or emerging market laws, greater freedom and privileges for businesses, government intervention and participation in the economy. does not produce the expected result under reducing conditions. Therefore, it is important to interpret the scientific-doctrinal definition of the notion of a legal entity in light of the current realities and the expansion of their participation in economic relations. At the same time, trying to understand not only the legal differentiation of the concept of a legal entity, but also the socio-economic notions in this regard can provide new solutions. From this point of view, the legal entity is primarily represented by the term "organization" (in Uzbek – tashkilot). If you look at the lexical meaning of the term "tashkilot" it is an Arabic word means the social, economic association or government institution with a clear structure and function, working program²⁵.

From the economic point of view, the interpretation of nature of legal entities and their specificity as an economic structure involves primarily the integration of investment and labor resources and the organization of production processes.

Secondly, when a legal entity is created by an individual (for example, a limited liability company, a private enterprise, a farm), its private (personal) property and the investment it wants to invest in it. This separation, in turn, ensures that the private (private) property of the individual (citizen) formed by the legal entity is free from entrepreneurial risk. This is because the legal entity, established by the individual person, is liable only for the amount spent.

Third, as the legal entity manages the property established for participation in the economic activity and, on the basis of it, performs economic activity (production, trade, work, services), this process must be performed in a different structure than the other participants. At the same time, it is natural for this structure to enter into relationships with other participants in economic relations, to have certain rights and obligations, and to coordinate the process.

As the legal entity acts as an active and, if possible, main participant in economic relations, legal regulation of these relationships requires establishing the legal regime of this structure (legal entity) and ensuring that its actions are reflected in the legal field. Therefore, it is necessary to express its definition in the legislation by interpreting the legal concept of a legal entity, taking into account its socio-economic nature and content. Of course, modern civil law provides for a legal definition of the concept of legal entity, and this definition is based on the doctrines that have been shaped by civil law for many years. However, it is more difficult to say that the definition of a legal entity in the current legislation is fully consistent with market law. Because, the definition of the concept of legal entity is related to the fact that the law still exists in the remnants of the former socialist jurisprudence and remains in the imagination of lawmakers and Civil Code creators, these "remnants" are clearly reflected in the Civil Code's rules regarding the concept of a legal entity, and this definition does not correspond to the essence and content of corporations at various levels, which are still developing today. Therefore, it is important to analyze the legal definition of the concept of a legal entity and analyze its essence from a legal point of view.

With regard to theoretical analysis and opinions in the legal literature, many experts are limited to the legal definition of law in their scientific works and educational literature. At the same time, it is not uncommon for a country to critically analyze the definition of a legal entity. For example, I. Yeliseev expresses the definition of a legal entity based on the legal

²⁵ Annotated Dictionary of the Uzbek Language / Edited by A. Madvaliev. - 23 p.

definition of Russian law as follows: legal entity - an organization recognized by the state as a legal entity, possessing property independence, responsible for its obligations with this property and participating in its own civil procedure²⁶.

I. Golodenko interprets the concept of legal entity from the legal definition established by the Ukrainian legislation:

A legal entity is an organization established and registered in the manner prescribed by law, having property independence, obtaining and realizing property and personal non-property rights and obligations, that suits and is sued in court²⁷.

This approach is also expressed by I. Zakirov and forms his understanding and legal features based on the definition of legal entity in the Civil Code of the Republic of Uzbekistan²⁸.

However some experts describe the concept of a legal entity it is based on the fact that it is a philosophical social phenomenon and is aimed at meeting a particular purpose and need by the community of people and seeks to articulate certain definitions.

In particular, Y. Stukalova noted, the legal entity is an objective legal reality and is logically reflected in the social relations associated with the exchange and distribution of material goods. At the same time, the existence of a legal entity is related to the legality of the law. A legal entity is represented as a legal institution and a "live", "relevant" law, the principles of its structure and activities are formalized by the state and social law-making²⁹.

According to A. Golovanov, a legal entity is a social-legal organism that unites the interrelation of such factors as the common interest and the mechanism of their implementation, representing a combination of social group, individual interests and interests of social groups. The emergence of an organization for which the rights of a legal entity are concerned is determined by the factors that exist in society. The existence of a legal entity is directly related to the pattern of normative creativity of the state activity in its establishment and operation³⁰.

Analyzing the concept of legal personality and its definition in legislation, I. Greshnikov writes: Analogue of the concept of "legal entity" is the name of *personne morale*, adopted in French and Swiss law and covers everything outside the sphere of individuals. In Anglo-American law the word *artificial person* is used, which means artificial, specially created person. In this sense, a legal entity is an abstraction required to include various organizations within the legal entities³¹.

According to H. Rahmonkulov, from a scientific point of view, the concept of a legal entity may be expressed differently, possessing proprietary and personal non-property rights and duties which are of a natural or complex nature, or can be considered as a socially-established subject of law aimed at achieving a particular purpose and meeting the needs of the population³².

In expressing the concept of a legal entity, the following statements by V. Artemenkov are of interest:

Based on the analysis of foreign and national scholars, it may be concluded that a legal person is an individual with legal status (*ipostas*³³).

