

Секция «Юриспруденция»

The amendments of the legal entities registration law

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In 2012 the draft of the Federal Law № 47538-6 “Amendments to the first, second, third and fourth parts of the Civil Code of the Russian Federation and other Legislative Acts of the Russian Federation” was brought in for consideration of the State Duma of the Russian Federation.

The actual need for the generation of this draft is best indicated by “The Concept of the development of Civil Legislation of the Russian Federation” [1]. The drafting of the act aims at the improvement of the existing Civil Code according to the changes of the economic and social situation in the country. Here is the explanation of this reform given by minister of Justice Alexander Kononov: “The innovations of the Civil Code are associated with an idea to make it better rather than with the failure of an existing act. They should reflect the spirit of the times, the changes of the economy, the process of country’s integration into the international community.” [2]

It should also be noted that the draft of the Civil Code amendments № 47538-6 hasn’t been approved as a whole by the State Duma of the Russian Federation. Some of its parts were introduced by the variety of other Federal Laws. Such selectivity in the launching of the draft might be attributed to the large volume and complexity of the proposed amendments [3]. Simultaneous reform of the Civil Code may require extensive changes of existing civil-law relations and consequently will lead to the commotion.

An example of such a partial introduction of the draft is the amendment of the fourth chapter of the Civil Code. The chapter about the legal entities has a direct impact on business development, and consequently on the economy of the country.

One of the major issues arises from the change of the 51st article of the Civil Code of the Russian Federation. The process of state registration of the legal entities is directly connected with the doctrine of their civil capacity and limits of state intervention in their creation and activity.

The amendment of the 51st article introduces the duty of the authorized registration authority to verify the accuracy of data entered in the Unified State Register of Legal Entities (USRLE). The mandatory verification of all the data can have both positive and negative feedbacks. Of course the registration process may become longer and more complicated. The refusal of entrepreneurs to register business in a form of legal entities may follow. However the USRLE will become a more reliable source of information about legal entities for the partners, creditors and third parties.

It is also very important that the legislator considered it necessary to introduce the check of the reliability of the data only, but not of its legitimacy.

There is also a possibility that the changes of the Civil Code introduced by the Federal Law № 134 - FZ "Amendments to the Certain Legislative Acts of the Russian Federation with regard to combating illegal financial transactions" 28.06.2013, weren't the result of the

realization of the Civil Code Amendments draft. This point of view comes out of the title of this law. Furthermore "The Concept of the development of the civil legislation of the Russian Federation," clearly says that the 51st Civil Code article amendments are capable of antagonizing violations and abuses in the economy [4].

For example the 4th part of the 51st article of the Civil Code of the Russian Federation is designed to protect bona fide businessmen from raider seizure [5]. Now the registration authority has to notify all the engaged parties about the changes of the legal entity's statute and addition of such information in the USRLE beforehand. However there arises a question. What are the criteria of interest to be applied by the registration authorities in the process of third parties notification?

Besides the fact that the 4th part of the 51st article is able to protect the rights of the founders of the legal entities, it is also able to protect the rights of third parties to the trade name, which has got almost no protection in the current Civil Code [6].

Considering the issue of the legal entities registration it is still very important to mention if there is an actual necessity for such a procedure in the Civil law. There is no need for the legal entities founders to register it [7]. However according to prof. I.A. Pokrovskiy the legal entity starts to exist only since the moment it is accepted in the society. This means that only the third parties actually want the existence of the mandatory legal entities registration. For today the introduction of the state authority's duty to verify the reliability of the data entered into USRLE made their registration process closer to its concessional type. However the absence of the legitimacy check makes it possible to be still attributed to the reporting type [8].

It is also important to mention that the Federal Law № 129 - FZ "The state registration of legal entities and individual entrepreneurs" 8.8.2001 was not subjected to any changes in accordance with the amendments of the Civil Code [9]. This is not entirely clear, since at the moment there is some gap between the provisions of the Civil Code and this Act.

Today we can see the process of the Civil Law reformation in the motion. However the reforms of the civil relations in the country are raising the new issues and are still far away from completion.

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