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The main topics of the common part of Economic Law are presented. The theoretical material is supported by the description of practical application of economic legislation to help students prepare for practical classes, exams, systematize and specify knowledge acquired in the process of studying the academic discipline, focus on basic concepts, their features and characteristics.
For full-time Bachelor's (first) degree students of all specialities.

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Introduction

A fundamental change in economic relations in Ukraine has made necessary the revision of the current legislative framework, its renovation and adaptation to new economic conditions. Economic laws governing the production, trading activity of subjects of economic activity, i. e., economic relations, undergo the greatest changes. In this regard, the requirements to future professional economists are high concerning the knowledge of the fundamentals of economic law and the skills in applying the rules of economic legislation to the economic daily practice.

The goal of the academic discipline is the consistent formation of students' knowledge of the main issues of the theory and practice of application of norms of economic law in the course of economic activity. The *goal* and *objectives* of the academic discipline are:

to give students theoretical knowledge about the basic concepts and institutions of Economic Law, economic activity, economic relations, economic obligations, economic contracts, economic and legal liability, antitrust-competitive regulation, legal management regimes in selected areas;

to form students' practical skills in: self-study and the use of acts of economic legislation and literature on economic law; independent solving of problems which arise in the application of economic laws; the development of legal instruments used in practical legal activities (constituent and internal documents of the subject of economic activity, contracts, claims, etc.).

The *subject* of the academic discipline is social relations in the field of economic activity.

Students begin studying this academic discipline after mastering most academic disciplines of the humanities and professional cycles. The theoretical and methodological bases of studying this discipline are such subjects as: "Law", "Economy of Enterprises".

As a result of studying the academic discipline the student should *know:*

the subject, methods, objectives of economic law; the scope of economic legislation;

the order and essence of legalization of the subject of economic activity; the current organizational and legal form of economic activity; stock exchange, bank and foreign economic activity; remedies for unfair competition;

the procedure, forms and consequences of control of economic activities;

the grounds and procedure for bringing businesses to responsibility for violation of economic law;

be able:

to competently use theoretical knowledge of economic law to solve specific business problems of the economic and legal practice: carry out problem tasks, prepare necessary documents and perform other work related to the legal aspects of subject of economic activity.

A set of competences that students must have after studying the academic discipline, includes the following abilities:

to analyze the concept, system, and method and the subject of legal regulation of economic law, choose the source of legal regulation of a certain economic relationship;

to form the ability to optimally choose the organizational and legal form of the economic entity in case it is created;

to describe the procedure of creation and state registration of economic entities and peculiarities of licensing their activity;

to determine the forms and procedure of termination of a subject of economic activity, as well as the features, grounds, order and procedure for termination of an entity in case of recognition of its bankruptcy;

to analyze the peculiarities of the legal regime of property of economic entities, to choose its type when creating a specific entity;

to determine the content and types of economic obligations and economic contracts, the procedure for conclusion of contracts, modification, termination and application of them to practice;

to identify entities in the field of economic activity, choose the type of economic and legal responsibility and the relevant economic legal sanctions for a specific economic offense;

to understand the principles, the procedure for protecting the rights of economic entities, and make procedural documents to ensure the effectiveness of such protection.

The material of the summary of lectures is placed taking into account the current economic legislation of Ukraine and other regulations so that students can freely navigate in the system of both economic and other areas of legislation of Ukraine.

Section 1. General provisions, subjects of economic activity

1. Economic law and economic legislation

1.1. The concept of economic law as a branch of law.
1.2. Economic relations and their classification.
1.3. Principles of legal regulation of economic relations.
1.4. The system of economic law.
1.5. Sources of economic law. Economic legislation and its characteristics.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the place of economic law in the legal system of Ukraine, the use of sources of economic law.

Professional competences:

the ability to analyze the concept, system, subject and methods of economic law;

formation of skills in collecting and analyzing information from sources of economic law.

Key words: economic law, subject and method of legal regulation of economic relations, system of economic law, sources of economic law, economic legislation, customs.

1.1. The concept of economic law as a branch of law

The definition of economic law as a branch of law takes place on the basis of the specifics of economic legal relations, which form the subject of legal regulation, and methods of legal regulation. Therefore, the focus of economic law is, first of all, on the subject matter, that is, on the set of social relations governed by its norms.

Among scientists there is no single point of view on the place of economic law in the system of law.

Thus, in the opinion of the first group of scientists, economic law is not an independent branch (S. M. Bratus, R. O. Khalfina, G. K. Matvieiev, Ya. M. Shevchenko, A. S. Dovgert, etc.), but integrated law – a combination of civil and administrative existing rules in the economy (but, for example, the institute of bankruptcy, antimonopoly regulation of economic activity, public

procurement, corporate relations, etc. exist in economic law). The second point of view is related to the characteristic of economic law as an independent branch, which has no common features with other branches (V. V. Laptev, V. K. Mamutov, I. G. Pobirchenko, etc.). In fact, we observe the relationship of economic law with civil law (in particular, subordination to the general principles of binding law), administrative law (with the use of methods of power regulations, legal forms of economic management and control over the implementation of economic activities). Most convincing is the position of the third group of scientists (S. S. Alekseev, Yu. K. Tolstoy, O. A. Pushkin), who consider economic law as a complex branch of law with its subject being the rules that regulate economic activity.

According to V. Milash [13, p. 8], the transition to a market economy and, accordingly, the expansion of the private sector, rapid development of economic activity, the emergence of new forms of management, the entry of domestic subject of economic activities into the external market and many other factors have led to the need for regulation of relations concerning organization and implementation of economic activity in the direction of specialization.

Thus, *economic law as a complex independent branch of law* is the totality (system) of norms governing economic relations, that is, relations arising in the process of organization and implementation of economic activity between subjects of economic activities, as well as between these entities and other participants' relations in the field of management. Consequently, it is the economic relations in the field of Ukrainian economy that constitute the subject of economic law.

In the Economic Code economic activity refers to the activity of subjects of economic activities in the field of social production aimed at manufacturing and sale of goods, works or services of value character that have price certainty (Part 1 Art. 3 of the Economic Code) [3; 70].

The matter of the definition makes it possible to distinguish the following signs of economic activity: a special subject structure (it is carried out by the subject of economic activity); a special field of economic activity – the field of social production; the value of the results of those activities that have price certainty.

Consequently, *economic activity* is considered as a socially useful activity of society members, their unions (associations) for the production of goods, the execution of works and the provision of services.

The list of general principles of economic activity (management) is set in Art. 6 of the Economic Code (hereinafter – EC) [3; 70]. They include:

- ensuring economic diversity and equal protection of the state by all subjects of economic activity;
- freedom of entrepreneurship within the limits defined by law;
- free movement of capital, goods and services in the territory of Ukraine;
- restriction of state regulation of economic processes in connection with the need to ensure the social orientation of the economy, fair competition in entrepreneurship, environmental protection of the population, consumer protection and the safety of society and the state;
- protection of the national commodity producer;
- prohibition of illegal (unlawful) interference of state authorities and local self-government bodies, their officials in economic relations.

Methods of economic law are a combination of ways used for regulation of the impact of the rules of economic law on the behavior of subjects of economic activity.

Economic relations are complex relations, which combine organizational and property (value) elements. Therefore, most scientists point out that in economic law as a complex branch of law in general, there are three basic methods of legal regulation. In this case, only one of these methods can act in relation to certain concrete relations. Others retreat to the "second plan" and apply when they are explicitly foreseen (not prohibited) by law if they are needed.

In the conditions of the formation of a market economy, the method of autonomous decisions of subjects of economic relations is predominantly used. It is based on the fact that a subject of economic activity has the right, on their own initiative, to make any decisions that do not contradict the legislation of Ukraine. This means that the subjects of economic relations independently: a) plan their economic activity; b) within the limits of the legislation freely choose subjects of economic contracts and determine the obligations in them, other conditions of economic relations.

There is still a method of power regulations (requirements of laws and instructions of the competent authorities, obligatory for subjects of economic activity). According to it, the activities (behavior) of subjects of economic activity are subject to compulsory models of legal relationships, defined by law. This, in particular, is obligatory observance of the prohibition of the law

on the implementation of economic activities (licenses, quotas, special regimes, etc.), the obligation of subjects of economic activity specified in the legislation to conclude state contracts with the state, etc.

The economic law also applies the method of recommendations. The state regulates the behavior of subjects of economic relations through the recommended models of relevant legal relationships. For example, exemplary forms of contracts for certain types of relations, methodological recommendations for certain types of activities in the field of management – these are examples of the state's use of this method.

Another option of the method of economic law is proposed by V. Milash, who indicates that for the coordination of the whole complex of interests arising in the field of economic activity and ensuring their harmonious implementation in the economic law, the method of equal subordination of economic law to the social economic order, which requires all subjects of economic law close interaction and mutual responsibility, is used. The mentioned economic and legal method consists of a set of methods and measures of influence of the norms of economic law on economic relations for optimization of their ordering, among which one should distinguish: ensuring the freedom to make autonomous decisions by subjects of economic relations within the limits permitted by law (determining the limits of autonomy of the will of the participants in economic legal relationships); establishment of positive obligations regarding obligatory legalization of economic activity (state registration, licensing, patenting); formation of legal regimes of economic activity; establishment of positive obligations (organizational and economic, social and communal obligations and public obligations, etc.); providing positive recommendations (with the help of dispositive norms); the imposition of prohibitions (regarding the implementation of certain types of economic activities to subjects of economic activity belonging to the private sector of the economy; the unlawful interference of state authorities and local self-government in the economic activity of subjects of economic activity, etc.), and others [13, p. 8–10].

Economic law is based on the combination and harmonization of private law and public law regulation, respectively, one part of its rules belongs to the field of private law (which is based on private interests), the other lies in the field of public law (which is based on public interests).

1.2. Economic relations and their classification

The subject of economic law as an independent branch is *economic relations* that arise in the process of organization and implementation of economic activity between subjects of economic activity, as well as between these entities and other participants in relations in the field of economic activity (Art. 3 of the Economic Code [3; 70]).

Economic relations as a subject of regulation consist only of two elements – the organizational one (organization of production, circulation) and property. The set of economic relations in such a narrow sense is the subject of economic law. By subject in this sense, economic law is distinguished from other branches of law, the rules of which operate in the field of management.

The division of relations in the field of management with other types of relations is established in Art. 4 of EC, in Part 1 of which it is stated that the following is not subject to the regulation of the Economic Code [3; 70]:

a) property and personal non-property relations regulated by the Civil Code of Ukraine [59; 89];

b) land, mining, forest and water relations, relations regarding the use and protection of flora and fauna, territories and objects of the nature reserve fund, atmospheric air;

c) labor relations;

d) financial relations with participation of subjects of economic activity that arise in the process of formation and control of the execution of budgets of all levels;

e) administrative and other relations of management with the participation of the subject of economic activity in which the state authority or local government is not an entity having economic competence and it does not directly exercise organizational and economic authority over the subject of economic activity [3; 70].

Among the *signs of economic relations* the following can be distinguished: 1) a limited, in comparison with civil law, circle of subjects; 2) the existence of organizational and economic obligations as a separate type of economic obligations, as well as a combination of economic relations of organizational and property elements; 3) the material content of economic relations, that is, social production and sales (output) by the subjects of production management (performance of works, provision of services).

The structure of legal relations includes the following elements: the object, the subject and the content.

An object is something about which relations will arise (material and immaterial goods).

A subject is a participant in relations, endowed with legal personality, who can acquire rights and obligations.

The content consists of subjective rights and legal obligations.

The basis for the emergence, content or termination of legal relationships are *legal facts*, that is, specific life circumstances, with which the law links the emergence, content or termination of legal relationships.

On a voluntary basis, legal facts are divided into *action* and *events*. *Actions* depend on human consciousness and will, while *events* do not. Actions are divided into *lawful* (observance of the law) and *unlawful* (violation of the law). Lawful actions, in turn, are divided into *legal acts* and *legal behaviors*. Unlawful actions are *offenses*.

Depending on the purpose and the way of organization and implementation of economic activity, Part 2 of Art. 3 of the EC [3; 70] identifies two of its types – *commercial economic activity* and *non-commercial economic activity*.

Economic activity, which is carried out for the achievement of economic and social results and for the purpose of profit, is an *entrepreneurial activity*, and the subjects of such activity (entrepreneurship) are entrepreneurs.

Economic activity can be carried out without the purpose of receiving profit (*non-commercial economic activity*).

According to Part 1 of Art. 43 of the EC "Freedom of Entrepreneurship", entrepreneurs have the right to independently carry out (without any restrictions) any business activity that is not prohibited by law [3; 70].

However, Part 3 of Art. 43 of the Economic Code [3; 70] sets restrictions on the conduct of entrepreneurial activity, which are:

a) the prohibition to carry out certain activities, the list of which is established by the Law of Ukraine "On Licensing of Types of Economic Activities" [37; 81] without a special permit (license);

b) the establishment of the list of types of activities in which entrepreneurship is prohibited.

Part 4 of Art. 43 of the Economic Code [3; 70] establishes the general rule that the conduct of entrepreneurial activities is prohibited for state authorities and local self-government bodies.

The law restricts the entrepreneurial activity of officials of state authorities and officials of local self-government bodies.

Non-commercial economic activities are carried out in order to meet certain social needs, regardless of the profitability of such activities: the profit from such activities plays a minor role (such is the activity of the part of state-owned, experimental and other planned and loss-making enterprises, which are financed by the state).

In accordance with Part 4 of Art. 3 of the EC *fields of economic relations* are economic and industrial (production), organizational and economic and internal economic relations [3; 70].

Economic and industrial (production) relations are property and other relations that arise between subject of economic activity in the direct realization of economic activity (Part 5 of Art. 3 of the Economic Code) [3; 70].

Organizational and economic relations are the relations between subjects of economic activity and subjects of organizational economic powers in the process of management of economic activities (Part 6 of Art. 3 of the Economic Code) [3; 70].

Internal economic relations are relations between the structural sub-divisions of the entity and the relationship of the entity with its structural units (Part 7 of Art. 3 of the Economic Code) [3; 70]. It should be pointed that the regulation of these relations due to their special nature are carried out not by the norms of the Economic Code, but by the provisions of local legal acts, adopted by the economic organizations themselves in relation to their structural units.

Economic relations can be classified on various grounds.

Thus, according to the *nature of the legal relationship* they distinguish:

- relations with direct implementation of economic activities (production and sales of products, works, services);
- relations with the organization of economic activity (state registration, licensing, patenting, quotas and other forms of state regulation of economic activity).

On the *mutual position of the parties,* legal relationships are divided into:

- horizontal, where participants are equal;
- vertical, where one of the participants is the management body, including the proprietor of the property or an authorized body.

Depending on *the branches of management and areas of management* in which they arise and operate, they distinguish the following relationships:

- in the industry;
- in the field of agriculture;

- in the field of transport;
- in the field of capital construction;
- in the field of privatization;
- in the field of antitrust (competition) regulation;
- in the field of foreign economic activity, etc.

1.3. Principles of legal regulation of economic relations

Domestic legal science, under the *principles of law* traditionally understands the fundamental ideas defined in the law or arising from it, in accordance with how they are regulated by social relations.

At the doctrinal level, all legal principles are divided into three groups: general law (so-called general principles of law), inter-branch and branch principles. *General legal principles* are the original provisions of law of supranational nature; on them, regulation as such is based. *Branch principles* cover only one branch of law. They also include the principles of legal institutions of a particular field of law. *Inter-branch principles* include the principles inherent in several branches of law, while the general legal principles fix the initial principles of law as such (their grounds are general social laws that have gained legal recognition – justice, fairness, equality of subjects before the law, humanism, unity of rights and duties, etc.), inter-branch and branch principles reflect the dynamics of the development of certain fields of society for a certain period of time.

General principles of management (principles of legal regulation of economic activity) according to Art. 6 of the Economic Code of Ukraine [3; 70] recognize:

1) ensuring economic diversity and equal protection of the state of all subjects of economic activity;

2) freedom of entrepreneurship within the limits specified by law;

3) free movement of capital, goods and services in the territory of Ukraine;

4) restriction of state regulation of economic processes in connection with the need to ensure social orientation of the economy, fair competition in entrepreneurship, environmental protection of the population, protection of consumer rights and the security of society and the state (however, social orientation of the economy can be achieved only by optimization of state regulation rather than its limitation);

5) protection of the national commodity producer;

6) prohibition of unlawful interference of state authorities and local self-government bodies, their officials in economic relations.

As pointed out by V. Milash, analysis of the current economic legislation gives grounds to assert that the *basic principles of legal regulation of economic activity are:* freedom of economic activity within the limits defined by law; freedom of contract within the limits specified by law; balancing private and public interests in the field of economy (the principle of proportionality); state regulation of economic activity; preventing the abuse of a monopoly position on the market; protection of economic competition, ensuring the rational use of natural resources in the field of management; the priority of preserving human health and protection of the fauna, the environment regarding the economic effect, protection of the national commodity producer, protection of the weakness of the contract; the principle of responsibility of subjects of economic activity, etc. [13, p. 8–12].

1.4. The system of economic law

The system of economic law includes appropriate logically constructed and interconnected norms and institutions that regulate economic activity.

According to this, the *Common Part* of economic law includes norms and institutions that extend to the activities of any entities. Thus, the Common part should include: the concept, characteristics, types and principles of economic activity; the concept and signs of entrepreneurship; the concept of economic law, its subject, methods and principles; sources of economic law and their classification; the concept, signs and types of economic relations; the concept and types of subjects of economic activity; legalization of economic activity (state registration, licensing); organizational and legal forms of subjects of economic activity; termination of economic activity (reorganization and liquidation of a subject of economic activity); peculiarities of liquidation of an entity in connection with bankruptcy.

The *Special Part* includes norms and institutions that regulate the activity of an individual entity or a separate type of economic activity, namely: guarantees of legitimate economic activity (legal regulation of the restriction of monopoly and protection of the subject of economic activity from unfair competition; legal regulation of pricing; protection of consumer rights); economic obligations

(peculiarities of economic agreements on the transfer of property to property and use, peculiarities of economic contracts for the performance of works, peculiarities of economic contracts for the provision of services); legal regulation of certain types of economic activity: legal regulation of trading activity, legal regulation of investment activity, legal regulation of foreign economic activity, legal regulation of stock exchange activities, legal regulation of the financial services market; control and responsibility in economic activity.

1.5. Sources of economic law. Economic legislation and its characteristics

The system of economic legislation in general is appointed by the subject of regulation, its limits are set in the codified legal act – the Economic Code of Ukraine that defines the basic principles of management in Ukraine and regulates economic relationships, resulting in the organization and implementation of economic activity between undertakings, as well as between these entities and other parties in the field of economic relations (Art. 1 of the Economic Code) [3; 70].

Economic legislation is a system of legal acts, whose norms in general (or only their separate norms and rules) regulate the process of organization and implementation of economic activity. They can be divided into the formal basis (the legal force of regulation) and content basis (meaning relationships that they regulate).

According to formal feature (legal force) the regulations include the Constitution of Ukraine, the Economic Code of Ukraine, laws of Ukraine, decrees and orders by President of Ukraine, decrees, resolutions and orders of the Cabinet of Ministers of Ukraine, legal acts of ministries, state committees, commissions and other central executive authorities (rules, orders, instructions, etc.), acts of territorial (local) action of city councils and state administrations on economic issues.

The sources of economic law should include the local (individual) acts of economic operators, which include the statutes of subjects of economic activity, founding treaties, other types of transactions, etc.

The principle of the priority of the special rules of international contractual law over the general norms of economic law of Ukraine is formulated, in particular, in Art. 50 EC: "If the rules of an international treaty are applied,

a valid international treaty, the consent to which the Verkhovna Rada of Ukraine has made binding, establishes other rules on entrepreneurship than those provided by the legislation of Ukraine. The rules of international treaties of Ukraine, in force at the time of the adoption of the Constitution of Ukraine, shall be applied in accordance with the Constitution of Ukraine in the manner prescribed by these international treaties" [3; 70].

The principle of granting international economic treaties the status of national legislation of Ukraine is stipulated by the Law of Ukraine of June 29, 2004 "On International Treaties of Ukraine" [39; 78], the current international treaties of Ukraine, the consent to which the Verkhovna Rada of Ukraine is bound by, are part of the national legislation and are applied in the order, foreseen for the norms of national legislation.

If an international agreement of Ukraine, which entered into force in the established procedure, establishes rules other than those provided for in the relevant act of the legislation of Ukraine, then the rules of the international agreement (Art. 19 of the Law [39; 78]) shall apply. If such an order is not established, priority, in accordance with the norms of international law, belongs to the rules of international treaties.

In addition to regulations, current legislation provides for the possibility of using customary norms, that is, customs, including the customs of business circulation.

Article 7 of the Civil Code provides that *a custom* is a rule of conduct that is not established by acts of civil law, but is established in a certain area of civil relations [59; 89].

In addition, the recommendations contained in the resolutions of the Plenum of the Supreme Court as well as the Supreme Economic Court of Ukraine up to 2016 and its information sheets may be used.

If civil relations are not regulated by the Civil Code, other acts of civil law or the contract, they are governed by the legal norms of the said acts regulating similar content in civil relations *(analogy of lex)*. In case of impossibility to use the analogy of lex for the regulation of civil relations, they are regulated in accordance with the general principles of civil law *(analogy of law)* [59; 89].

Recommended literature: [2; 3; 5; 13 – 15; 27; 35 – 38; 59; 65; 70; 75; 78; 81; 89; 90; 95].

2. The concept of entrepreneurship

2.1. Prerequisites for entrepreneurial activity.

2.2. The concept of entrepreneurial activity, its features. Principles and types of entrepreneurial activity.

2.3. Restrictions on the conduct of entrepreneurial activity.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the essence of entrepreneurship, the principles of its realization.

Professional competences:

the ability to analyze the content and features of entrepreneurship;

formation of skills to distinguish entrepreneurial activity from other types of activity.

Key words: entrepreneurship, principles of entrepreneurship, freedom of entrepreneurship legality, systematic, restrictions on the conduct of entrepreneurial activity.

2.1. Prerequisites for entrepreneurial activity

The first prerequisite for entrepreneurial activity was the *political precondition* associated with the recognition and consolidation of the human right to entrepreneurial activity at the national constitutional level (consolidation of the right of private property, the possibility of privatization, which facilitated the emergence of new professions and creation of non-state structures for training of such specialists).

The basis for the development of entrepreneurship was individual labor activity, which stimulated citizens to engage in such activities, and on this basis, as a matter of fact, private business relations began to develop. As a consequence of the process of sovereignty of all sides of life of Ukrainian society initially was recognition in Art. 4 of the Law of the USSR "On the Economic Independence of the Ukrainian SSR" [35] of individual (personal and private labor) property, and then the private property became dominant.

For the development of entrepreneurial activity in the state there should be a favorable *economic situation*, as well as a favorable and well-balanced investment policy. First of all, it concerns the change in the nature of property

relations. The economic system, based on the unlimited dominance of state property with its command-distribution mechanism, could not provide conditions for creativity and initiative. Without the latter, the widespread dissemination of innovations is impossible. Therefore, a prerequisite for the development of entrepreneurship is the availability of private property, which gives space to a private initiative for work, limited to the physical and intellectual capabilities of a person.

The prerequisites for the development of entrepreneurial activity are the stability of the state economic and social policy, weighed tax policy and preferential tax regime, the presence of a developed infrastructure of entrepreneurship (first of all small) support, the existence of an effective system of protection of intellectual property, the formation of flexible mechanisms for improving business activity, the possibility of free exit to the external market, a stable and efficient credit system, etc.

Of particular importance are the legal preconditions – the availability of stable legislation and its focus on providing favorable conditions for such activities. If it takes into account economic laws and processes, then it plays a stimulating role, and if it is conservative – on the contrary. At the same time, the part of laws should be predominant, with the dominant sublegal acts there is a threat of frequent changes and the possibility of pressure from the state.

Importance in the conditions of a truly free and secure business is given to the state of law and order. When opening a business, an individual ascertains through the prism of law and order what possible consequences for him are. It is not coincidence that in recent years decisive real steps have been taken to combat organized (including economic) crime, corruption. This is especially important for attracting foreign investments into the Ukrainian economy. By developing recommendations for the participation of US entrepreneurs in investment processes, the US Senate and the Department of State periodically conduct research and publish data on the state of law and order in one or another country.

For the realization of entrepreneurial capacity there must be *preconditions of a legal personality* – the absence of prohibitions or restrictions for the employment of a particular person. Under the general rule, entrepreneurial capacity – the ability to have entrepreneurial rights and obligations – comes at the age of 18 years (an exception is joining a cooperative, which is possible for people aged 16, in case of marriage before adulthood, emancipation).

Persons who, in accordance with the established procedure, are limited in their capacity or recognized as incapacitated, can not engage in entrepreneurship. Persons who are prohibited from doing business under the law (for example, Part 2 of Art. 42 of the Constitution of Ukraine [11; 90]), can not actively engage in business. But they can be holders of ordinary shares and have limited corporate rights. Actually, precisely for this point there was a great privatization. The right to engage in such activities is limited to persons for whom a court order or a law measure of social protection against the recurrence of their crimes is established.

The *organizational preconditions* include a clear definition and consolidation of the mechanism of legalization of entrepreneurship, optimization of the system of authorized state bodies that carry out registration of subjects of economic activity, issue licenses, etc., simplify the procedure for legalization.

Since a person independently realizes his entrepreneurial capacity, psychological peculiarities play an important role when choosing a kind of occupation, a person's propensity to such activity, comfort. The psychological stability of the person is also of value (in most cases the failure of business structures and their consequence – bankruptcy – comes from the human factor).

When choosing entrepreneurship as a socially and legally significant activity, much attention is paid to professional knowledge and experience, including organizational activity. In most cases, the choice of types of business activities are guided by professional opportunities. Moreover, for a number of such activities, they are mandatory (for example, advocacy or trade activities).

Entrepreneurial activity depends on a number of other prerequisites: climatic, seasonal and territorial (for example, in resort areas, entrepreneurship is seasonal in nature).

2.2. The concept of entrepreneurial activity, its features. Principles and types of entrepreneurial activity

Analysis of principles of entrepreneurial activity gives grounds for concluding that the main conceptual basis for entrepreneurship is freedom. Without it, entrepreneurship is impossible, because it is not able to quickly adapt to market conditions, and therefore will be uncompetitive. But if freedom is a conscious necessity realized by a person in a society, then he must consider the interests of society itself, of the state and other persons.

The state undertakes to establish the framework and conditions for the exercise of such freedom.

According to Art. 42 of the Economic Code of Ukraine [3; 70], *entrepreneurship* is considered as a self-initiating systematic economic activity at one's own risk (in relation to the manufacture and sale of products, execution of works, provision of services) carried out by a subject of economic activity (an entrepreneur) in order to achieve economic and social results and profit making.

Entrepreneurship should be carried out legally, that is, a person must register as an entrepreneur in the established procedure and, if necessary, obtain special permits.

Signs of entrepreneurial activity:

1) independence (a person himself determines the mode of property, independently exercises, disposes of his property);

2) systematic (in accordance with the provisions of the Decree of the Cabinet of Ministers of Ukraine, which is abolished today, activities carried out less than four times during a calendar year were considered non-commercial activities). Today, there is no legal definition of the concept of systematic. In judicial practice, business (systematic) activity was a recognized activity carried out more than three times during a calendar year;

3) initiative (in particular, regarding the election of the legal form, type of activity, market, counteragents, consumers, etc.);

4) legality (the created structure, registration, etc. must be lawful and legal);

5) riskiness (which has both objective and subjective character);

6) the purpose of entrepreneurial activity (achievement of economic and social results, that is, public production, and profit making);

7) forms of entrepreneurial activity are the manufacture and sale of products, the execution of works and the provision of services.

Principles of entrepreneurial activity are the basic ideas and provisions that business should meet and which derive from the general provisions on the freedom to conduct such activities. They are enshrined in Art. 44 of the Economic Code of Ukraine [3; 70]:

1) free entrepreneur's choice of types of entrepreneurial activity;

2) self-formation by an entrepreneur of the activity program, selection of suppliers and consumers of manufactured products, attraction of material, technical, financial and other kinds of resources, the use of which is not

restricted by law, price setting for products and services in accordance with the law;

3) free hiring of employees (based on civil or labor legislation);

4) commercial calculation and own commercial risk;

5) free disposal of profits remaining with the entrepreneur after paying taxes, fees and other statutory payments;

6) self-realization by the entrepreneur of foreign economic activity, use of the entrepreneur's share of the currency earnings attributed to him at his own discretion.

Classification of the types of entrepreneurial activity can be carried out according to different criteria.

1. Depending on the form of property, on which the entrepreneurial activity is based, they distinguish:

1) private;

2) state;

3) communal;

4) collective (according to the Economic Code of Ukraine [3; 70]) activity.

2. Depending on the way in which profits are earned in highly developed economies:

1) interprofessional (material production, which creates the product);

2) intrapreneurship (mediation activity for bringing such a product to the consumer).

3. Depending on the nature of the product:

1) material production (creation of goods, works, services);

2) non-material production (creation of objects of intellectual property).

4. Depending on the amount of annual income and the number of employees:

1) small business (the average number of employees for the reporting period (calendar year) does not exceed 50 persons and the annual income from any activity does not exceed the amount equivalent to 10 million euro, determined by the average annual rate of the National Bank of Ukraine), including micro-entrepreneurship (the average number of employees for the reporting period (calendar year) does not exceed 10 persons and the annual income from any activity does not exceed the amount equivalent to 2 million euro, determined by the average annual rate of the National Bank of Ukraine);

2) middle business;

3) big business (the average number of employees in a reporting period (calendar year) exceeds 250 and the annual income from any activity exceeds

the amount equivalent to 50 million euro, determined by the average annual rate of the National Bank of Ukraine).

5. Based on the formal sign:

1) entrepreneurial activity in the manufacture and sale of goods;

2) business activity;

3) business service activities;

4) commercial entrepreneurship.

6. Depending on the organizational and legal form:

1) entrepreneurial activity without the creation of a legal entity (simple business);

2) entrepreneurial activity with the creation of a legal entity (complex entrepreneurship):

2.1) unitary;

2.2) corporate.

2.3. Restrictions on the conduct of entrepreneurial activity

Restrictions on entrepreneurial activity can be conditionally divided into several groups.

Firstly, this is *about limiting the subject structure:*

1. Legislation establishes the impossibility of engaging in entrepreneurial activity of certain categories of citizens (servicemen, officers of the prosecutor's office, court, state security, notary, internal affairs, state authorities and local self-government). According to Art. 42 of the Constitution of Ukraine [11; 90], entrepreneurial activity of deputies and officials of state authorities and local self-government bodies is limited by law. At the same time, Part 3 of Art. 52 of the Economic Code of Ukraine [3; 70] also prohibits those individuals' non-commercial activities. According to Part 3 of Art. 23 of the Law of Ukraine "On Economic Entities" [31; 72] the officials of the management bodies of the company can not be people's deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and other executive bodies, servicemen, notaries, deputies of local councils working in these councils on an ongoing basis, officials of the prosecutor's office, court, state security, internal affairs, as well as officials of public authorities and local self-government, except when civil servants carry out functions of management shares owned by the state, and represent the state in the supervisory board or audit commission.

2. Persons who committed a crime and to whom court applied punishment in the form of deprivation of the right to engage in a particular activity can not engage in entrepreneurial activities. Thus, according to Part 3 of Art. 23 of the Law of Ukraine "On Economic Entities" [31; 72], persons who are prohibited from engaging in certain activities by court may not be officials of those companies that carry out this activity.

3. Persons who have been prosecuted for stealing, gaining unlawful benefits and other mercenary crimes, can not occupy management positions and positions related to substantive liability in the companies (economic entities).

The second category of restrictions is *connected with the state monopoly for certain activities*. Thus, according to Part 4 of Art. 22 of the Economic Code of Ukraine [3; 70], the law may determine the types of economic activity that is allowed to be carried out exclusively by state enterprises, institutions and organizations. Certain restrictions on the implementation of economic activities are contained in Art. 4 of the Law of Ukraine "On Entrepreneurship" [44; 75] (The law lost force on 01.01.2004, in addition to Art. 4, according to which activities related to the circulation of narcotic drugs, psychotropic substances, their analogues and precursors are carried out in accordance with the Law of Ukraine "On the Circulation of Narcotic Drugs in Ukraine, Psychotropic Substances, their Analogues and Precursors"). According to Art. 6 of this Law [44; 75], activities related to the circulation of drugs, psychotropic substances (with the exception of psychotropic substances included in List No. 2 of Table III of the List) and precursors (included in List No. 1 in Table IV of the List), are carried out by enterprises of state and communal forms of property if they have a license to carry out the respective activities. Activities related to the protection of certain particularly important objects of state property law, a list of which is determined in the order established by the Cabinet of Ministers of Ukraine, as well as activities related to conducting forensic, and psychiatric examinations and the development, testing, production and operation of rocket carriers, in particular with their space launches with any purpose, can be carried out only by state enterprises and organizations, and the implementation of pawnbrokerage operations – also by full partnerships. Activities related to the production of motor gasoline or the addition (mixing) of bioethanol and/or biocomponents on its basis to the hydrocarbon base (gasoline, fractions, components, etc.) are carried out by enterprises, the list of which is determined by the Cabinet of Ministers of Ukraine upon order of

the central executive body authorities that ensure the implementation of state policy in the fuel and energy complex. Activity related to the production of bioethanol is carried out by entities having a corresponding license.