²⁶ Civil law: Textbook.: 3 vol. T. 1. - 6th ed., Rev. and add. / N.D. Egorov, I.V. Eliseev and others; Repl. ed. A.P. Sergeev, Yu.K. Tolstoy. - M.: TC Velby, Prospect Publishing House, 2003. -146 p.

²⁷ Golodenko I.A. The concept and essence of a legal entity // - 320 p.

²⁸ Zokirov I.B. Civil Law I T. - Toshkent: TSIL, 2009. - 165 p.

²⁹ Stukalova Yu.V. Legal entities as subjects of entrepreneurial activity in Russia of the 19th - early 20th centuries: historical and legal development and theoretical understanding: author. dis. PhD - Saratov: 2009. - 9 p.

³⁰ Golovanov A.K. Categorical and subtractive essence of a legal entity: author. dis. PhD. - Dushanbe: 2010. - 11 p.

³¹ Greshnikov I.P. The concept of a legal entity in civil law and legislation: author. dis. ... PhD - Alma-Ata, 1997. - 15 p.

³² Rakhmankulov H. R. Subjects of civil law. Tutorial. - Tashkent: Moscow State University, 2008. - 65 b.

³³ *Ipostas* - derived from the Greek word meaning meaning, substance.

Legal status (ipostas) is an area of interconnected factors that a legal entity needs to obtain an objective right to recognize it as a subject.

These are the following: features of the expression of the individual's will (the basis of the legal entity's independent expression of will); availability of property (necessary for participation in economic activity); purposefulness (existence of the main purpose provided by the constituent documents and legislation).

As an individual, human becomes the owner of many social and legal functions, performing various roles (parent, guardian, teacher, contracting party, etc.) and having many needs, interests, interests, habits, knowledge and skills. Legal status (ipostas) restricts the multi-disciplinary social and legal structure of a person, leaving only the opportunity for the legal entity to have free will³⁴.

These ideas are based on the social nature, purpose and objectives of the legal entity. It is desirable to focus on the legal concept of the legal entity as it is formed by the simultaneous expression of the concept of a legal entity in economic, social and legal positions, as a result of a mixture of different unrelated categories and terms. Because, as mentioned above, the term "legal entity" has a legal meaning and, unlike individuals, is formed and arises after formal legal registration (state registration), which is related to the use of the term "legal" in a common name for organizations.

It is worth noting that there are contradictions in the legal definition of the term legal entity as a common name for all types of organizations. Including, Article 39 of the Civil Code defines the term "organization" as the definition of a legal entity, while the first part of Article 4 of the Code of Civil Procedure stipulates that "enterprises, institutions, organizations, public associations and self-government bodies" shall be referred to as organizations in the general sense. Such an interpretation, that is, the fact that enterprises and institutions are called organizations, is not legally correct. Because, according to Article 85 of the Civil Code, an enterprise is not a subject of civil law, and therefore it is not appropriate to identify or incorporate the term "enterprise" with a legal entity or organization with a cumulative concept. Of course, it is important to remember that "enterprise" is used as complementary and identifiable in some organizational and legal forms of a legal entity. Specifically, Article 70 of the Civil Code defines the organizational and legal forms of a legal entity, such as "unitary enterprise", Article 72, "state unitary enterprise" and "private enterprise", which can often entice law enforcement. However, in any case, the term "enterprise"³⁵ (in its sole words) is an object of civil law and does not represent the legal entity or organization.

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³⁴ Artemenkov V.K. The distinction between the concepts of "sole executive body" and "person acting as sole executive body" in business companies // Perm University Herald. Jurisprudence. 2010.- No. 4. - S. 90.

³⁵ Whereas the concept of enterprise was used in the Soviet sense in the sense of a subject and is usually applied to organizations engaged in production activities, non-production structures were referred to as institutions and generally referred to as any type of legal entity. A clear example of this is the Law on Enterprises, which went into effect in Uzbekistan in the early 1990s. The fact that this approach is still in place in national legislation is an indisputable fact.

entity, its legal capacity is not always effective or emerging market laws, greater freedom and privileges for businesses, government intervention and participation in the economy. does not produce the expected result under reducing conditions. Therefore, it is important to interpret the scientific-doctrinal definition of the notion of a legal entity in light of the current realities and the expansion of their participation in economic relations. At the same time, trying to understand not only the legal differentiation of the concept of a legal entity, but also the socio-economic notions in this regard can provide new solutions. From this point of view, the legal entity is primarily represented by the term “organization” (in Uzbek – tashkilot). If you look at the lexical meaning of the term “tashkilot” it is an Arabic word means the social, economic association or government institution with a clear structure and function, working program³⁶.

The legal literature follows a number of approaches to understanding the concept of a legal entity from an economic point of view. In particular, A.Alpatov, pointing out a number of cases in revealing the economic nature of a legal entity (corporation), at the same time, any social structure is a vertical organization, achieving greater economic efficiency through the combination of capital and labor, the ability to coordinate capital and labor resources by joining a single corporation, implying that the emergence of a single legal entity through incorporation into a corporation is a factor determining the economic nature of the legal entity³⁷.

