

CIVIL LIABILITY OF LEGAL ENTITIES

Key words: civil liability, legal entities, fiduciary obligations of company executives

Açar sözlər: mülki məsuliyyəti, hüquqi şəxslər, şirkət rəhbərlərinin fidusiar öhdəlikləri

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Introduction

Due to the complexity of corporate legal relations, there is a need to regulate the activities of participants in various areas of law. The responsibility of the participants of corporate relations also cannot be determined only by the norms of a certain field of law. The liability of the participants of corporate legal relations is regulated by the norms of criminal, civil, administrative and disciplinary (labor) legislation.

The vast majority of the regulation of liability arising from the activities of legal entities covers the norms of civil liability.

The Civil Code of the Republic of Azerbaijan establishes the principle that a legal entity shall be liable for its obligations with all its property [1]. At the same time, the legislation stipulates that economic entities are not responsible for the debts of their participants. There are exceptions in economic partnerships among legal entities.

With the exception of the above, this approach follows from the general principles of civil liability. Each subject of civil law relations is independently responsible for its obligations.

However, there is an exception to the general principle that legal entities are independent of the obligations of its participants. This exception is related to the founding period, which is a special period of the legal entity's activity.

According to article 46 of the Civil Code of the Republic of Azerbaijan, the founders of a legal entity are jointly and severally liable for the obligations related to the establishment of the legal entity, which arose prior to the state registration of the legal entity [1].

Relevant information on the legal entity shall be deemed created after its inclusion in the state register of legal entities. However, before its creation, the company's founders may take certain actions in connection with this process. For example, the provision of certain services by the company to be established, the performance of work, etc. In this regard, the legislation defines the responsibility of the founders for the obligations arising before the state registration of the company [6, p. 146].

However, at the same time, it is possible to place the responsibility for the obligations of the founders in connection with the establishment of a legal entity on that company. Transfer of responsibility to the company is possible by the decision of the general meeting of participants and with the consent of the creditor.

The responsibility defined in accordance with Article 46 of the Civil Code of the Republic of Azerbaijan is primarily related to the establishment of a legal entity. Later, these obligations arose before the state registration of the company, ie before the company received the status of a legal entity. However, it can be concluded that our legislation considers the responsibility of the founders from the moment of concluding the memorandum of association to the moment of state registration of the company as joint responsibility.

Legitimacy arises when a joint liability is defined by a contract or law that provides for a joint obligation or claim. Pursuant to Article 501 of the Civil Code, the creditor may, at its discretion, demand from any debtor both full and partial execution. The obligations of the remaining debtors remain in force until the obligation is fully fulfilled.

The full payment of a joint obligation by one debtor shall relieve the other debtors of the obligation. In this case, unless otherwise provided by the nature of the relationship between the joint debtors or the contract, the debtor who has performed the joint obligation shall have the right of claim in respect of the remaining debtors in proportion to their shares, but less their share.

Civil liability manifests itself in a special form in the relationship between the parent company and subsidiary company, provided for in the Civil Code. Thus, the parent company, which has the right to issue binding instructions to the subsidiary, is jointly and severally liable for the execution of those transactions with its subsidiary. Although this principle of subordination seems logical, the law stipulates that the parent

company has the right to issue binding instructions to the subsidiary only if it is not provided for in the contract or charter [9, p. 60].

The term fiduciary obligations should be used when referring to the liabilities of companies that are major participants in corporate law relationships. Fiduciary obligations are considered to be formed between trustees and trustees. This approach is specific to the countries of the Romano-Germanic legal system. In the Anglo-American legal system, fiduciary obligations and relations include not only relations of representation (credibility), but also relations of authority over one another. [8, p. 838]

The fiduciary obligation of the person managing the legal entity is specified in Article 49.3 of the Civil Code. A person acting on behalf of a legal entity, including any person represented in the governing bodies of the legal entity (supervisory board (board of directors, executive body), must act honestly, professionally and logically in the interests of the legal entity he represents. to be loyal to the interests of all participants and to put the interests of the legal entity above its own interests, to be careful, as well as to be fair and impartial in making decisions. That person is responsible for the performance of these duties in accordance with the interests of the legal entity. At the request of a participant (participants) who has at least 5 percent share (share) in the authorized capital of a legal entity, he / she must compensate the damage caused to the legal entity as a result of the violation in case of violation of his / her obligations.

Fiduciary legal relations cover a wide range of relations and apply specifically to relations in which one person has the ability to control another person or dispose of another person's property [3, p. 217].

The current legislation of Azerbaijan defines some obligations that are considered fiduciary obligations to the company's management. These include general management and control over the company, current management of the company's activities, as well as acting honestly and professionally.

They must be loyal to the interests of the legal entity and all its participants, and must be careful to put the interests of the company above their own. As the executive body is also an employee of the company and its governing body, the liability for damage caused to the company by it is regulated by civil, corporate and labor legislation [9, p. 110].