In addition to general restrictions on the implementation of entrepreneurship, the current legislation has established a number of special requirements:

1. As to the place of business, for example, in free economic zones. Thus, from the value of the Law of Ukraine "On General Principles for the Creation and Functioning of Special (free) Economic Zones" of October 13, 1992 [37; 77], a special (free) economic zone is recognized part of the territory of Ukraine, which establishes and operates a special legal regime of economic activity and the procedure for its application and the legislation of Ukraine.

2. Regarding the organizational and legal form (for example, pawnbrokerage operations can be carried out only by full partnerships and state enterprises).

The implementation of entrepreneurship in the territory of Ukraine, on its continental shelf and in the exclusive (marine) economic zone by foreign legal entities is determined by special regulatory acts. Thus, the Law of Ukraine "On Foreign Economic Activity" establishes that legal entities carry out foreign economic activity without state registration of them as its participants.

3. To the form of property. Although all forms of property are in general rule, the state retains a monopoly right to the manufacture and sale of narcotic substances, weapons and explosives, for the production of securities and banknotes. The state can support certain strategic types of entrepreneurial activities for it, with special legal and, above all, economic means. This applies in particular to agricultural production.

4. In some cases, special territorial, time and other requirements are established, for example, regarding the size of the authorized fund and its size at the time of state registration (for example, the minimum size of the authorized capital stock of joint stock companies must be not less than 1250 minimum wages).

The owner of monopoly rights in the case of granting them to other persons may establish limits on the production of goods, territorial restrictions on its implementation, etc. They are set by the parties to the licensing agreement or franchising agreement.

Special rules are established for business in areas that have a special legal status (border, free enterprise zone, port and so on).

5. The volume of production and sales of goods by setting quotas. These quotas can be set by the state, and the holder of the exclusive right.

6. Regarding the way of doing business, which should be environmentally friendly, not contradict the principles of morality, humanity, humanism. In most cases, the production itself must be certified.

7. Concerning the subject of activity. Retail trade in explosive and pyrotechnic products is not allowed.

8. Concerning the combining of activities. Simultaneous trade in industrial and food products, as well as some food products (chocolate products with fish products) is not allowed. Competition between activities of a full partnership and its participant is not allowed, and the state can not engage in the same kind of activity as a full partnership.

The current normative acts establish a number of other restrictions and rules that entrepreneurs must follow in their activities.

Thus, auditing activities, as well as the ability to be an attorney in matters of intellectual property, may be carried out only by a citizen of Ukraine. Citizens of other states or subjected to such activity in the territory of Ukraine can not carry out this type of activity. (Such prohibitions are in force in most countries.)

Legal consequences of carrying out entrepreneurial activity without registration or prohibited economic (entrepreneurial) activities are the prosecution of offenders for administrative liability.

According to Art. 164 of the Code of Ukraine on Administrative Offenses [10], conduct of economic activity without state registration as a subject of economic activity or without obtaining a license for conducting a certain type of economic activity subject to licensing in accordance with the law, or conducting such types of economic activity in violation of licensing conditions, as well as without obtaining a permit, another document of a permit nature, if its receipt is provided for by law (except in cases of application of the principle of tacit consent) entails the imposition of a fine from one thousand to two thousand tax-free minimum income of citizens with the confiscation of manufactured products, implements of production, raw materials and money received as a result of the commission of this administrative offense, or without such. These actions committed by a person who for years has been subjected to administrative penalty for the same infringement, or in obtaining significant profits (when the sum of a thousand or more times the non-taxable minimum income) impose a fine of two thousand to five thousand tax-free

minimum income of citizens with the confiscation of manufactured products, implements of production, raw materials and money received as a result of the commission of this administrative offense.

Providing a licensing authority or administrator with false information regarding the conformity of logistics to requirements of the legislation entails a fine of one thousand to two thousand non-taxable minimum income.

Recommended literature: [2; 3; 6; 10; 11; 13 – 15; 17; 20; 23; 24; 26; 27; 32; 33; 42; 44; 60 – 62; 69; 70; 72; 75; 77; 90; 95].

3. Subjects of economic activities, their organizational and legal forms

3.1. General characteristics of subjects of economic activity.

3.2. The concept of organizational and legal form of entrepreneurial activity.

3.3. Entrepreneurial activity without the formation of a legal entity.

3.4. Business activity of legal entities. General characteristics of a legal entity, their classification.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the organizational and legal forms of subjects of economic activities, their features.

Professional competences:

the ability to analyze organizational and legal forms of subjects of economic activities;

formation of skills in comparison of organizational and legal forms of subjects of economic activities.

Key words: subjects of economic activities, organizational and legal form, entrepreneur, proprietorship, legal entity.

3.1. General characteristics of subjects of economic activity

The *subjects of economic law* are participants in economic relations. According to Art. 2 of the EC [3; 70] *parties in the field of economic relations are:*

a) subjects of economic activities;

b) consumers;

c) bodies of state power and bodies of local self-government, with economic competence;

d) citizens, public organizations and other organizations that act as founders of subjects of economic activities or carry out organizational and economic powers in relation to them on the basis of property relations.

The largest and most important for economic activity is the group of subjects of economic law being subjects of economic activities. *Subjects of economic activities* are the participants in economic relations, who carry out economic activities while realizing economic competence (a set of economic rights and obligations), have separate property and are responsible for their obligations within this property, except in cases provided by law (Part 1 of Art. 55 of the EC [3; 70]).

The above-mentioned definition gives grounds to distinguish the following features of the subjects of economic activities:

- this subject is a participant in economic relations;
- it directly carries out economic activity;
- it is endowed with economic competence;
- it has property separate from other entities (including the proprietor);
- it is responsible for the obligations within the bounds of its property.

Subjects of economic activities in accordance with Part 2 of Art. 55 of the EC [3; 70] are:

1) economic organizations, legal entities created in accordance with the Civil Code of Ukraine, state, communal and other enterprises created in accordance with the Economic Code, as well as other legal entities that carry out economic activities and are registered in accordance with the procedure established by law;

2) citizens of Ukraine, foreigners and stateless persons who carry out economic activities and are registered as entrepreneurs in accordance with the law.

Subjects of economic activities perform their economic competence on the basis of property rights, rights of economic management, rights of operational management in accordance with the definition of this competence in the EC and other laws.

Subjects of economic activities – economic organizations operating on the basis of property rights, rights of economic management or operational

management, have the status of a legal entity as defined by civil legislation and the Economic Code.

Subjects of economic activities, depending on the number of employees and income from any activity for the year, may belong to: small subjects of economic activity, including microentrepreneurship, medium or large subjects.

Subjects of microentrepreneurial activity are:

1) natural persons registered in the manner prescribed by law as proprietorships whose average number of employees for the reporting period (calendar year) does not exceed 10 persons and the annual income from any activity does not exceed the equivalent of 2 million euros, determined by the average annual rate of the National Bank of Ukraine;

2) legal entities – subjects of economic activities of any organizational form and form of property in which the average number of employees for the reporting period (calendar year) does not exceed 10 persons and the annual income from any activity does not exceed the amount equivalent to 2 million euro, determined by the average annual rate of the National Bank of Ukraine.

Subjects of small entrepreneurship are:

1) natural persons registered in the manner prescribed by law as proprietorships whose average number of employees for the reporting period (calendar year) does not exceed 50 persons and the annual income from any activity does not exceed the equivalent of 10 million euros, determined by the average annual rate of the National Bank of Ukraine;

2) legal entities that are subjects of economic activity of any organizational form and form of property in which the average number of employees for the reporting period (calendar year) does not exceed 50 persons and the annual income from any activity does not exceed the equivalent of 10 million euros, determined by the average annual rate of the National Bank of Ukraine.

Subjects of *large entrepreneurship* are legal entities – subjects of economic activities of any organizational and legal form and form of property, in which the average number of employees for the reporting period (calendar year) exceeds 250 persons and the annual income from any activity exceeds the amount, equivalent to 50 million euros, determined by the average annual rate of the National Bank of Ukraine.

Other subjects of economic activity belong to *subjects of medium-sized entrepreneurship.*

For a person to engage in economic activities it is necessary to have full *legal personality* (legal capacity and active legal capacity):

1) civil legal capacity arises at the time of birth and terminates with the death of a person, may be restricted in cases and in the order prescribed by law;

2) civil legal personality of legal entities arises simultaneously and is associated with its registration, and the termination of liquidation.

Legal capacity of any subject may be *general* and *special.* While general legal capacity is a prerequisite for the pursuit of any kind of activity and the acquisition of any kind of rights not prohibited by law, special legal capacity gives the opportunity to carry out only those activities that correspond to the subject of the activity of the particular subject.

While legal capacity as an abstract opportunity for a person to have legal property can be realized at any moment, the right to engage in entrepreneurship is only possible at the age of 18 years. Although there are scientists' opinions that this age is equal to 16 years. This is provided by the Civil Code, Part 3 of Art. 35 [59; 89]. It provides that full civil capacity may be granted to an individual who has reached the age of 16 and who wishes to engage in entrepreneurial activity. In the event of the written consent of the parents (adoptive parents), the trustee or the guardianship and guardianship authority, such person may be registered as an entrepreneur. In this case, an individual acquires full civil capacity from the moment of state registration as an entrepreneur, and, accordingly, entrepreneurial capacity.

3.2. The concept of organizational and legal form of entrepreneurial activity

The organizational and legal form of entrepreneurial activity indicates the peculiarities of the legal status of the proprietor of the property, the procedure for exercising his authority to manage, and determines the types of activity permitted by the current legislation, governing bodies, the limits and procedure for liability for economic obligations.

The optimal organization of entrepreneurial activity requires thorough knowledge of economic methods and methods of production, organization, highly professional management of the enterprise, understanding of the regularities of interpersonal communication in the team. In this regard, economic, managerial and psychological forms of enterprise organization are distinguished. At the same time, these forms of economic organization

(subjects of economic activity) are used by entrepreneurs indirectly, but significantly affect the choice of a specific legal form of economic organization (subjects of economic activity) and are reflected in the activities of an individual entrepreneur, enterprise, its varieties or other business structure.

In legal literature, entrepreneurial activity is classified on the basis of organizational and legal form, with the forms of property, types and methods of separation/division of powers at enterprises of separate forms of property, management of its property used al criteria. Other authors base their classification on the characteristic (circle) of the rights and obligations of its participants as to the property of the business structure, as well as the purpose of the activity.

The organizational and legal form of entrepreneurship can be defined as a legal way chosen by the proprietor to manage its property in accordance with the procedure and conditions established by the legislation of Ukraine, reflecting the special legal personality, legal status of property, specialization. Organizational and legal form directly determines the limits of entrepreneurial legal personality, the procedure for the creation, the legal status of the founders or proprietors, the features and consequences of the termination of their activities.

In accordance with the current legislation of Ukraine, the organizational and legal forms of entrepreneurial activity can be summarized as follows: entrepreneurial activity without the formation of a legal entity and entrepreneurial activity of legal entities (enterprises).

Each of the forms of entrepreneurial activity defined in the legislation of Ukraine has its own peculiarities, connected both with the process of its organization and creation, and with the possibilities of realization of the desired type (subject) of activity and its regime.

3.3. Entrepreneurial activity without the formation of a legal entity

Organization of a business without a legal entity is the simplest way of managing the property necessary for its implementation. It is manifested in the autonomy of the activity, where the individual decides to engage in such an entrepreneurship, its type and place, according to which he chooses specific starting positions.

The right to engage in entrepreneurial activities is granted only to a person with full active legal capacity (Part 1 of Art. 50 of the CC [59; 89]).

It comes only at the age of eighteen, from the moment of marriage, or in this case – the emancipation (the recognition of a minor who has reached sixteen years of age, provided that he works under an employment contract or, with the consent of his parents, is engaged in entrepreneurial activity, fully capable).

An individual exercising his right to entrepreneurship must be registered in the order established by the current legislation as an entrepreneur.

In the case when the individual started the business without state registration, having entered into the relevant contracts (bought the wholesale lot of the goods for the purpose of its further sale, entered into a lease agreement, etc.) he has no right to sell them as an entrepreneur on the grounds that it is not legalized, even in the case when the procedure of legalization (registration) was violated, but legally, the registration authorities refused it.

The advantages of this organizational and legal form are:

1) the possibility of combining such activity with other types of activity not prohibited by the current legislation;

2) independent decision-making concerning the management of property allocated for entrepreneurial activity;

3) the absence of imperatives regarding the formation of certain property funds;

4) the possibility of easy withdrawal of profits and the unconnectivity of such a withdrawal with formalities;

5) a simplified list of required documentation and the procedure for its maintenance;

6) the possibility of temporarily suspending the selected activity and subsequent renewal at a time convenient for itself;

7) simplified (in comparison with legal entities) order of full termination of entrepreneurship;

8) simplified accounting and reporting procedures, including tax;

9) simplified taxation procedure;

10) ease of adaptation to changes in market trends – demand for certain goods;

11) absence of a tight dependence on the pricing mechanism characteristic of commercial structures.

The negative points also include: 1) legislative restrictions on the subject of the proposed business activity (some of them may only be carried out by establishing a legal entity, with certain organizational and legal forms – for

example, the implementation of pawnshop operations with state enterprises is allowed only by certain economic entities); 2) restrictions caused by the inability of the citizen to carry out the widest range of desired activities, availability of professional, educational and material opportunities of the entrepreneur.

3.4. Business activity of legal entities. General characteristics of a legal entity

Legal entities recognized as organizations that have separate property, may, on their own behalf, acquire property and personal non-property rights and bear obligations, be plaintiffs and defendants in court, economic and arbitration courts. The Civil Code of Ukraine in force enshrines in Art. 80 [59; 89] the following notion of a legal entity: "A *legal entity* is an organization established and registered in accordance with the procedure established by law. A legal entity is endowed with civil capacity and active civil capacity, may be the plaintiff and defendant in court".

Signs of a legal entity are:

1. Organizational unity.
2. The presence of separate property of a legal entity.
3. A legal entity independently acts in legal relationships on its own behalf.
4. A legal entity acting as a party and procedural relations.

Legal entities as members of a legal relationship have a number of individual identifying features. These include: the name; the legal entity's location; a stamp; a current account; a statute of a legal entity (or other constituent document); a trademark, a service mark, a brand name, etc.

Classification of legal entities:

depending on the order of creation (Art. 81 of the CC) [59; 89]:

1) legal entities of private law;

2) legal entities of public law;

based on the founders and the organizational and legal form:

1) *unitary,* based on the property of one person and independent of other individual or legal entities;

2) *corporate,* based on the property of two or more individuals or legal entities with the right to participate in the management and distribution profits.

A unitary enterprise is created by one founder who allocates the necessary property, forms the authorized capital in accordance with the law, which is not divided into shares (units), approves the statute, distributes revenues directly or through the manager appointed by him, manages the enterprise and forms his labor collective on the basis of employment, solves the issue of reorganization and liquidation of the enterprise. Unitary enterprises are state, communal, enterprise-owned property associations, religious organizations or enterprises privately owned by the founder.

A corporate enterprise is formed, as a rule, by two or more founders under their joint decision (agreement), acts on the basis of the association of property and/or business or employment of the founders (participants), their joint management of cases, on the basis of corporate rights, as well as through the bodies they create, the participation of founders (participants) in the distribution of income and risks of the enterprise. Corporate ones are cooperative enterprises, enterprises created in the form of an economic entity, as well as other enterprises, including those based on the private property of two or more persons.

Classification of legal entities according to the organizational and legal forms (Art. 83 of the CC [59; 89]):

a) *a company* is an organization created by combining the persons (participants) entitled to participate in this company:

- commercial (Art. 84 of the CC [59; 89]);
- non-commercial (Art. 85 of the CC [59; 89]);

b) *an institution* is an organization created by one or several persons (founders) who are not involved in managing it, by combining (allocating) their property to achieve the goal determined by the founders at the expense of this property;

depending on the volume of property rights, one can distinguish:

- legal persons entitled to the right of economic management (state commercial and communal commercial enterprises have such a right);
- legal entities with the right of operational management (state-owned and communal non-commercial enterprises have such a right);
- legal entities with the property right (these include other types of enterprises);

depending on the constituent documents, one can distinguish:

- statutory legal entities (this applies to most enterprises, joint-stock companies, limited liability companies and additional liability companies);

• contractual persons acting on the basis of the founding agreement (they include a full partnership and partnership in commendam).

Industrial, agricultural (agro-industrial), trade and other legal entities are distinguished according to the *directions of activity*. However, since the division of labor spheres has not been clearly defined in Ukraine, it is difficult to distinguish the legal criteria for such a division. Moreover, the activities of the majority of legal entities of subjects of economic activity are intertwined.

Recommended literature: [2; 3; 11 – 15; 17; 20; 34; 35; 44; 47 – 49; 55; 59 – 62; 70; 73 – 76; 89; 90; 92].

4. Legal status of economic entities

4.1. General characteristics of economic entities.

4.2. Legal status of full partnerships and partnerships in commendam.

4.3. Legal status of limited liability companies and additional liability companies.

4.4. Legal status of joint-stock companies.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the types of economic entities, their features.

Professional competences:

the ability to analyze types of economic entities;

formation of skills in comparison of economic entity's types.

Key words: economic entity; full partnership; partnerships in commendam; limited liability company; additional liability company; joint-stock company; private joint-stock company; public joint-stock company.

4.1. General characteristics of economic entities

Economic entities are based on four unions:

1) a union of capital (is characteristic of all entities without exception);

2) a union of liability (for so-called unlimited liability companies: full partnerships, full partners of partnerships in commendam and additional liability companies);

3) a union of activities (full partnerships);

4) a union of management.

The status of economic entities is regulated by Chapter 8 of the Civil Code "Entrepreneurship Companies (Entities)" (Para 1 of Subsection 2 of Section II of Book I) [59; 89], Chapter 9 of the Economic Code "Economic Entities" [3; 70] and the Law "On Economic Entities" of September 19, 1991 [31; 72], as well as the Law of Ukraine "On Joint-Stock Companies" dated July 27, 2022 [66], the Law "On Companies with Limited and Additional Liability" of February 6, 2018 [54].

According to Art. 1 of the Law "On Economic Entities" [31; 72] economic entities are enterprises, institutions, organizations established on the basis of the agreement by legal entities and citizens through the merger of their property or/and entrepreneurial activities for the purpose of obtaining profits.

The common characteristics inherent in an economic entity established in accordance with the legislation of Ukraine include:

1) the corporate nature of the rights of its participants (founders), that is, relations between the participants due to their share participation in the formation of the authorized fund;

2) obligatory distribution of the authorized capital into parts (fates) between its founders;

3) own property;

4) liability (full, mixed and limited) of the founders of each separate type of economic entities, established by the legislator;

5) availability of an insurance fund of at least 25 % of the authorized capital.

Economic entities are recognized enterprises or other subjects of economic activity created by legal entities and/or citizens by combining their property and participating in the entrepreneurial activity of the company for the purpose of profit (Part 1 of Art. 79 of the Economic Code) [3; 70].

Economic entities, depending on the term for which they are founded, may be created for an indefinite or for a specified period.

Constituent documents of economic entities shall contain information about the type of company, the object and purpose of its activities, founders and participants, name, size and order of formation of authorized (compounded) capital, the allocation of profits and losses, composition and competence of the company and the procedure for acceptance of their decisions, including the list of issues requiring a qualified majority of the people, the procedure for amending the constituent documents and the procedure for liquidation and reorganization of the company. Constituent documents of each type of

company should reflect the features of its activity (Part 3 of Art. 4 of the Law of Ukraine "On Economic Entities") [31; 72].

The *management of a company* is carried out by its bodies, the composition and procedure for the election (appointment) of which is carried out in accordance with the type of company (entity). The management bodies of the company are divided into higher, executive, control. The supreme body is a general meeting that solves the most important issues of the company's activities. Current issues of the activity of economic entities are solved by the executive bodies and their officials. Officials of the management bodies of the company are individuals – the head and members of the executive body, the audit committee, the auditor of the company and also head and members of another body of the company, authorized by the authorities of the company, if the formation of such body is provided by constituent documents of the company.

The specified features are provided by the legislator on the consequences of the actions taken before the state registration of the company. According to Art. 8 of the Law "On Economic Entities" [31; 72], the company may open accounts in banks, as well as conclude contracts and other agreements only after its registration. Agreements concluded on behalf of the company before the moment of registration are recognized as being concluded by the company only as a subject to further approval by the company.

Agreements concluded by the founder prior to the registration of the company not yet approved by the company, entail legal consequences only for the founder.

Contractual companies include a full partnership and a partnership in commendam. Participants in a full partnership and full members of a partnership in commendam are always only persons who are registered as entrepreneurs.

Among the economic entities the most widespread ones were *statutory companies*. Although they were based on the constitutive agreement, their constituent document was the statute: limited liability companies, joint-stock companies and additional liability companies.

4.2. Legal status of full partnerships and partnerships in commendam

A full partnership is an economic entity, all participants of which, in accordance with the agreement between them, carry out business activity on

behalf of the company and bear an additional joint liability for the obligations of the company (partnership) with all their property (Part 3 of Art. 80 of the Economic Code) [3; 70].

A full partnership carries out its activity on the basis of the constituent (founder's) agreement.

The conduct of affairs of a full partnership is carried out with the general consent of all participants, by all participants or one or some of them. In the latter case, the scope of the powers of the participants is determined by the order, which is signed by the rest of the participants. The members of the partnership are not entitled to carry out transactions in their own name and in their interests, which are homogeneous with the objectives of the company, as well as to participate in any partnership (except a joint-stock company) that has the same purpose as a full partnership.

The special features of establishment and operation of a full partnership include:

the presence of a single founding document – the constituent agreement;

no statutory requirements regarding the size and conditions of property formation;

lack of statutory bodies of the company management because doing business of the economic entity is effected by the participants (shared by all or one or some participants acting on the basis of an order);

full property liability of the company for its obligations, subsidiary joint liability party in partnership for the obligations of the company that may be subject to foreclosure;

the existence of statutory restrictions for the participants to compete with the full company;

the prohibition of foreclosure on the share of a full member in his company's obligations;

the possibility of liquidating a full partnership at the request of creditors (one of the participants) in case when the partnership refuses to allocate the share of such participant-debtor to satisfy the demand of creditors.

A person may be a participant in only one full partnership and has no right without the consent of other participants to perform transactions on their behalf and in their interests of third parties that are homogeneous with those forming the subject of the activity of such a partnership, as well as to participate in any partnership (except for joint-stock companies), which have

the same goal as a full partnership. In case of violation of this rule, a company has the right to demand from such participant of their choice to compensate damages incurred or to transfer the acquired profit.

The right to conduct affairs of a full partnership belongs to each of its participants, if the constituent agreement does not provide other conditions to individual participants. In case of joint conduct of cases for the implementation of agreements it requires the consent of all members of the partnership. In relations with third persons, the company has no right to invoke the provisions of the constituent agreement that restrict the powers of the members of the partnership, except when the partnership proves that the third person at the time of signing the contract knew or ought to have known about the absence of the right to conduct business by such a party on behalf of the partnership. If the participant of the partnership, having no authority, acted in the general interest, then its actions generate legal consequences only with their approval.

The profits generated as a result of a joint venture are distributed in proportion to their shares in the capital stock, unless otherwise provided by the constituent agreement or an additional agreement. Elimination of any of the members of the partnership (entity) from participation in the receipt of profits or in the distribution of losses is not allowed.

A partnership in commendam is an economic entity in which one or more participants (full members) carry out business on behalf of the partnership and bear additional joint liability with all their property which can be recovered by law, and the rest of the participants take part in the company's activities only by their own contributions (depositors) (Part 6 of Art. 80 of the Economic Code [3; 70]).

The legal status of depositors is close to the associate members of a cooperative and members of a limited liability company. So, while a full participant can only be in one partnership in commendam, the depositor can place his equity in several such or other partnerships. A full member of a partnership in commendam can not be a member of a full partnership and vice versa. A depositor to a partnership in commendam is required to contribute to the share capital, which is subject to the relevant certificate.

To the above characteristics, related to the creation and operation of a partnership in commendam, there are two categories of participants (full participants, responsible for the obligations of the company with all their property, which may be levied; depositors, the amount of whose total contribution is limited to 50 % of the property of the partnership and who do not bear

additional liability for the obligations of the partnership). The capital of a partnership in commendam shall be paid by its participants until the end of the first year from the date of the state registration of the partnership.

The management of the affairs of the company is carried out only by full participants.

A partnership in commendam is subject to liquidation in the event of the retirement of all full participants, and in case of the withdrawal of all depositors, such a partnership can be reorganized into a full partnership.

4.3. Legal status of limited liability companies and additional liability companies

A limited liability company is an economic entity with an authorized fund divided into shares, the size of which is determined by the constituent documents and is responsible for its obligations only with its own property. Participants who have fully paid their contributions bear the risk of losses associated with the activity of the company, within the limits of their contributions (Part 3 of Art. 80 of the EC) [3; 70].

The number of participants in the company is not limited (Art. 4 of the Law "On Companies with Limited and Additional Liability") [54].

The characteristic features of this type of economic entities are: limiting the liability of its participants only by their share, including the non-introduced, the absence of the participants of the subsidiary property liability for the debts of the company, provided that they have fully contributed their shares. Art. 2 of the Law "On Companies with Limited and Additional Liability" [53] stipulates that members of a company that have not fully paid contributions shall be jointly and severally liable for their obligations within the value of the non-deducted part of the contribution of each participant.

Each member of the company must fully contribute within six months from the date of the state registration of the company, unless otherwise provided by the statute. The relevant provisions may be introduced into the statute, amended or excluded from it by unanimous decision of the general meeting of participants, which was attended by all the members of the company (Art. 14 of the Law) [54].

A company participant has a preferential right to purchase a share (part of the share) of another participant, which is sold to a third person (Art. 20 of the Law) [54].

The participant of the company has the right to alienate his/her share (a part of the share) in the authorized capital of the company, by paying or free of charge to other members of the partnership or third parties. The participant of the partnership has the right to alienate his share (a part of the share) in the authorized capital only in the part in which it is paid (Art. 21 of the Law) [54].

A participant of a company whose share in the authorized capital of the company is less than 50 percent may leave the company at any time without the consent of other participants. A participant of a company whose share in the authorized capital of the company is 50 percent or more may leave the company with the consent of other participants.

A decision on granting consent to a member to quilt the company may be taken within one month from the date of submission of the application by the participant, unless another term is provided by the statute.

The participant is considered to be quitting the company from the date of the state registration of his quit. Exit of the participant from the company, which will result in the absence of any participant, is prohibited.

Not later than 30 days from the day the company has found out or had to find out about the member's quit, it is obliged to inform the former participant of the cost of his share, provide a reasoned calculation and copies of the documents necessary for the calculation.

A limited liability company has its bodies of management: the supreme body – the general meeting of members, the executive body – sole or collegial (management or director), the control – the supervisory board (in the case of origin).

The supreme body of a limited liability company is the general meeting of participants. Company participants take part in the general meeting of participants in person or through their representatives (Art. 33 of the Law [54]). At a general meeting of participants, each participant has a number of votes, proportional to the size of his share in the authorized capital of the company, unless otherwise is provided by the statute (Part 3 of Art. 29 of the Law [54]).

The statute of a company may provide for the formation of a *supervisory board*, which within the limits of the competence defined by the statute of the company, supervises and regulates the activities of the executive body of the company. In particular, the competence of the supervisory board may include the election of the sole executive body of the entity or members of the collegial executive body of the entity (all or separately one or more of them), the suspension and termination of their powers, establishment of the amount

of remuneration to the members of the executive body of the entity (Art. 38 of the Law) [54].

The executive body of the entity manages the current activities of the company. To its competence belong all matters related to the management of daily operations of the entity, except for matters within the exclusive competence of the general meeting of members and the supervisory board of the entity (in the case of formation). The executive body of the entity is accountable to the general meeting of participants and the supervisory board of the company (in case of formation) and organizes the execution of their decisions.

The executive body of the company is personal (individual). The name of the personal executive body is the "director" if the statute does not provide a different name. The statute may stipulate that the executive body of the company is collegiate, and its quantitative composition is determined. The name of the collegial executive body is the "directorate", and its chairman is "general director", unless otherwise is specified in the statute.

The election of the members of the collegial executive body and its chairman shall be conducted by voting on each candidate individually, unless the statute provides for the election of members of the executive body and its chairman by a list, cumulative voting or in another order (Art. 39 of the Law) [54].

An additional liability company is an economic entity with the statutory (authorized) capital divided into shares specified in the constituent documents of the size. Participants in such a company are liable for their debts with their contributions to the statutory (authorized) capital, and in case of insufficiency of these amounts, they are additionally owned by them in the same amount for all participants to the amount of each participant's contribution. The maximum size of the responsibility of the participants is provided for in the constituent documents (Part 4 of Art. 80 of the Economic Code) [3; 70].

Additional liability company participants jointly carry additional (subsidiary) responsibility for their obligations with their property in the amount established by the statute of the company with additional liability, and it is equally multiple for all participants to the value of the contribution made by each of them (Art. 56 of the Law) [54].

Characteristic features of the additional liability company are:

1) share division of its property among the participants;

2) corporate governance;

3) the possibility of foreclosing the property of participants in case of exceeding the debt obligations of the authorized capital in a multiple amount to the share of each founder.

Thus, the responsibility of the founders is subsidiary (additional), but according to the mechanism of payment it is shared.

4.4. Legal status of joint-stock companies

A joint-stock company is an economic entity that has an authorized fund divided by the number of shares of equal nominal value and that is responsible for obligations only with the property of the company, and shareholders bear the risk of losses related to the entity actions through the value of their shares (Part 2 of Art. 80 of the EC) [3; 70].

In cases stipulated by the company the shareholders that did not entirely pay shares, bare responsibilities for the entity liabilities only within their own unpaid property.

The main characteristics of joint-stock companies are:

1) acting on the basis of the statute. The constitutive agreement is not a constituent document of a company and is valid until the date of registration of the results of the closed (private) placement of shares by the State Commission for Securities and the Stock Market;

2) the required compulsory presence of statutory (authorized) capital, the minimum size of which must be at least equivalent to 1 250 minimum wages; reserve capital not less than 15 % of the authorized capital and replenished at the expense of annual deductions, which can not be less than 5 % of the amount of net profit;

3) distribution of the authorized capital in parts, equal at nominal value (shares);

4) liability only with the property that belongs to it by property right;

5) lack of vicarious liability of shareholders, excluding shareholders who have not fully fulfilled their obligations in respect of the company;

6) the obligatory nature of property with the majority of the shareholders in the JSC and the necessity for their personal participation in the activity of the JSC;

7) the democratic nature of management, manifested in the ability to have a proportional shareholder value of the number of votes;

8) the corporate nature of management and the availability of a three-level management:

a) the supreme governing body – the general meeting of shareholders or their representatives;

b) the executive body – individual or collegiate;

c) control:

- an audit commission (for financial and economic activities of the company);
- a supervisory board (in the activities of the board);

9) participation of shareholders in management, depending on the number of shares owned by them on the right of property;

10) determination of the volume of rights of shareholders, depending on the type of shares (privileged or simple) owned by them on the right of property;

11) withdrawal of a shareholder from a company by way of alienation of shares;

12) the meeting of shareholders is considered to be a power *(quorum)* subject to registration for participation of shareholders, which collectively own at least 60 % of the voting shares;

13) the possibility of attracting significant investors as the owners of preferred shares;

14) the number of preferred shares in the authorized fund can not exceed 25 %;

15) withdrawal of a shareholder from a joint-stock company by alienation of shares.

According to Art. 25 of the Law of Ukraine "On Economic Entities" [31; 72], Art. 81 of the EC, Art. 5 of the Law of Ukraine "On Joint-Stock Companies" [66], depending on the type, joint-stock companies are classified into *public and private joint-stock companies* (Table 1).

Table 1

Differences between public joint-stock companies (PJSC) and private joint-stock companies (PrJSC)

The criterion for differences	PJSC	PrJSC
1	2	3
Number of participants (Part 1 of Art. 5 of the Law)	Not limited	1 – 100 people

Table 1 (the end)

1	2	3
Listing procedure (Art. 24) (Features of stock turnover)	Duty committed; a public joint-stock company is required to undergo the procedure of including shares in the stock exchange list of the least one stock exchange (listing)	Shares of a private joint-stock company can not be bought and/or sold on the stock exchange, except for sale through an auction exchange
Placement of shares (Part 2 of Art. 5)	Free	Limited
Procedure for the alienation of shares (Art. 7)	Shareholders have the right to dispose shares without the consent of other shareholders	The statute may provide for the preferential right of its shareholders and the company itself to purchase shares offered by their owner for sale to a third party
Procedure for placing shares of additional issue (Part 2 of Art. 5)	Private and public (i.e., by way of a public offer for the purchase of shares of an uncertain number of persons) placement of shares	Private placement of shares (among a certain number of persons)
Annual financial statements (Art. 75)	Compulsory audit by an independent auditor	–
Notice on the payment of dividends (Part 4 Art. 30)	Stock exchange, which is in the stock register	Only those entitled to receive dividends
Report on the general meeting of shareholders (Art. 25)	Shareholders and the stock exchange where the listing has been done	Only shareholders personally
The procedure for voting at general meetings (Art. 43)	Only with the use of bulletins	Not established; if the number of participants is no more than 25 persons, decision-making is allowed by survey method
Own web page on the Internet (Part 3, Art. 78)	Duty committed	–
Election of members of the supervisory board (P. 4 of Art. 53)	Cumulative	Cumulatively or through proportional representation by the number of shares (according to the statute)
Disclosure of activity information	On the basis of international accounting standards	–

A private joint-stock company can only carry out private placement of shares. If a general meeting of a private joint-stock company makes a decision about a public placement of shares, appropriate changes to the statute of the company are made, in fact those of changing the type of company from private to public.