A. Golovanov, interpreting the categorical and substrate nature of the legal entity, observes in following way: initially, the legal entity's structure emerged as a mechanism for regulating the activities of collective entities, allowing for the integration of fragmented and uncoordinated activities of individuals into a single production cycle. The historical task of the legal entity's design is to create a focused power effect that greatly enhances the beneficial behavior of these forces (scattered individuals and their resources, labor – note from the author – N.I). Therefore, the establishment of a legal entity is related to the association of individuals, which involves combining property for entrepreneurial activity, which creates a need for legal regulation of commercial associations³⁸.

According to O. Makarenko, a legal person is a legal category, and like all legal constructs, is abstract. However, at the same time, the concept of a legal entity is represented as a fact of life and is logically reflected in the development of social relations related to the exchange and distribution of material goods³⁹.

I. Eliseev, answering to the question of what is the purpose of regulating the status of a legal entity at the legislative level comes from the analysis of the following tasks performed by the legal entity:

1) Registration of corporate interests.

The institution of legal entity, in a sense, organizes and regulates the internal relations between the participants of the legal entity, thereby forming the will of the participants of the legal entity and enabling them to participate on their own behalf.

2) Consolidation of capital.

The most appropriate form of long-term capitalization of a legal entity, in particular its joint stock company, is that without it large-scale business activities will not have meaning.

3) Business risk limitation.

The design of the legal entity allows the participant to limit the risk of property risk within the amount of the investment in a particular enterprise.

³⁶ Annotated Dictionary of the Uzbek Language / Edited by A. Madvaliev. - 23 p.

³⁷ Alpatov A.A. Legal entity: from legal analysis to an economic entity // Modern Law. 2011. - No. 5. – P.66-67.

³⁸ Golovanov A.K. Categorical and subtractive essence of a legal entity: author. diss. PhD. - Dushanbe: 2010. -- 11 p.

³⁹ Makarenko O.V. Legal entity as a legal category // Business in law. 2009. - No. 5. - 42 p.

4) Investment management.

The institution of legal entity provides the basis for the flexible use of capital owned by one person (including the state) in various areas of entrepreneurial activity⁴⁰.

A similar approach is also noted by E. Sukhanov and indicates that the main purpose of the legal entity's design is to limit the risk of debt liability and more efficient use of capital (property), with the main feature being that the property is a separate way of organizing personalized (individual) economic activities⁴¹. In the works of E. Sukhanov it is noted that "the structure of the legal person was created as a result of the needs of property (civil) circulation and therefore is not an intersectoral, civil category"⁴².

According to Y. Basin, legal entities are created in all spheres of social and economic activity. However, the necessity and importance of this institution are determined, first of all, by the possibility of separating the created entity from the persons who created it. Therefore, as a legal entity is an independent and property justified subject of rights and obligations, its founders are generally not liable for its debts (similar legal entities are not liable to its founders).

Founders of a legal entity will have the opportunity to limit their entrepreneurial risk to the amount acceptable to them. In this sense, the practical importance of legal entities is, first and foremost, in the property-civil relationship⁴³.

We think. interpreting the essence of legal entities from an economic point of view and its uniqueness as an economic structure involves primarily the integration of investment and labor resources and the organization of production processes.

Secondly, when a legal entity is established by an individual (for example, a limited liability company, a private enterprise, a farm), it invests in its own (private) property and its investment in entrepreneurship. This separation, in turn, ensures that the private (personal) property of the individual (citizen) formed by the legal entity is free from entrepreneurial risk. This is because the legal entity, established by the individual, is liable only for the amount spent.

Third, as the legal entity manages the property established for participation in the economic activity and, on the basis of it, performs economic activity (production, trade, work, services), this process must be performed in a different structure than the other participants. At the same time, it is natural for this structure to enter into relationships with other participants in economic relations, to have certain rights and obligations, and to coordinate the process.

As the legal entity acts as an active and, if possible, key participant in economic relations, legal regulation of these relationships requires establishing the legal regime of this structure (legal entity) and ensuring that its actions are reflected in the legal field. Therefore, it is necessary to express its definition in the legislation by interpreting the legal concept of a legal entity, taking into account its socio-economic nature and content. Of course, modern civil law provides for a legal definition of the concept of legal personality, and this definition is based on the doctrines that have been shaped by civil law for many years. However, it is more difficult to say that the definition of a legal entity in the current legislation is fully consistent with market law. Because, the definition of the concept of legal entity is related to

⁴⁰ Civil law: Textbook.: 3 vol. T. 1. - 6th ed., Rev. and add. / N.D. Egorov, I.V. Eliseev and others; Repl. ed. A.P. Sergeev, Yu.K. Tolstoy. - M.: TC Velby, Prospect Publishing House, 2003. -- P. 141-142..

⁴¹ Civil law. In 4 t. T. 1: General part / [Em V.S. and etc.] ; open ed. - E.A. Sukhanov. - 3rd ed., Revised and add. - M.: Walters Clover, 2006. -- 210-211 p.

