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LEGAL REGIME OF THE AUTHORIZED CAPITAL OF BUSINESS ENTITIES: THEORETICAL AND METHODOLOGICAL FOUNDATIONS AND LAW ENFORCEMENT ISSUES

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Abstract:

This article presents a comprehensive legal analysis of the legal regime of the authorized capital as a fundamental institution of corporate law. The author examines the dual nature of the authorized capital, serving simultaneously as the material base of an enterprise and as a legal instrument for protecting the interests of creditors. The functions of the authorized capital fund are critically reconsidered in the context of the liberalization of the Republic of Uzbekistan's corporate legislation. Special attention is given to the defects in the legal regulation of non-monetary contributions and the problem of maintaining equivalence between the declared capital and the actual net assets of the company. Based on the results of the study, proposals are formulated for implementing mechanisms of subsidiary liability for undercapitalization and for digitizing control over the state of assets.

Keywords: Authorized capital; business entities; civil law; legal regime; corporate governance; net assets; guarantee function; non-monetary contributions; legal entity; liability of participants.

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Introduction

The relevance of studying the legal regime of the authorized capital of business entities is due to the fundamental transformations taking place in the civil turnover of the Republic of Uzbekistan. In the current stage of market development, the authorized capital ceases to be considered exclusively as a static accounting figure, acquiring the status of a complex legal mechanism that ensures the balance of interests among the company's participants, the legal entity itself, and its counterparties.

In the context of implementing the *Strategy for the Development of the New Uzbekistan* and the large-scale reform of the Civil Code, issues of legal certainty in the formation and alteration of the authorized fund take on special significance. The existing legal model, characterized by a high degree of flexibility (dispositivity) for limited liability companies, raises a number of acute questions for legal science. In particular, to what extent is it justified to abandon strict requirements for the minimum size of capital, and does this not lead to the erosion of the guarantee function that has historically been considered key in the continental legal system. Studying this topic requires a deep analysis not only of national legislation but also of the doctrinal approaches developed in civil law, in order to formulate the most effective model of legal regulation.

Main Part (Theoretical and Practical Analysis)

Paradigm of the Legal Nature of Authorized Capital

The question of the legal essence of the authorized capital traditionally provokes debate among civil law scholars. On the one hand, it is interpreted as an abstract calculated amount that fixes the minimum volume of property that a company must have to secure the rights of creditors. On the other hand, the authorized capital plays the role of the “organizational core” that determines the measure of liability and the volume of participants' corporate rights.

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In domestic doctrine, the material approach prevailed for a long time; however, modern law enforcement practice dictates the need to shift toward functional analysis. It is important to understand that the legal regime of the authorized capital is not merely a set of rules about its size, but a complex system of rules regulating the procedures for its formation, alteration, assessment of contributions, and maintenance of its stability throughout the entire period of the entity's activity.

In modern legal science, the position is increasingly justified that the authorized capital should be considered a multifunctional legal institution combining property, obligation, and corporate elements. Its property nature is manifested in the formation of the property base of the legal entity; its obligation nature – in the participants' duty to make contributions in the established amount and within a specified term; its corporate nature – in determining a person's extent of participation in the management of the company, the distribution of profits, and the exercise of other corporate rights.

Particular importance lies in the guarantee function of the authorized capital, aimed at ensuring the interests of creditors. However, in today's economic conditions, the mere existence of a formally paid authorized capital does not always indicate the real solvency of the legal entity. In this regard, doctrinal literature increasingly emphasizes the need to strengthen the importance of financial reporting mechanisms, control over the value of net assets, and transparency of corporate activities.

It should be noted that the legal regime of the authorized capital is closely connected with the principle of balancing the interests of participants in corporate relations. On the one hand, the legislator must ensure freedom of entrepreneurial initiative and minimize excessive barriers to business formation. On the other hand, sufficient guarantees must be established for the company's counterparties and creditors. Precisely for this reason, issues of increasing and decreasing the authorized capital, the procedure for making non-monetary contributions, and the

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consequences of non-payment of capital have not only corporate but also public-law significance.

Thus, the modern paradigm of the legal nature of the authorized capital implies moving away from its perception solely as a static nominal figure. The authorized capital should be considered a dynamic legal mechanism that provides for structuring property relations within the business entity, distributing corporate rights among participants, and protecting the interests of third parties. This approach allows the essence of the authorized capital to be revealed more fully in the context of the modernization of corporate legislation and the development of a market economy.