Changing the type of a company from private to public or from public to private *is not transformation of it*.

The founders of joint-stock companies may be individuals and legal entities. They enter into a constituent agreement, which defines the procedure for joint activities in the joint-stock company, its form, the responsibility of the subscribers to the shares before the third parties. The founders are jointly liable only for obligations arising prior to the date of registration of the company. Before founding a joint-stock company, the founders must notify in writing of their intention, make a subscription to the shares, hold a constituent assembly, and then state registration of the company is effected.

Citizens of Ukraine, foreign citizens, stateless persons and refugees legally staying in Ukraine can act as founders.

The company's share certifies the corporate rights of a shareholder in this joint-stock company. All shares of the company are registered. Shares of the companies exist exclusively in the non-documentary form.

The company may exercise the placement of shares of two types: simple and privileged.

According to Art. 9 of the Law "On Joint-Stock Companies" [66] *creation of a company is carried out in the following stages:*

1) making of a decision by the founders' meeting on the formation of a joint-stock company and on the closed (private) placement of shares;

2) submission of the application and all necessary documents for registration of the issue of shares to the State Commission on Securities and the Stock Market;

3) registration by the State Commission of Securities and the Stock Market of the issue of shares and issuance of a temporary certificate on registration of the issue of shares;

4) assignment of an international identification number of securities to shares;

5) conclusion of an agreement on servicing the issue of shares with the depositary of securities or with a registrar of registered securities of the agreement on keeping the register of holders of registered securities;

6) closed (private) placement of shares among the founders of the company;

7) payment by the founders of the total nominal value of the shares;

8) approval by the company's constituent assembly of the results of the closed (private) placement of shares among the founders of the company, approval of the company's statute, as well as other decisions provided by law;

9) registration of the company and its statute in the state registration bodies;

10) submission of the report on the results of the closed (private) placement of shares to the State Commission on Securities and the Stock Market;

11) the State Commission on Securities and the Stock Market report on the results of the closed (private) placement of shares;

12) obtaining a certificate of state registration of the share issue;

13) the issuance of documents confirming the property of the shares to the founders of the company.

The officials of a joint-stock company will not be deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and local executive power bodies, local self-government bodies, military, notaries, official persons of prosecution, court, service security, national police, civil servants, except when they perform functions of management of corporate rights of the state and represent the interests of the state or territorial community in the supervisory board or audit commission of the company. Persons forbidden to engage in certain activities may not be officials of the bodies of the company that conducts this type of activity. Persons who have been prosecuted for official crimes against property or economic crimes can not be officials of the bodies of the company.

A general meeting is the *supreme body of a joint-stock company* (Art. 32 of the Law) [66]. The company is to convene an annual general meeting, which is hold no later than April 30 following the reporting year.

A shareholder has the right to appoint a representative to attend the meeting. The representative may be permanent or appointed for a certain period.

One voting share gives one shareholder one vote for resolution of each of the issues put to the vote at the general meeting of a joint-stock company, except carrying out cumulative voting.

The decision of the general meeting of shareholders *shall be taken by a majority not less than 3/4 of the votes of the shareholders participating in the meeting* regarding:

1) amendments to the statute of the company;

2) liquidation of the company, except in cases established by law;

3) issues stipulated by the law governing the issues of creation, operation and termination of joint stock companies.

In other matters, decisions are made by a simple majority of the votes of the shareholders who take part in the meeting.

The executive body of a joint-stock company manages the current activities of the company (Art. 58 of the Law) [66]. The competence of the executive body is to resolve all issues related to the management of daily operations of the company, in addition to matters within the exclusive competence of the general meeting and the supervisory board.

The executive body of a joint-stock company is accountable to the general meeting, and the supervisory board organizes performance of their solutions. The executive body acts on behalf of the joint-stock company within the limits established by the statute of the joint-stock company and by law.

The executive body of a joint-stock company may be collegial (the board, the directorate) or sole (the director, the general manager). Any individual who has full civil capacity and is not a member of the supervisory board or audit commission of this company may become a member of the executive body of the joint-stock company.

The supervisory board of a joint-stock company (Art. 51 of the Law) [66] is the body that protects the rights of the shareholders of the company and within the limits of competence defined by the statute and the Law controls and regulates the activities of the executive body.

In joint-stock companies with the number of shareholders – owners of ordinary shares of 10 persons and more, the creation of the supervisory board is compulsory. In a company with the number of shareholders – owners of ordinary shares of 9 people and less, in the absence of a supervisory board its powers are exercised by the general meeting.

Members of the supervisory board shall perform their duties personally and may not transfer their authority to another person. Members of the supervisory board have the right to pay for their activities at the expense of the company. Determination of the payment terms is based on the general meeting based on the approved cost estimate.

The competence of the supervisory board includes the resolution of issues stipulated by the Law, the statute, as well as the general meetings that are referred to the resolution of the supervisory board. The exclusive competence of the supervisory board is set in (Art. 52 of the Law [66]).

Members of the supervisory board of a public joint-stock company are elected by shareholders during the general meeting of the company for a period not exceeding three years (Art. 53 of the Law [66]).

A member of the supervisory board of a joint-stock company may be only an individual. A member of the supervisory board may not be a member of the executive body at the same time and/or a member of the audit commission (auditor) of this company.

The supervisory board is elected by the shareholders or those who represent their interests, and/or independent directors.

According to Art. 73 of the Law [66] a general meeting may elect a *revision committee (auditor)* for carrying out audits of financial and economic activity of a joint-stock company. In joint-stock companies with the number of shareholders – owners of ordinary shares of the company that does not exceed 100 persons, the position of the auditor may be introduced or a revision commission may be elected, and in companies with the number of shareholders – owners of common shares of the company more than 100 people only an audit committee can be elected.

The members of the audit committee in joint-stock companies are selected exclusively by cumulative voting of individuals who have full civil capacity, and/or the number of legal entities – shareholders.

The audit committee (auditor) conducts verification of the financial and economic activities of the joint-stock company based on the results of the fiscal year, unless otherwise provided by the statute of the company.

According to Art. 75 of the Law [66], the annual financial statements of a public joint-stock company shall be required and checked *by an independent auditor*. Officials of the company are obliged to provide the independent auditor with access to all documents necessary for checking the results of financial and economic activity of the company. *An independent auditor can not be:* 1) an affiliated person of the company; 2) an affiliated person of an official of the company; 3) a person who provides consulting services to the company.

Audit of the activity of a joint-stock company as well has to be held at the request of a shareholder (shareholders) who is (are) the owner (owners) of more than 10 percent of ordinary shares of the company.

Recommended literature: [2; 3; 11 – 15; 17; 20; 47; 53; 60 – 62; 66; 72; 85; 89; 90].

5. Legal status of enterprises and enterprise associations

5.1. Legal status of enterprises, classification of enterprises.
5.2. General characteristics of the types of enterprises.
5.3. Legal status of enterprise associations.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the types of enterprises and enterprise associations.

Professional competences:

the ability to analyze the types of enterprises and enterprise associations;
formation of skills in comparison of enterprise types;
formation of skills in comparison of enterprise associations.

Key words: enterprise; separate subdivisions of enterprises; state enterprise; state-owned enterprise; communal enterprise; collective property enterprises; cooperative; consumer cooperatives; enterprises of public and religious organizations; enterprise association; association; corporation; consortium; concern.

5.1. Legal status of enterprises, classification of enterprises

An enterprise is an independent subject of economic activity established by the competent state or local government or other entities to meet social and personal needs through the systematic implementation of industrial, research, trade and other economic activities in the manner provided by the Economic Code and others laws (Art. 62 of the EC) [3; 70].

An enterprise, unless other provided by law, acts on the basis of the statute or model statute. Enterprises regardless of the form of property, the organizational and legal form, as well as the constituent documents on the basis of which they are created and operate, have equal rights and obligations. An enterprise is a legal entity which has separate property, an independent balance, accounts in institutions of banks and may have seals. It can not have legal entities in its structure.

Classification of enterprises:

1) depending on *the form of property*:

a) a private enterprise (acting on the basis of private property of citizens or subjects of economic activity (legal entities));

b) an enterprise that operates on the basis of collective property (a corporate or unitary enterprise, which operates on the basis of the collective property of the founder (founders));

c) a communal enterprise (acting on the basis of communal property of a territorial community);

d) a state enterprise (acting on the basis of state property);

e) an enterprise based on a mixed form of property (based on the estate union of various property forms);

f) a joint communal enterprise, acting on a contractual basis for co-financing (retention) by the relevant territorial communities – subjects of co-operation;

- an enterprise with foreign investments;
- a foreign enterprise (in the authorized fund, foreign investments make up to 100 %);

2) depending on *the way of formation* (foundation) and *formation of the authorized fund*:

a) unitary enterprises created by one founder who allocates the necessary property, forms an authorized fund which is not divided into shares (units) in accordance with the law, approves the statute, distributes revenues directly or through the manager appointed by him, manages the enterprise and forms a labor collective on the basis of employment, solves the issue of reorganization and liquidation of the enterprise. Unitary enterprises include:

- state enterprises;
- communal enterprises;
- enterprises based on the property of associations of citizens, religious organizations;
- enterprises based on the private property of the founder;

b) corporate enterprises formed by two or more founders under their joint decision (agreement) operate on the basis of association of property and (or) entrepreneurial activity or work of founders (participants), their joint management of cases on the basis of corporate rights, as well as through bodies created by them, participation of founders (participants) in distribution of incomes and risks of the enterprise. Corporate enterprises include:

- cooperative enterprises;
- enterprises in the form of an economic entity;
- other enterprises, including those based on the private property of two or more persons;

3) depending on *the relationship between enterprises*, there are independent and dependent enterprises.

An independent enterprise is an enterprise, whose authorized fund or capital belongs to it independently on the right of property, the right of full economic management or the right of operational management.

Dependent enterprises are those in whose capital there is a significant share of another enterprise.

Enterprises founded by other enterprises and subordinated to them are called *subsidiaries (branch establishment),* and the enterprises that created them are *parent companies*.

An enterprise has an independent balance – a system of indicators that characterize its economic activity through the ratio or contrast of its individual sides. The balance of an enterprise is the main form of accounting, which characterizes in monetary terms the state of sources of formation and directions of investment of capital for a certain date. These balances, as a rule, are compiled on the basis of the results of the year, as on the 31 of December of the relevant reporting year, and submitted for inspection to the tax and other bodies. In accordance with the current legislation, the company opens settlement and other accounts in commercial banks. It has its own stamp, which shows its name and number in the Unified Register of Enterprises. In order to individualize its product and distinguish it from identical or similar products of other manufacturers, the enterprise has the right to register the mark for goods and services, as well as the company name, in the established manner.

The choice of a specific organizational and legal form of the enterprise itself is influenced by such factors as property; legal regime of property transferred to the company by its founders; existing legislative restrictions regarding the subject of this organizational and legal form; powers to manage the property of a legal entity; minimum requirements of the legislation of its founders; the limits of liability of founders for the debts of the legal entity established by them; delegated nature of management powers and some other features.

An enterprise can consist of *production structural divisions* (manufactories, shops, offices, sections, brigades, laboratories, etc.), as well as *functional structural divisions of the management apparatus* (departments, offices, services).

Functions, rights and obligations of the structural subdivisions of an enterprise are determined by the *provisions* approved by them in accordance with the established procedure. The company independently determines its organizational structure, the number of employees and the staffing schedule.

An enterprise has the right to create *a subsidiary (an affiliate), representative offices, branches and other separate subdivisions*, agreeing on the placement of such units of the enterprise with the relevant local government bodies in accordance with the *provisions* established by law. Such separated subdivisions do not have the status of a legal entity and operate on the basis of their provisions approved by the enterprise. Enterprises can open accounts at banks' offices through their separate subdivisions in accordance with the law.

An affiliate (subsidiary) is a separated subdivision of an enterprise located outside its place of location and carrying out all or only part of its functions.

A representative office is a separate subdivision of an enterprise, which is also located outside the place of its location, and represents and protects the legitimate rights and interests of the enterprise.

A branch is a primary element of an enterprise, which directly carries out part of the functions assigned to it. It forms the whole entity with the enterprise, with single capital, statute and balance, as well as the name that coincides with the name of the enterprise.

Enterprises can also create *agencies* – divisions of an enterprise that execute individual orders of the enterprise and, as a rule, carry out maintenance of the main types of its activities. Placement of such units is agreed with local authorities.

Subsidiaries and representative offices are not legal entities, but they are endowed with property and operate on the basis of the provisions approved for them by the enterprise. Their directors are appointed by a legal entity and act on the basis of the power of attorney issued by it. Information about open separate subdivisions of the enterprise should be entered into the Unified State Register.

As a general rule, *enterprise management* is divided into supreme, executive and control. The competence of the supreme authorities of the enterprise – the general meeting of its founders is the decision of strategic issues of its activities, affecting the essential foundations of its activities or activities of the founders. The executive bodies settle tactical issues, including those related to daily activities. In the course of implementation of

the powers specified in the established order by the supreme authority, they are accountable to it and supervised by it. The control body, as a general rule, is an audit and monitoring committee, which is elected by the general meeting and is accountable to it. The founders of private enterprises (based on the property of one person) directly conduct the management of the enterprise independently or through a person authorized by them. In accordance with the peculiarities of a particular organizational and legal form of the company, a number of management features are established (for example, joint-stock companies form a supervisory board).

The management of an enterprise is carried out in accordance with its constituent documents on the basis of a combination of the owner's rights regarding the economic use of his property and participation in the management of the labor collective. At the same time, the owner of the company exercises its management rights directly or through its authorized bodies. For the management of the economic activity of the enterprise, the owner (owners) or an authorized body of the company appoints (elects) the head of the enterprise. The head of an enterprise without a power of attorney acts on behalf of the enterprise, represents its interests in the bodies of state power and local self-government, other organizations, in relations with legal entities and citizens, forms the administration of the enterprise and solves issues of the enterprise within the limits and in accordance with the procedure established by the constituent documents.

Decisions on social and economic issues regarding the activities of the enterprise are developed and made by its governing bodies with the participation of the labor collective and its authorized bodies. The latter may be the Council of the labor collective, its head, and more often the trade union body.

At enterprises using hired labor, a collective agreement between the owner (a body authorized by him) and the labor collective should be concluded. This agreement regulates the industrial, labor and social relations of the labor collective with the administration of the enterprise.

The labor collective of an enterprise is made up of all citizens who, by their labor, take part in its activity on the basis of an employment contract (agreement) or other forms regulating the labor relations of an employee with an enterprise.

5.2. General characteristics of the types of enterprises

State enterprises are formed by the competent authority of state power in an orderly manner on the basis of a separate part of the state property, as a rule, without division into shares, and are within the scope of its management. The state authority, to which the management company belongs, is the representative of the owner and performs its functions within the limits defined by the Economic Code of Ukraine and other legislative acts. The property of such enterprise is state property and is entrusted to it on the right of economic management or operational management.

The basis for the economic activity of state commercial enterprises is the property of the state form of property, which is secured by such an enterprise and belongs to it on the right of economic management. The need for the existence of state-owned enterprises is due to the fact that they operate in the most important, strategic sectors of the state's economy (military-industrial complex, communications, means of connection and information, etc.), ensuring its sovereignty and general regulatory character. These enterprises carry out entrepreneurial activity, which is an exclusive prerogative of the state itself and is aimed at ensuring strategic state interests and functions of the state itself.

Thus, according to Art. 4 of the Law of Ukraine "On Entrepreneurship" [44; 75] a number of types of entrepreneurial activity may be carried out only by state enterprises (activities related to the protection of certain particularly important objects of the state property right, the list of which is determined in accordance with the procedure established by the Cabinet of Ministers of Ukraine, with the carrying out of forensic, medical, psychiatric examinations and the development, testing, production and operation of rocket carriers, including their space launches with any target may be carried out only by state enterprises and organizations, etc.).

Such enterprises operate on the basis of the statutes approved by their founders, which are the bodies authorized by the state to manage and dispose of state property. Such bodies are ministries and other subordinate bodies of the Cabinet of Ministers of Ukraine.

State commercial enterprises operate on the basis of the statute or model statute on the principles of entrepreneurship and are responsible for the consequences of its activities by all their property that they have on the right of economic management.

State-owned enterprises are created by the decision of the Cabinet of Ministers of Ukraine in the branches of national economy, in which:

- the law permits carrying out of economic activities only to state enterprises;
- the main (more than 50 %) consumer of products (works, services) is the state;
- under conditions of economic activity, free competition between producers or consumers is not possible;
- the major (over 50 % part of goods) production corresponds to socially necessary products (works, services), which, according to its conditions and the nature of the needs it satisfies, can not be profitable;
- privatization of property complexes of state enterprises is prohibited by law.

A state-owned enterprise is created by the decision of the Cabinet of Ministers of Ukraine. The decision on the creation of a state-owned enterprise determines the scope and nature of the main activity of the enterprise, as well as the body to whose management field the created enterprise belongs. Reorganization and liquidation of a state-owned enterprise is carried out in accordance with the requirements of the Economic Code by the decision of the body, whose competence is the creation of this enterprise. The property is secured by it on the right of operational management.

The body, whose field of management includes the state-owned enterprise, approves the statute of the enterprise, appoints its head, gives permission for the execution of economic activity, defines the types of products (works, services), the production and sale of which is subject to the said permit.

A state-owned enterprise carries out economic activity in accordance with the production tasks of the body it is subordinate to.

The body, whose area of management includes a state-owned enterprise, controls the use and preservation of the property owned by the enterprise, and has the right to remove from the state-owned enterprise the property that is not used or used for other purposes and to dispose of it within the limits of its authority.

A state-owned enterprise does not have the right to alienate or in other way dispose of the property belonging to fixed assets attached to it without the prior consent of the authority to whose field of management it belongs.

A state-owned enterprise is responsible for its obligations only with funds at its disposal. In case of insufficient funds, the state, in the person of the authority to whose management the company belongs, bears full subsidiary responsibility for the obligations of the state-owned enterprise.

A state-owned enterprise is responsible for its obligations with the funds and other property at its disposal (except for fixed assets). In case of insufficiency of such funds and the property of the state-owned enterprise, the owner is liable for his obligations. It cannot become bankrupt.

A communal unitary enterprise is formed in an orderly manner by a competent local self-government body on the basis of a separate part of communal property and is included in the field of its management. The organ, whose field of management includes this communal unitary enterprise, is the representative of the owner – the corresponding territorial community – and performs its functions within the limits defined by the Economic Code of Ukraine and other legislative acts. The property of this enterprise is communal and secured by such an enterprise on the right of economic management (a communal commercial enterprise) or on the right of operational management (a communal non-commercial enterprise).

The features of economic activity of communal unitary enterprises are determined in accordance with the requirements established by the Economic Code regarding the activities of state commercial or state-owned enterprises, as well as other requirements stipulated by law.

A collective property enterprise (Chapter 10 of the EC [3; 70]) is a corporate or unitary enterprise that operates on the basis of the collective property of the founder (founders).

The founders of collective enterprises, as a general rule, have limited liability for the obligations of legal entities established by them, unless other provided by the current legislation of Ukraine. For a collective enterprise it is characteristic that the combination of property and labor activity, the distribution of profits received as a result of such activity, is carried out through labor participation.

Collective property enterprises are production cooperatives, enterprises of consumer cooperation, enterprises of public and religious organizations, and other enterprises provided by law.

Cooperatives as voluntary associations of citizens aiming to jointly solve economic, social and household and other issues can be created in various fields (production, consumer, residential, etc.). Activities of different types of cooperatives are regulated by law.

A production cooperative is a voluntary association of citizens on the basis of membership for the purpose of joint production or other economic activity, based on their personal labor participation and association of property share contributions, participation in enterprise management and distribution of income among members in accordance with their participation in its activities. Production cooperatives may carry out production, processing, stock-manufacturing, supply, service and any other business activity not prohibited by the statute.

A production cooperative is a legal entity which operates on the basis of the statute.

Citizens who have reached the age of 16, recognize the statute of the cooperative and comply with its requirements, take property and labor participation in the activities of the cooperative may become members of the production cooperative.

Production cooperative management is carried out on the basis of self-government, publicity, participation of its members in solving the issues of the cooperative activities. The supreme governing body of a production cooperative is the general meeting of the cooperative members. Cooperative management bodies include the board (head) of the cooperative and the audit committee (auditor) of the cooperative.

Consumer cooperation in Ukraine is a system of self-governing organizations of citizens (consumer partnerships, their unions, associations), as well as enterprises and institutions of these organizations, which are an independent organizational form of the cooperative movement.

A primary link of consumer cooperation is *a consumer partnership* – a self-government organization of citizens, which, on the basis of voluntary membership, property participation and mutual assistance, is united for joint economic activity with a view to collectively organized provision of their economic and social interests. Each member of the consumer partnership has a share in its property. A consumer partnership is a legal entity which acts on the basis of the statute.

Enterprises of consumer cooperation are unitary or corporate enterprises formed by a consumer partnership (company) or a union (association) of consumer partnerships in accordance with the requirements of the Economic Code and other legislative acts for the purpose of implementing the statutory objectives of these associations, unions (associations).

An enterprise of associations of citizens, religious organization is a unitary enterprise based on the property of citizens' associations (a public organization, a political party), or the property of a religious organization for the conduct of economic activity in order to fulfill their statutory tasks.

The founder of an enterprise of a citizen association is a relevant association of citizens having the status of a legal entity, as well as an association of public organizations in the event that its statute provides for the right of establishment of enterprises. Political parties and legal entities created by them are prohibited from setting up enterprises, with the exception of the mass media, enterprises selling social and political literature, other propaganda-campaign materials, products with their own symbols, holding exhibitions, lectures, festivals and other socio-political events.

Religious organizations have the right to establish publishing, printing, production, restoration, construction, agricultural and other enterprises necessary for the operation of these organizations.

A private enterprise operates on the basis of private property of legal entities of one or several citizens, foreigners, stateless persons and his (their) labor or with the use of hired labor.

The prevalence of this organizational and legal form is due to the following factors: the absence of a statutory restriction on the formation of an authorized fund and, consequently, the possibility of expeditiously increasing or reducing its size, the possibility of differentiating the powers of the owner of the property of the enterprise (its founder) from the person directly involved in enterprise management; fairly wide scope of substantive activity of this business structure; minimal responsibility of the founder of the enterprise.

Thus, the minimum size of the authorized capital is determined only for economic entities, where it equals 1250 minimum wages for joint-stock companies. As the legislation of Ukraine stipulates providing a legal entity (when it is created) with the founder's property intended for business purposes, the formation of an authorized fund of a private enterprise is required with property that meets the requirements of "sufficiency for business" depending on the alleged industrial or other activities of the enterprise. The main feature of "sufficiency of property" can be the volume of consumer qualities of such property, allocated for the provision of entrepreneurship. For example, for the production activity of a legal entity it is equipment for the production of products (machines, materials, means); for the field of services, it is furniture, communication facilities, etc. The stated value of the transferred property is fixed in the statute of a private enterprise.

An important factor influencing the choice of the specified organizational and legal form of entrepreneurship is the possibility of differentiating the powers of the owner of the property from the authority to manage this structure.

Thus, the relation of the founder of an enterprise to the legal entity created by him is only obligatory, namely: the founder is obliged to form the authorized fund of the enterprise by allocating the property necessary for the business activity, approving its statute, appointing the head of the enterprise, approving annual reports, and balances, deciding on the reorganization or termination of this structure. Other management powers may be assigned by the owner to the head of the enterprise – the director who will bear all full responsibility for the results of the activity of the legal entity both before its founder and before the state, including responsibility for payment of obligatory taxes, fees and other payments to the budget.

The advantages of this organizational and legal form of entrepreneurial activity include the possibility of a wide choice of business, with the exception of the implementation of insurance, banking, pawnbrokerage (lombard) and trust operations. These restrictions do not exclude the possibility of a private enterprise to take an indirect participation in these types of entrepreneurships, acting as a co-founder of the relevant economic partnerships. Moreover, indirect participation in economic entities engaged in the above-mentioned risky business activities, is most appropriate for private enterprises, since the responsibility of its founder, an individual, is generally limited in nature, without exceeding its contribution to the authorized fund of the private enterprise established by it (unless other provided by the legislation of Ukraine and the constituent documents of the enterprise).

A farm is a form of entrepreneurship for the purpose of production, processing and marketing of agricultural products. Members of the farm cannot be persons who work on it by an employment contract (agreement).

An enterprise created in accordance with the requirements of the EC, whose authorized capital is not less than 10 % a foreign investment, is recognized *an enterprise with foreign investments*. The enterprise acquires the status of a company with foreign investments from the date of the transfer of foreign investment into its balance. *Foreign investment* is the value invested by foreign investors in investment objects in accordance with the legislation of Ukraine in order to profit or achieve a social effect. Foreign investments can be made in objects for which it is not prohibited by the laws of Ukraine.

The law may specify areas of management and/or territories in which the total amount of participation of a foreign investor is established, as well as territories in which the activities of enterprises with foreign investments are restricted or prohibited, proceeding from the requirements of ensuring national security.

A foreign enterprise is a unitary or corporative enterprise created under the legislation of Ukraine, which operates solely on the basis of the property of foreigners or foreign legal entities, or an active enterprise acquired in full property of these persons. Foreign enterprises cannot be created in the sectors defined by law, which are of strategic importance to the security of the state.

5.3. Legal status of enterprise associations

In order to cooperate in the economic activity of an enterprise, regardless of the form of property, they have the right to combine their industrial, scientific, commercial and other activities and create economic associations if this does not contradict the antitrust laws of Ukraine.

An enterprise association (Art. 117 of the Economic Code [3; 70]) is an economic organization formed as a part of two or more enterprises in order to coordinate their production, scientific and other activities in order to solve common economic and social problems.

Types of enterprise associations:

1) depending on the order of foundation:

a) an economic association – an association of enterprises formed on their initiative, regardless of their type, which on a voluntary basis unite their economic activity;

b) state or communal economic associations – associations of enterprises formed by state (communal enterprises) by the decision of the Cabinet of Ministers of Ukraine, ministries or decisions of the competent local authorities (usually in the form of corporations or concerns, regardless of the name of the association).

Thus, an association of enterprises is created by the enterprises themselves on a contractual basis or on the initiative and decisions of the owner: the government, branch ministries or relevant state committees, in agreement with the Antimonopoly Committee of Ukraine. Nonstate enterprises may also voluntarily join such associations if provided by their constituent documents.

Unions of registered companies in Ukraine may include enterprises of other states, as well as enterprises of Ukraine, to make associations of enterprises registered in other countries. The procedure for joining such associations and their organization and activities is carried out in accordance with the legislation of Ukraine on foreign economic activity.

2) according to the organizational and legal form:

a) an association – a contractual association created for the purpose of continuous coordination of economic activity of enterprises, united by centralizing one or several production and management functions, the development of specialization and cooperation of production, the organization of joint productions on the basis of association of participants, financial and material resources to meet mainly the economic needs of the association members. The association cannot interfere in the activities of the participating enterprises. Thus, the association performs only a coordinating role;

b) a corporation – a contractual association created on the basis of a combination of the industrial, scientific and commercial interests of united enterprises, with the delegation of certain powers of centralized regulation of the activities of each of the participants to the governing bodies of the corporation;

c) a consortium – a temporary statutory association of enterprises for the achievement by its participants of a certain general economic purpose (implementation of targeted programs, scientific and technical, construction projects, etc.). The consortium enjoys and disposes of its property, including centralized funds allocated to it by its founders, as well as funds received from other sources. In Ukraine, a consortium is recognized as a legal entity (while in other countries (UK, USA) not), acting on the basis of a special type of agreement on joint activities – a consortium agreement;

d) a concern – a statutory association of enterprises, as well as other organizations, based on their financial dependence on one or a group of members of the association, with the centralization of the functions of scientific and technological and industrial development, investment, financial, foreign economic and other activities. In the end, the concern, as a rule, falls within the financial dependence of the banks created by their participants;

3) *associated enterprises (economic organizations)* – a group of economic entities – legal entities that are linked by economic and/or organizational relationships in the form of participation in the authorized fund and/or in management. Dependence between associate enterprises can be simple or decisive (Part 1 of Art. 126 of the Economic Code [3; 70]);

4) *a holding company* – a joint-stock company that owns, uses and disposes of the holding corporate shares (stocks, divvies) of two or more corporate enterprises (Part 5 of Art. 126 of the Economic Code [3; 70] and Art. 1 of the Law of Ukraine "On Holding Companies in Ukraine" as of March 15, 2006 [57; 80]).

Enterprises – members of an enterprise association maintain the status of a legal entity, regardless of the organizational and legal form of the association and they are subject to the provisions of the Economic Code and other laws regulating the activities of enterprises.

Enterprises – members of economic associations keep the legal status of a legal entity and have the right:

1) to voluntarily withdraw at any time from the association on the terms and in accordance with the procedure established by the constituent agreement on its formation or statute;

2) to be a member of other enterprise associations, unless otherwise provided by law, a constituent agreement or statute of an enterprise associations;

3) to receive from the economic association, in accordance with the established procedure, information related to the interests of the enterprise;

4) to receive part of profit from the activities of a business association in accordance with its statute.

An enterprise may have other rights provided for by the constituent agreement or the statute of a business association in accordance with the law.

An enterprise which is a member of a state or communal enterprise association has no right without the consent of the association to leave its structure, as well as to unite on a voluntary basis its activity with other subjects of economic activities and make a decision to terminate its activity.

The association is not responsible for the obligations of the enterprises that are part of it, as enterprises are not responsible for the obligations of associations, except when the constituent documents provide other option. Enterprises – members of an association may withdraw from its membership, with the preservation of mutual obligations and agreements with other subjects of economic activities, which are its members.

The *supreme governing* body is the general meeting of participants, and the executive body is the management, the directorate, etc. The supreme body of an enterprise association is authorized to approve the statute and other constituent documents, make changes to them, decide on the admission

of new members to the enterprise association and exclude the participants from its membership to resolve financial and other issues in accordance with the constituent documents of the enterprise association, to form an executive body of a enterprise association in accordance with its statute or agreement.

The *executive bodies* decide on the current activities of the merger of enterprises that, according to the statute or agreement, are within its competence.

Recommended literature: [2; 3; 13 – 15; 17; 34; 35; 40; 43; 44; 48; 49; 55; 56; 60 – 62; 70; 73 – 76; 80; 92].

6. Legalization of subjects of economic activity

6.1. Concepts, types and stages of legalization.

6.2. General characteristics of state registration.

6.3. General characteristics of the state registration procedure.

6.4. General characteristics of the procedure for making changes and amendments to constituent documents of a legal entity, information about a proprietorship.

6.5. General characteristics of licensing of economic activity.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the concept and stages of legalization, general characteristics of the state registration procedure and licensing.

Professional competences:

the ability to analyze types and stages of legalization;

formation of skills in characterization of the procedure for state registration;

formation of skills in characterization of the procedure for licensing of economic activity.

Key words: legalization; state registration; application procedure; procedure for making changes and amendments to constituent documents of a legal entity, information about proprietorship.

6.1. Concepts, types and stages of legalization

Legalization is considered as legalizing or giving legal force, the transition to a legal position. In most cases, legalization is associated with the state

registration of a subject, but some types of legalization are of a permanent nature (optional), for example, licensing.

Legalization is a necessary prerequisite for participation in economic (entrepreneurial) relations; it indicates the intention of a person to carry out economic (entrepreneurial) activity on legal grounds and through legalization of the entities to exercise their right to engage in economic (entrepreneurial) activity and, accordingly, become an economic (entrepreneurial) legal personality.

The essence of legalization is in implementing a series of successive legally significant actions aimed at acquiring the rights and obligations of a subject of economic activity (entrepreneurship). Accordingly, the legalization is divided into:

- interior;
- exterior.

Interior legalization manifests itself at the initiative stage, goes through the organizational one and ends with formalization (choosing the manager, the organizational form, the type of activity, the location). This internal legalization is a prerequisite for the *external* one*,* which starts with the procedure of state registration, then there is statistical, permitting, fiscal, insurances, fire, sanitary accounting, etc., and a special legalization, licensing, certification, accreditation and so on.

Legalization means a certain sequence of legally significant actions of a person to exercise his own right to engage in economic activity (entrepreneurship) in order to legitimize it.

Thus, legalization carries out a control function aimed at compliance with the law on the implementation of entrepreneurship conditions, the maintenance of the Unified State Register, ensuring the priorities of the national producer, etc.

Legalization is carried out in the application and permissive order.

The procedure for state registration is regulated in detail by a special regulatory act – the Law of Ukraine "On the State Registration of Legal Entities, Proprietorships and Public Formations" dated May 15, 2003 (hereinafter – the "Law") [33; 87].

6.2. General characteristics of state registration

State registration of legal entities, public formations that do not have the status of a legal entity, and proprietorships – entrepreneurs (state registration)

is an official recognition by the state of the fact of establishment or termination of a legal entity, a public formation that does not have the status of a legal entity, certification of the existence of the relevant status of a public association, a trade union, its organization or association, a political party, an organization of employers, associations of employers' organizations and their symbols, confirmation of the fact of acquiring by an individual or depriving him of the status of an entrepreneur, changes in the information contained in the Unified State register of legal entities, proprietorships and public formations, of legal entities and proprietorships, as well as of other registration actions provided for by law.