⁴² Sukhanov E.A. Avilov G.E. Legal entities in modern Russian law // Civil law - private law. M., 2008.P. 441; Sukhanov E.A. Enterprise and legal entity // Civil Law - Private Law. M., 2008.P. 437; Sukhanov E.A. On the problem of legal entities of public law // Problems of reforming the Civil Code of Russia. P. 112.

⁴³ Basin Yu.G. Legal entities under the Civil Code of the Republic of Kazakhstan. Concept and general characteristic // <http://online.zakon.kz/>

the fact that the law still exists in the remnants of the former socialist jurisprudence and remains in the imagination of lawmakers and Civil Code creators, these "remnants" are clearly reflected in the Civil Code rules regarding the concept of a legal entity, and this definition does not correspond to the essence and content of corporations at various levels, which are still developing today.

Based on the above analysis, the following definition of legal entity can be proposed: a legal entity, established in the manner and in accordance with the procedure established by the legislation, acquiring and exercising civil rights on its own behalf on the basis of separate property in its property, undertaking and enforcing them, can sue and be sued in court.

3. THE MATTER OF A LEGAL CAPACITY OF LEGAL ENTITY

In Jurisprudence, the concept of legal capacity is seen as the first element of legal entity. Usually legal capacity means the subject has rights and duties. According to experts in law doctrine, legal capacity - the ability of a person to acquire subjective rights and legal obligations in accordance with the norms of law. In other words, legal capacity is the ability of individuals and legal entities to obtain subjective rights and legal obligations, to engage in various relationships provided by law⁴⁴.

Legal capacity is the prerequisite and stage of legal personality, and the ability to acquire rights and responsibilities is an opportunity for all subjects. For this reason, it is necessary that a particular organization or organization has the capacity to acquire rights and responsibilities to be recognized as a legal entity. If this capability is due to the birth of citizens (experts say, in some cases, from the time of the fetus), this is the case for legal entities when they are registered (Article 41 of the Civil Code).

According to N. Kozlova, legal personality of legal entities is artificial. The Constitutional Court of the Russian Federation in this regard (p. 4 of Decree of Constitutional Court of the Russian Federation from December 17, 1996 N 20-P // SZ RF. 1997. N 1. p. 197) expresses a well-grounded view that the human and civil rights provided by law can be applied to a legal entity only to the extent that it is applicable to the nature of those rights⁴⁵.

It should be noted that the same is true of Section 3.02 of the Model Law on Business Corporations Act, 1994, approved by the American Bar Association, accordingly, any corporation has the right to exist indefinitely and is entitled to take all actions necessary or desirable to carry out its activities, including the rights of an individual⁴⁶. Article 51 of the Swiss Civil Code states that a legal entity may have all the rights and bear all the obligations except for the factors, concerned human, such as sex, age or kinship, as a prerequisite for the emergence of a legal entity⁴⁷.

In general, legal entities and individuals have the same opportunities to participate in civil relations⁴⁸. However, only legal entities may be involved in a some relationship. Only legal entities can be insurers; the register of holders of securities is maintained only by legal entities; only legal entities have the right of economic and operational management of property. At the same time, it should be noted that there is a "List of activities that private entrepreneurs can carry out without the establishment of legal entity", approved by the Cabinet of Ministers of the Republic of Uzbekistan № 6 dated January 7, 2011. The list

⁴⁴ Theory of State and Law: Textbook / HT Adilkariev, IT Tulteev and others; prof. Edited by Kh.T. - Tashkent: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2009. - 323 p.

⁴⁵ Kozlova N.V. Legal personality of a legal entity. - M.: Statute, 2005. - 34 p.

⁴⁶ Syrodova O.N. US and Russian Joint Stock Law: A Comparative Analysis. - P. 20 - 21, 31 - 32.

⁴⁷ Zaitseva V.V. Legal entities // Civil and commercial law of the capitalist states / Ch. ed. E.A. Vasiliev. - P. 87.

⁴⁸ Braginsky M.I. Legal entities: Comment of the Civil Code of the Russian Federation // Economy and law. 1998. - No. 3. - P.12.

provides the activities that can be undertaken by individual entrepreneurs without the establishment of a legal entity (for example, about 80 types of activities, such as retail, household services, as a number of other activities).

It should be noted that the terms “legal capacity” (pravosposobnost) and “legal capacity” (pravo sposobnosti) are interrelated. If "legal capacity" means the acquisition of rights and obligations as a condition of legal personality, "legal capacity" is the "relation" which determines the legal capacity, permission, or scope of a person's authority to carry out a particular action. For example, the executive director has the legal capacity to enter into a specific transaction, assuming that the LLC has a legal capacity to enter into transactions with an equity fund of more than 25%.

It should be noted that the notion of legal capacity of the legal entity and its deep analysis of its legal nature require separate research and in-depth theoretical analysis. However, in this study, we look at some new approaches to legal capacity that have been formulated in the legal literature and are now being proposed and on the basis of the relationship between legislation and constituent documents, to determine which path the modern civilized doctrine of legal personality should follow, and today's corporate-legal relations, we will focus on changes in the content of the legal personality and legal capacity.