Although the Labor Code calls the head of the company (executive body) an "employer", he is ultimately an employee. The company becomes the employer of the executive bodies through the general meeting and the board of directors. An employer acting on the basis of an employment contract with an owner shall be fully liable for damage caused to the owner as a result of his illegal actions in accordance with the procedure and in the cases established by the Labor Code and other normative legal acts [2].

As can be seen, the norms of material liability of labor legislation are applied to the executive body of the company. However, these norms do not apply to members of the board of directors.

There must be conditions that form the basis of civil liability for the application of civil liability. These conditions are the causal link between the wrongdoing, the harm, the guilt, and the outcome of the wrongdoing. Some literature mentions these terms as part of civil liability [3, p. 670].

An illegal act is an act that violates the imperative norms of law or the legal provisions of the contract, as well as the terms that are not directly provided by law, but do not contradict the general principles and meaning of civil law.

The illegal behavior of a leader can be expressed in the form of action and inaction. However, it should be borne in mind that inaction is considered illegal when the person is obliged to act.

Damage means the expenses incurred or to be incurred by the infringer to restore the infringed right, the actual loss in the form of loss or damage to his property, as well as the loss of income that the person may receive [3, p. 675].

The causal link between illegal action and harm is a type of interrelationship between the events that occur in the object.

When examining the nature of the guilt of leaders, it should be borne in mind that guilt can occur not only in the form of intent, but also in the form of negligence [4, p. 221].

Conclusion

Legal entities that are the main participants in corporate legal relations are determined to be liable for their obligations with all their property. Participants of a legal entity are not responsible for the obligations of the legal entity. Participants are only at risk in the value of their share. The only exception is the special period - the founding period. However, it should be noted that the status of a legal entity is obtained after state registration in accordance with the law. In the legal regulation of the liability of a legal entity, the fiduciary obligations of executives are defined. Managers must act honestly, professionally and logically when taking steps in the best interests of the company. They must be loyal to the interests of the legal entity and all its

participants, and must put the interests of the company above their own interests and be careful. In order to bring a legal entity to civil liability, there must be elements of the composition of civil liability (illegal act, damage, guilt, causal link between the illegal act and the result of this act).

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Hüquqi şəxslərin mülki məsuliyyəti

Xülasə

Korporativ hüquq münasibətlərinin əsas iştirakçısı olan hüquqi şəxslərin ona məxsus olan bütün əmlakı ilə öz öhdəlikləri üçün məsuliyyət daşımıASI müəyyən edilmişdir. Hüquqi şəxsin iştirakçıları hüquqi şəxsin öhdəliklərinə görə məsuliyyət daşımırlar. İştirakçılar yalnız onlara məxsus olan pay (səhm) dəyərində risklər. Burada istisna qisminə yalnız xüsusi dövr - təsis dövrü istisna edilir. Lakin, qeyd etmək lazımdır ki, qanunvericiliklə nəzərdə tutulmuş qaydada dövlət qeydiyyatından keçidkən sonra hüquqi şəxs statusu əldə edilir. Hüquqi şəxsin məsuliyyətinin hüquqi tənzimlənməsində rəhbər işçilərin fidusiar öhdəlikləri yənmişdir. Rəhbər şəxslər şirkətin mənafeyi üçün addımlar atarkən vicdanla, peşəkar qaydada və məntiqlə hərəkət etməlidirlər. Hüquqi şəxsin və onun bütün iştirakçılarının maraqlarına sadiq olmalıdırlar və şirkətin maraqlarını öz maraqlarından üstün tutmalıdırlar və ehtiyatlı olmağa borcludurlar. Hüquqi şəxsin mülki hüquqi məsuliyyətə cəlb edilməsi üçün mülki hüquqi məsuliyyət tərkibinin elementləri (qanunazidd əməl, zərər, təqsir, qanunazidd əməllə bu əməlin nəticəsi arasında səbəbli əlaqə) mövcud olmalıdır.

Гражданская ответственность юридических лиц

Резюме

Юридические лица, являющиеся основными участниками корпоративных правовых отношений, несут ответственность по своим обязательствам всем своим имуществом. Участники юридического лица не несут ответственности по обязательствам юридического лица. Участники подвергаются риску только по стоимости своей доли. Единственным исключением является особый период – период основания. Однако следует отметить, что статус юридического лица получается после государственной регистрации в соответствии с законодательством. В правовом регулировании ответственности юридического лица определены фидуциарные обязательства руководителей. Менеджеры должны действовать честно, профессионально и логически, принимая меры в интересах компании. Они должны быть верны интересам юридического лица и всех его участников, и должны ставить интересы компании выше собственных интересов и быть осторожными. Чтобы привлечь юридическое лицо к гражданской ответственности, должны существовать элементы состава гражданской ответственности (противоправное деяние, ущерб, вина, причинно-следственная связь между противоправным деянием и результатом этого деяния).

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