The system of bodies in the field of state registration is:

1) the Ministry of Justice of Ukraine;

2) other entities of state registration:

- the Ministry of Justice of Ukraine – in the case of state registration of political parties, All-Ukrainian trade unions, their associations, All-Ukrainian associations of employers' organizations; separate subdivisions of foreign nongovernmental organizations, representative offices, branches, affiliations of foreign charitable organizations, permanent arbitration courts, founders of which are All-Ukrainian public organizations, All-Ukrainian creative unions and symbols of public formations;
- the central executive body that implements the state policy in the field of religion, the Council of Ministers of the Autonomous Republic of Crimea, oblast (region), cities of Kyiv and Sevastopol state administrations – in the case of state registration of legal entities – religious organizations;
- territorial bodies of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, oblast (region), cities of Kyiv and Sevastopol – in the case of state registration of primary, local, oblast, regional and republican trade unions, their organizations and associations, structural units of political parties, regional (local) creative unions, territorial branches of All-Ukrainian creative unions, local, regional, republican of the Autonomous Republic of Crimea, Kyiv and Sevastopol city organizations of employers and their associations, permanent arbitration courts, public associations, their separate subdivisions, public associations that do not have the status of a legal entity, confirmation of the All-Ukrainian status of a public association;
- executive bodies of village, town and city councils, Kyiv and Sevastopol city, district, district in the cities of Kyiv and Sevastopol, state administrations, notaries – in case of state registration of other legal entities (except for the

cases provided in paragraphs 2 to 4 of clause 14 of Part 1 of Art. 1 of the Law [33; 87]) and proprietorships.

The executive bodies of village, town and city councils (except for the cities of the oblast and/or republican of the Autonomous Republic of Crimea) acquire powers of state registration of other legal entities and proprietorships according to the law "On the State Registration of Legal Entities and Proprietorships and Public Formations" [33; 87] in the event that such a decision is taken by the relevant council.

A state registrar of legal entities and proprietorships and public formations is a person who is in labor relations with the subject of state registration, a notary public.

Art. 6 of the Law provides that the *state registrar may be* a citizen of Ukraine with higher education, who meets the qualification requirements determined by the Ministry of Justice of Ukraine, and is in labor relations with the subject of state registration (except notaries), and a notary.

State registration is based on the following *basic principles:*

1) mandatory state registration in the Unified State Register;

2) publicity of the state registration in the Unified State Register and the documents that became the basis for its implementation;

3) regulation of relations concerning the state registration, and the peculiarities of state registration exclusively by this Law;

4) state registration on an *applicant's basis*;

5) the unity of the methodology of state registration;

6) the objectivity, reliability and completeness of information in the Unified State Register;

7) making information to the Unified State Register solely on the basis and in accordance with the Law;

8) the openness and availability of information of the Unified State Register (Part 1 of Art. 4 of the Law [33; 87]).

State registration of legal entities, public formations that do not have the status of a legal entity, on the basis of documents submitted in paper form, is carried out within the Autonomous Republic of Crimea, oblast, cities of Kyiv and Sevastopol at the location of the legal entity or public formation, that do not have the status of a legal entity.

State registration of proprietorships on the basis of documents submitted in paper and electronic form, as well as state registration of legal entities, public formations that do not have the status of a legal entity, on

the basis of documents submitted in electronic form, is carried out regardless of their location.

State registration of changes to the information on a legal entity contained in the Unified State Register, as a result of notarization of the transaction, the subject of which is the alienation (transfer) of the founder's (participant's) share in the authorized (share) capital (share fund) of the legal entity (except joint-stock companies, limited liability companies, additional liability companies), as a result of issuance of a certificate of inheritance to the share of the founder (participant) in the authorized (share) capital (share fund) of a legal entity (except joint-stock companies, limited liability companies, additional liability companies) is conducted by a notary who has performed the relevant notarial act, immediately after the certification inscription on the document or signing the document issued by him, except in cases of notarization of the transaction, the legal effect of which is associated with a certain circumstance, and other cases provided for in this article.

Documents for state registration can be submitted in paper or electronic form. In paper form, documents are filed personally by the applicant or by post.

If the documents are filed in paper form, the applicant submits a passport of a citizen of Ukraine or other identity document provided by the Law of Ukraine "On the Single State Demographic Register and Documents Confirming the Citizenship of Ukraine, Certifying the Person or His Special Status" [36; 96].

If the applicant is a foreigner or a stateless person, the identity document is a national, diplomatic or service passport of a foreigner or another document certifying the identity of a foreigner or a stateless person.

In case of submission of documents, the representative shall additionally submit a copy of the original (notarized copy) of the document certifying his authority.

Documents are submitted electronically by the applicant using the unified state web portal of electronic services in the order determined by the Ministry of Justice of Ukraine and the central executive body that ensures the formation and implementation of state policy in the field of electronic and administrative services. For services that the web portal does not provide, it is done through the portal of electronic services in the order determined by the Ministry of Justice of Ukraine in the Procedure for state registration of legal entities, proprietorships and public formations that do not have the status of a legal entity, provided that the applicant signs the application using electronic means of identification with a high level of trust.

Documents in paper form are accepted by description, a copy of which on the day of their receipt is issued to the applicant with a note on the date of their receipt and access code in the manner in accordance with which documents were submitted (Art. 14 of the Law [33; 87]).

Documents submitted for state registration must meet the following requirements (Art. 15 of the Law [33; 87]):

1) the documents must be in the state language and, in addition, at the request of the applicant, in a different language (except for the application for state registration);

2) the text of the documents must be written legibly (by machine or by hand in block letters);

3) the documents should not contain purges or overwriting, forged words and other corrections, not specified in them, spelling and arithmetic errors, filled in pencil, and also contain damages that prevent from unambiguous interpretation of their contents;

4) documents in electronic form must be executed in accordance with the requirements specified by the legislation;

5) the application for state registration is signed by the applicant. In case of submission of an application for state registration by post, the authenticity of the signature of the applicant must be notarized;

6) the decision of the authorized body of management of a legal entity must be executed in compliance with the requirements established by law and must comply with the law;

7) the decision on the termination of a legal entity must contain information about the personal membership of the termination commission (reorganization commission, liquidation commission), its head or liquidator, registration numbers of tax payers or series and passport number (for individuals who, through their religious convictions, refused to accept the registration number of the taxpayer's registration card, informed the relevant supervisory authority and have a note in the passport about the right to make payments for the series and number port), the procedure and the term creditors claiming their demands;

8) the constituent document of a legal entity, provision, regulations, a list of judges of a permanent arbitration court, the statute (provision) of a public formation, which does not have the status of a legal entity, the agreement (declaration) on the establishment of a family farm, must contain information provided by the legislation and comply with the law;

9) the constituent document of a legal entity (except for a state body, a local self-government body, a legal entity created and operating on the basis of a model statute) shall be presented in writing, stipulated, numbered and signed by the founders (participants), authorized by them or the head and secretary of the general meeting (in case of such a decision made by the general meeting, except in cases of establishment of a legal entity). The authenticity of signatures on the constituent document of a legal entity, set out in writing (except for a legal entity created on the basis of an administrative act of a state body, local self-government body) is notarized, except as provided by law;

10) the constituent documents of banks, other legal entities, which according to the law are subject to approval (registration), respectively, by the National Bank of Ukraine, other state bodies, shall be submitted with a mark on their approval by the relevant body. The authenticity of signatures on the transfer deed and the distribution balance of the legal entity is notarized with the obligatory use of special forms of notarial documents, except as provided by law;

11) amendments to the constituent document of a legal entity, provision, regulations, a list of judges of a permanent arbitration court, the statute (regulations) of a public formation that does not have the status of a legal entity, shall be filed by way of its revision;

12) the transfer act (in the case of merger, accession, conversion) and the distributive balance (in case of division or separation) of a legal entity must comply with the requirements established by law;

13) documents issued in accordance with the legislation of a foreign state must be legalized (consular legalization or placement of apostille) in accordance with the procedure established by law, unless other stipulated by international treaties;

14) the document, which is set out in a foreign language, must be translated into the state language with a certificate of fidelity of translation from one language to another or the signature of the interpreter in accordance with the procedure established by the legislation;

15) the image and description of the symbols must be executed in accordance with the requirements established by law and must comply with the law;

16) if the originals of the documents required for state registration, in accordance with the law remain in the files of state bodies, local self-

government bodies that issue them, the applicant submits copies of documents issued by such bodies in accordance with the law.

The forms of applications for state registration are approved by the Ministry of Justice of Ukraine.

6.3. General characteristics of the state registration procedure

For the state registration of the creation of a legal entity (including those created as a result of separation, merger, transformation, division), in addition to the creation of a central executive body, a local self-government body, the following documents are submitted (Art. 17 of the Law [33; 87]):

1) an application on the state registration of the creation of a legal entity;

2) a copy of the original (a notarized copy) of the decision of the founders, and in cases provided by law – the decision of the relevant state body to create a legal entity;

3) a constituent document of a legal entity – in the case of the creation of a legal entity on the basis of its own constituent document;

4) a document on the payment of an administrative fee – in cases provided for in Art. 36 of the Law [33; 87];

5) a document confirming the registration of a foreign person in the country of its location (an extract from a commercial, bank, a judicial register, etc.) – in the case of the creation of a legal entity, whose founder (founders) is a foreign legal entity, and other documents provided by law;

6) a structure of property according to the form and content determined in accordance with the legislation, etc.

For the state registration of a decision on the spin-off of a legal entity, a copy of the original (a notarized copy) of the decision of the participants or the corresponding body of the legal entity regarding the identification of the legal entity shall be provided.

The following documents are submitted for the state registration of the creation of a separate subdivision of a legal entity (Part 17 Art. 17 of the Law [33; 87]):

1) an application for state registration of the created separate subdivision of a legal entity;

2) a copy of the original (a notarized copy) of the decision of the authorized body of management of the legal entity on the establishment of a separate subdivision;

3) a structure of property according to the form and content determined in accordance with the legislation;

4) an extract, a statement or anther document from a trade, banking, court register, etc., confirming the registration of a nonresident legal entity in the country of its location, if the founder of the legal entity is a nonresident legal entity;

5) a notarized copy of the document certifying the person who is the ultimate beneficial proprietor of the legal entity, for a nonresident individual and, if such a document is issued without the use of the Unified State Demographic Register, for a resident individual.

The following documents are submitted for the state registration of an individual (Art. 18 of the Law [33; 87]):

1) an application for state registration of an individual by an entrepreneur, that can indicate a request for registration of such a person as a value-added taxpayer and/or the choice of a simplified taxation system;

2) a notarized written consent of the parents (adoptive parents) or the trustee or the guardianship and guardianship body – for an individual who has reached the age of sixteen and has a desire to engage in entrepreneurial activity but does not have full civil capacity;

3) an agreement (declaration) on the establishment of a family farm – in the case of state registration of an individual who independently or with family members creates a family farm in accordance with the Law of Ukraine "On Farming".

It is prohibited to require additional documents for conducting registration actions if they are not provided for by this article.

Art. 25 of the Law [33; 87] regulates the *procedure for state registration and other registration actions.* Thus, *a state registration and other registration actions are carried out on the basis of:*

1) documents submitted by the applicant for state registration;

2) judicial decisions which have become legally binding and entail a change of information in the Unified State Register or a prohibition (cancellation of the prohibition) of registration actions and also received in electronic form from the court or the state executive service in accordance with the Law of Ukraine "On Enforcement Proceedings" [30];

3) decisions taken on the results of the appeal in an administrative procedure in accordance with Art. 34 of the Law [33; 87].

The procedure for state registration and other registration actions based on documents submitted by the applicant for state registration *includes:*

1) filling in the application form for state registration – in case of personally submitting the documents by the applicant (at the request of the applicant);

2) reception of documents by the description – in case of submission of documents in paper form;

3) making copies of documents in electronic form – in case of submission of documents in paper form;

4) making copies of documents in electronic form to the Unified State Register;

5) verification of documents for the availability of grounds for suspension of consideration of documents;

6) verification of documents for the grounds for refusal of state registration;

7) making a decision on the registration action – for public formations, symbols and evidence of the existence of the All-Ukrainian status of a public association;

8) of registration actions (including the principle of tacit consent) in the absence of grounds for suspension of consideration of documents and denial of state registration by making an entry in the Single State Register;

9) formation and publication on the portal of electronic services or using the Unified State Web Portal of electronic services statement, results of the provision of administrative services in the field of state registration and constituent documents of a legal entity;

10) issuance at the request of the applicant of an extract from the Unified State Register in paper form based on the results of the registration action (in case of submission of an application for state registration in paper form).

An extract from the Unified State Register in paper form is provided with the signature and seal of the state registrar.

The subject of state registration not later than the next working day from the date of receipt of the court decision provided for in Par. 2 of Part 1 of Art. 25 of the Law [33; 87], must:

1) apply to the court for an explanation of the court decision – in case if the court decision is unclear to the subject of state registration;

2) notify the court or the state executive service of the impossibility of executing the decision indicating the grounds – in case of impossibility to execute the court decision;

3) carry out an application action by making an entry into the Unified State Register (except as provided by Par. 1 and 2 of this Part);

4) form an extract for its publication on the portal of electronic services or using the Unified State Web Portal of electronic services – in case of changes in the information contained in the statement.

Consideration of documents submitted for state registration and other registration actions is carried out in the following terms (Art. 26 of the Law [33; 87]):

for legal entities and natural proprietorships – within 24 hours after the arrival of documents submitted for state registration and other registration actions, except weekends and holidays.

The deadline for consideration of documents may be extended by the subject of state registration, if necessary, but not more than 15 working days.

The grounds for suspending consideration of documents submitted for state registration are (Art. 27 of the Law [33; 87]):

1) submission of documents or information specified by this Law not in full;

2) noncompliance of the documents with the requirements set forth in Art. 15 of the Law;

3) inconsistency of the registration number of the payer's tax card or series and passport number (for individuals who, because of their religious beliefs, have refused to accept the registration number of the tax card's account, have informed the relevant supervisory authority and have a note in the passport about the right to make payments for the series and passport number) with the information provided in accordance with Art. 13 of the Law [33; 87];

4) non-payment of an administrative fee or payment not in full;

5) submission of documents in violation of the deadline set by the legislation for their submission.

Suspension of consideration of documents is carried out within 24 hours, except for days off and holidays, after arrival of the documents submitted for state registration.

Consideration of documents is suspended for a period of 15 calendar days from the date of their submission.

The grounds for refusal of state registration (Art. 28 of the Law [33; 87]):

1) the documents submitted by a person who does not have this authority;

2) the Unified State Register contains information about a court decision regarding the prohibition of registration;

3) the grounds for suspension of consideration of the documents during the established term are not eliminated;

4) the documents contradict the requirements of the Constitution and laws of Ukraine;

5) the lack of conformity of the legal entity with the requirements of the law;

6) the procedure established by law for the establishment of a legal entity has been violated, etc.

The grounds for refusal to register proprietorship:

1) the documents submitted by a person who does not have this authority;

2) the Unified State Register contains information about the court decision regarding the prohibition to conduct the registration action;

3) the grounds for suspension of consideration of the documents during the established term are not eliminated;

4) the documents submitted to an improper subject of state registration;

5) restrictions on the entrepreneurial activity, established by law;

6) presence, in the Unified State Register, of an account that an individual has registered as a proprietorship;

7) the submitted documents contradict the requirements of the laws of Ukraine.

The refusal to state registration is carried out within 24 hours after the receipt of the documents submitted for state registration, except weekends and holidays.

A registration file (Art. 29 of the Law [33; 87]) is formed in paper and electronic form after making a Unified State Register of the state registration of a legal entity, public formations, which have no legal status, state registration of an individual – entrepreneur and state registration of the inclusion of information on legal entities and proprietorships.

Registration files in paper form are stored in the entity state registration at the location of a legal entity, public formations, proprietorship of a legal entity (other than public formations and religious organizations) and proprietorships – in the executive bodies of the city council oblast and/or republican significance Kyiv and Sevastopol city, district, district in Kyiv and Sevastopol city state administrations.

Registration files in paper form are stored for five years from the date of the Unified State Register of the state registration of the termination of a legal

entity, public formations, which have no legal personality or state registration of cessation of business of a proprietorship.

Registration files in electronic form are stored for 75 years from the date of the Unified State Register of the state registration of the termination of a legal person, public formations, that is not a legal entity or state registration of cessation of business of an individual – entrepreneur.

State registration is subject to an administrative fee in the following amount (Art. 36 of the Law [33; 87]):

0.3 subsistence minimum for able-bodied persons – for state registration of changes in information about a legal entity contained in the Unified State Register, except for making changes to the information on the communication with the legal entity;

0.1 subsistence minimum for able-bodied persons – for state registration of changes in information about the first name, middle name or address of an individual – entrepreneur.

For the provision of information from the Unified State Register, a fee is charged in the following amount:

0.05 subsistence minimum for able-bodied persons – for providing a statement for apostille and extraction in paper form;

0.07 subsistence minimum for able-bodied persons – for providing a document in paper form contained in the registration file;

75 percent of the fee prescribed by this part for providing a corresponding document in paper form – for state registration based on documents submitted in electronic form.

The administrative fee and fee for providing information from the Unified State Register are filed in the appropriate amount of the minimum wage in the monthly amount established by law on January 1 of the calendar year in which the relevant documents for the registration action or the request to provide information from the Unified State Register are submitted, and rounded to the nearest 10 hryvnia.

6.4. General characteristics of the procedure for making changes and amendments to constituent documents of a legal entity, information about a proprietorship

In case of amendments to the constituent instrument of a legal entity, provisions, regulations, a list of judges of a permanent arbitral tribunal, the

statute (provisions) of a public formation, which does not have the status of a legal entity, shall be filed by way of its revision in the new wording.

For state registration of changes in the information about a legal entity contained in the Unified State Register, including changes to the constituent documents of a legal entity, the following documents shall be submitted (Part 4 of Art. 17 of the Law [33; 87]):

1) an application for state registration of changes in the information about a legal entity contained in the Unified State Register;

2) a copy of the original (a notarized copy) of the decision of the authorized body of management of the legal entity on the changes introduced into the Unified State Register, except for making changes to the information on the ultimate beneficiary owners (controllers) of the legal entity, including the final beneficiary owners (controllers) of its founder, if the founder is a legal entity, location and communication with the legal entity;

3) a document confirming the registration of a foreign person in the country of its location (an extract from a trade, a bank, a judicial register, etc.) – in case of changes related to the entry of the founders of a foreign legal entity;

4) a document on the payment of administrative fees – in cases provided for in Art. 36 of the Law [33; 87];

5) the constituent document of a legal entity in the new wording – in case of amendments introduced in the constituent document;

6) a copy of the original (a notarized copy) of the transferable act or distribution balance – in the case of making changes related to the introduction of data on the legal entity, the legal successor of which is a registered legal entity;

7) copy of the original (a notarized copy) of the decision of the authorized body of the legal entity to withdraw from the composition of the founders (participants) and/or the statement of the physical person about withdrawal from the founders (participants), the authenticity of whose signature is notarized, and/or agreement, another document on the transfer or delivery of the share of the founder (participant) in the authorized (stock) capital (united fund) of the legal entity and/or the decision of the authorized body of management of the legal entity on the compulsory exclusion from the composition of the founders (participants) of the legal entity or a photocopy of death certificate of an individual, a court decision on the recognition of an individual a missing person – in case of making changes related to the change in the composition of the founders (participants) of a legal entity;

8) the structure of property according to the form and content determined in accordance with the legislation;

9) an extract, a statement or another document from the trade, banking, court register, etc., confirming the registration of a nonresident legal entity in the country of its location, if the founder of the legal entity is a nonresident legal entity;

10) a notarized copy of the document certifying the person who is the ultimate beneficial proprietor of the legal entity, – for a nonresident individual and, if such a document is issued without the use of the Unified State Demographic Register, – for a resident individual, etc.

For state registration of changes in the information on the proprietorship, contained in the Unified State Register, the following documents are submitted:

1) an application for state registration of changes in the information on the proprietorship, which is contained in the Unified State Register;

2) a document on payment of an administrative fee – in cases stipulated by the Law;

3) a copy of the certificate on the change of the registration number of the registration card – in case of making changes related to changing the registration number of the taxpayer's account card;

4) a copy of the first page of the passport and the page indicating the right to make any payments for the series and passport number – in case of changes of the series and the passport number – for individuals who, because of their religious beliefs, refused from the receipt of the registration number of the tax card's account, informed a corresponding supervisory authority about it and have a note in the passport about the right to make payments according to the series and passport number;

5) an agreement (declaration) on the establishment of a family farm – in the case of a proprietorship of a family farm in accordance with the Law of Ukraine "On Farming"; an agreement (declaration) on the establishment of a family farm in a new wording – in the case of amendments to the agreement (declaration) on the establishment of a family farm.

6.5. General characteristics of licensing of economic activities

Relations concerning the licensing of certain types of economic activity are regulated by the Law "On Licensing Types of Economic Activities"

of March 2, 2015 [37; 81]. The operation of this Law does not apply to the procedure for the issue, reissue and revocation of licenses for the following types of economic activity:

1) activity in the field of television and radio broadcasting, carried out in accordance with the Law of Ukraine "On Television and Radio Broadcasting";

2) the production and trade of ethyl alcohol, cognac and fruit and grain distillate, bioethanol, alcoholic beverages and tobacco products, carried out in accordance with the Law of Ukraine "On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit, Alcoholic Beverages and Tobacco Products and Fuel";

3) activities in the field of electricity, natural gas market, centralized water supply and centralized drainage, production of thermal energy, transportation of thermal energy by main and local (distribution) heating networks, supply of thermal energy and other activities licensed by the National Commission for State regulation in the field of energy and communal services, in accordance with the law, and control in these fields;

4) activity in the field of nuclear energy use, which is carried out in accordance with the Law of Ukraine "On Permitting Activity in the Field of Nuclear Energy Use";

5) professional activity in the capital markets and organized commodity markets, the licensing of which is carried out by the National Commission on Securities and Stock Market in accordance with the law;

6) activity on the gambling market, which is carried out in accordance with the Law of Ukraine "On State Regulation of Activities Related to the Organization and Conduct of Gambling".

This Law does not apply to the licensing of banking activities, activities for the provision of financial services and activities for the provision of collection services to banks, licensed by the National Bank of Ukraine in accordance with the law.

Licensing is a means of state regulation of conducting the types of economic activities aimed at ensuring security and protection of economic and social interests of the state, society, rights and legitimate interests, human life and health, environmental safety and environmental protection.

Article 7 of the Law [37; 81] provides more than 30 types of activities subject to licensing.

A license is a right of a subject of economic activity to conduct a type of economic activity or a part of a type of economic activity subject to licensing (Par. 5, Part 1, Art. 1 of the Law [37; 81]).

An entity may carry out economic activities subject to licensing from the date of entering information into the license register on the decision of the licensing authority to issue a license (Part 4 of Art. 2 of the Law [37; 81]).

State policy in the field of licensing is based on:

1) the principle of a single state licensing system;

2) the principle of territoriality, according to which the license extends to the administrative territory of the licensing authority that issued it;

3) the principle of compliance with the law;

4) the principle of priority protection of rights, legitimate interests, human life and health, the environment, protection of limited resources of the state and ensuring the security of the state;

5) the principle of equality of rights of business entities;

6) the principle of openness of the licensing process (Part 1 of Art. 3 of the Law [37; 81]).

Documents, whose submission to the licensing authority is provided by this Law, *may be submitted to the licensing authority at the choice of the licensee:*

1) purposely;

2) by post with the description of the attachment;

3) in electronic form in the manner prescribed by the Cabinet of Ministers of Ukraine.

Documents of the transferee of the license, the licensee in accordance with this Law shall be set out in the state language and signed by the applicant of the license, the licensee or by another authorized person.

The transferee of the license applies to a licensing authority to obtain a license based on the defined licensing conditions.

If the documents are presented in an orderly manner, the transferee of the license makes a document certifying his identity.

In case of submission of documents by a representative of the licensee the original document (a certified copy), which certifies his powers is additionally presented.

An *application for obtaining a license should contain information about*:

1) the transferee of the license:

for a legal entity – the full name, the identification code, the location, the list of separated subdivisions within which the conduct of economic activity which is subject to licensing is planned;

for proprietorship – the surname, the first name, the middle name (if any), residence information, the registration number of the taxpayer registration

card (not specified individuals who because of their religious beliefs refuse to accept the registration number of the taxpayer registration card and informed about this the supervisory body and have a mark in the passport – a copy of this mark is submitted) and consent to the processing of personal data in order to ensure compliance with the requirements of the Law;

2) the type of economic activity (in whole or in part) specified in Art. 7 of the Law [37; 81] on which the transferee of the license intends to obtain a license.

The application for obtaining a license shall be accompanied by:

1) the documents in accordance with licensing requirements;

2) a copy of the passport of the head of the license transferee (or his authorized representative) with a note from the state tax service body about the notification of refusal due to their religious beliefs to accept the registration number of taxpayer's registration card (submitted only by proprietorships, who, because of their religious beliefs refuse to accept the registration number of the taxpayer's registration card and reported this to the relevant supervisory body);

3) a description of documents submitted for obtaining a license, in duplicate (in case of submission of the documents in paper form).

The list of confirmed documents is established by licensing conditions and is exclusive (Art. 11 of the Law [37; 81]).

Licensing conditions are a normative legal act of the Cabinet of Ministers of Ukraine, whose provisions contain an exhaustive list of requirements to conduct economic activities subject to licensing that are mandatory for the transferee of the license, and an exhaustive list of the documents attached to the application for obtaining a license.

The licensing body within five working days from the date of receipt of the application for obtaining a license establishes the presence or absence of grounds for leaving it without consideration and, if available, makes a corresponding decision. The decision to leave the application for a license without consideration enters into force from the date of its adoption and must be published on the official website of the licensing authority and information about such a decision in the license register the next working day after its adoption. After eliminating the reasons that led to the decision to leave the application for a license without consideration, the transferee of the license may re-apply for a license (Art. 12 of the Law [37; 81]).

The licensing body, after establishing the absence of grounds for leaving the application for obtaining a license without consideration, considers

it in order to establish the absence or availability of grounds for refusal to issue a license by analyzing the supporting documents and obtaining information from the state paper and electronic information resources (Part 1 of Art. 13 of the Law [37; 81]).

In case of establishing during the consideration of the application for obtaining a license, the lack of grounds for refusal to issue a license, the licensing authority makes a decision on the issuance of a license.

The term of the decision to issue a license is ten working days from the date of receipt by the licensing authority of the application for obtaining a license.

A license for conducting by the transferee of a certain type of economic activities subject to licensing, is issued by the licensing body in electronic form (a record of the decision of the licensing body to issue a license to a subject of economic activity in the Unified State Register of legal entities, proprietorships and public formations) and is reflected in the extract from the Unified State Register of legal entities, proprietorships and public formations, which is issued to the licensee free of charge, and is subject to mandatory publication on the portal of electronic services in the manner prescribed by the Ministry of Justice of Ukraine in the Procedure for providing information from the Unified State Register of legal entities, proprietorships and public formations.

The license is issued for *an unlimited period.*

According to Art. 14 of the Law [37; 81] *the issuance of a license is subject* to a *one-time fee* in the amount of one subsistence minimum, based on the subsistence minimum for able-bodied persons, effective on the day the decision of the licensing body taken by the licensing authority, unless another amount of the fee is established by law.

The fee for issuing a license by the Council of Ministers of the Autonomous Republic of Crimea or a local executive body amounts to 10 percent of the subsistence minimum for able-bodied persons, effective on the day the decision is made on the issue of a license.

The fee for the issuance of a license shall be paid by the licensee within the term not later than ten working days from the date of entry of the decision to issue a license to a license registry.

Recommended literature: [2; 3; 13 – 15; 17; 19; 22; 25; 36; 39; 42; 47; 50; 52; 58; 60 – 63; 70; 71; 81; 86; 87; 93; 96].

Section 2. Contracts, liability and protection of rights

7. Termination of subjects of entrepreneurial activity

7.1. Grounds, techniques and forms of termination of subjects of entrepreneurship. General characteristics of reorganization of subjects of entrepreneurial activity.

7.2. Liquidation of a subject of entrepreneurial activity – a legal entity.

7.3. Bankruptcy of subjects of entrepreneurial activity.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the concept, grounds, techniques and forms of termination of subjects of entrepreneurship and bankruptcy of subjects of entrepreneurial activity.

Professional competences:

the ability to analyze grounds, techniques and forms of termination of subjects of entrepreneurship;

formation of skills in the characterization of types of reorganization of subjects of entrepreneurial activity;

formation of skills in the characterization of the liquidation of a subject of entrepreneurial activity – a legal entity;

formation of skills in the characterization of the bankruptcy procedure of subjects of entrepreneurial activity.

Key words: termination of subjects of entrepreneurship; succession; reorganization of subjects of entrepreneurial activity; spin-off; merger; transformation; division; accession; liquidation of a subject of entrepreneurial activity – a legal entity; bankruptcy; sanation; liquidation procedure.

7.1. Grounds, techniques and forms of termination of subjects of entrepreneurship. General characteristics of reorganization of subjects of entrepreneurial activity

The *termination of subjects of economic activity*, as well as their creation, is carried out in the manner prescribed by law. There are the grounds, techniques and forms of termination of subjects of entrepreneurship.

Grounds for termination are specific life circumstances, with which the law links the termination of the subject (legal facts).

Techniques of termination are the rules prescribed by law for the termination of a subject, which begins at the will of the owner or an authorized person, or by a decision of the competent authority of the state (court).

Termination forms are techniques by means of which a suspension procedure is carried out. These forms include reorganization and liquidation.

Art. 104 of the Civil Code [59; 89] provides that a legal entity terminates as a result of *reorganization* (merger, accession, division, transformation) or *liquidation*. In case of reorganization of legal entities, property, rights and obligations pass to successors.

The legal entity is considered suspended from the date of the entry of its termination in a unified state register.

Full (universal) *succession* is such, in which the successor gets all rights and obligations.

With *partial* (singular) *succession* only part of the assets and obligations of the reorganized entity is transferred to the created entity of entrepreneurial activity (the successor) by the distributive balance.

Mergers, accessions, divisions and transformations of a legal entity are carried out:

- based on the decision of its participants or;
- by a body of a legal entity authorized to do so by constituent documents and;
- in cases stipulated by law – by a court decision or relevant state authorities.

The law may provide for the consent of the relevant state authorities to terminate a legal entity by merger or accession (Art. 106 of the CC [59; 89]).

A spin-off before the adoption of the Civil Code of 2003 was considered as a kind of reorganization, and today it is a form of creation of a legal entity.

A *spin-off* is the transfer of the distribution balance of property, rights and obligations of a legal entity to one or several newly created legal entities. After making a decision on the spin-off, the legal entity participants or the body that made the decision on the spin-off, draw up and approve the distribution balance.

In the case of the spin-off of legal entities, state registration of legal entities created as a result of the spin-off, and state registration of changes to the information contained in the Unified State Register, on the legal entity from which the spin-off was made, with regard to the legal entity, the successor is carried out. Spin-off is considered to be completed from the date of

state registration of changes in the information contained in the Unified State Register, on the legal entity from which the spin-off was made regarding the legal entity – successor (Part 4 of Art. 4 of the Law "On the State Registration of Legal Entities, Proprietorships and Public Formations" [33; 87]).

In the case of a merger of legal entities, state registration of the newly formed legal entity and the state registration of termination of legal entities that are terminated as a result of the merger is carried out. The merger is deemed to be completed from the date of state registration of termination of legal entities terminated as a result of the merger (Part 5 of Art. 4 of the Law [33; 87]).

Transformation of a legal entity is a change in its organizational and legal form. In case of transformation, all property, all rights and obligations of the previous legal entity pass to a new legal entity (Art. 108 of the Civil Code [59; 89]).

In the case of transformation of legal entities, state registration of the termination of a legal entity terminating as a result of the transformation, and state registration of the newly formed legal entity is carried out. Transformation is deemed to be completed from the date of state registration of the newly formed legal entity (Part 6 of Art. 4 of the Law [33; 87]).

In the case of division of legal entities, state registration of newly formed legal entities and state registration of the termination of a legal entity, which is terminated as a result of division, is carried out. Division is considered to be completed from the date of state registration of the termination of the legal entity, which is terminated as a result of division (Part 7 of Art. 4 of the Law [33; 87]).

In the case of the accession of legal entities, state registration of the termination of the legal entities terminated as a result of the accession and state registration of changes to the information contained in the Unified State Register regarding the legal succession of the legal entity to which they are joining is carried out. The accession is considered to be completed from the date of state registration of changes to the information contained in the Unified State Register regarding the legal succession of the legal entity which they are joining (Part 8 of Art. 4 of the Law [33; 87]).

According to Art. 105 of the Civil Code [59; 89] members of a legal entity, a court or a body that made a decision to terminate a legal entity, are obliged to notify the state registration body in writing *within three working days from the date of the decision*.

The term of claiming of creditors to legal entity that terminates can not be less than two or more than six months after publication of notice of the decision to terminate the legal entity.

Stages of reorganization:

1) making a decision (it must contain information provided for by Par. 7, Art. 15 of the Law "On State Registration of Legal Entities, Proprietorships and Public Formations" [33; 87]);

2) creation of the commission (Art. 105 CC [59; 89]);

3) announcement of the state registrar on termination (during 3 working days from the moment of the decision);

4) registration by the registrar in the Unified State Register, publication of the announcement;

5) announcement of the lenders (creditors) about the presentation of their requirements; its term can not be less than two or more than six months after the publication of the notice of the decision to terminate the legal entity;

6) evaluation of property;

7) satisfaction or refusal;

8) creation of a transfer deed / a distribution balance;

9) approval of these by the participants of the legal entity or the body that made the decision to terminate it;

10) changes of constituent documents;

11) settlements with lenders (creditors);

12) final approval balance;

13) state registration of the termination.