As for the concepts and views that were originally formed on the legal personality and legal capacity, for a long time, civil law doctrine has been adopted to explain the legal capacity of the legal entity - the so-called "special legal capacity" - to explain the content of the legal personality and the manner in which the rights and obligations are implemented. This provision is also envisaged by the third part of Article 41 of the applicable Civil Code and is reflected in the legislation of a number of CIS countries.

The historical roots of the doctrine of the special legal entity or the ultra vires doctrine in the law of foreign countries are based on the permissiveness of corporations in the early stages of capitalism, although many frauds have been observed. In addition, the restriction of rights is related to the artificial nature of the legal entity.

Today, there is a tendency to abandon the principle of special legal capacity (the doctrine of ultra vires), which is mainly related to the legal capacity of commercial legal entities.

For example, the Swiss Civil Code provides that legal entities have unrestricted legal capacity (Article 51).

To change the purpose of the association established in Germany by permission, it is required the consent of all members of the association, as well as the permission of the competent public authority (paragraph 33 § 3 of the Germany Civil Regulations). However, the German legal doctrine and judicial practice believe that the purpose of the statute is only relevant to the internal relations of the association. This principle is enshrined in the law on trade companies. A transaction concluded outside the authority of the body of the legal entity provided by the charter or partnership agreement, as well as beyond the limits established by the charter, is valid for third parties.

While legal entities established in England have always had common legal capacity, legal entities established on the basis of a general or special parliament document are considered to have the rights and obligations necessary to achieve the statutory objectives. Transactions that go beyond the statutory goals are not valid and may be settled in court by the legal entity itself or its counterparties. Therefore, the Companies Act of 1989 abolished the principle of ultra vires⁴⁹.

In the United States, legislation of many states have a general legal capacity of corporations. The requirement that the Corporation's charter even impose common types of

⁴⁹ Kulagin M.I. Selected Works. - S. 132 - 134, 232; Zaitseva V.V. Legal entities // Civil and commercial law of the capitalist states / Otv. ed. E.A. Vasiliev. - M.: 1993. - P.88 - 89.

activities hampers the development of business activity, impedes market conjuncture and investment flows into promising areas, challenging the legitimacy of many transactions that do not correspond to the stability of economic relations. Even if the legal capacity of the corporation under the law and charter is special, an agreement made out of authority is not valid. In this case, a lawsuit against a corporation banning certain actions to execute a transaction or decision beyond its competence may be filed by a shareholder when the agreement (decision) has not yet been executed and the third party is not aware of the transaction. A corporation or a person acting on its behalf or in its interests may file a lawsuit against the incumbent or the former manager for damages caused by his actions beyond his powers. If the corporation is permanently out of statutory jurisdiction, the prosecutor may file a liquidation lawsuit⁵⁰.

It should be noted that it would be expedient to use the legal mechanisms mentioned above in the law of foreign countries in the national legal system.

4. RESPONSIBILITY OF LEGAL ENTITIES, ASSESSMENT OF FOUNDERS AND PARTICIPANTS IN LEGAL ENTITIES'S LIABILITY

Issues related to legal entity liability, the existing problems and the conceptual aspects that need to be addressed, for the long-standing and controversial questions are relevant to the analysis of current realities and the emerging market laws based on economic and legal reforms in the country. Simply put, the legal entity's liability means that it is responsible for its obligations with the property it owns. The legal entity is liable for the property that is in its property for non-fulfillment of its obligations. However, this simple construction is not always enough for the legal entity. In most cases, when liability for legal entity obligations his property may be insufficient and in this case the responsibility arises. After all, as mentioned in the above paragraphs, the essence of the legal entity was that the property of founders and participants of the legal entity was allotted and that the legal entity was solely responsible for the property. Approaching from this point of view, insufficient property available to secure the legal entity's liability means that the remaining creditors' claims are not satisfied. But, in this case, various abuses and accusations would have been committed by those who had damaged the creditor's interests and had benefited from the legal entity's creation and its activities.

Therefore, the existing legislation defines the relationship and responsibility of two independent entities - the legal entity and its founder (participant) in determining the liability of legal entities, and this approach is specific to almost every legal form of legal entity.

As is well known, violations are usually committed by individuals (individuals). The violation is the sole and common basis of civil law responsibility. Violation is a mystery to the legal entity, and it is logically wrong that an organization (abstract) has committed a violation. However, in determining the civil liability of legal entities, it is necessary to take into account the fact that the offense was committed by its employees, in the course of exercising the rights and duties of the legal entity. Although legal entities are governed by the supreme body of the legal entity and its subordinate body, the responsibility lies with the legal entity and not on the individuals operating in the body of the legal entity. Civil legal liability is ensured both when a civil liability arises from contractual obligations or as a result of obligation of delists⁵¹.

Summarizing the above points, definition of liability of legal entity, in what form it is expressed in the actions causing liability, category of civil liability for guilt and the rule that guilt is a condition of civil liability, the responsibility structure for the fault of the third

⁵⁰ Syrodova O.N. Stock law of the USA and Russia (comparative analysis). - M.: 1996. - P.30 - 34.