Problems of Evaluating Non-Monetary Contributions and Capital Reliability

One of the most vulnerable aspects of the legal regime is the procedure for contributing non-monetary assets to the authorized capital. Article 15 of the Law of the Republic of Uzbekistan “On Limited and Additional Liability Companies” permits the transfer of items, rights, and other valuables as contributions. However, the absence of an imperative requirement for an independent appraisal of any non-monetary contributions (regardless of their amount) creates the legal risk of “fictitious capitalization.”

In foreign practice (for example, in German law), the procedure for verifying the formation of capital (*Gründungsprüfung*) is significantly stricter. In our reality, this creates a situation where intellectual property or used equipment is valued by participants at an inflated cost, misleading bona fide participants in civil transactions. It seems advisable to revise the legislative thresholds that require mandatory engagement of professional appraisers, in order to minimize the risks of asset withdrawal.

Interrelationship of Authorized Capital and Net Assets: Legal Dissonance

A critical element of the legal regime is the rule of maintaining the net assets at a level not lower than the authorized capital. According to the current legislation, if at the end of the financial year the value of a company’s net assets is less than

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its authorized capital, the company is obliged to declare a reduction of its capital to an amount not exceeding the value of its net assets.

However, this mechanism in practice does not always achieve its intended purpose. The formal enshrinement of the obligation to reduce the authorized capital is not accompanied by effective control tools and timely response by authorized bodies. As a result, a significant gap arises between the legally established size of the authorized capital and the company's actual asset position, which undermines the trust of participants in civil circulation in the information about the company.

It should be taken into account that the net assets indicator is a more objective indicator of a legal entity's financial condition than the nominal size of the authorized capital. If the authorized capital is fixed in the founding documents and changed through a special procedure, then the value of net assets reflects the current ratio of the company's assets to its obligations. That is why, in modern corporate practice, net assets serve as a kind of criterion for the economic stability of a business entity.

However, this legal mechanism often remains a "dead norm" due to the lack of operational state control. A creditor only learns of the company's insolvency at the stage of bankruptcy, when the authorized capital can no longer serve its guarantee function. Moreover, the company often continues to conclude transactions, take on new obligations, and expand its economic activities despite the actual deterioration of its financial position. This creates risks of unfair conduct and causing losses to counterparties.

The problem is exacerbated by the fact that current regulation in some cases lacks a clear mechanism for the consequences of the company's inaction when net assets decrease. The absence of timely reduction of the authorized capital or measures to restore financial stability does not always entail immediate liability of officials. As a result, this obligation is perceived as declarative.

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It seems advisable to strengthen the personal responsibility of a company's executive bodies for concealing or untimely disclosing information about the decline in the value of net assets. Such responsibility could be expressed in administrative sanctions, disqualification of managers, and, in the presence of losses, in the imposition of property liability on behalf of the company and its creditors.

In addition, a promising direction is the digitization of control in this sphere. The author believes it is necessary to consider the possibility of automated reconciliation of financial reporting data with the state register of legal entities, as well as the introduction of a system of risk indicators signaling a critical decline in the value of net assets. This will allow for the prompt identification of problematic companies and prevent further deterioration of their financial condition.

Attention should also be paid to foreign experience, where the emphasis is placed not so much on the formal size of the authorized capital, but on solvency tests and the duty of directors to act in good faith when the company faces a threat of insolvency. The use of such approaches can improve the effectiveness of national legislation.

Thus, the interrelationship of authorized capital and net assets demonstrates the existence of a certain legal dissonance between formal corporate indicators and the actual asset condition of the company. To eliminate this contradiction, a shift from declarative regulation to a system of continuous monitoring, transparency of financial information, and real accountability of management bodies is required.

Conclusion and Proposals

The conducted research allows us to conclude that the legal regime of the authorized capital in the Republic of Uzbekistan requires thorough modernization. Flexibility in matters of capital size should be offset by the

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stringency of mechanisms ensuring the accuracy of information about the capital's composition.

Based on the analysis, the following are proposed:

1. **Legislatively establish the subsidiary liability of founders** to the extent of the amount of overvaluation of non-monetary contributions, as identified during subsequent audit or liquidation.

2. **Implement a system of “public notifications”** in the Unified State Register of Business Entities that would automatically reflect information on a significant (over 25%) decline in the value of net assets compared to the authorized capital.

3. **Develop a mechanism for subordinating the claims of creditor-participants** in the event of the enterprise's bankruptcy, if their claims arose from loan agreements that were used as a substitute for the necessary increase of authorized capital.

Such a comprehensive transformation of the legal regime will allow the authorized capital to be turned from a formal requisite into an effective instrument for ensuring the stability and transparency of entrepreneurial activity.

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