7.2. Liquidation of a subject of economic activity – a legal entity

Liquidation of a subject of economic activity means complete cessation of its activities.

A legal entity is liquidated in the following cases (Art. 110 of the Civil Code [59; 89]):

1) with the decision of its participants or the body of a legal entity authorized by these constituent documents, as well as in connection with the expiration of the term for which the legal entity was created, achievement of the purpose for which it was created, as well as in other cases provided in the constituent documents;

2) with a court decision on the liquidation of a legal entity through violations committed in the process of creation that can not be eliminated by a claim of a legal entity or an appropriate state authority;

3) with a court decision on the liquidation of a legal entity in other cases established by law – on the claim of the relevant state authority.

The liquidation procedure (Art. 111 of the CC and Art. 105 of the CC [59; 89]) implies the following steps:

1) making a decision (it must contain information provided by Par. 7, Art. 15 of the Law "On State Registration of Legal Entities, Proprietorships and Public Formations" [33; 87]);

2) creation of the commission (liquidator);

3) making a note in the Unified State Register about the decision;

4) the commission (liquidator) is obliged to take all necessary measures to recover the receivables of the liquidated legal entity and to notify in writing each debtor about the termination of the legal entity;

5) the liquidation commission (liquidator) declares demands and claims for recovery of debts from the debtor of the legal entity;

6) the liquidation commission (liquidator) closes the accounts opened in financial institutions, in addition to the account used for payments to creditors during the liquidation of the legal entity;

7) the liquidation commission (liquidator) takes measures to make inventory of the property of the terminated legal entity, identifies and takes measures to return the property that is with the third party;

8) the liquidation commission (liquidator) returns licenses, permits, other documents, seals and stamps to state authorities, bodies of local self-government;

9) the liquidation commission (liquidator), after the deadline for submission of claims by creditors, creates an interim liquidation balance sheet;

10) the liquidation commission (liquidator) approves the interim liquidation balance;

11) prior to approval of the liquidation balance, the liquidation commission (liquidator) prepares and submits accounts for the last reporting period to the bodies of revenues and taxes, the Pension Fund of Ukraine and social insurance funds;

12) after completion of settlements with creditors, the liquidation commission (liquidator) makes a liquidation balance, ensures its approval by the legal entity participants, the court or the body that decided to terminate

the legal entity, and ensures submission of the documents to the bodies of revenues and taxes;

13) documents, subject to mandatory storage, shall be transferred to the relevant archival institutions in accordance with the procedure established by law;

14) the liquidation commission (liquidator) ensures submission to the state registrar of the documents stipulated by law for state registration of the termination of the legal entity in the term established by law.

In the event of liquidation of a solvent legal entity, the claims of its creditors are satisfied in the following order (Art. 112 of the CC [59; 89]):

1) *primarily* claims for damage caused by mutilation, other impairment of health or death, and the claims of creditors, collateralized, or other are satisfied;

2) *in the second place* the demands of employees related to labor relations, the author's request for payment for the use of the result of his intellectual, creative activity are satisfied;

3) *in the third place* the demands on taxes, duties (obligatory payments) *are* satisfied;

4) *in the fourth place* all other requirements are met.

Requirements of one turn are met in proportion to the amount of claims belonging to each lender of this turn.

In case of refusal of the liquidation commission to satisfy the creditor's claims or evasion from their consideration, the creditor has the right within a month from the date when he found out or should have been aware of such refusal to sue to the court with a claim to the liquidation commission. Under the verdict, the creditor's claims can be satisfied at the expense of the property remaining after the liquidation of the legal entity.

The claims of the creditor, declared after the expiration of the deadline set by the liquidation commission for their presentation, are satisfied with the property of the legal entity that is being liquidated, which remains after the satisfaction of the claims of the creditors, stated in due time.

Claims of creditors are not recognized by the liquidation commission if the creditor within a month after the receipt of the notification about the full or partial refusal to recognize his claims did not sue to the court, the claims in which the lender refused the court decision, as well as claims which are not satisfied because of the lack of property of the legal entity that is being liquidated are considered to be repatriated.

A proprietorship is deprived of the status of an entrepreneur from the date of entry in the Unified State Register of a record of state registration of the termination of entrepreneurial activity by this individual (Part 8 of Art. 4 of the Law [33; 87]).

7.3. Bankruptcy of subjects of economic activity

1. The concept and reasons for bankruptcy.
2. Bankruptcy proceedings.
3. Sanation of the debtor.
4. Liquidation procedure.
5. Collection of bankruptcy debts and the procedure for satisfying the claims of creditors.

The founders (participants, shareholders) of the debtor, the owner of the property (the body authorized to manage the property) of the debtor, central executive authorities, bodies of the Autonomous Republic of Crimea, and local self-government bodies, within the limits of their authority, are obliged to take timely measures to prevent bankruptcy of the debtor (Part 1 Art. 4 of the Code of Ukraine on Bankruptcy Procedures [9]). One of such measures is the *sanation of the debtor to initiate a bankruptcy proceeding* as a system of measures to restore the debtor's solvency, which can be carried out by the debtor's founder (participant, shareholder), the owner of the property (the body authorized to manage the property) of the debtor, the debtor's lender (creditor), other persons in order to prevent the debtor's bankruptcy by using organizational, technical, financial and economic, legal measures in accordance with the legislation up to the commencement of proceedings in a bankruptcy case set in Art. 5 of the Code [9].

Bankruptcy is a rather lengthy and complicated procedure, and special procedures may be applied to the debtor – extra-judicial remedies for bankruptcy prevention – an agreement between the debtor and the creditors on the coordination of the conditions for the continuation of his activity or voluntary self-destruction, pre-trial sanation, special management of his property and forced liquidation.

In accordance with Art. 6 of the Code [9] on the debtor – the legal entity, the following bankruptcy proceedings apply:

disposal of the debtor's property;

sanation (restoration of solvency) of the debtor;

liquidation of the bankrupt.

On the debtor – to the entrepreneur the following bankruptcy proceedings are applied:

restructuring of the debtor's debt;

debt repayment. The procedure for repayment of the debtor's debt is initiated in the case of insolvency together with the recognition of the debtor a bankrupt.

Sanation of the debtor or liquidation of the bankrupt is carried out in compliance with the requirements of the legislation concerning the protection of economic competition.

According to Art. 8 of the Code [9] bankruptcy cases are considered by economic courts *at the location of the debtor* – legal entity, individual or proprietorship. The debtor and the creditor have the right to apply to the economic court for the initiation of the bankruptcy proceedings. Bankruptcy proceedings are initiated by an economic court upon the debtor's application also in case of insolvency.

Bankruptcy is a recognized by the economic court inability of the debtor to resume his solvency through the procedures of sanation and restructuring and to repay the monetary claims of creditors stipulated in accordance with the procedure established by the Code of Ukraine on Bankruptcy Procedures, except with the application of the liquidation procedure (Par. 2 of Part 1 of Art. 1 of the Code of Ukraine on Bankruptcy Procedures [9]).

A ground for initiation of a bankruptcy proceeding is an application written by the creditor or the debtor to the economic court (Art. 34 of the Code of Ukraine on Bankruptcy Procedures [9]).

Bankruptcy proceedings mean:

1. Initiation of proceedings (Art. 34 – 43 of the Code of Ukraine on Bankruptcy Procedures [9]).

The bankruptcy procedure, bankruptcy proceedings begin with filing the corresponding application with the debtor or creditor in writing to the economic court (Art. 34 of the Code of Ukraine on Bankruptcy Procedures [9]).

At the same time, the debtor is obliged to sue in a month term to the economic court with an application on the initiation of a bankruptcy case in the event acceding to claims of one or several lenders will result in the impossibility of fulfilling the debtor's monetary obligations to other creditors in full (the threat of insolvency) and in other cases provided for by the Code of Ukraine on Bankruptcy Procedures [9].

In the absence of grounds for refusal to accept, leave aside or return the application on the initiation of bankruptcy proceedings the economic court accepts the application for consideration, about what within *five days* of its arrival makes a court ruling (Part 1 of Art. 35 of the Code of Ukraine on Bankruptcy Procedures [9]).

The debtor, before the date of the preparatory meeting, gives the economic court and the applicant a *reply* to the application for initiation of bankruptcy proceedings. To the debtor's reply, proof of sending the applicant copies of the reply should be provided (Part 1 Art. 36 of the Code of Ukraine on Bankruptcy Procedures [9]).

At the same time, the economic court may decide *to refuse the application* (Art. 37 of the Code of Ukraine on Bankruptcy Procedures [9]) or to *return the application without consideration* (Art. 38 of the Code of Ukraine on Bankruptcy Procedures [9]) not later than *five days* from the day the application for the bankruptcy proceedings was filed.

The consideration of the validity of the applicant's claims, as well as the finding of the existence of grounds for initiation of a bankruptcy proceeding, is carried out by an economic court in a preparatory meeting, which is conducted in accordance with the procedure provided for by the Code (Part 1 of Art. 39 of the Code of Ukraine on Bankruptcy Procedures [9]).

The preparatory meeting of the court shall be held no later than on the *fourteenth day* after the court ruling to accept the application on the initiation of a bankruptcy proceeding, and if there are valid reasons (payment of monetary obligations to creditors, etc.), no later than the thirtieth day (Part 2 of Art. 35 of the Code of Ukraine on Bankruptcy Procedures [9]).

In the preparatory meeting, the economic court reviews the submitted documents, listens to the explanations of the parties, assesses the validity of the debtor's objections, and also resolves other issues related to the consideration of the case.

In consequence of the consideration of the application for initiation a bankruptcy proceeding and the recovery of the debtor, the economic court shall issue a ruling on:

initiation of bankruptcy proceedings;

refusal to initiate a bankruptcy proceeding.

The court ruling to initiate a bankruptcy proceeding shall state about:

initiation of bankruptcy proceedings;

recognition of the creditor's claims and their size;

introduction of a moratorium on satisfaction of creditors' claims;

introduction of the procedure for the disposal of property;

appointment of the executor of estate, establishment of the amount of payment for its services and the source of its payment;

taking measures to ensure the claims of creditors by prohibiting the debtor and the owner of the property (the body authorized to manage the property) of the debtor to take decisions on liquidation, reorganization of the debtor, as well as to alienate fixed assets and items of pledge;

the term of submission by the executor of estate to the economic court of the information about the results of consideration of creditors' claims, which can not exceed a month and twenty days after the date of the preparatory courtroom;

the date of making by the executor of estate a register of claims of creditors and submitting it for approval to the economic court, which can not be later than a month and twenty days after the date of the preparatory meeting of the court;

the date of the preliminary session, which should be held not later than seventy days, and in the case of a large number of creditors, no later than three months after the date of the preparatory meeting of the court;

the term of carrying out by the executor of estate of the inventory of the debtor's property, which can not exceed two months, and in the case of a significant amount of property – three months after the date of the preparatory meeting of the court.

In order to identify creditors and persons who have expressed a desire to participate in the debtor's sanation, on the official web-portal of the judicial power of Ukraine no later than the next day from the day of the court ruling on the initiation of proceedings in the case, the economic court shall publish a notice about the initiation of proceedings in the debtor's case (official promulgation).

The court ruling on bankruptcy proceedings enter into force from the date of its adoption.

A court ruling on the initiation of a bankruptcy proceeding shall be sent to the debtor, the creditor (the creditors) and other persons who take part or should participate in this case (the owner of the property, the body authorized to manage the debtor's property, etc.), to the controlling body specified by the Tax Code of Ukraine, the local general court, the relevant body or person enforcing court decisions, decisions of other bodies, at the location (residence) of the debtor no later than three days after the day it was taken.

2. The procedure for property disposal.

The procedure for disposal of debtor's property comes to force in 170 calendar day's term (Part 2 of Art. 44 of the Code of Ukraine on Bankruptcy Procedures [9]).

Property disposal is a system of measures for supervision and control over the management and disposal of the debtor's property in order to ensure the safe, efficient use of the assets of the debtor, analysis of its financial situation, as well as the definition of the next optimal procedure (sanation or liquidation) (Part 1 Art. 44 of the Code of Ukraine on Bankruptcy Procedures [9]).

According to Part 13 of Art. 46 of the Code of Ukraine on Bankruptcy Procedures [9], from the date of the court ruling on the termination of the authority of the debtor head or management body of the debtor, the head, whose authority is terminated by the decision of the economic court, is obliged to submit to the executor of estate within three days, and the property manager – to accept the accounting and other documents of the debtor, seals, stamps, tangible and other valuables.

Competitive lenders (creditors) in accordance with the requirements that arose prior to the date of initiation of bankruptcy proceedings shall submit to the economic court written applications with claims to the debtor as well as documents confirming them within thirty days from the day of the official announcement of the initiation of a bankruptcy case. The countdown of creditors' money claims against the debtor begins on the day of the official announcement of the bankruptcy proceedings (Part 1 of Art. 47 of the Code of Ukraine on Bankruptcy Procedures [9]).

The debtor's executor of estate shall, not later than on the tenth day of the day following the expiration of the specified term, taking into account the results of consideration of claims by the debtors, fully or partially recognize them or reject them with the justification of the grounds for recognition or rejection, as reported in writing by the applicants and the economic court (Part 5 of Art. 47 of the Code of Ukraine on Bankruptcy Procedures [9]).

Part 9 of Art. 47 of the Code of Ukraine on Bankruptcy Procedures provides that individuals and/or legal entities wishing to participate in the debtor reorganization (hereinafter referred to as investors) may submit to the property manager an application for participation in the debtor reorganization and their proposals for the debtor sanation (sanation plan, etc.).

The preliminary session of the economic court shall be held no later than seventy calendar days, and in the case of a large number of creditors – no later than three months after the preparatory meeting of the court. The

parties, as well as other participants in the bankruptcy proceeding, declared to be in compliance with the Code of Ukraine on Bankruptcy Procedures [9] shall be informed of the previous court hearing.

In the preliminary session, the economic court shall consider all claims of creditors, provided during the term determined by the Code of Ukraine on Bankruptcy Procedures (Art. 45 [9]), including those which were denied by the debtor or the executor of estate.

As a result of the preliminary session, the economic court makes a court ruling stating:

the size and the list of all claims of creditors recognized by the court, which are entered by the executor of estate in the register of claims of creditors;

the size and the list of claims of creditors not recognized by the court;

the date of meeting of creditors and the committee of creditors;

the date of the final sitting of the court at which the court ruling on the sanation of the debtor or the court order on recognition of the debtor by the bankruptcy and the initiation of the liquidation procedure, or the court ruling to terminate the bankruptcy proceeding or the court ruling to extend the procedure for the disposal of the property and the postponement of the final court hearing to be held in the terms set in Part 2 of Art. 44 of the Code of Ukraine on Bankruptcy Procedures [9] (one hundred seventy calendar days).

The executor of estate, based on the results of the preliminary session, brings into the register of claims of creditors information on each creditor, the size of his claims on monetary obligations, existence of the right of the deciding vote (in representative bodies of the creditors), the order of satisfaction of each requirement (Art. 25 of the Code of Ukraine on Bankruptcy Procedures [9]).

Within ten days after the ruling on the results of the preliminary session of the economic court, the executor of estate in writing informs the creditors in accordance with the register of claims of creditors, the authorized person of the debtor's employees and the authorized representative of the debtor's founders (participants, shareholders) about the place and time of the meeting of creditors and organizes the meeting (Part 1 of Art. 48 of the Code of Ukraine on Bankruptcy Procedures [9]).

Participants in the meeting of debtors' creditors with *the right of deciding vote* are competitive lenders, recognized by the economic court in the preliminary session and entered in the register of claims of creditors.

The following persons with *the right of deliberative vote* may participate in the meeting of debtors' creditors*:* creditors whose claims are secured by the pledge of the debtor's property; creditors with requirements for payment of salaries, royalties, alimony, as well as compensation for damage to the life and health of citizens; competing lenders whose claims are made after the deadline set for submission; a representative of employees of the debtor; an authorized person of the debtor's founders (participants, shareholders); a representative of the body authorized to manage state property; an arbitrage receiver.

The first meeting of creditors is considered credible if there are lenders with at least two thirds of the votes.

The meeting of creditors is carried out at the location of the debtor.

The competence of the meeting of creditors is to decide on:

1) determination of the quantitative composition and election of members of the creditors' committee;

2) early termination of the powers of the committee of creditors or its individual members;

3) approval of the debtor's sanation plan and approving amendments;

4) a petition to the economic court with the motion for the introduction of the following procedure in the bankruptcy case;

5) election of the arbitration receiver in case of removal of the arbitration receiver, determined by the Unified court information and telecommunication system, from the powers operation;

6) other issues stipulated by the Code of Ukraine on Bankruptcy Procedures [9], including those within the competence of the creditors' committee.

At the time of the bankruptcy procedure, the creditors' meeting shall be elected by a committee of creditors of not more than seven persons. Election of a committee of creditors shall be held by open vote by a majority of votes present at the meetings of creditors determined in accordance with Part 4 of Art. 48 of the Code of Ukraine on Bankruptcy Procedures [9]. The lender, having twenty five percent or more votes, is automatically included in the committee of creditors.

During the bankruptcy procedures the interests of all creditors are represented by the creditors' committee established by the Code of Ukraine on Bankruptcy Procedures [9].

The protocol decision of the creditors' meeting on the formation and composition of the creditors' committee is submitted to the economic court.

The competence of the committee of creditors is to decide on:

the election of the chairman of the committee;

convening a meeting of creditors;

the application to the economic court with a motion for the initiation of the sanation procedure, recognition of the debtor as a bankrupt and the initiation of liquidation procedures in cases provided by the Code of Ukraine on Bankruptcy Procedures [9];

the appeal to the economic court with the motion to declare the debtor's transactions (agreements) invalid at any stage of the bankruptcy procedure;

the appeal to the economic court with a motion for the appointment of the arbitration receiver, termination of the powers of the arbitration receiver and the appointment of another arbitration receiver;

granting consent for the sale of the debtor's property (except for the subject of ensuring) and agreeing the terms of the sale of the debtor's property (except for the subject of ensuring) in the rehabilitation procedure in accordance with the sanation plan or in the bankruptcy procedure;

making suggestions to the economic court regarding the extension or reduction of the procedure for disposal of property of the debtor or the sanation of the debtor;

other issues stipulated by the Code of Ukraine on Bankruptcy Procedures [9].

In the work of committee, the following persons may participate with the deliberative vote: the arbitration receiver, a representative of the debtor's employees, an authorized person of the debtor's founders (participants, shareholders), a secured creditor and, if necessary, a representative of the body authorized to manage the state property, and a representative of the local self-government body.

The decision of the meeting (committee) of creditors is considered to be adopted by the majority of votes of creditors if the creditors present at the meeting (committee) voted for it.

The meeting of the committee of creditors is called upon and conducted according to the rules defined for the meeting of creditors.

In the final courtroom, in the procedure for disposing of the debtor's property, the transition to the next judicial procedure (procedure of sanation, liquidation) is carried out or the proceedings are closed.

Before the expiry of the procedure for disposing of the debtor's property, the creditors' meeting is required to take one of the following decisions:

approve the sanation plan and submit to the economic court a motion for the introduction of the sanation procedure and approval of the sanation plan;

submit to the economic court a motion for the recognition of the debtor a bankrupt and initiating of a liquidation procedure.

In the event of circumstances that do not allow the creditors' meeting to take one of such decisions within the established timeframe, the creditors' meeting may decide to sue to the economic court with a motion for extension of the procedure for disposal of property within the time limits set by the Code of Ukraine on Bankruptcy Procedures [9].

In the final meeting, the economic court takes one of the following court decisions:

the court ruling on extending the time of the procedure for disposal of property within the time limits set by the Code of Ukraine on Bankruptcy Procedures [9];

the court ruling on the introduction of the sanation procedure and the approval of the plan of sanation in the event of approval of the debtor's sanation plan by a meeting of creditors and approval by its secured creditors in accordance with the procedure established by the Code of Ukraine on Bankruptcy Procedures [9];

the court order on the recognition of the debtor a bankrupt and the initiation of the liquidation procedure;

the court ruling to terminate bankruptcy proceedings.

If the creditors' meeting within the period of validity of the procedure for the disposal of property has not adopted any of the decisions provided by Art. 49 of the Code of Ukraine on Bankruptcy Procedures [9], the economic court in the presence of signs of bankruptcy, within five days after the completion of the procedure for disposal of the debtor's property, shall adopt a court order recognizing the debtor a bankrupt and initiation a liquidation procedure if other is not provided by this article.

From the date of recognition by the economic court of the debtor a bankrupt and initiation of a liquidation procedure or introduction of a sanation procedure or approval of a settlement agreement, the procedure for disposal of the property and powers of the property manager ceases (Part 6 Art. 49 of the Code of Ukraine on Bankruptcy Procedures [9]).

3. Sanation is a system of measures taken in the course of proceedings in bankruptcy in order to prevent the recognition of the debtor a bankrupt and its elimination, aimed at improving the financial and economic situation of the debtor, as well as satisfaction in full or in part, the requirements of creditors by restructuring the enterprise, debts and assets and/or changes in the organizational and legal structure of the debtor (Art. 50 of the Code of Ukraine on Bankruptcy Procedures).

The economic court validates the approved plan of the debtor and makes a court ruling on the introduction of a sanitation procedure.

The procedure for sanation of the debtor is terminated ahead of schedule in case of non-fulfillment of the terms of the plan of sanation and/or in case of non-fulfillment of the debtor's current obligations, in connection with which the economic court recognizes the debtor a bankrupt and initiates the liquidation procedure (Part 11 of Art. 50 of the Code of Ukraine on Bankruptcy Procedures [9]).

The sanation manager of the debtor is appointed by an economic court in accordance with the procedure established by the Code of Ukraine on Bankruptcy Procedures [9] from among arbitration receivers.

The sanation manager of the debtor is appointed by an economic court in accordance with the procedure established by the Code from among arbitration receivers.

The court ruling of the economic court on the introduction of the procedure of sanation and the appointment of the sanation manager enters into force from the date of its resolution.

The debtor's management bodies are obliged, within 15 days from the date of the decision on the initiation of the sanation procedure and the appointment of the sanation manager, to submit to the sanation manager the accounting and other documentation of the debtor, its seals, stamps, tangible and other valuables.

The official announcement of the initiation of the sanation procedure is carried out on the official web-portal of the judicial system of Ukraine.

Approval of the report of the sanation manager or early termination of the sanation procedure entails the termination of the authority of the arbitration manager as the sanation head, as indicated in the relevant court order, unless otherwise provided by the Code of Ukraine on Bankruptcy Procedures.

The sanation plan must specify the size of the claims of each class of creditors that would be satisfied if the debtor's liquidation procedure was initiated.

The sanation plan should include measures to restore the debtor's solvency; provide for the term of recovery of the debtor's solvency. Solvency is considered to be restored if the claims of creditors are repaid in accordance with the register of claims of creditors.

The sanation plan must make sure that the debtor's debt is paid off.

Measures to restore the debtor's solvency, which include a plan for sanation, may be:

enterprise restructuring;

conversion of production;

closure of unprofitable productions;

deferment, installment or release of the debts or a part of the debts;

liquidation of accounts debts;

restructuring of the debtor's assets in accordance with the requirements of the Code of Ukraine on Bankruptcy Procedures [9];

sale of part of the debtor's property;

execution of obligations of the debtor by the proprietor of the debtor's property and his liability for non-fulfillment of obligations assumed by him;

alienation of property and repayment of obligations of the debtor by substituting assets;

dismission of employees of the debtor who can not be involved in the process of carrying out the plan of sanation;

obtaining (raising) of a loan for the payment of outgoing assistance to the debtor's employees who are discharged according to the plan of sanation, which is compensated in accordance with the requirements of the Code of Ukraine on Bankruptcy Procedures [9] extraordinary with the sale of the debtor's property;

obtaining loans and credits, purchasing goods on credit;

other ways to restore the debtor's solvency.

Restructuring of an enterprise means the implementation of organizational and economic, financial and economic, legal, technical measures aimed at reorganizing the enterprise, in particular, by its division, with the transfer of debt obligations to a legal entity that is not subject to sanation, to change property, management, organizational and legal form, which will promote financial improvement of the enterprise, increase of efficiency of production,

increase of volumes of production of competitive products and full or partial satisfaction of creditors' claims (Part 3 art. 51 of the Code of Ukraine on Bankruptcy Procedures [9]).

The decision on approval or rejection of the sanation plan is made by each class individually by voting.

The sanation plan and voting protocols of each class of creditors are submitted by the executor of estate to the economic court within one working day after the voting.

The economic court issues a court ruling approving the debtor's sanation plan if:

the sanation plan is approved by all classes of competing creditors, the amount and/or order of satisfaction of which has been modified by the sanation plan compared to the conditions that would have been applied if liquidation procedures had been initiated;

the sanation plan is approved by the class of secured creditors;

the amount of creditors who have voted against the approval of the sanation plan is not smaller in the sanation process than the amount that would have been satisfied if the liquidation procedure had been initiated.

The economic court issues a court ruling of refusal to approve the sanation plan if the sanation plan does not meet the requirements of the legislation.

Presenting a court ruling to refuse to approve the sanation plan does not prevent the re-filing of the sanation plan approved by the creditor meeting for approval.

The economic court issues a court order on the recognition of the debtor bankrupt and the initiation of the liquidation procedure in case the sanation plan is not approved by the court within the term established by the Code of Ukraine on Bankruptcy Procedures.

Fifteen days before the expiration of the sanation procedure as determined by the sanation plan, and if there are grounds for termination of the sanation procedure, the *sanation manager is required to submit a written report to the meeting of creditors* and inform the creditors of the time and place of the meeting.

The report of the sanation manager shall be accompanied by evidence of satisfaction of the requirements of the secured creditors in accordance with the register of claims of creditors. At the same time as the report*, the sanation manager makes one of the following proposals:*

making a decision on the termination of the sanation procedure in connection with the restoration of the debtor's solvency;

appeal to the end of the term of the sanation procedure to the economic court with a motion for the recognition of the debtor a bankrupt and the initiation of the liquidation procedure;

appeal to the economic court with a motion for adoption of the approved changes to the sanation plan approved by the creditor meeting and extension of the reorganization procedure.

The report of the sanation manager shall be considered by the creditor meeting not later than ten days from the date of its arrival and not later than the expiration of the sanation procedure specified in the sanation plan.

Following the review of the report by the sanation manager, the *meeting of creditors makes a decision to apply to the economic court with a motion regarding:*

the termination of the proceedings in connection with the implementation of the plan of sanation and restoration of the debtor's solvency;

the termination of the sanation procedure, recognition of the debtor a bankrupt and initiation of a liquidation procedure;

the approval of changes to the sanation plan and extension of the sanation procedure.

If the creditor meeting has not taken any of the above decisions or such a decision has not been brought about to the economic court within fifteen days from the end of the term of the sanation procedure, the economic court shall consider the termination of proceedings in a bankruptcy case or recognition of the debtor bankrupt and initiation of a liquidation procedure.

The report of the sanation manager, considered by the meeting of creditors, and the protocol of the meeting of creditors shall be sent to the economic court not later than five days from the date of such meeting, the date of the creditor meeting.

The report of the sanation manager and the complaints of creditors are considered at the sitting of the economic court.

Settlement of accounts with creditors shall be made by the sanation manager in accordance with the procedure established by the sanation plan.

4. Liquidation procedure.

In cases provided by the Code [9], an *economic court* in a courtroom with the participation of the parties, *shall adopt a court order recognizing the debtor a bankrupt and initiate liquidation proceedings*. The court determines

the period within which the liquidator is obliged to liquidate the debtor. This period may not exceed *12 months* (Art. 58 of the Code of Ukraine on Bankruptcy Procedures [9]).

From the date of adoption by the economic court of the court order on the recognition of the debtor a bankrupt and initiation of the liquidation procedure:

the economic activity of the bankrupt is completed by the end of the technological cycle of production in case of its possible sale, except for the conclusion and execution of contracts aimed at protecting the estate of the bankrupt or ensuring its preservation (maintenance) in the proper condition, property lease agreements that are temporarily not used, for the period before its sale in the liquidation procedure, etc.;

the term of execution of all bankruptcy obligations of a bankrupt is considered the one that started;

the bankrupt does not incur any additional obligations, including the payment of taxes and fees (compulsory payments), in addition to the costs directly related to the implementation of the liquidation procedure;

accrual for penalty (fine, penalty interest), percentage and other economic sanctions for all types of bankrupt debt is terminated;

information about the financial condition of the bankrupt shall cease to be confidential or constitute a commercial secret;

the sale of bankrupt's estate is permitted in the manner prescribed by the Code of Ukraine on Bankruptcy Procedures [9];

the arrest imposed on the debtor's property, recognized a bankrupt, and other restrictions on the disposal of the property of such a debtor is canceled. The imposition of new arrests or other restrictions on the disposal of the bankruptcy estate is not allowed;

the powers of the bankruptcy authorities regarding the management of the bankrupt and the disposal of its estate (property) are terminated, if this has not been done before, members of the executive body (head) of the bankrupt are dismissed from work in connection with the bankruptcy of the enterprise, and the powers of the proprietor (the body authorized to manage property) of the property of the bankrupt also cease.

Within 15 days of the appointment of the liquidator, the relevant bankruptcy officials are obliged to submit accounting and other documentation, seals and stamps, material and other values of the bankrupt to the liquidator. In the event of fulfillment of these duties, the relevant bankruptcy officials are

liable according to the law. The liquidator has the right to order the production of duplicate seals and stamps in case of their loss.

In order to identify creditors with claims against a debtor recognized bankrupt, which arose during the bankruptcy proceedings, the economic court officially publishes a notice about the recognition of the debtor bankrupt and initiates the liquidation procedure on the official web portal of the judicial system of Ukraine.

In a court order recognizing a debtor bankrupt and initiation of a liquidation procedure, an economic court shall assign a liquidator of the bankrupt, taking into account the requirements established by the Code of Ukraine on Bankruptcy Procedures, from among the arbitrage receivers, mentioned in the Unified Register of Arbitration receivers of Ukraine.

The liquidator fulfills its powers until completion of the liquidation procedure in accordance with the procedure established by the Code of Ukraine on Bankruptcy Procedures [9].

In a liquidation proceeding, the economic court shall consider complaints about actions (omission) of the liquidator and exercise other powers provided for by the Code of Ukraine on Bankruptcy Procedures [9].

In the liquidation procedure, the economic court considers applications with claims of current creditors, which were submitted to the economic court after the official announcement of the notification of recognition of the debtor bankrupt.

Applications with claims of current creditors are considered by the economic court in the order of their receipt. As a result of consideration of these applications, the economic court by its court ruling recognizes or rejects (in whole or in part) the claims of such creditors (Art. 60 of the Code of Ukraine on Bankruptcy Procedures [9]).

The liquidator from the day of its appointment is given the following powers:

1) to accept in their charge the debtor's estate (property), to ensure its preservation;

2) to perform functions of management and disposal of the bankrupt estate;

3) to conduct inventory and determine the initial value of the bankrupt estate;

4) to analyze the financial condition of the bankrupt;

5) to execute the powers of the head (management bodies) of the bankrupt;

6) to form a liquidation mass;

7) to declare to third parties requirements to return the sum of receivable to the bankrupt;

8) to receive a loan to pay severance to employees who are released as a result of the liquidation of the bankrupt, which is reimbursed in accordance with the Code of Ukraine on Bankruptcy Procedures [9] out of turn at the expense of the funds received from the sale of the bankrupt's estate;

9) from the date of the recognition of the debtor bankrupt and initiation of the liquidation procedure, to inform the bankruptcy employees of dismissal and exercise it in accordance with the labor legislation of Ukraine. The payment of severance to dismissed employees of the bankrupt is carried out by the liquidator primarily at the expense of funds received from the sale of the bankrupt estate or a loan granted for this purpose;

10) to declare, in an established order, an objection regarding the requirements claimed to the debtor by current creditors for unpaid obligations that arose during the bankruptcy proceedings;

11) to submit an application to declare the debtor's transactions invalid;

12) to take measures aimed at finding, identifying and returning the bankrupt property that is with third parties;

13) to transmit, in accordance with the established procedure for maintenance, the bankrupt documents, which in accordance with legal acts, are subject to mandatory storage;

14) to sell the bankrupt estate to meet the requirements included in the register of creditor claims, in accordance with the procedure provided for by the Code of Ukraine on Bankruptcy Procedures [9]; etc.

During the liquidation procedure, the liquidator is obliged to use only one (liquidation) account of the debtor in the banking institution. Cash balances on other accounts are transferred to the liquidation account debtor.

Funds received during the liquidation procedure are credited to the debtor's liquidation account. After payment of the costs associated with the liquidation procedure and payment of the principal and additional fees of the arbitration receiver, payments to the creditors are made in the order established by the Code of Ukraine on Bankruptcy Procedures [9].

The costs related to the liquidation procedure shall be paid in the following order:

first of all, the costs associated with the liquidation procedure are paid, and the liquidator's remuneration is paid;

in the second place, the obligations are fulfilled to the persons who, after the initiation of the bankruptcy proceedings of the debtor, provided credit, supplied raw materials, components with deferred payment.

All types of property assets (property and property rights) of a bankrupt, owned by him on the property right or the right of economic management, are included in the liquidation mass (Part 1 of Art. 62 of the Code of Ukraine on Bankruptcy Procedures [9]).