⁵¹ Egamberdieva N.H. Bases and measures of civil-legal responsibility: Jurisprudence. PhD.... - Tashkent: 2006. - 58 p.

party and whether the other aspects and circumstances apply to liability of a legal entity understanding the essence and practical meaning of a legal entity is crucial in establishing a certain responsibility of the founder, participant, employee or manager for its civil liability. In spite of the fact that the liability of the legal entity and the attitude of the guilty person to the actions of the legal entity irrespective of their nature, the property liability arises with regard to the legal entity and in addition may be responsible for its manager, employees, founders and participants.

The same is true of the law of foreign countries. In particular, under Article 9 of the First Directive on Company Law No. 68/151 / EES adopted by the Council of the European Union on March 9, 1968, the company bears responsibility for the actions of the company's body, even if the act does not meet the company's business purpose, however, the body of the company must have acted within the limits of its statutory authority. Also, Article 9 of the Directive states that the State may establish a liability if the company can prove that its counterparty knew or should have known that the transaction was non-existent⁵².

Under the European Communities Act of 1972, England, the company's directors' agreement is considered to be within the authority of the company, and the director's authority is not limited to the company's memorandum or other internal regulations. However, this law is based on a presumption of honesty of the counterparty. The fact that a third party is aware of its charter content does not exclude this presumption⁵³.

A legal entity is only responsible for transactions made by its body or head, but also bears responsibility for the damage caused by its employee. It is well known that on behalf of the legal entity its activities are carried out by its bodies, managers and employees. As a rule, the work performed by a legal entity employee and its results create rights and obligations with regard to the legal entity. In this regard, the legal entity shall pay damages caused by its employee to third parties. The same rule may apply to a citizen who is employed by another citizen. In market relations, it is common for one citizen to use the labor of another citizen. However, the employer must compensate for the losses incurred by his employee, such as the employer, as legal entities. According to Article 989 of the Civil Code, a legal entity or a citizen shall indemnify the damage inflicted by an employee in the performance of his duties. For example, due to carelessness of the bus driver, the wall belonging to citizen A. may be damaged. In the case of a court to recover damages, the liability for damages rests with the driver rather than the driver.

It is worth noting the stages of formation of Article 48 of the Civil Code, which is known as the "liability of the legal entity" and the nature of the provisions envisaged in the current edition.

It is noteworthy that Article 48 of the Civil Code of March 1, 1997 contained only article 48. It should be noted that in the current edition, only the first three parts of the original version remain unchanged, the fourth part has been changed, and two more are added to it, and the present article is in six parts. In the first edition, this provision was amended as the fourth part of Article 48 of the Civil Code clearly established the scope of liability for bankruptcy of a legal entity and the scope of responsible persons was clearly defined. The ratio between the previous and current version of Article 48 of Part 4 of the Civil Code is clearly shown in the following table:

⁵² Official Journal of the European Communities N L 65 of 14 March 1968.

⁵³ Zaitseva V.V. Lawyer // Civil and Trade Law of capitalist states / red. E.A. Vasiliev. - p. 88 - 89.

Previous state	Current state
<p>If the bankruptcy of the legal entity is created by the founders (participants), the owner of the property of the legal entity, or other persons who have the right to issue obligatory instructions for this legal entity or have other opportunities to determine its actions, in the case, the property of the legal entity is insufficient, such persons may be subject to subsidiary liability for their obligations.</p>	<p>If the insolvency (bankruptcy) of a legal entity is due to illegal actions of a founder (participant) or a proprietor of the property of a legal entity, which has the right to issue mandatory instructions for the legal entity, in the event of insufficient property of the legal entity, such person may be subject to subsidiary liability for his obligations.</p>

In the first edition, the following persons were responsible for the insolvency (bankruptcy) of the legal entity:

- 1) founders (participants);
- 2) the owner of the property of the legal entity;
- 3) persons who have the right to issue compulsory instructions for that legal entity;
- 4) persons who have other opportunities to determine the actions of the legal entity.

Following the amendments, the scope of liability for the legal entity's insolvency (bankruptcy) is as follows:

- 1) the person as the founder (participant), who has the right to issue binding instructions to the legal entity;
- 2) the owner of the property of the legal entity

In addition, Article 48, Part 4 of the Civil Code, clarifies that the founders (participants) and the owners are not always liable for the insolvency (bankruptcy) of the legal entity, but only because of "illegal actions".

The rules included in Parts 5-6 of Article 48 of the Civil Code include only the founder (participant) or proprietor having the right to issue a statutory statute, in which case the founder or owner of the legal entity is considered to be the most important. As such a case is defined as "the failure of a legal entity to anticipate the bankruptcy of a particular act and to exercise its right to carry out such action" only in this case the insolvency (bankruptcy) of the founder (participant) and the property of the legal entity The subsidiary may be liable for.

This rule is the main criterion of liability of the founder (participant) and the owner for the insolvency of the legal person, and in all other cases excludes the responsibility of these persons. In other words, based on the current edition of Article 48 of the Civil Code, the following terms of subsidiary liability of the founder (participant) and the property owner of the property of the legal entity can be distinguished:

- 1) the right to give binding instructions;
- 2) that the statutory documents provide the right to issue mandatory instructions;
- 3) existence of a causal link between the legal entity's insolvency (bankruptcy) and illegal actions;
- 4) insufficient property of the legal entity;
- 5) knowingly foreseeing the legal entity to become insolvent (bankrupt) as a result of certain actions;
- 6) use of his right to carry out such action.

Liability of the founder (participant) and the owner of the property of the legal entity in the event of a bankruptcy (bankruptcy) may occur only in the event of accumulation of all these actions.

Indeed, the legal entity's liability means that it is liable for its obligations with all its property and compensates for any losses. In addition to the general rule set out in Article 48

of the Civil Code, the legal entity states that it has the capacity to respond to its obligations as a legal entity and maintains that its liability lies within its property. Of course, this rule is strict and not applicable to all organizational and legal forms of a legal entity.

Therefore, in parts two and six of Article 48 of the Civil Code, there are exceptions to the general rule set out in the first part of the Civil Code, which stipulate the liability of the founders and participants of the legal entity.

In particular, according to the second part of Article 48 of the Civil Code, the state-owned enterprise and the owner financed by the owner are liable for their obligations in the manner and on the terms envisaged by the fifth part of Article 72 and the third part of Article 76 of this Code.

According to Article 72, Part 5 of the Civil Code, the State bears a subsidiary responsibility for its obligations in case of insufficient property of the state-owned enterprise. According to the third part of Article 76 of the Civil Code, the institution is responsible for its obligations with its own funds. If these funds are insufficient, the owner of the relevant property shall be subsidiary liable for its obligations.

The essence of Subsidiary Liability is interpreted as an additional liability of the founder-founder for the legal entity created by him and attached to it. Such liability usually arises when the property is transferred to another legal entity on the basis of operative and economic rights, and the founder is directly involved in the activities of the legal entity that he or she creates, defines the purpose of its activities, approves its decisions and disposes of the received income.

The responsibility of the founder (participant) for actions of the legal entity is also covered by the legislation of the foreign countries. Specifically, US law provides that directors, not the corporation, are responsible for the directors' behavior. Specifically, pursuant to § 8.31 of the US Model Law on Business Corporations, a director may also be liable for the responsibilities of a corporation if the director's actions are not "honest". Therefore, the structure does not have complete independence of the legal entity as a business entity and a participant in civil turnover, and the owner of the property is always a subsidiary liability for its obligations.

The existence of an element of unlawful conduct in American corporate law is traditionally associated with the failure of the director to fulfill his responsibilities. In this case, the general duties of the director are duty of care and duty of loyalty.

This position of *duty of care*⁵⁴ implies that the director is honest with his responsibilities; *duty of loyalty* required in certain situations. The act wisely for the benefit of the corporation⁵⁵. However, the Delaware State Corporate Law ("DGCL") allows corporations to include in the certificate of registration a "justified comment" that limits or eliminates the director's personal responsibility for non-compliance. This, in turn, does not exclude the directors' need to express the necessary oversight, but prohibits them from being personally liable for material damage⁵⁶.

In analyzing the German corporate governance model, M. Vahidov states that the directors are responsible for the following: directors who violate the legitimate interests of the company are responsible for: - non-compliance with the law or contractual obligations to the company; committing deliberate or careless acts; when these actions harm the company⁵⁷.

⁵⁴ Tanimov O.V. Legal entity - classic ideas in law // Legal world. 2013. - No. 5. - P. 45–47.

⁵⁵ Robert W. Hamilton. The Law of Corporations. – St. Paul: West group, 2000. – P. 467.

⁵⁶ The material of the enterprise is the USA. - URL: <https://vk.com/doc> (request date: 14.04.2014)

⁵⁷ Vohidov MM The legal analysis of the German model of corporate governance // Development and actual problems of civil law: Proceedings of the international scientific-practical conference. - Tashkent: TSIL, 2005. - 482 p.

In highlighting the essence of the joint stock company as a corporate entity, S.Gulyamov states that the liability of the shareholders is limited, which means that the shareholders are liable for the obligations of the JSC only within their share and that the JSC is not liable for the obligations of the shareholders. The joint-stock company states that it is fundamentally different from a company in which its participants have additional property liability when there is no legal entity⁵⁸.

Continuing this view, the joint-stock company is not liable for its obligations, but it is provided by applicable law that the liability of the participant can be directly caused by the bankruptcy of the JSC. In particular, Article 81 of the Law on Joint Stock Companies and Shareholders' Rights states that the bankruptcy of the company is caused by the illegal actions of a person acting as a shareholder with the right to issue mandatory orders to the company. In the event of insufficient ownership, the shareholder may be subject to subsidiary liability for the company's obligations. A shareholder shall have the right to issue binding orders only in cases provided by the charter of the company.

Bankruptcy of the company shall be considered as a result of actions of the shareholder, if the joint stock company having the right to issue obligatory instructions to the company, before knowingly bankruptcy as a result of certain actions, uses this right for such actions.