Funds received from the sale of the bankrupt estate are directed to satisfy the claims of creditors in the manner prescribed by this Code [9] in the following order*:*

1) in the first place:

claims for payment of arrears of wages to employed and dismissed bankrupt workers, monetary compensation for all unused days of annual leave and additional leave for workers with children, other funds due to employees in connection with paid absence at work (pay downtime due to no fault of an employee, guarantees for the time of performance of state or public duties, guarantees and compensation for business trips, guarantees for workers sent for advanced training, guarantees for donors, guarantees for employees sent to the medical examination, social benefits due to temporary disability at the expense of the company, etc.), as well as the allowance paid to the employees with the termination of labor relations and accrued on these amounts of insurance premiums for compulsory state pension insurance and other social insurance, including reimbursement of the loan received for these purposes;

requirements for payment of arrears of compensation for losses caused to the State Budget of Ukraine as a result of the implementation of verdicts of the European Court of Human Rights against Ukraine;

claims of creditors under insurance contracts;

costs related to the bankruptcy proceedings in the economic court;

costs of creditors for conducting an audit, if the audit was conducted by a verdict of an economic court at the expense of their funds;

2) in the second place:

requirements for obligations arising as a result of damage to life and health of citizens through capitalization in the liquidation procedure of corresponding payments, including the Social Insurance Fund of Ukraine for citizens who are insured in this fund in accordance with the procedure established by the Cabinet of Ministers of Ukraine, obligations for payment of

premiums for compulsory state pension insurance and other social insurance, except for the requirements, satisfied with the extraordinary, on the return of unused funds to the Social Insurance Fund of Ukraine and requirements of citizens – principals (investors) trust companies or other businesses that are attracted to the property (funds) principals (investors);

3) in the third place:

requirements for payment of taxes and duties (mandatory payments);

requirements of the central executive body, which manages the state reserve;

4) in the fourth place:

claims of creditors not secured by pledge;

5) in the fifth place:

requirements for the return of contributions of members of the labor collective to the authorized capital of the enterprise;

6) in the sixth place:

other requirements are satisfied.

The requirements of each subsequent turn shall be satisfied as the proceeds to the account of funds from the sale of the bankrupt estate (property) after full satisfaction of the requirements of the preceding turn, except in cases established by this Code.

In the event of insufficient funds received from the sale of the bankrupt estate, in order to fully satisfy all requirements of one turn, claims shall be met in proportion to the amount of claims belonging to each creditor of one turn.

Claims not satisfied with the lack of estate are considered to be repaid.

After completing all settlements with creditors, the liquidator submits a report and a liquidation balance to the economic court and provides the following documents (Art. 65 of the Code [9]):

information on the results of inventory of the debtor's estate and a list of the liquidation mass;

information about realization of objects of the liquidation mass with reference to concluded contracts of sale;

copies of documents confirming the alienation of the debtor's assets during the liquidation procedure (including the protocols on the auction, sale and purchase contracts, acts of acceptance and transfer of property, acts on the acquisition of property at an auction, etc.);

a register of creditors' claims with data on the size of repayment claims of creditors;

documents confirming the repayment of claims by creditors;

a certificate from an archival institution about the acceptance of documents which are subject to long-term storage in accordance with the law;

for joint-stock companies – the decree on the cancellation of registration of the issue of shares, certified by the National Commission for Securities and Stock Market;

for issuers of debt securities – the report on the consequences of the repayment of securities.

The economic court informs the liquidator and creditors of the time and place of the courtroom where the report and the liquidation balance should be considered.

It is the obligation of the liquidator to carry out the entirety of the actions aimed at identifying and recovering debtor's assets.

The economic court, after hearing the liquidator's report and the opinion of the creditors, issues a court ruling approving the liquidator's report and the liquidation balance.

If according to the results of the liquidation procedure after the satisfaction of the claims of the creditors no property is left, the economic court makes a court ruling on the liquidation of the bankrupt legal entity. A copy of this court ruling is sent to the state registrar for state registration of the termination of the bankrupt legal entity, as well as the owner of the property.

If the liquidator has not identified the property assets that are to be included in the liquidation mass, he is obliged to submit a liquidation balance which certifies the absence of the bankrupt estate to the economic court.

If the property of the bankrupt is sufficient to meet the creditors' claims in full, it is considered to be non-debt and may continue its business activities. In this case, the liquidator, within five days from the date of the adoption by the economic court of the relevant verdict, shall notify the authority or official of the body to whose competence the appointment of the head (management bodies) of the debtor belongs, and, if necessary, calls a general meeting or a meeting of the appropriate authority and continues to exercise powers of the head (management bodies) up to their appointment in the prescribed manner.

An economic court can make a court ruling on the liquidation of a legal entity that has been released from debts only if the balance of its property assets is less than required for the continuation of its economic activity in accordance with the law.

The liquidator exercises his powers before entering into the Unified State Register of legal entities, proprietorships and public formations a record about termination of a bankrupt legal entity.

The economic court terminates the bankruptcy proceedings if (Art. 90 of the Code of Ukraine on Bankruptcy Procedures [9]):

1) the debtor – legal entity is not mentioned in the Unified State Register of legal entities, proprietorships and public formations;

2) the legal entity which is the debtor is terminated in accordance with the procedure established by the legislation, as indicated in the Unified State Register of legal entities, proprietorships and public formations;

3) there is a bankruptcy case of the same debtor in the proceedings of the economic court;

4) the debtor's solvency has been restored or all creditors' claims have been settled in accordance with the register of creditors' claims;

5) the report of the sanation manager or the liquidator is approved in the manner provided by the Code of Ukraine on Bankruptcy Procedures [9];

6) no claims have been made against the debtor after the official announcement of the initiation of the bankruptcy proceedings;

7) the case is not subject to consideration in the economic courts of Ukraine;

8) the economic court has not established signs of insolvency of the debtor;

9) in other cases, provided by law.

Recommended literature: [2; 3; 8; 9; 13 – 15; 17; 18; 22; 30; 31; 46; 57; 59 – 62; 64; 70; 84; 87; 89].

8. Property right. The legal regime of property of a subject of economic activity

8.1. The concept of property right and the property rights in Ukraine.

8.2. Grounds for the emergence and termination of property right.

8.3. The essence of the right of economic management, the right of operational management.

8.4. The concept of property in the field of management and the source of the formation of property of a subject of economic activity.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the types of property and legal regime of estate of a subject of economic activity.

Professional competences:

the ability to analyze the concept of property right;

formation of skills in the comparison of the grounds for the emergence and termination of property right;

formation of skills in the comparison of the legal regime of estate of a subject of economic activity.

Key words: property; estate; property right; legal regime of estate of a subject of economic activity; the right of economic management; the right of operational management; the source of the formation of property of a subject of economic activity.

8.1. The concept of property right and property rights in Ukraine

Property right as an economic category is characterized by the appropriation of material goods that are created by nature itself or by human labor in the production process by an individual or a group of individuals. Thus, property is a social relationship that arises between people with respect to the appropriation of material goods.

Property right in the objective meaning is a set of rules that govern the relationship of ownership (property), use and disposal of property by the proprietor. *Right of property in the subjective sense* is the proprietor's legally secured opportunity to carry out any actions that do not contradict the law on property at his own discretion.

Property right is absolute, since in such a legal relationship the authorized person (the proprietor) opposes the indefinite obligated persons (non-proprietors), each of whom is obliged to refrain from violating the rights of the proprietor.

The contents of property right are:

- the right of possession;
- the right of use;
- the right of disposal.

Possession is the legal domination of a person over a thing, as well as the actual and economic possession of it (or the actual affiliation of property to a person).

Possession of a thing can be carried out both by the owner and by other persons on the basis of an agreement with the owner or other legal basis. Possession of a non-owner of a thing is determined by law if it is based on a legal title (contract or other legal basis) and protected by law, as well as possession by the owner.

Illegal possession can be of two types:

a) conscientious (when the owner does not know and can not know about the illegality of his possession);

b) unconscientious (when the owner knew or should have known about the illegality of possession).

The right to use is guaranteed by law and the legal possibility recognized by the owner to obtain (get) from the thing its useful economic properties in the process of personal or industrial consumption, including receipt of issues and profits.

The right of disposal is the opportunity of the owner, as recognized and guaranteed by law, to determine the legal fate of things, that is, the possibility to terminate the ownership of it or temporarily stop the exercise of ownership and use.

The Civil Code [59; 89] provides the following *types of forms of property right*: private; communal; state; collective (in EC).

The subjects of *the right of private property* are individuals and legal entities; objects can be any property, except for its types which according to the law can not be owned by such persons (Art. 325 of the CC [59; 89]).

State property includes funds belonging to the state of Ukraine; on its behalf and in its interests, the right of ownership is exercised by state authorities (Art. 326 of the CC) [59; 89].

Communal property includes funds belonging to a territorial community; the management of it is carried out directly by the territorial community and bodies of local self-government created by it (Art. 327 of the CC [59; 89]).

Art. 324 of the Civil Code [59; 89] and Art. 13 of the Constitution [11; 90] establish the objects of the property *rights of the Ukrainian people*.

8.2. Grounds for the emergence and termination of property rights

Property rights arise and terminate on the basis of legal facts – the ways (grounds) for the emergence or termination of such a right, that is, certain life circumstances with which the law binds the said legal consequences.

The grounds for property rights are divided into:

- *initial* when the right of property arises for the first time or independently of the will of the previous owner (creation, production, specification – processing, possession – occupation, nationalization, discovery, treasure and transfer to the property without economic property, including caring cattle);
- *derivatives* when the property right arises at the discretion of the previous owner (contracts for the transfer of ownership, inheritance, privatization, confiscation and requisition).

Grounds for termination of property right are stipulated in Art. 346 of the Civil Code [59; 89]. These include:

1) the alienation of the proprietor of his property;

2) the proprietor's refusal of property right;

3) termination of property right, which according to the law can not belong to this person;

4) destruction of property;

5) the purchase of monuments of cultural heritage;

6) forced alienation of land for private property, other objects of immovable property located there with public requirements under the law;

7) foreclosure of property for obligations of the proprietor;

8) requisition. According to Art. 353 of the Civil Code [59; 89] in the event of a natural disaster, accident, epidemic, epizootics and other extraordinary circumstances, for the purpose of public necessity, property may be forcibly removed from the proprietor on the basis and in accordance with the procedure established by law, subject to the prior and full reimbursement of its value;

9) confiscation, i.e., deprivation of title to property by a court decision as a sanction for committing an offense in cases established by law (Art. 354 of the Civil Code [59; 89]);

10) termination of a legal entity or death of the proprietor (owner).

According to Art. 347 of the Civil Code [59; 89] a person may refuse from the property right in estate by announcing about it or by taking any other actions that witness his/her refusal from the property right. In case of refusal from the property right in estate not subject to state registration this property right shall be terminated since the moment of effecting an action witnessing such refusal. In case of refusal from the property right in estate subject to state registration, this property right shall be terminated since the moment of the entry made in the State Register upon the proprietor's application.

Article 348 of the Civil Code [59; 89] regulates the termination of the person's property right in estate that cannot belong to him.

If, on the grounds not forbidden by the law, a person acquired the property right in estate that pursuant to the law approved later cannot belong to him, the property in question shall be alienated by the proprietor within a period established by the law. If the property is not alienated in the terms specified by the law, this property, considering its nature and purpose, shall be subject to forced sale upon the court decision based on the application of the relevant governmental body. In the event of forced sale of the property, its former proprietor shall receive the sales proceeds with deduction of the expenses related to the property alienation. If the property is not sold, it shall be transferred to the state property by the court decision. In this case the former proprietor shall receive the sum determined by the court decision. If on the grounds not forbidden by the law a person acquired the property right in estate that pursuant to the law approved later required a special permission that was denied to this person, this property shall be subject to alienation per the procedure specified in Part 1 of Art. 348 of the CC [59; 89].

The property right in estate shall be terminated in the event of the property destruction. In the event of destruction of the property with property right for it being subject to state registration, this right shall be terminated since the moment of introducing of changes to the State Register upon the owner's application.

8.3. The essence of the right of economic management, the right of operational management

The basis of the legal regime of property of subjects of economic activity, on which their economic activity is based, are property rights and other real rights: the right of economic management and the right of operational management the (Part 1 of Art. 133 of the EC [3; 70]).

Economic activity can also be carried out on the basis of other real rights (possession rights, rights of use, etc.) provided by the Civil Code of Ukraine [59; 89].

The estate (property) of a subject of economic activity can be fixed on another right in accordance with the terms of the contract with the property owner.

The state provides equal protection of property rights of all subjects of economic activity.

The subject of economic activity that carries out economic activity on the basis of property rights, at its discretion, alone or in conjunction with other subjects, possesses, uses and disposes of estate (property) belonging to him (them), including the right to provide property to other subjects to use it on the property right, the right of economic management or operational management, or on the basis of other forms of the legal regime of the property provided by the Economic Code (Art. 134 of the EC [3; 70]).

According to Art. 135 of the EC [3; 70] the property owner has the right individually or in conjunction with other proprietors on the basis of estate (property) belonging to him (them) to establish economic organizations or carry out economic activity in other organizational and legal forms of management, not prohibited by law, at his discretion determining the purpose and subject, structure of the subject of economic activity formed by him, the composition and competence of its management bodies, the procedure for using property, other issues of management of the subject's activities, as well as decide on the termination of the subject of economic activity, founded by him, in accordance with the legislation.

The proprietor has the right individually or through authorized bodies in order to carry out entrepreneurial activity to establish economic organizations, attaching to them the estate (property) belonging to him on the property right, the right of economic management, and for the implementation of non-profit economic activity – to the right of operational management, to determine the purpose and subject of the activities of such organizations, composition and competence of their management bodies, the procedure for their decisions, composition and procedure for the use of property, identify other conditions of management with the owner approved by the proprietor (authorized body) of the constituent documents of the economic organization, as well as to exercise directly or through authorized bodies within the limits established by the authorities, law, other management powers in relation to the established organization and terminate its activities in accordance with the Economic Code [3; 70] and other laws.

The right of economic management is a real right of a subject of economic activity that owns, uses and disposes of the property entrusted to it by the owner (a body authorized by him) with a limitation of the authority of the order regarding certain types of property with the consent of the owner in cases provided by law (Part 1 Art. 136 of the EC [3; 70]).

The right of economic management is a special substantive right of an entity – a legal entity – to own, use and dispose of property belonging to it

within the limits established by law and constituent documents of the entity (Art. 74, 75, 136 of the EC [3; 70]).

The owner of the property enshrined in the right of economic management under the subject of entrepreneurship, exercises control over the use and preservation of proper property directly or through an authorized body, not interfering with the operational and economic activity of the enterprise (Part 2 of Art. 136 of the EC [3; 70]). In practice, this means post facto control in the form of an entity's report to the owner on exercising powers over the property obtained or, less frequently, approving completed transactions and concluded agreements that have become binding on the economic organization.

The right of economic management shall be terminated:

a) on the basis of the decision of the proprietor (an authorized body) in accordance with the law and local acts of the entity – by transfer of property, which is formalized by the relevant act of acceptance-transfer;

b) after the transfer of the property to third parties – on the basis of a contract, court decision or in accordance with the law;

c) upon termination of the object of rights, which must be confirmed by a relevant document.

Operational management can be defined as the power given by the owner to the legal entity – the entity in the form of a real right in the form of ownership, use and disposal of the entire property complex in the interests of the owner and with the restrictions established by law, the purpose of the entity, the purpose of the property and, finally – tasks of the property owner (a body authorized by him).

The right of operational management is a real right of a subject of economic activity that owns, uses and disposes of the property entrusted to it by the owner (a body authorized by him) for the conduct of non-commercial economic activities within the limits established by law and the owner (a body authorized by him) (Part 1 of Art. 137 of the EC [3; 70]).

The proprietor of the property enshrined in the right of operational management by the entity, exercises control over the use and preservation of property management directly or through an authorized body and has the right to remove excess estate (property) from the subject of economic activity, as well as the property that is not used, and the property used by it for purposes other than its intended purpose.

The right of operational management is protected by law in accordance with the provisions established to protect property rights.

8.4. The concept of property in the field of management and the source of the formation of property of a subject of economic activity

The estate (property) determines a set of things and other values (including intangible assets) that have a value definition, are produced or used in the activities of business entities and are reflected in their balance or are counted in other statutory accounting forms of property of these entities.

Depending on the economic form that the property acquires in the process of economic activity, property values include:

1) *fixed assets* (buildings, structures, facilities and equipment, tools, production equipment and supplies, household equipment and other durable property, which is assigned by law to fixed assets);

2) *circulating assets* (raw materials, fuel, materials, valuables and objects that rapidly become worn out, other property of production and non-production purposes, which is assigned by law to working capital);

3) *funds* (money in national and foreign currency, intended to carry out commodity relations of these entities with other entities and financial relations in accordance with the legislation);

4) *products.* Goods in the property of business entities are defined as manufactured goods (inventories), works and services performed.

Sources of property formation of a subject of economic activity are: monetary and material contributions of the founders; revenues from sales of products (works, services); income from securities; capital investments and subsidies from budgets; proceeds from the sale (lease) of property objects (complexes) belonging to them, acquisition of property of other subjects; loans to banks and other lenders; gratuitous and charitable donations, donations from organizations and citizens; other sources not prohibited by law.

Recommended literature: [2; 3; 11; 13 – 15; 17; 29; 40; 45; 54; 59; 60 – 62; 70; 82; 89; 90].

9. Economic obligations. Economic contracts

9.1. General provisions on economic obligations.

9.2. Economic contracts and their contents.

9.3. Conclusion of economic contracts.

9.4. Execution of economic contracts and ways of ensuring obligations.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the types of economic obligations and to describe the process of conclusion of economic contracts.

Professional competences:

the ability to analyze the concept of economic obligations;

formation of skills in the comparison of the type of economic obligations;

formation of skills in conclusion of economic contracts and execution ways of ensuring obligations.

Key words: economic obligation; property and economic obligation; organizational and economic obligation; social and communal obligation; public obligation; consensual and real obligation; an economic contract; offer; acceptance; conclusion of an economic contract; execution of an economic contract; ways of ensuring obligations.

9.1. General provisions on economic obligations

Paragraph 4 of the Economic Code defines economic obligations, in accordance with the provisions of Par. 1 of Art. 173 of the Economic Code [3; 70], as recognized *economic obligations* arising between the subject of economic activity and another party (parties) of economic relations on the grounds provided by the Economic Code, whereby one entity (the obliged party, including the debtor) is required to perform a certain action of economic or managerial nature in favor of another entity (to perform work, to transfer property, to pay money, to provide information, etc.) or to refrain from certain actions, and another entity (the controlled party, including the creditor) has the right to demand that the obliged party fulfill its obligations.

Economic obligations may arise:

1) directly from the law or other normative legal act regulating economic activity;

2) from the act of management of economic activity;

3) from an economic contract and other agreements provided by law, as well as from agreements not provided by law, but which do not contradict it;

4) as a result of causing damage by a subject of economic activity or to a subject of economic activity; the acquisition or preservation of the property of an entity or by an entity at the expense of another person without sufficient grounds;

5) as a result of the creation of objects of intellectual property and other actions of the subjects, as well as a result of events with which the law links

the occurrence of legal consequences in the field of economic activity (Art. 174 of the EC [3; 70]).

Types of economic obligations:

1) *property and economic obligations* – civil law obligations arising between the participants in economic relations in the conduct of economic activity, by virtue of which the obliged party must take a certain economic action in favor of the other party or refrain from a certain action, and the management party has the right to demand the obliged party perform its duties (Art. 175 of the EC [3; 70]). Property and economic obligations that arise between the subjects of economic activity or subjects of economic activity and non-economic entities – legal entities, on the basis of economic contracts are economic-contractual obligations (Art. 179 of the EC [3; 70]);

2) *organizational and economic obligations* – these are economic obligations that arise in the process of managing economic activities between a subject of economic activity and a subject of organizational and economic powers, in virtue of which the obliged party must implement a certain management and economic (organizational) action in favor of the other party, or refrain from a certain action, and the controlling party has the right to demand fulfillment of obligations by the obligated party;

3) Art. 177 of the Economic Code [3; 70] also defines *social and communal obligations*: subjects of economic activity are obliged, at the expense of their local government, to create, in accordance with the law, special workplaces for disabled persons and organize their professional training. Subjects of economic activity, in accordance with Part 4 of Art. 175 of the Economic Code [3; 70], may, regardless of the statutory purpose of their activities, assume obligations on economic assistance in solving social development of settlements of their location, in the construction and maintenance of social and cultural objects, and objects of communal services and consumer services, to submit other economic assistance in order to solve local problems. Business entities have the right to participate in the formation of appropriate funds of local councils, unless other provided by law, and in carrying out work on integrated economic and social development of territories;

4) Art. 178 of the Economic Code [3; 70] determines the content of *public obligations*: with a subject of economic activity, which, in accordance with the law and its constituent documents, is obliged to carry out works, provide services or sell goods to anyone who applies for it legally, has no right to refuse from the performance of works, provision of services, sale of goods

in the presence of such an opportunity or to give preference to one consumer over others, except in cases provided by law.

9.2. Economic contracts and their contents

An economic contract is an agreement between the parties – subjects of economic activity or non-economic entities – legal entities and subjects of economic activity – aimed at the emergence, change or termination of economic rights and obligations.

Art. 179 of the Economic Code [3; 70] establishes general conditions for the conclusion of economic contracts. Thus, *the content of such agreements may be determined on the basis of:*

free expression of will, when the parties have the right to agree on any terms of the contract, which does not contradict the law;

an exemplary agreement recommended by the management body for use in contracts concluded by them, when the parties have the right, by mutual agreement, to modify certain conditions provided for by an exemplary agreement or to supplement its content;

a model agreement approved by the Cabinet of Ministers of Ukraine or in cases provided by law, another state authority, where the parties can not depart from the contents of the model contract, but have the right to specify its terms;

the contract of accession proposed by one party to other possible entities, when these entities in the case of entering into a contract have no right to insist on changing its content.

The content of an economic contract is the terms of the agreement, determined by its parties, aimed at establishing, changing or termination of economic obligations, as agreed by the parties, and those adopted by them as mandatory terms of the contract in accordance with the law (Part 1 of Art. 180 of the EC).

Thus, the *content of the economic contract includes the following types of conditions:*

1) *essential conditions* – the subject, the price and the term of the contract – without the consent of the essential conditions the contract can not be concluded;

2) *normal conditions* – may not be included in the text of the contract, as generally provided by law (for example, regarding the place of performance of the obligation);

3) *random conditions* – they are not characteristic of this contract.

Classification of contracts:

1) depending on the presence of the rights and obligations of the parties:

a) one-side (on one side there are only rights, on the other – responsibilities);

b) bilateral (the parties have corresponding rights and obligations: the right of one side corresponds to the duty of another and vice versa);

2) depending on the necessity of the implementation of correspondent rights of a compensatory nature:

a) paid;

b) free of charge. In this aspect, the Civil Code [59; 89] provides for a presumption of payment of the contract;

3) depending on the moment at which the contract is deemed concluded:

a) consensual (the contract is deemed concluded after the parties have reached an agreement on all essential terms of the contract). If the contract requires a written form, it is deemed concluded from the moment of the submission of such a form;

b) real (the contract is considered concluded from the moment of transfer of the subject of the contract).

In economic contracts, when they are concluded, the following mandatory conditions are required:

- conformity of contracts with the current legislation;
- conformity of contracts with statutory goals and tasks of subjects of economic activity;
- they are concluded in the appropriate form provided for such a deal (most of the economic contracts are concluded in writing, but in some cases, the necessity of observing the standard form or the possibility of oral form is foreseen, in particular, if a contract is executed at the time of its commission – Art. 216 of the EC [3; 70]);
- they must be signed by authorized persons;
- the annexes to the agreements, if they are foreseen, must necessarily indicate this in the text of the contract;
- they provide and detail the responsibility of the parties for breach of contractual obligations;
- they indicate the order of settlement of differences;
- they foresee the possibility (impossibility) of pre-term performance of the contract or execution of its parts;

- force majeure circumstances;
- consequences of non-fulfillment of the deal in case of unilateral refusal to execute the contract.

9.3. Conclusion of economic contracts

The general procedure for concluding economic contracts is provided for in Art. 181 of the Economic Code [3; 70].

An offer is a proposal for the conclusion of a contract; *an acceptance* is unconditional acceptance of the terms of the contract.

As a rule, an economic contract is described in the form of a single document, signed by the parties. It is allowed to conclude economic contracts in a simplified way, that is, by exchanging letters, faxograms, telegrams, telephonograms, etc., as well as by confirming the acceptance of orders for execution, unless the law specifies requirements for the form and order of conclusion of this type of contracts.

A draft contract may be proposed by any of the parties. In the event that the draft treaty is set out as a single document, it is provided to the other party in duplicate.

The party, who has received the draft agreement, if agrees with its conditions, draws up an agreement in accordance with the requirements of Part 1, Art. 181 of the EC [3; 70] and returns one copy of the contract to the other party or sends a reply to the letter, facsimile or fax within twenty days after the arrival of the contract.

In the event of objections to certain terms of the contract, the party who received the draft agreement shall draw up a protocol of disagreements, as the reservation is made in the contract, and within twenty days the other party shall send two copies of the protocol of disagreement together with the signed contract.

The party who received the protocol of disagreement with the contract is obliged to review it within twenty days, at the same time to take measures to resolve the differences with the other party and to include in the contract all accepted proposals, and those remaining unresolved disputes, to transfer to the court in the same the term, if there is a consent of the other party.

If the parties reach an agreement on all or some of the conditions specified in the protocol of disagreement, such consent must be confirmed in writing (the protocol of coordination of differences, letters, telegrams, tele-typograms, etc.).

If the party who received the protocol of disagreements regarding the terms of the contract, based on a state order or such, the conclusion of which is binding on the parties by law, or a party – the executor under an agreement that has been recognized as a monopolist in a certain market of goods (works, services) received a protocol of disagreements, in the established procedure, will not transfer within the specified twenty-day term to the court the differences remaining unregulated, the proposals of the other party shall be deemed accepted.

In the event that the parties have not reached an agreement on all essential terms of the economic contract, such a contract is considered un-solved (that has not happened). If one of the parties has taken actual action regarding its implementation, the legal consequences of such actions are determined by the norms of the Civil Code of Ukraine [59; 89].

In addition, the legislator provides for the peculiarities of concluding separate types of economic contracts:

- preliminary agreements (Art. 182 of the EC [3; 70]);
- contracts for state orders (Art. 183 of the EC [3; 70]);
- on the basis of the free will of the parties, exemplary and typical agreements (Art. 186 of the EC [3; 70]);
- at the exchanges, fairs, public auctions (Art. 185 of the EC [3; 70]);
- organizational and economic contracts (Art. 186 of the EC [3; 70]);
- economic contracts by a court decision (Art. 187 of the EC [3; 70]).

Article 188 of the Economic Code [3; 70] provides for the procedure for amending and terminating economic contracts. Thus, unilateral amendment and termination of economic contracts is not allowed, unless other provided by law or contract.

The party of the contract, who considers it necessary to amend or terminate the contract, must send a proposal to the other party under the contract.

The party to the contract, which has received a proposal to amend or terminate the contract, within twenty days from the arrival of the proposal, shall inform the other party of the results of its consideration.

In the event that the parties have not reached an agreement on the amendment (termination) of the agreement or if the response is not received within the established time period, taking into account the time of postal circulation, the interested party has the right to submit the dispute to the court decision.

If the court decision is to amend or terminate, the contract is deemed to be amended or terminated from the day the decision enters into force, unless another term of entry into force has been established by a court order.

9.4. Execution of economic contracts and ways of ensuring obligations

The fulfillment of obligations is regulated by Chapter 48 of Section I of Book 5 of the Civil Code [59; 89]. Thus, the obligation must be fulfilled properly in accordance with the terms of the contract and the requirements of this Code, other acts of civil law, and in the absence of such conditions and requirements – in accordance with the customs of business turnover or other requirements that are commonly applied (Art. 526 of the Civil Code [59; 89]).

The place of performance of the obligation is set out in the contract. If the place of performance of the obligation is not specified in the contract, execution is carried out:

1) for the obligation to transfer immovable property – at the location of this property;

2) for the obligation to transfer the goods (property) arising on the basis of the contract of carriage – at the place of delivery of the goods (property) to the carrier;

3) for the obligation to transfer the goods (property) arising on the basis of other transactions – at the place of manufacture or storage of goods (property), if this place was known to the creditor at the time of the obligation;

4) for monetary obligations – at the place of residence of the creditor, and if the creditor is a legal entity – at its location at the time of the obligation. If the creditor changes his place of residence (location) at the time of the obligation and notifies the debtor, the obligation is fulfilled at the new place of residence (location) of the creditor by assigning all expenses related to the change of place of performance to the creditor;

5) other obligations – at the place of residence (location) of the debtor.

The obligation may be performed elsewhere if it is established by acts of civil law or proceeds from the essence of obligations or customs of business turnover (Art. 532 of the CC [59; 89]).

Chapter 49 of Section I of Book 5 of the Civil Code regulates the enforcement of the obligation. Thus, according to the provisions of Art. 546 of the CC [59; 89] the fulfillment of obligation may be provided with a liquidated

damage (penalty), surety, guarantee, pledge, withhold (retain), deposit. In addition, other types of enforcement may be established by contract or by law.

1. *Liquidated damages (fine penalty, liquidated damages in percentage)* are the amount of money or other property that the debtor must transfer to the creditor in case of violation of the obligation by the debtor. At the same time, a subject of liquidated damages may be a monetary amount, movable and immovable property (Part 1 of Art. 549 and Part 1 of Art. 551 of the CC [3; 70]).

A fine penalty is liquidated damages, calculated as a percentage of the amount of the default or improperly executed obligation (Part 2 of Art. 549 of the CC [3; 70]).

Liquidated damages in percentage are liquidated damages calculated as percentage of the amount of untimely executed monetary obligation for each day of delay of execution (Part 3 of Art. 549 of the CC [3; 70]).

2. *Under the contract of surety,* the provider of surety shall be entrusted to the creditor of the debtor for the performance of his duty. The provider of surety is liable to the creditor for violation of the obligation by the debtor (Part 1 of Art. 553 of the CC [3; 70]).

3. *Under the guarantee,* the bank, another financial institution, the insurance organization (guarantor) guarantees to the creditor (beneficiary) the fulfillment of the debtor (principal) of his duty. The guarantor is liable to the creditor for violation of the obligation by the debtor (Part 1 of Art. 560 of the Civil Code [3; 70]).

4. A *deposit* is a monetary sum or movable property issued to the creditor by the debtor in the account of the debtors due to the contract of payment, to confirm the obligation and to ensure its execution (Part 1 of Art. 570 of the Civil Code [3; 70]).

5. *By virtue of a pledge*, a creditor (chargee) shall have the right, in the event of default by the debtor (chargor) of the obligation secured by pledge, to receive satisfaction from the pledged property mainly in front of other creditors of this debtor, unless other provided by law (the right of pledge) (Part 1 of Art. 572 of the CC [3; 70]).

In accordance with the provisions of Art. 4 of the Law of Ukraine "On Pledge" dated 02.10.1992 [39]. the subject of a pledge may be property and property rights. The subject of a pledge may be property that, in accordance with the legislation of Ukraine, may be alienated by the chargor and which may be levied, as well as property that will become the property of the chargor after the conclusion of the pledge agreement, including products,

issues and other profits (future harvest, breeding stock livestock, etc.), if provided by the contract.

The national security and historical values, which are in the state property and entered or are to be entered in the State Register of National Cultural Property, can not be the subject of a pledge. Neither, the subject of a pledge can be requirements that are personal in nature, as well as other requirements, the pledge of which is prohibited by law.

Objects of state property, the privatization of which is prohibited by legislative acts, as well as property complexes of state enterprises and their structural subdivisions, which are in the process of corporatization, can not be subject to pledge. The subject of collateral of state enterprises, the privatization of which is prohibited by legislative acts, and their structural subdivisions, which are in the process of corporatization, may be their goods in circulation or in processing.

Art. 575 of the Civil Code [59; 89] provides for *two types of pledges* – a mortgage and a pawn. Thus, *mortgage* is a pledge of immovable property that remains in the possession of the mortgagor or a third person; and *with a pawn* there is a pledge of movable property, which is transferred to the possession of the mortgagee or on his orders – possession of a third person.

The Law of Ukraine "On Pledge" [39], in addition to these types, provides a pledge of property, property rights, as well as goods in circulation or in processing.

A creditor who is legally entitled to a thing to be transferred to the debtor or a person specified by the debtor, in the event of non-fulfillment by him in due time of an obligation to pay this thing or reimbursement to the creditor of the costs and other costs associated with it, has the right to *withhold (retain)* it from it for execution of the debtor obligation (Part 1 of Art. 594 of the Civil Code [59; 89]).

Recommended literature: [2; 3; 13 – 15; 17; 21; 28; 37; 59 – 62; 65; 70; 89].

10. Economic and legal liability

10.1. The concept and types of economic and legal liability.

10.2. The grounds of economic legal liability.

10.3. General characteristics of economic and legal sanctions.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the types of economic and legal liability.

Professional competences:

the ability to analyze the concept of economic and legal liability;

formation of skills in the comparison of the types of economic and legal liability and economic and legal sanctions;

formation of skills in the comparison of the types of economic and legal sanctions.

Key words: economic legal liability; contractual liability; non-contractual liability; economic offense; economic and legal liability and economic and legal sanctions; losses; compensation of losses; fine sanction; liquidated damages; fine penalty; liquidated damages in percentage; operational and economic sanctions; administrative and economic sanctions.

10.1. The concept and types of economic and legal liability

Economic and legal liability is a complex legal institution of economic law, the subject of which is the regulation of economic offenses.