2. CONCLUSION

On the basis of civil-legal analysis of the theoretical issues legal entity, were made, the following conclusions, judgments and conclusions:

1. It is desirable approaching to understanding the legal entity based on modern market laws from today's point of view. Since the main purpose of a legal entity in market relations is to carry out a specific activity on the basis of separate property, its essence also comes from this purpose and it must also be interpreted in this context. In our view, the analysis of the legal entity as a distinct legal construct⁵⁹ in this regard can yield the expected result. Of course, this approach seems to contradict the interpretation of a legal entity's substrate in terms of subjectivity or expression of will, but by its practical nature it seems to be closer to the modern reality.

2. legal construction is the participation of legal entities in legal relations, based on certain laws and regulations, which define a specific "scheme" of the determination, movement and consequence of their rights and obligations, and resemble a flexible and flexible "template", a device that produces a specific "rigidity", on this basis legal relations, legal categories, legal institutions are represented and the legislation is systematized according to the specific legal contract. For example, contracts in the Civil Code are based on "transfer of property", "execution of works", "services" and other such legal contractions. The function and purpose of legal constructions are to represent the basic elements of existing legal reality: subjects, objects of legal relations, rights and obligations, application and interpretation of schemes, directions and models of action and "drawing", "direction", "model" is a product of the legal thinking of experts.

3. Many of the theories of the past (the nineteenth century) concerning the understanding of legal entities should not be a matter of correctness or completeness, but it would be desirable to formulate a theory of "legal entity construction" based on modernity. Because, in the modern system of economic relations, the legal entity is a structure for the achievement of economic and social goals, and the "organization" is directly based on human activity and

⁵⁸ Gulyamov S.S. Legal Problems of Corporate Governance: Theory and Practice. Second Edition. - T.: TSIL. 2017. – P.77-78.

⁵⁹ Legal construction is one of the elements of legal technique, the location of the legal material describing the internal unity of the rights, obligations and forms of responsibility of the persons concerned.

administrative procedures, the question is not of what structure and essence of a legal entity, but on what criteria a legal entity is formed and how it is organized and operated, and on which legal structure and scheme it is based, it is important to improve the consistency and improvement of legal mechanisms for legal entities, as well as businesses.

4. In our opinion, the separation of property, in its importance, is the main idea of the contract of the legal entity, which is based on the existence and necessity of the legal entity. As individuals have a desire to do business or to maintain their existing legal status, a separate property structure is required to do so. It is not appropriate to speak about the existence and legal personality of a legal entity without special property.

5. In our opinion, it is inexcusable to include the "right of operative and economic management" in the current legislation as the basis of a separate property of a legal entity. In addition, the use of the expression "in its property, business or operational management" in the definition of legal entity (Article 39) of the Civil Code does not meet the conditions of market relations. In almost all CIS countries, where the right of operative management and economic management applies, the definition of a legal entity is merely "possession of particular property". Including, part 1 of Article 48 of the Civil Code of the Russian Federation, part 1 of Article 43 of the Civil Code of Azerbaijan, part 1 of Article 48 of the GK of Turkmenistan, part 1 of Article 80 of the Civil Code of Ukraine states that possession of property is they do not include such terms as "own property, business or operational management". Therefore, from the first part of Article 39 of the Civil Code it is necessary to exclude the phrase "in its property, business or operational management".

6. In our opinion, an independent property liability of a legal entity means that it is liable for its obligations with its own property. In this case, the legal entity is liable for its obligations with all its property. The excess of the amount of the debt over the property of the legal entity may create the liability of the founders in cases provided by the legislation. Therefore, it should not be understood that "independent property liability" of a legal entity is purely personal. In this case the category of "separate property" is the main one, and it would be more appropriate to call this mark of the legal entity "liable to separate property". Because the term "independent" in "independent property responsibility" does not, in fact, imply liability for the legal entity. In any case, the liability of the legal entity is based on the direct influence and decision of its founder and participants. Therefore, from a legal point of view, the phrase "independent property responsibility" is incorrect.

7. Name of a legal entity as its designation can be considered as a function of:

1) The name of a legal entity serves to distinguish it from other subjects of civil law. Consequently, a civil-law participant should participate in this relationship first and foremost in its own name, thus distinguishing it from other entities.

2) The name of the legal entity helps to understand the legal form and main directions of its activities. Therefore, its registration is done under the same name and is reflected in its constituent documents.

3) The name of the legal entity is the main element indicating that he is the owner of the personal non-property rights. It is known that after the registration of a legal entity, it is the owner of not only proprietary but personal non-property rights and the main object of his personal non-property right is his name. In other words, a legal entity has the right to demand the protection of its name and to demand any remedies for it.

4) At the same time, the name of a commercial legal entity can be not only an object of personal non-property rights, but also an object of proprietary rights and can be transferred for use to other persons. At the same time, when the enterprise is sold as an object, the name of the company is also transferred to the buyer.

5) In the name of a legal entity, the organization carries out all its activities, maintains its documentation, makes transactions, has rights and obligations.

8. Based on the above analysis, the following definition of legal entity can be proposed: a legal entity, established in the manner and in accordance with the procedure established by the legislation, acquiring and exercising civil rights on its own behalf on the basis of separate property in its property, undertaking and enforcing them, can sue and be sued in court.