Economic and legal liability can be defined as legal relations that arise as a result of committing an economic offense between subjects of economic activity or between a subject of economic activity and a public authority or a local self-government body, resulting in a fact that a subject of economic activity that is guilty of committing an offense gets unfavorable consequences of property or organizational nature, which are stipulated by economic and legal sanctions.

It is possible to distinguish the following signs of economic and legal liability:

first, in the form such liability is a legal one, consisting in a negative assessment of the behavior of the offender by the state and in direct demand or sanction of the law to apply to him measures of property effects in the form of compensation for damages, payment of a penalty, fine or other legal consequences adverse for the offender. The general principle of this liability is the state security in relation to the application of property and other economic sanctions stipulated by the agreement or the law through the system of special and general human rights state bodies, the function of which is precisely the application of economic sanctions;

second, in terms of economic and legal liability in general it is material and it is used in the form of a certain system of property (economic) sanctions

provided or permitted by the norms of economic legislation. Economic law establishes the principle of full property liability of business entities until bankruptcy (Part 4 of Art. 205 of the Economic Code [3; 70]);

third, the ground for application is an economic offense – an unlawful act or omission of the offender. Economic law, as well as civil law liability, is based on the principle of presumption of the offender's guilt.

The application of economic sanctions must guarantee protection of the rights and legitimate interests of citizens, organizations and the state, including compensation for losses incurred by participants in economic relations caused by the offense, and ensure the rule of law in the field of economic activity (Part 2 of Art. 216 of the Economic Code [3; 70]).

Thus, economic and legal liability is intended to stimulate the proper performance of economic obligations by operators of economic relationship. Its main objective is to ensure law and order in the field of economics (in economic relations).

The realization of this goal is intended to promote the principles on which the economic and legal liability is based, enshrined in Part 3 of Art. 216 of the EC [3; 70]:

- the injured party has the right to compensation, regardless of whether there is a reservation in the contract;
- the statutory liability of the manufacturer (seller) for the poor quality of the product is also applied irrespective of whether there is a warning in the contract;
- payment of penalties for violation of the obligation and also compensation for losses does not release the offender without the consent of the second party from the fulfillment of accepted obligations in kind;
- in the economic agreement there are unacceptable warnings regarding the exclusion or limitation of the liability of the manufacturer (seller) of the product.

Functions of economic and legal liability:

- *a compensatory function* (restoration of the disturbed property of the victim by means of application in his favor of compensatory, property sanctions, which are levied from the offender and elimination of the consequences of unlawful behavior of the subject of economic activity);
- *a preventive function* (due to the use of liability, not only eliminates the fact of the offense, but also applies legal measures aimed at eliminating its causes and conditions);

- *a security function* (to protect the legitimate rights and interests of participants in economic circulation and consumers);
- *a stimulating function* (the possibility or threat of applying economic (property) sanctions to the offender in case the commission of the offense prompts the person to terminate the offense and the real fulfillment of the obligation);
- *an information function* (for participants in economic circulation, information about application of measures of responsibility to the subject of economic activity – the offender – is the question of the expediency of continuing or the existence of economic relations with such entity).

Depending on the legal basis (norms that are violated) there are contractual and non-contractual violations. Accordingly, there is a *contractual and non-contractual economic and legal liability*. The contractual liability is related to the non-performance or improper performance of contractual obligations by the entity. Non-contractual liability arises in case of loss, violation of the legislation on economic competition, acquisition or preservation of property by a subject of economic activity or a subject of economic activity at the expense of another person without sufficient grounds, etc.

Depending on the size the economic legal liability can be:

a) *solidary (joint),* based on the principle of "one for all", which means its indivisibility between the joint debtors. The creditor is able to satisfy his claims immediately from one debtor, for example, the most solvent one. The joint debtors remain obligated until complete fulfillment of their obligation regardless of the fact that some other part of the claim is fulfilled by another debtor. This liability takes place in cases of joint damage, participants in a full partnership with each other for the obligations of such a partnership, etc.;

b) *partial,* separate liability of each of the co-debtors to the lender in a certain part specified by the agreement or the law, for example, members of a limited liability company, for the obligations of the company;

c) *subsidiary,* which has additional character in relation to the offender's liability, first of all, the claims are brought to the debtor, and only in case of not receiving their satisfaction from them completely or in part – to the person who carries additional (subsidiary) liability. Such liability, for example, is borne by the members of an additional liability company for the obligations of the company.

10.2. Grounds of economic and legal liability

According to Art. 216, 219 of the Economic Code [3; 70] *the ground of economic and legal liability of a* participant in economic relations is an offense committed by him in the field of economic management (Art. 216, 219 of the Economic Code [3; 70]).

An economic offense is an unlawful act or omission (inaction) of a participant in economic relations that does not comply with the requirements of economic law, is not in accordance with the legal obligations of the indicated participant, violates the subjective rights of another participant in economic relations or third parties. According to the provisions of Art. 610 of the Civil Code [59; 89], violation of the obligation is its *non-fulfillment* or *execution in violation of the conditions* determined by the content of the obligation (improper performance).

Depending on the legal basis, there are *contractual* and *non-contractual offenses*.

Contractual offenses are divided into:

offenses at the stage of occurrence of obligations;

breach of the terms of performance of contractual and other economic obligations for the supply of products and goods;

violations of economic obligations regarding the quality of the delivered products (goods), work performed, services rendered;

violation of the state discipline of prices;

violation in the field of credit and settlement relations concerning the execution of economic contracts;

violation of economic obligations for the carriage of goods.

Non-contractual offenses include:

violations of the legislation on the protection of economic competition;

violation of the rights of the proprietor as connected, and not connected with the deprivation of property;

causing harm;

acquisition or preservation of the property *of entity or a subject of economic activity* at the expense of another person without sufficient grounds for that, etc.

Types of legal grounds for economic and legal responsibility:

normative (a set of rules of law on the liability of participants in economic relations);

economic and legal personality of the parties – the debtor and the creditor;

offenses in the field of economic activity. This ground consists of four elements – the *terms of economic and legal liability.* The aggregate (composition) of the four named conditions forms the legal and factual grounds of economic and legal liability.

These terms of economic and legal liability are:

a) the *fact of an economic offense;*

b) *losses caused by violations of* economic obligations or established requirements for the conduct of economic activity;

c) a *causal connection* between the wrongful conduct of the offender and the loss inflicted by the victim;

d) the *fault of the* offender – a participant in economic relations.

Under the general rule (Part 1 of Art. 219 of the Economic Code [3; 70]), for failure or improper performance of economic obligations or violation of the rules of economic activity, the offender meets his rightful ownership or the rights entrusted to him on the right of economic management or operational management of property, unless otherwise provided by the Economic Code and other laws.

According to Part 3 of Art. 219 of the EC [3; 70] the court has the right to reduce the amount of liability or to release the defendant from liability, if the violation was facilitated by unlawful actions (omission) of the second party to the obligation.

10.3. General characteristics of economic and legal sanctions

Economic and legal sanctions are recognized measures of influence on the perpetrator in the field of economic activity, as a result of which their application is adversely affected by economic and/or legal consequences. The following types of economic sanctions are applied in the field of economic activity: compensation, fine sanctions, operational and economic sanctions, as well as administrative and economic sanctions (Part 1 of Art. 217 of the Economic Code [3; 70]).

1. *Compensation of losses* involves the restoration of the property status of the subject of economic activity at the expense of another subject of economic activity – the offender. It is precisely this type of liability that all conditions of economic and legal liability are assumed.

The Economic Code in Part 1 of Art. 224 [3; 70] determines the legal basis for the compensation of losses: "A participant in economic relations, who breached an economic obligation or established requirements for the conduct of economic activity, shall reimburse the losses caused to the subject of economic activity whose rights or legitimate interests are violated".

The legislator also identifies the types of costs incurred by the managed party, which are losses. *A loss* is expenses incurred by the eligible party, loss or damage to its property, as well as income not received by the eligible party, which the eligible party would have received in case of proper fulfillment of the obligation or observance of the rules of economic activity by the other party.

According to Part 1 of Art. 225 of the EC [3; 70] *the amount of losses to be compensated* by a person who committed an economic offense include:

- the value of the lost, damaged or destroyed property which is determined in accordance with the requirements of the legislation;
- additional expenses (penalties paid to another subject of economic activity, the cost of additional works, additional expenditures, etc.) incurred by the party who has suffered loss as a result of violation of the obligation by the other party;
- unearned profit (lost profit), for which the injured party was entitled to count on the other party in case of proper performance of the obligation;
- material compensation of non-pecuniary loss in cases stipulated by law.

Parts 3 and 4 of Art. 225 of the Economic Code [3; 70] establish certain requirements for determining the amount of losses: in determining the amount of losses, unless otherwise provided by law or contract, the prices that existed at the place of performance of the obligation are taken into account on the day the debtor satisfies voluntarily claims of the injured party, and in the event that the demand is not met voluntarily – on the day of submission of the appropriate claim for the recovery of losses to the court. In the specific circumstances, the court may satisfy the claim for losses, taking into account the prices on the day the court decision is made.

The conditions and procedure for compensation of losses are established by Art. 226 of the Economic Code [3; 70], according to which the participant of the government relations which committed the economic offense, is obliged to take the necessary measures to prevent losses in the economic area of other participants in economic relations or to reduce their size, and in the

event that losses are caused to other subjects of economic activity, is obliged, upon the request of these subjects of economic activity, to indemnify the loss voluntarily in full, unless the law or agreement of the parties provides for compensation for losses in another volume.

Loss compensation as a property sanction is applied:

in the relations of purchase and sale between subjects of economic activity;

in the relations of commercial mediation (agency activities);

for non-fulfillment or improper fulfillment of obligations under a contract for capital construction, the guilty party pays penalties, as well as compensates the other party for losses.

Loss compensation is in the pre-court and claim procedure.

2. *Fine sanction*s are economic sanctions in the form of a monetary amount (liquidated damages (fine penalty, liquidated damages in percentage), which the participant in economic relations is obliged to pay in case of violation of the rules of his business, failure or improper performance of economic obligations (Part 1 of Art. 230 of the EC [3; 70]).

Liquidated damages are a monetary amount or other property that the debtor must transfer to the creditor in case of violation of the obligation by the debtor. At the same time, the subject of a penalty may be a monetary amount, movable and immovable property (Part 1 of Art. 549 and Part 1 of Art. 551 of the Civil Code [59; 89]).

The fine penalty is calculated as percentage of the amount of the default or improperly executed obligation, *the liquidated damages in percentage* – as percentage of the amount of untimely fulfillment of the monetary obligation for each day of delay of execution.

Analysis of Art. 230 of the Economic Code [3; 70] shows:

1) fine sanctions are always used in the form of a monetary amount;

2) the grounds for applying fine sanctions are:

- a violation of the rules of economic activity by a participant in economic relations or;
- non-performance or improper performance of an economic obligation;

3) the subjects of the right to apply fine sanctions are participants in the relations in the field of economic activity, specified in Art. 2 of the EC [3; 70];

4) the law on certain types of commitments may specify the amount of fine sanctions, the change of which, in agreement with the parties, is not allowed.

Under the general rule, the amount of penalties is provided by law or by contract. Priority in determining the amount of sanctions is provided by law, and only in those cases where the amount of penalties is not specified by law, sanctions are applied in the amount stipulated by the contract (Part 4 of Art. 231 of the Economic Code [3; 70]).

She EC provides different ways of setting the size of sanctions by contract:

a) in percentage terms to the amount of the outstanding part of the obligation;

b) in a certain defined amount of money;

c) in percentage terms to the amount of the obligation, regardless of the degree of its implementation;

d) in a multiple amount to the cost of goods (works, services).

Under the general rule of economic legislation, if fine sanctions are imposed for non-fulfillment or improper fulfillment of the obligation, then the losses are reimbursed in part not covered by these sanctions *(offset penalty).*

The law or contract may provide for cases when:

- only fine sanctions can be imposed *(exclusive penalty);*
- losses can be recovered in full amount over fine sanctions *(penalty);*
- at the option of the creditor either losses, or fine sanctions may be levied *(alternative penalty).*

A request for payment of fine sanctions for an economic offense may be made by a participant in economic relations, whose rights or legitimate interests are violated, and in cases provided by law – by an authorized body with economic competence.

3. *Operational and economic sanctions* are measures of operational influence on the offender, in order to terminate or prevent the repetition of the violation of obligations, then the parties themselves use the obligation unilaterally (Part 1 of Art. 235 of the Economic Code [3; 70]).

The specifics of operational and economic sanctions are that they are applied by the parties without reference to judicial or other authorized bodies, and without the consent of the other party, but only those operational and economic sanctions, the *application of which is provided by the contract.* And they are applied *irrespective of the fault of the subject* who breached the economic obligation.

In accordance with Part 1 of Art. 236 of the Economic Code [3; 70] the parties may provide for the use of the following kinds of operational and economic sanctions in economic contracts:

a) a one-sided refusal to execute the obligation by the controlling party, with the release of it from responsibility for it – in case of violation of the obligation by the other party:

- *refusal to pay* for an obligation that was executed improperly or prematurely executed by the debtor without the consent of the other party;
- *postponement of shipment of* products or performance of work due to delay in the issuance of letters of credit by the payer, suspension of the issuance of bank loans, etc.;

b) refusal of the controlling party to accept the further fulfillment of the obligation, violated by the other party, or the unilateral return of the obligee made by the creditor (debiting from the debtor's account without interest of the funds paid for poor products, etc.);

c) unilaterally installing for the future additional guarantees of the proper fulfillment of obligations by the party who breached the obligation, changing the order of payment for products (works, services), transferring the payer to the previous payment for products (works, services) or for payment after checking their quality, etc.;

d) refusal to establish a future economic relationship with the party that breaches the obligation.

The list of operational and economic sanctions set in Part 1 of Art. 236 of the EC [3; 70] is not exhaustive. The parties may provide for other operational and economic sanctions in the contract.

The reason for the application of operational and economic sanctions is a violation of the economic obligation by the other party. Operational and economic sanctions are applied by the party who has suffered from the offense, in an extrajudicial manner and without a preliminary presentation of a claim to the offender of the obligation (Art. 237 of the Economic Code [3; 70]).

Operational and economic sanctions can be applied simultaneously with indemnification of losses and collection of fine sanctions.

4. *Administrative and economic sanctions* are measures of organizational, legal or property character, aimed at termination of a subject of economic activity's violation and liquidation of its consequences (Part 1 of Art. 238 of the Economic Code [3; 70]). They are established exclusively by law and applied by the authorized bodies of state power or local self-government.

The following features of the application of administrative and economic sanctions can be defined:

a) the grounds for application of sanctions are violations of the *rules of economic activity* established by legislative acts*;*

b) sanctions are applied only to *subjects of economic activity* (rather than all participants in economic relations);

c) they can be applied by the *authorized bodies of state power or local self-government bodies;*

d) they are *measures of organizational or legal character;*

e) sanctions are aimed at *termination of an offense* of an entity and *liquidation of its consequences;*

f) they can be established *exclusively by laws;*

g) they may be applied to the entity *within six months from the date of detection of the violation,* but *no later than one year from the date of violation* of the rules of economic activity established by the legislative acts, except in cases stipulated by law.

The following administrative and economic sanctions may be imposed on subjects of economic activity:

1) the seizure of profit (income);

2) administrative and economic penalty;

3) collection of fees (obligatory payments);

4) the use of anti-dumping, compensatory or special measures;

5) termination of export-import operations;

6) application of the individual licensing;

7) suspension of the license (patent) on the exercise of certain types of economic activity by the subject of economic activity; cancellation of the license (patent) for the conduct of certain types of economic activity by the subject of economic activity; restriction or restriction or suspension of an entity's activities.

As established by Art. 246 of the Economic Code [3; 70], the carrying out of any economic activity that endangers the life and health of people or poses an increased danger to the environment is prohibited.

Losses incurred by the subject of economic activity in connection with the unlawful application of administrative and economic sanctions against it shall be compensated in accordance with the procedure established by the Economic Code and other laws.

Recommended literature: [2; 3; 13 – 15; 17; 59 – 62; 70; 89].

11. Control over the implementation of entrepreneurial activity

11.1. The concept and features of control.

11.2. Legal regulation of control over the entrepreneurial activity.

11.3. The concept and principles of state control (supervision) over the implementation of entrepreneurial activity.

11.4. The procedure for implementation of comprehensive planning measures of state supervision (control).

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the concept and procedure for implementation of comprehensive planning measures of state supervision (control).

Professional competences:

the ability to analyze the concept and features of control over the entrepreneurial activity;

formation of skills in characterization of the concept and principles of state control (supervision) over the implementation of entrepreneurial activity;

formation of skills in realization of own rights and obligations in the procedure for implementation of comprehensive planning measures of state supervision (control).

Key words: control over the entrepreneurial activity; principles of state control (supervision) over the implementation of entrepreneurial activity; procedure for implementation of comprehensive planning measures of state supervision (control).

11.1. The concept and features of control

In accordance with the provisions of the law, state bodies can not interfere in the direct economic activity of subjects of economic activity except in cases where such activity does not materially affect the rights of state bodies provided for by the legislation of Ukraine to exercise control over their activities.

Control over the conduct of entrepreneurial activity is defined as an organic component, a management function.

Control is verification, supervision over the implementation of laws, tasks, quality, requirements or terms, etc. It is the final function of public administration, that is management activity of specially created state bodies that is directly aimed at implementing laws.

As a purposeful activity of state bodies and their officials, control has a number of peculiar *features:*

1) this is one of the main legal issues allowed by the state to interfere in entrepreneurial activity. According to the rare, directly foreseen by the current legislation cases, the termination of the activity of the entrepreneur is not allowed in the process of control;

2) control over the implementation of entrepreneurial activity is based on the powers of state control bodies clearly defined by special laws. A state body and its officials can not go beyond their control functions and exceed the scope of the given powers;

3) control functions belong not only to state bodies, but also to public bodies (for example, a company for the protection of consumer rights), to other entities in case that violations of their absolute rights (counterfeit actions) are discovered;

4) control must be carried out in the legal forms provided by law and only within the limits specified by the law or by-laws;

5) control must be carried out only if there are cases provided for by law. When carrying out the control over another state body in respect of the same subject, which was controlled in advance, all expenses for carrying it out should be reimbursed at the expense of the latter body;

6) control must be productive, completed to the end and finish with a corresponding conclusion;

7) control should be operational and conducted in the best possible time.

Officials of the controlling authority in exercising their powers can not be distracted for other activities not related to control.

11.2. Legal regulation of control over entrepreneurial activity

State control over entrepreneurial activity, oriented on relations in the field of entrepreneurship, is an integral part, a kind of state control.

State control over entrepreneurial activity as a kind of state control is carried out on the basis and within the limits established by the legislation, and the party is in checking compliance with mandatory requirements of the legislation by the subjects of entrepreneurship in order to prevent, detect, terminate and eliminate violations.

The Economic Code of Ukraine clearly defines the means of state regulation of economic activity (Art. 12 of the Economic Code [3; 70]) and

state control and supervision of economic activity (Art. 19 of the Economic Code [3; 70]).

Article 19 of the Economic Code [3; 70] in the field of state control indicates the following types of it: currency, tax control, control over prices and pricing, monitoring the compliance with competition law, control in the field of foreign economic activity, etc.

The main regulatory act of the control of economic activities is the Law of Ukraine No. 877-V "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" of April 5, 2007 [42].

Certain tendencies of liberalization in the legislation of state control over entrepreneurial activity regarding legal guarantees of rights and legitimate interests of the subjects of economic activity should be noted. In particular, a significant reduction in the list of activities subject to licensing are simplified and shortened in time: the procedure for obtaining licenses, introducing changes in them significantly simplified the system of state registration of economic entities on the basis of laws adopted in the last few years regulating the legitimation of entities' entrepreneurship.

It should also be pointed out that such a positive tendency as the transfer by the state of part of the control functions to a professional non-profit association of entrepreneurs in the form of self-regulated organizations has appeared.

11.3. The concept and principles of state control (supervision) over the implementation of entrepreneurial activity

According to the Law "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" [42], state supervision (control) is the activity of authorized central bodies of executive power, their territorial bodies, state collegial bodies, executive authorities of the Autonomous Republic of Crimea, bodies of local self-government (hereinafter – bodies of state supervision (control)) within the limits of powers prescribed by law, regarding the detection and prevention of violations of the requirements of legislation by subjects of economic activity and ensuring the interests of society, in particular the proper quality of products, works and services, the permissible level of the securities for the population, the environment (Art. 1 of the Law [42]).

According to Part 4 of Art. 4 of the Law "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" [42], a state supervision body can not exercise state supervision (control) in the field of economic activity, unless the law explicitly authorizes such a body to carry out state supervision (control) in a certain area of economic activity and does not determine the authority of such body during the exercise of state supervision (control).

State supervision (control) is carried out according to *the principles of*:

1) priority in the field of human life and health, functioning and development of society, living environment and life fronting any other interests and goals in the field of economic activity;

2) control and accountability of the state supervision (control) body to the relevant state authorities;

3) equality of rights and legitimate interests of all subjects of economic activity;

4) guaranteeing the rights and lawful interests of each subject of economic activity;

5) the objectivity and impartiality of the implementation of state supervision (control), the inadmissibility of conducting inspections of subjects of economic activity by anonymous and other groundless applications, as well as inevitability of the responsibility of individuals for filing such applications;

6) exercising state supervision (control) only if there are grounds and, in the manner, prescribed by law;

7) openness, transparency, planning and systematic state supervision (control);

8) inadmissibility of duplication of powers of state supervision bodies (control) and inadmissibility of the implementation of state supervision (control) measures by various state supervision (control) bodies on the same issue;

9) non-interference with the state body of supervision (control) in the activity of the subject of economic activity, if it is carried out within the limits of the law;

10) responsibility of the state supervision (control) body and its officials for the damage caused to the subject of economic activity as a result of violation of the requirements of the legislation, violation of the rights and legitimate interests of the subject of economic activity;

11) compliance with the conditions of international treaties of Ukraine;

12) independence of the bodies of state supervision (control) from political parties and any other associations of citizens;

13) presence of one state supervisory (control) authority within the central executive body;

14) presumption of the legality of a subject of economic activity in the event that the rule of law or other legal act issued on the basis of the law, or if the rules of various laws or various normative legal acts allow ambiguous (plural) interpretation of the rights and obligations of the subject of management and/or powers of a state supervision (control) body;

15) orientation of state supervision (control) on prevention of an offense in the field of economic activity;

16) preventing the establishment of targets or any other planning for bringing economic entities to liability and imposing sanctions on them;

17) carrying out state supervision (control) on the basis of the principle of risk assessment and expediency.

Measures of state supervision (control) can be scheduled and unscheduled.

Part 1 of Art. 5 of the Law [42] establishes in particular that planned activities are carried out in accordance with annual or quarterly plans approved by the state supervisory authority (control) before December 1 of the year preceding the planned one, or until the 25th of the last month of the quarter preceding the scheduled one.

During one year, more than one planned event of state supervision (control) of one subject of economic activity is not allowed.

The plan for the implementation of state supervision (control) measures for the next planning period should contain specific calendar dates for the beginning of each planned state supervision (control) and the terms for implementation of these measures.

The plan of implementation of measures of state supervision (control) for the relevant planning period shall be made public on the official website of the state supervision (control) body not later than 10 days before the beginning of the corresponding planning period.

In accordance with Part 1 of Art. 6 of the Law [42] the *grounds for the implementation of unscheduled measures are:*

1) submission of a written application by the entity to an appropriate state supervision (control) body on the implementation of the state supervision (control) measure at his request;

2) identification and confirmation of unreliability of the data declared in the documents of mandatory reporting submitted by the entity;

3) verification of compliance by the entity with the requirements, orders or other regulatory documents to eliminate violations of the requirements

of legislation issued on the results of the planned activities by the state supervision (control) body;

4) a substantiated appeal of a natural person as to the violation of the legal entity's rights by a subject of economic activity. An unplanned event in this case is carried out only with the consent of the central executive body for its conduct – the State Regulatory Service of Ukraine (hereinafter – SRS). A similar procedure has been used quite effectively for almost a year and a half in the field of licensing of types of economic activity, when such permission is provided by the Expert Appeal Council established under the State Regulatory Service;

5) failure to submit mandatory reporting documents by the entity without due cause, as well as written explanations of the reasons that prevented the submission of such documents;

6) occurrence of an accident, death of the victim as a result of an accident or occupational disease that was related to the activities of the entity.

Part 2 of Art. 6 of the Law [42] establishes that carrying out unscheduled measures on the grounds, other than those provided for in this Art., shall be prohibited unless other provided by law or an international treaty of Ukraine, the consent of which is binding on the Verkhovna Rada of Ukraine.

The law stipulates that the planned measures of state supervision (control), depending on the degree of risk, are carried out by the bodies of state supervision (control) of the economic entities assigned *to a high level of risk* – not more than once *in 2 years*, *to average level* – not more than *once in 3 years*, *insignificant level* – not more than *once in 5 years*. In addition, the period of implementation of the planned measure was reduced from 15 to 10 days.

Law establishes full publicity of the agreement procedures of the State Regulatory Service of Ukraine and a mandatory requirement that before the beginning of public oversight activities permission to conduct them be made public on the official website of the State Regulatory Service of Ukraine.

Accordingly, the subject of economic activity has the right not to allow officials of the state supervision (control) body to take control and supervision measures, if they are not presented with the approval of the State Regulatory Service.

Thus, for citizens, it is possible to protect their rights in case of their violation. At the same time, the mechanism of protection of business from unreasonable inspections by the supervisory (control) authorities is being implemented.

In addition, the creation of an Integrated automated system of state supervision (control) with information on all measures of state supervision (control), to which entrepreneurs will have free access, will be a positive step in the field of state control over entrepreneurial activity, which will promote protection against unnecessary interference of official's supervisory bodies in the activity of subjects of economic activity in carrying out measures of state supervision (control).

11.4. The procedure for implementation of comprehensive planning measures of state supervision (control)

The procedure for implementation of comprehensive planning measures of state supervision (control) was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 350 dated May 24, 2017. These measures are carried out in accordance with the plan of implementation of comprehensive planning measures of state supervision (control) bodies, which is approved by the order of the SRS and made public on its official website no later than November 15, the year preceding the scheduled one.

The term of implementation of a complex measure can not exceed ten working days, and with respect to micro, small subjects of economic activity – five working days.

In order to carry out a comprehensive measure, each state supervisory (control) authority issues an order (decision, regulation), which must include the name of the subject of economic activity with respect to which the measure will be carried out and the subject of the complex measure. On the basis of an order (decision, regulation) an identity card (direction) is issued for the implementation of the event.

Before commencing implementation of complex measures, officials of each state supervision body (control) are obliged to present a certificate (referral) to the head of the subject of economic activity – a legal entity, its separated subdivision or an authorized person (an individual entrepreneur or an authorized person) and a service certificate certifying an official of the state supervision body (control), and provide a copy of the certificate (referral) to the subject of economic activity.

Before the commencement of implementation of complex measures, an official of each state supervision (control) body shall enter a record in the journal of registration of measures of state supervision (control) (if such

a journal is available with the subject of management), this record being about:

the type and form of the complex event;

the name of the state supervision (control) body;

the number of the service certificate, the surname, the name, the patronymic and the position of the official of the state supervision (control) body authorized to carry out the integrated measure;

the date and number of the certificate (referral) for the implementation of the comprehensive measure;

the term of implementation of the complex measure (the dates of the beginning and end of the complex event).

According to the results of complex measures, each body of state supervision (control) separately draws up acts in duplicate.

Each body of state supervision (control) provides acquaintance of the subject of economic activity or a person authorized by it with the relevant act during the last day of the implementation of the comprehensive measure, taking into account the business hours of the subject of economic activity, established by its rules of internal labor regulations.

On the last day of the implementation of the complex measure, two copies of such an act shall be signed by officials of the relevant state supervision (control) body, which carried it out, and the subject of management or its authorized person, unless otherwise provided by law.

If the subject of economic activity does not agree with the act, it signs such an act with remarks.

Observations of the subject of economic activity on the implementation of state supervision (control) are an integral part of the act of the state supervision body (control).

In the event of the subject's of economic activity refusal to sign the act, the official of such a body shall enter an appropriate record for the state supervision (control) body.

One copy of the act shall be handed to the head of the subject of economic activity, a legal entity, its separate subdivision or an authorized person (an individual, an entrepreneur or an authorized person) on the last day of the implementation of the complex measure, and the second one shall be kept with the state supervision (control) body.

In the event of the subject's of economic activity refusal to receive a copy of the act, the second copy of the act shall be sent to the subject

of economic activity by registered mail with the description of the investment and the notice of delivery within three working days after completion of the comprehensive measure.

Recommended literature: [1 – 3; 13 – 18; 30; 31; 41; 46; 58 – 62; 64; 67; 70; 71; 83 – 85; 88; 89].

12. Protection of the rights of a subject of economic activity

12.1. The system of economic courts in Ukraine and their powers.
12.2. The essence of pre-trial settlement of economic disputes.
12.3. The subordination and jurisdiction of the economic court.
12.4. General characteristics of the time limit for claims.
12.5. Settlement of economic disputes by economic court.

The purpose is to form a system of theoretical knowledge, applied skills and abilities to determine the system and powers of economic courts, the content of subordination and jurisdiction of the economic court and the process of protection of rights and legitimate interests of subjects of economic activity in pre-trial and judicial procedure.

Professional competences:

the ability to analyze the system and powers of economic courts;

formation of skills in realization of protection of rights and legitimate interests of subjects of economic activity in pre-trial and judicial procedure;

formation of skills in realization of protection of rights and legitimate interests including that by making a pre-arbitration notice and a statement of claim.

Key words: economic courts; system of powers of economic courts; powers of economic courts; pre-trial settlement of economic disputes; pre-arbitration notice; the time limit for claims; judicial settlement of economic disputes by economic court; statement of claim.

12.1. The system of economic courts in Ukraine and their powers

The economic court is an independent body in resolving all economic disputes that arise between legal entities, state and other bodies, as well as when considering bankruptcy cases.

The judicial system of Ukraine is determined by the Constitution and the law of Ukraine "On Judicial System and Status of Judges" in the edition dated 02.06.2016 [52; 91].

Economic courts are the three branches of the system of courts, consisting of local economic courts, economic courts of appeal and the Cassation Economic Court as a part of the Supreme Court (Table 2).

Table 2

The system of economic courts

The system of economic courts		
Local economic courts are regional (oblast) economic courts and economic court of the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol (Part 2 of Art. 21 of the Law [52; 91])	Economic courts of appeal are established in appeal districts (Part 2 of Art. 26 of the Law [52; 91])	The Cassation Economic Court in the Supreme Court

A local court is a court of first instance which deals with cases attributed to its jurisdiction by the procedural law.

Local economic courts consider cases arising from economic legal relations, as well as other cases, assigned to their jurisdiction by law (Part 3 of Art. 22 of the Law [52; 91]).

A local court consists of local court judges, of which the chairman of the court and, in cases determined by law, the deputy or deputy chairmen of the court are appointed (Part 4 of Art. 21 of the Law [52; 91]). In addition, according to Part 2 of Art. 18 of the Law [52; 91], in cases determined by law, as well as by the decision of the assembly of judges of the relevant court, specialization of judges may be introduced for consideration of specific categories of cases.

A judge of a local court carries out justice in accordance with the procedure established by the procedural law, as well as other powers specified by law (Art. 23 of the Law [52; 91]).

According to Part 1 of Art. 26 of the Law [52; 91] the system of courts of general jurisdiction includes appeal courts as courts of the appeal instance. Appeal courts for economic cases are appeal economic courts, which are formed in the respective appeal districts.

As part of the court of appeal judicial chambers may be formed to consider certain categories of cases. The judicial chamber is headed by the secretary of the court chamber who is elected from among the judges of this court for a term of three years (Parts 4, 5 of Art. 26 of the Law [52; 91]). In addition, according to Part 2 of Art. 18 of the Law [52; 91] in the courts of general jurisdiction specialization of judges for consideration of specific categories of cases may be introduced.

The powers of the economic court of appeal are: 1) to carry out justice in accordance with the procedure established by the procedural law; 2) to analyze the judicial statistics, study and generalize judicial practice, inform the relevant local courts, the Supreme Court about the results of generalization of the court practice; 3) to provide local courts with methodological assistance in the application of legislation; 4) to carry out other powers, determined by the Law (Art. 27 of the Law [52; 91]).

The Supreme Court is the highest court in the system of Ukrainian judiciary (Art. 36 of the Law [52; 91]).

The Supreme Court consists of up to two hundred judges and includes: 1) the Grand Chamber of the Supreme Court; 2) the Cassation Administrative Court; 3) the Cassation Economic Court; 4) the Cassation Criminal Court; 5) the Cassation Civil Court.

Each cassation court includes judges of a certain specialization. In each cassation court, judicial chambers are established for consideration of certain categories of cases, taking into account the specialization of judges. The number and specialization of the chambers of court are determined by the decision of the meeting of judges of the cassation court, taking into account the requirements of the creation of separate chambers in the Cassation Economic Court and judicial load.

In the Cassation Court, separate chambers are required to deal with cases concerning: 1) bankruptcy; 2) protection of intellectual property rights, as well as related to antitrust and competition law; 3) corporate disputes, corporate rights and securities.

Other chambers in cassation courts are created by the decision of the meeting of judges of the cassation court (Art. 37 of the Law [52; 91]).

A judge of the Supreme Court may be a person who meets the requirements for candidates for the position of judge, according to the results of the qualification assessment confirmed the ability to administer justice in the Supreme Court, and meets one of the following requirements: 1) has at

least ten years of experience as a judge; 2) has a scientific degree in law and experience of scientific research in the field of law for at least ten years; 3) has experience in the professional activities of a lawyer, including the performance of representation in the court and/or protection from a criminal charge for at least ten years; 4) has a combined standing (experience) of work (professional activity) in accordance with the requirements specified in clauses 1 – 3 for at least ten years.

According to Art. 69 of the Law [52; 91] a citizen of Ukraine who is not under the age of thirty and not older than sixty-five years and who has a higher legal education and experience of professional activity in the field of law for at least five years, is competent, honest and proficient in the state language may be appointed for the position of judge.

A citizen can not be appointed judge in case of: 1) being recognized by a court a person of limited capacity or incapacitated; 2) having chronic mental or other diseases that impede the performance of functions in the administration of justice; 3) having an unexecuted or outstanding conviction.

A person who is prohibited from occupying the position in question is not entitled to apply for a position of a judge.

A person cannot apply for the position of a judge in case he has previously been dismissed from the position of judge for committing a significant disciplinary offense, gross or systematic neglect of duties that is incompatible with the status of a judge or has shown his/her inconsistency with the position held, violation of the requirements of incompatibility, violation of the duty to confirm the legality of the source of origin of the property or in connection with the entry into force of a guilty verdict against such a person, except in cases where the decision to dismiss him on these grounds is recognized as illegal in a court of law or the court's guilty verdict is annulled.

A person who was previously dismissed from the position of a judge on the basis of a qualification assessment can not claim to be a judge either.

12.2. The essence of pre-trial settlement of economic disputes

Pre-trial settlement is regulated by Art. 19 of the Economic Procedural Code of Ukraine (hereinafter referred to as the EPC [4]).

Pre-trial settlement of disputes is a system of measures applied by organizations whose property rights are violated for the direct resolution of a dispute before an appeal to an economic court. Such a settlement includes

not only the presentation of pre-arbitration notices and other demands to the counterparty, but also consideration and voluntary satisfaction of demands by a party that has submitted a legitimate and substantiated pre-arbitration notice.

The parties shall take measures for pre-trial settlement of a dispute by agreement between themselves or in cases where such measures are binding in accordance with the law. Thus, special regulations establish the procedure for pre-trial settlement, for example, in transportation contracts.

Persons who violated the rights and legitimate interests of others are obliged to renew them without waiting for a pre-arbitration notice or claim.

A pre-arbitration notice is a written procedural document, which contains the demands of the creditor company to the debtor company on the restoration or protection of the violated right.

A pre-arbitration notice must contain sufficiently complete and exhaustive data on the parties to the dispute. It also indicates the date of bringing the notice and the notice number. A pre-arbitration notice sets out the circumstances under which the pre-arbitration notice is brought; evidence supporting these circumstances; references to relevant regulations. It is necessary to precisely and specifically formulate the demands of the applicant and to determine the amount of the pre-arbitration notice and make its calculation if the claim is subject to monetary valuation. It is also necessary to indicate the payment details of the applicant's pre-arbitration notice. The applicant of the pre-arbitration notice must attach the required minimum documents (evidence) that confirm the demand (original or copy).

The pre-arbitration notice is considered on the grounds set out in it, and the validity of the applicant demands is examined basing on the submitted documents.

The enterprises and organizations that have received the pre-arbitration notice are obliged to satisfy the applicant's substantiated demands. The other party is obliged to respond to the pre-arbitration notice, in which it shall notify the relation to the stated demands. The answer is submitted in writing (a letter, a telegram, a pictogram, a fax, etc.).

12.3. The subordination and jurisdiction of the economic court

Subordination is the definition of a range of cases that fall within the competence of an authority. The subordination of the economic court determines the range of cases that fall within the competence of the economic court, that is, they are heard in the economic court.

The criteria determining the subordination of the economic court are:

1) the nature of the controversial relationship;

2) the subject matter of the parties to the dispute.

Article 20 of the EPC [4] establishes a list of cases subordinate to the economic court. Thus, economic courts consider cases in disputes arising in connection with the conduct of economic activities (except for cases provided for in Part 2 of Art. 20 of the EPC [4]), and other matters in cases determined by law, in particular:

1) cases in disputes arising from the conclusion, modification, termination and execution of transactions in economic activities, except for transactions, the party to which is an individual who is not an entrepreneur, as well as in disputes regarding the transactions entered into to secure the performance of the obligation, parties to which are legal entities and/or individuals – entrepreneurs;

2) cases in disputes concerning the privatization of property, except for disputes concerning the privatization of state housing stock;

3) cases in disputes arising from corporate relations, including disputes between the parties (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), including a participant who left related to the creation, operation, management or termination of the activity of such a legal entity, except for labor disputes;

4) cases in disputes arising from transactions concerning stocks, portions, shares, other corporate rights in a legal entity, except for transactions in family and inheritance legal relations;

5) cases in disputes concerning securities, including those related to the rights to securities and the rights arising therefrom, issue, placement, circulation and redemption of securities, accounting for securities rights, securities liabilities, in addition to debt securities owned by an individual who is not an entrepreneur and promissory notes used in tax and customs relations;

6) cases in disputes concerning the right of property or other property right to estate (movable and immovable, including land), registration of rights to property, which (the rights to which) are the subject of a dispute, the invalidation of acts that violate such rights, except for disputes to which a non-entrepreneur is a party and disputes concerning the seizure of property for public needs or for reasons of public necessity, as well as cases in disputes concerning property that is the subject of enforcement of an obligation whose parties are legal entities and/or individuals – entrepreneurs;

7) cases in disputes arising from the relations concerning the protection of economic competition, the restriction of monopoly in economic activities, protection against unfair competition, including disputes related to appealing decisions of the Antimonopoly Committee of Ukraine, as well as cases for statements of the bodies of the Antimonopoly Committee of Ukraine on issues assigned by law to their competence, except for disputes that are assigned to the jurisdiction of the High Court of Intellectual Property;

8) cases of bankruptcy and cases in disputes with property demands to the debtor in respect of which bankruptcy proceedings have been opened, including cases in disputes concerning the invalidation of any transactions (agreements) concluded by the debtor; collection of wages; the renewal of the work of officials and officials of the debtor, except for disputes regarding the determination and payment (collection) of monetary obligations (tax debt) determined in accordance with the Tax Code of Ukraine [17; 88], as well as disputes regarding the invalidation of transactions under the claim of the controlling authority for the exercise of his powers, defined by the Tax Code of Ukraine [17; 88];

9) cases with a statement on approval of the plans of the sanation of the debtor before the initiation the bankruptcy proceedings;

10) cases in disputes concerning the appeal of acts (decisions) of economic entities and their bodies, officials and officers in the field of organization and conduct of economic activity, except for acts (decisions) of subjects of authoritative powers taken to fulfill their governmental management functions, and disputes with which a non-entrepreneur is a party;

11) cases on appealing against decisions of arbitration courts and on issuing orders for enforcement of decisions of arbitration courts formed in accordance with the Law of Ukraine "On Arbitration Courts", if such decisions were adopted in the disputes specified in Art. 20 of the EPC [4];

12) cases in disputes between a legal entity and its official (including an official whose powers have been terminated) on the reimbursement of losses inflicted by a legal entity on actions (inactivity) of such an official, on the claim of the owner (participant, shareholder) of such legal entity, filed in its interests;

13) demands for the registration of property and property rights, other registration actions, invalidation of acts violating the rights to estate (property rights), if such demands are derived from a dispute regarding such estate or property rights or a dispute arising from corporate relations, if this dispute is subject to consideration in the economic court and submitted to its consideration together with such demands;

14) cases in disputes concerning the protection of business reputation, except for disputes the party to which is an individual who is not an entrepreneur or self-employed person;

15) other cases in disputes between subjects of economic activity;

16) cases for the application for a court order if the applicant and the debtor is a legal entity or proprietorship.

Jurisdiction involves the delineation of cognizance between economic courts (which helps to distribute subordinate economic disputes between economic courts).

Depending on the type of cases to be resolved, and the territory to which the jurisdiction of a particular court extends, the jurisdiction of the tribal (substantive) and territorial or spatial (local) jurisdiction are distinguished.

Tribal jurisdiction helps to determine which court of the level of the economic court system should take a specific case before proceeding as a court of first instance, depending on the subject of the dispute. The general rule of tribal jurisdiction states that all cases that are to be resolved in the procedure of economic proceedings are considered by local economic courts as courts of first instance (Art. 24 of the EPC [4]), except for cases:

a) regarding appeals against decisions of arbitration courts, issuance of orders for enforcement of decisions of arbitral tribunals shall be considered by the appeal economic courts as courts of first instance at the place of the consideration of the case by the arbitral tribunal;

b) the Supreme Court on Intellectual Property shall consider cases as a court of first instance in disputes specified in Part 2 of Art. 20 of the EPC [4].

Territorial jurisdiction is the jurisdiction of the court, depending on the area, to which the jurisdiction of the court extends. It divides the competence of homogeneous courts (one link of the judicial system). As a rule, territorial jurisdiction is divided into general, alternative (at the choice of the plaintiff), contractual, exclusive and litigious cases of litigation.

General jurisdiction is determined by the location of the defendant. Thus, in accordance with Art. 27 of the EPC [4] a claim shall be submitted to the economic court at the location or place of residence of the defendant, unless otherwise provided by the ECP.

Alternative jurisdiction is jurisdiction, in which cases may be considered by one of several courts specified by law on the choice of the plaintiff (Art. 29 of the EPC [4]).

Thus, in the case of disputes with the participation of several defendants, the economic court considers at the location of one of the defendants on the choice of the plaintiff. These are:

1. Claims in disputes with the participation of several defendants may be filed in an economic court at the location or place of residence of one of the defendants.

2. Claims arising out of the activities of an affiliate or representative office of a legal entity may also be filed at their location.

3. Claims to the collector regarding the recognition of the executive inscription of the notary as not being enforceable, or the return of the recovery under the notary's executive letter, may also be filed at the place of its execution.

4. Claims in disputes arising out of contracts, in which the place of execution is defined or performed because of their special features can be only in a certain place, may also be presented at the place of execution of these agreements.

5. Claims to the defendant, where the place of registration of residence or stay is unknown, are filed at the location of the defendant's property or the most recent registered place of residence or stay or permanent activity of the defendant.

6. Claims for damages caused by measures of securing a claim may also be filed at the place of application of the measures to ensure the claim (to the court that applied the appropriate measures).

7. Claims for compensation for damage caused by property may also be filed at the place of harm.

8. Claims for compensation for damage caused by collision of vessels, as well as the collection of compensation fees for sea rescue, may also be filed at the location of the defendant's vessel or port of registration of the vessel.

9. Claims to the defendant who does not have a place or residence in Ukraine can be filed at the location of his property.

Exclusivity is jurisdiction, which allows consideration of certain categories of cases only by the courts specified in the law (Art. 30 of the EPC [4]):

- disputes arising from the contract of carriage, in the case where one of the defendants is the carrier, are considered by the economic court with the location of the carrier;
- a case on the arrest of a ship, which is carried out to ensure the maritime demand, is considered by the economic court at the location of the

seaport of Ukraine, in which the ship is or to which the ship is going, or the port of registration of the vessel;

- disputes arising in relation to immovable property, are considered by the economic court at the location of the property or the main part thereof. If the claims related to one another are presented simultaneously with respect to several real estate objects, the dispute is considered at the location of the object the value of which is the highest;
- disputes on the rights to sea and aircrafts, inland navigation vessels, space objects are resolved by the economic court at the place of their state registration;
- disputes, in which the defendant is the Cabinet of Ministers of Ukraine, a ministry or other central executive body, the National Bank of Ukraine, the Accounting Chamber, the Verkhovna Rada of the Autonomous Republic of Crimea or the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol city councils or oblast, Kyiv and Sevastopol city state administrations, as well as cases, where materials contain state secrets, are considered by the local economic court, whose jurisdiction extends to the city of Kyiv;
- disputes arising from corporate relations, including disputes between the parties (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), including the participant who left, except for labor disputes, as well as disputes arising out of transactions concerning corporate rights (other than shares) in the legal entity, are considered by an economic court at the location of the legal entity;
- disputes between the legal entity and its official (including an official whose powers have been terminated) for compensation of losses incurred by the legal entity by actions (inaction) of its official, are considered by the economic court at the location of the legal entity;
- disputes related to the issue, placement or redemption of securities, are considered by the economic court at the location of the issuer;
- disputes stipulated in clauses 8 and 9 of Part 1, Art. 20 of the EPC [4] (compensation for damage caused by property, compensation for damage caused by collision of vessels, and also the collection of compensation fees for rescuing at sea), are considered by the economic court at the location of the debtor;
- a counter claim and a claim of a third person claiming independent demands on the subject of the dispute, regardless of their jurisdiction are

presented in the economic court at the place of the original claim. This rule does not apply when, in accordance with the other rules of exclusive jurisdiction as defined in this Article, such a claim is to be dealt with by a court other than the one hearing the original claim;

- in the case of consolidation of claims for the conclusion, modification, termination and execution of an agreement with the demands for another transaction entered into for the main obligation, the dispute is considered by the economic court at the location of the defendant, which is a party to the main obligation;
- requirements for registration of property and property rights, other registration actions, invalidation of acts that violate property rights, if such requirements are derived from a dispute regarding such property or property rights or a dispute arising from corporate relations, if this dispute is subject to consideration in the economic court and is submitted to it for consideration together with such claims.

12.4. General characteristics of the time limit for claims

The time limit for claims is defined in the current legislation as the time limit within which a person may sue to the court for the protection of his civil right or interest (Art. 256 of the Civil Code (hereinafter referred to as the CC)).

The time limit for claims is set by law. Unlike the provisions of the Civil Code of 1960, the new Civil Code provided that the time limit for claims may be increased by agreement between the parties (a written agreement is concluded). The time limit for claims established by law can not be reduced by agreement of the parties (Art. 259 of the CC [59; 89]).

The time limit for claims does not extend to certain types of civil legal relationships that are of particular importance, in particular, to claims arising from violations of personal non-property rights (except cases explicitly stated in the law). Therefore, it is not subject to the time limit for such claims as, for example, the requirement on the demand of the depositor to the bank (financial institution) on the issue of a deposit; a claim for damages caused by injury, other damage to health or death; the requirement of the owner or other person to declare legal act illegal to a state authority, a body of power of the Autonomous Republic of Crimea or a local self-government, which violates his right of ownership or other property right; requirement of the insured person to the insurer on the insurance payment (insurance indemnity);

the requirement of a central executive body that manages state reserves, on the implementation of commitments arising from the Law of Ukraine "On State Material Reserve" (Art. 268 of the CC [59; 89]).

According to Part 2 of Art. 268 of the Civil Code [59; 89], the law may also establish other requirements, which are not subject to limitation.

Types of the time limit for claims:

1) general (Art. 257 of the CC [59; 89]);

2) special (Art. 258 of the CC [59; 89]).

A general time limit for claims is set at a duration of three years (Art. 257 of the Civil Code [59; 89]). This term is general because it applies to all requirements, except those for which the law provides special terms.

A special time limit for claims applies to relations that have a certain specificity, especially legal regulation. The time limit for claims of one year applies, in particular, to such requirements: 1) the recovery of a penalty (fine); 2) the refutation of inaccurate information placed in the media. In this case, the time limit for claims is calculated from the date of placing this information in the media or from the day that the person knew or could have learnt about this information; 3) transfer to the co-owner of the rights and obligations of the buyer for breach of the emptive right to purchase shares in common property right (Art. 362 of the CC [59; 89]); 4) in connection with deficiencies of goods sold (Art. 681 of the CC [59; 89]); 5) termination of the gift contract (Art. 728 of the CC [59; 89]); 6) carriage of goods, mail (Art. 925 of the CC [59; 89]); 7) an appeal of actions of the executor of the will (Art. 1293 of the CC [59; 89]).

To calculate the time limit for claims, it is important to determine its starting point. According to Art. 261 of the CC [59; 89], *the time limit for claims starts* from the day when the person knew or could have known of the violation of his right or of the person who violated him.

12.5. Settlement of economic disputes by economic court

According to Art. 12 of the EPC [4] economic proceedings are carried out according to the rules, stipulated by the EPC [4], in the order:

1) order proceedings;

2) claim proceedings (general or simplified).

Order proceeding is intended for consideration of cases on applications for the recovery of small amounts of money, for which there is no dispute or if its availability is unknown to the applicant.

Simplified claim *proceedings* are intended for consideration of insignificant cases, cases of little significance and other cases for which priority is given to a quick resolution.

General claim proceedings are intended for consideration of cases which due to complexity or other circumstances are inappropriate to be considered in simplified proceedings.

Submission of applications on the merits of the case is the right of the parties to the case. The court may allow a party to file additional explanations regarding a separate issue that arose during the trial, if it is considered necessary.

The statement of claim is a form established by law to appeal to a court for judicial protection and a resolution of a dispute about a right.

The economic law has established requirements regarding the form and content of the statement of claim, since only if the requirements are met, a statement of claim may act as a procedural means for initiation of judicial activity aimed at protecting the subjective rights and legitimate interests of citizens, legal entities and the state.

Thus, according to Art. 162 of the EPC [4], in the statement of claim, the plaintiff sets out his demands regarding the subject of the dispute and their justification. It is submitted to the court in writing and signed by the plaintiff or his representative or another person who has the right to apply to the court in the interests of another person.

The statement of claim must contain:

1) the name of the court of first instance to which the application is filed;

2) full name (for legal entities) or name (full name – for individuals) parties and other participants of the case, their location (for legal entities) or place of residence or stay (for individuals); the ZIP code; the identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities registered under the legislation of Ukraine), as well as the registration number of the tax card's account holder (for individuals), if it is available, or the number and series of passports for natural persons – citizens of Ukraine (if the information is known to the plaintiff), an indication of the status of a proprietorship (for proprietorships); the known communication numbers, the official e-mail address and e-mail address;

3) indication of the price of the claim if the claim is subject to monetary valuation; reasonable calculation of the amounts collected or disputed;

4) the content of the claim demands: the method (methods) of protecting the rights or interests envisaged by law or agreement or other means (methods) for the protection of rights and interests, which does not contradict the law and which the plaintiff asks the court to determine in the decision; if the claim is filed to several defendants – the content of the claims for each of them;

5) a statement of the circumstances in which the plaintiff substantiates his demands; indication of evidence, confirming the specified circumstances; the legal basis of the claim;

6) information on the implementation of measures of pre-trial settlement of a dispute – in the event that the law establishes a mandatory pre-trial procedure for settling a dispute;

7) information on taking measures to provide evidence or a claim before filing a statement of claim, if any were taken;

8) a list of documents and other evidence attached to the application; indication of evidence that can not be filed together with the statement of claim (if any); an indication of the existence of the original or electronic evidence from the plaintiff or other person, copies of which are attached to the application;

9) preliminary (indicative) calculation of the amount of court costs incurred by the plaintiff and which he expects to incur in connection with the consideration of the case;

10) confirmation of the plaintiff that he has not filed another claim (claims) to this same defendant (defendants) with the same subject and for the same ground.

If the claim is filed by a person exempted from payment of a court fee in accordance with the law, it shall indicate the grounds for the release of the plaintiff from payment of the court fee.

In the case of a statement of claim submitted by a person who has the right to apply to the court in the interests of another person, the application must state the grounds for such appeal.

Other information necessary for the proper resolution of the dispute may be indicated in the statement of claim.

The price of a claim is determined (Art. 163 of the EPC [4]):

1) in claims for recovery of money – the amount charged, or the amount disputed by the executive or other document by which the penalty is carried out in an uncontested (without acceptance) order;

2) in claims for recognition of the right of property or its reclamation – the value of property;

3) in claims that consist of several independent demands – the total sum of all claims.

A claim demand may consist of collecting money, transferring property, recognizing the right or converting disputed legal relationships.

According to Art. 164 of the EPC [4] *the statement of claim must be supported by documents that confirm:*

1) sending of the case copies of the statement of claim and the documents attached to it to the other participants;

2) payment of court fees in the established order and amount, or documents confirming the grounds for exemption from payment of court fees in accordance with the law.

The plaintiff is obliged to add to the statement of claim all evidence available to him, confirming the circumstances on which the claim demands are based (if a written or electronic evidence is submitted, the plaintiff can attach a copy of the relevant evidence to the statement of claim).

The claim is filed by filing a statement of claim in the court of first instance, where it is registered and not later than the next day after transmission to the judge (Part 1 of Art. 171 of the EPC [4]).

The judge, after considering the statement of claim, takes one of the following decisions within 5 days:

- accepts it for consideration and opens a proceeding in the case (Art. 176 of the EPC [4]);
- refuses to open the proceedings (Art. 175 of the EPC [4]);
- leaves a statement of claim without a rush. If the plaintiff has not remedied the shortcomings of the statement of claim within the time limit set by the court, the application is considered not to be submitted and returned to the person who filed the statement of claim (Art. 174 of the EPC [4]).

Preparation of the proceedings has the following tasks: 1) the final definition of the subject matter of the dispute and the nature of the controversial legal relationship, claim demands and the composition of the participants in the trial; 2) elucidation of objections against claim demands; 3) determination of the circumstances of the case, which are subject to establishment, and collection of relevant evidence; 4) solving the divestments; 5) determination of the procedure for consideration of the case; 6) commitment of other actions in order to ensure the proper, timely and unhindered consideration of the merits.

Preparatory proceedings begin with the opening insolvency proceedings and end with the closing of the preparatory meeting. It must be held within sixty days from the date of opening insolvency proceedings. In exceptional cases, for the proper preparation of the case for substantive consideration, this period may be extended by no more than thirty days at the motion of one of the parties or on the initiative of the court (Art. 177 of the EPC [4]).

In order to carry out the task of preparatory proceedings in each litigation, which is considered under the rules of general proceedings, a preparatory meeting is held (Part 1 of Art. 181 of the EPC [4]).

According to the results of the preparatory meeting, the court decides on: 1) leaving the statement of claim without consideration; 2) closure of proceedings; 3) closure of the preparatory proceedings and the appointment of the case to the litigation on the merits (Part 2 of Art. 185 of the EPC [4]).

Chapter 4 of the Economic Procedure Code [4] stipulated a new institute in the litigation – a *dispute settlement with the participation of a judge*, which is conducted with the consent of the parties before the start of the merits. It is not allowed in disputes (cases): 1) on the restoration of solvency of the debtor or recognition of it as a bankrupt; 2) on applications for approval of plans to reorganize the debtor before opening insolvency proceedings in the bankruptcy case; 3) in the case of a third party claiming an independent claim regarding the subject matter of the dispute.

The purpose of the consideration of the case is, in essence, the consideration and resolution of the dispute on the basis of materials collected in the preparatory proceedings, as well as the distribution of court costs (Art. 194 of the Economic Procedure Code [4]).

The court should begin the consideration of the case in essence *not later than sixty days from the date of opening insolvency proceedings*, and in the case of extension of the preparatory proceedings, no later than the next day after the expiration of such term. The court examines the case on the merits within thirty days from the date of commencement of consideration of the case on the merits (Art. 195 of the EPC [4]).

Consideration of the case takes place in a court session (Part 1 of Art. 196 of the EPC [4]).

In the time appointed for consideration of the case, the presiding judge opens a hearing and announces which case will be considered. After the announcement of the case the trial begins on the merits. The presiding judge establishes the persons who participate in the court session, as well as checks the powers of the representatives (Art. 201 of the EPC [4]).

The presiding judge declares the composition of the court, as well as the names of the translator, specialist, secretary of the court session (Art. 204 of the EPC [4]).

At the motion of the participant, the presiding judge clarifies his rights and obligations, except for cases when the party is represented by a lawyer (Art. 205 of the EPC [4]).

Witnesses are removed from the courtroom in the designated premises without the opportunity to get acquainted with the course of the court session. The court administrator takes measures to ensure that witnesses who are questioned by the court do not communicate with those who have not yet been questioned by the court (Art. 206 of the EPC [4]).

The court will hear the introductory words of the plaintiff and the third person who participates in it, the defendant and the third person who participates in it, as well as other participants in the case. The participants in the case may put questions to each other in the order determined by the chairman, and with his permission. The presiding judge on his own initiative or at the oral motion of a party to a case may remove issues not related to the subject of the dispute, raise questions to the party to the litigation (Art. 208 of the EPC [4]).

The court, having heard the introductory word of the participants in the case, finds out the circumstances to which the parties to the case refer as the basis of their claims and objections, and investigates, in the order determined in the preparatory meeting in the case, the evidence on which they are substantiated.

With the consent of the court speakers can exchange replicas. The right of the last replica always belongs to the defendant and his representative (Art. 218 of the EPC [59; 89]).

After court debates, the court goes to the consultative room (a specially equipped room for judgments) to make a decision, announcing the indicative time for its announcement (Art. 219 of the EPC [4]).

Courts pass decisions, ruling in the name of Ukraine immediately after the judicial consideration. Decisions and rulings are taken, drawn up and signed in the deliberation room by the composition of the court, which considered the case (Parts 1, 2 of Art. 233 of the EPC [4]).

A court decision consists of introductory, descriptive, motivational, and operative parts.

A court decision shall be announced in a court session, which ends the consideration of the case, in public, except in cases established by this Code. The court can declare only an introductory and operative part of the decision (Art. 240 of the EPC [4]).

Economic court decision comes into force after the expiration of the appeal, if an appeal was not filed (the appeal filed against the decision of local economic court within twenty days, and the court ruling of local economic court – within ten days of their proclamation – Art. 256 of the EPC). In the case of lodging an appeal, the decision, if it has not been canceled, becomes valid after the return of the appeal, refusal to open or close the appeal proceeding or the adoption of a ruling of the court of appeal instance on the effects of appeal review (Art. 241 of the EPC [4]).

Enforcement of the decision of the economic court is based on the order of the economic court.

Recommended literature: [2; 3; 7; 19; 52; 59; 89; 91].

Glossary

A

Affirm (a lower court's decision) – залишити в силі (підтвердити) рішення суду нижчої інстанції
Accept – приймати пропозицію (акцептувати)
Acceptance – беззастережне прийняття умов договору
Accession – приєднання
Accounts receivable – дебіторська заборгованість
Accounts payable – кредиторська заборгованість
Act (resolution, order, decree) of the parliament – постанова парламенту
Active legal capacity (capability) – дієздатність
Additional liability company – товариство з додатковою відповідальністю
Admissibility of evidence – допустимість доказів
Admit – визнавати (позов)
Affiliate – філія
Arbitrage receiver (bankruptcy commissioner) – арбітражний керуючий
Assets and liabilities – активи та пасиви
Authoritative powers – владні повноваження

B

Bankruptcy commissioner – арбітражний керуючий
Bear – нести (відповідальність)
Breach – порушення (умов договору)

C

Causal connection – причинний зв'язок
Cause of action – підстава позову
Claim – позов
Claimant – заявник претензії
Claim demand – позовна вимога
Cognizance – компетенція
Come to effect – набирати законної сили
Commencement of an insolvency (initiation of the proceeding) – порушення провадження у справі
Compel – примушувати
Complaint – скарга
Conclude – укладати (договір)
Counterclaim – зустрічний позов

Court debates – судові дебати
Court order – постанова (суду)
Courtroom – судове засідання
Court ruling – ухвала (суду)
Court session – судове засідання
Cross-examination – перехресний допит

D

Decree – декрет
Decree (resolution) – постанова уряду
Deciding (casting) vote – вирішальний голос
Default judgment – заочне рішення
Defendant – відповідач
Deliberative vote – дорадчий голос
Demand – вимога
Demurrer – відвід (судді)
Deny – відхилити, заперечувати (проти позову)
Deposit – завдаток
Deposition – свідчення (в суді)
Discovery – виявлення (доказів)
Dismiss a lawsuit – відхилити позов
Disposal – розпорядження
Disposal of property – розпорядження майном
Distribution balance – розподільчий баланс
Division – поділ

E

Economic entity (economic company, business association) – господарське товариство
Economic offense – господарське правопорушення
Enact a law (pass a law) – прийняти закон
Enforceable – який має законну силу
Enjoyment – користування
Enterprise – підприємство
Enterprise associations – об'єднання підприємств
Estate – майно
Evidence – доказ
Executor of estate – розпорядник майна

Extra-judicial remedies for bankruptcy prevention – позасудові засоби запобігання банкрутству

F

Fault – вина
Filing of an application – подання заяви
Full partnership – повне товариство

G

Guarantee – гарантія
General partnership (English) – повне товариство (не співпадає за змістом з українським аналогом)
Ground – підстава; **on the grounds** – на підставі

H

Harm – шкода

I

Inaction – бездіяльність
Injunction – припис (судова заборона)
Individual – фізична особа
Inspect – оглядати (докази)
Issue – випуск (акцій)
Issuer of debt securities – емітент боргових цінних паперів
Issues and profits – плоди і доходи

J

Joint-stock company – акціонерне товариство
Judicial consideration – судовий розгляд
Jurisdiction – підсудність

L

Liability – відповідальність
Leaving aside – залишення без руху заяви (яка подавалася до суду)
Lien (retainer) – притримання
Limited liability company – товариство з обмеженою відповідальністю
Legal capacity (ability) – правоздатність
Legal personality – правосуб'єктність (правоздатність + дієздатність)
Liquidated damages (fine penalty, liquidated damages in percentage) – неустойка (штраф, пеня)
Liquidated damages (penalty) – неустойка
Litigation (trial) – судовий процес
Losses – збитки

M

Merger – злиття

Modify (a lower court's decision) – змінити рішення суду нижчої інстанції

Mortgage – іпотека (застава нерухомого майна)

Motion – клопотання

N

Natural person, individual – фізична особа

O

Offer – пропозиція укласти договір

Officials and officers – посадові та службові особи

Omission (inaction) – бездіяльність

Opening insolvency proceedings – порушення провадження у справі

Order (decree) – указ (Президента)

Own – володіти

Owner – володілець

Owner of the property (proprietor) – власник майна

Ownership – власність (володіння)

P

Partnership in commendam – командитне товариство

Pawn – заклад (застава рухомого майна)

Pawn brokerage (lombard) – ломбард

Penalty interest – пеня

Plaintiff – позивач

Pledge – застава

Possession – володіння

Preparatory meeting – підготовче засідання (суду)

Presiding judge – головуючий суддя

Pre-arbitration notice – претензія (документ)

Pre-trial settlement of economic disputes – досудове вирішення господарського спору

Promise – зобов'язання (обіцянка)

Proof – доказування, доказ (підтвердження)

Property burdens – обтяження майна

Property (ownership) – власність

Property right (right in rem) – речове право

Property right – право власності

Property right in the objective meaning – право власності в об'єктивному смислі
Property right in the subjective sense – право власності в суб'єктивному смислі
Proprietorship – фізична особа – підприємець
Proprietor – власник
Protocol of disagreements – протокол розбіжностей
Provision – положення (про філію)

Q

Quit – припинити (членство у товаристві)

R

Real (immovable) and movable property – нерухоме й рухоме майно
Real right – речове право
Regulation – регламент
Reimburse – відшкодовувати
Relief – звільнення (від сплати податків)
Remedy – відшкодування
Reply – відзив (на позовну заяву)
Resolution – резолюція, постанова
Resolution of economic disputes – вирішення господарських спорів
Reverse (a lower court's decision) – відмінити рішення суду нижчої інстанції
Right of disposal – право розпорядження
Right of possession – право володіння
Right to use (enjoyment) – право користування

S

Sanation manager – керуючий санацією
Secured creditor – забезпечений кредитор
Serve – подавати (докази)
Surety – порука
Severance pay – вихідна допомога
Share (stock, divvy) – акції (частки, паї)
Stock – частка
Spin-off – виділ
State-owned enterprise – казенне підприємство
Sub-company, subsidiary – дочірня компанія

Subject of economic activity (English *business entity*) – суб'єкт господарювання*

Subordination – підвідомчість

Succession – правонаступництво

Sue – пред'являти позов

Summary judgment – рішення, схвалене у порядку спрощеного судочинства

T

Testimony – пояснення свідка

Time limit for claims – позовна давність

Traineeship – стажування

Transaction – правочин

Transfer deed – передавальний акт

Transferee of the licence – здобувач ліцензії

Transformation – перетворення

Trial – судовий процес, судовий розгляд

U

Use (enjoyment) – користування

Unlawful – незаконний

V

Verdict (court decision) – рішення суду

Victim – потерпілий

Violation – порушення

W

Warranty (English) – *гарантія* (обіцянка про річ чи факт однієї сторони на користь іншої у договорі купівлі-продажу)

Witness – свідок

* In English vocabulary суб'єкти господарювання – business entities (комерційні суб'єкти), but in Ukrainian they are divided into natural persons – entrepreneurs and legal entities, тому вважаємо за доцільне використовувати термін subjects of economic activity.

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Content

НАВЧАЛЬНЕ ВИДАННЯ

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ГОСПОДАРСЬКЕ ПРАВО

Навчальний посібник
(англ. мовою)

Самостійне електронне текстове мережеве видання

Відповідальний за видання *О. М. Лук'янчиков*

Відповідальний редактор *О. С. Вяткіна*

Редактор *З. В. Зобова*

Коректор *З. В. Зобова*

Розглянуто основні теми загальної частини господарського права. Теоретичний матеріал підкріплено описом практичного застосування господарського законодавства, що допоможе студентам у підготовці до практичних занять, іспитів, систематизувати та конкретизувати знання, здобуті в процесі вивчення навчальної дисципліни, акцентувати увагу на основних поняттях, їхніх ознаках і характеристиках.

Рекомендовано для студентів усіх спеціальностей першого (бакалаврського) рівня денної форми навчання.

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