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ACTUAL PROBLEMS OF DEVELOPMENT OF LEGAL POLICY IN THE SPHERE OF CIVIL AND PROCEDURAL LAW IN UZBEKISTAN

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Annotation: The article deals with the issue of observing the need for amendments to some legislative acts, including the need to introduce improvements to certain articles of the Civil Code of the Republic of Uzbekistan and their importance of today.

Including, author highlights the urgent task of elaborating modern legislation that regulates relations in the field of economics and entrepreneurship, financial, civil and other relations in solving these problems and also outlines the issues about the hereditary right and its rejection, pledge issues, and changes in the field of judicial law.

Key words: legislation, civil law, civil code, improvement civil code, entrepreneurship, hereditary right, pledge issues, judicial law.

The strategy for further development of the Republic of Uzbekistan for 2017-2021, which was announced by the President of the Republic of Uzbekistan Mirziyoyev Sh.M., provides for the development and liberalization of the economy aimed at increasing its competitiveness and

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openness, ensuring freedom of economic activity, further strengthening macroeconomic stability and maintaining the pace economic growth, modernization and active diversification of the leading sectors of the economy, radical reform of the financial and banking sphere, the full protection of private property and entrepreneurship, further expansion of foreign economic relations, active attraction of foreign investments, effective development of tourism, structural changes in agriculture.

To solve these problems, it is necessary to develop and modern legislation regulating relations in the sphere of economy and entrepreneurship. That is why the modernization of the Civil Code of the Republic of Uzbekistan, which is the legal basis regulating the whole complex of economic, financial, civil and other relations, becomes an extremely urgent task. It is well-known saying: "Civil Code is the constitution of the market".

Changes and amendments to the Civil Code should not be aimed at a capital change of all constructive and content elements of the corresponding text of the Civil Code, and basically should concern modernization of certain institutions and norms of the Civil Code, as well as exclusion from the Civil Code of provisions incompatible with the market economy, or violating the rules of legal technology. In addition, a number of articles are needed.

The Civil Code, which was in action since March 1, 1997, was developed in 1993-1996, more than 20 years ago, when there was a completely different economy, thinking, sense of justice, and other goals were set. Over the past two decades, our society has not only come to an understanding of what a real market economy is, but also has its own experience, which has revealed certain shortcomings and gaps in civil legislation, the inconsistency of a number of provisions of the Civil Code to established market relations.

Working on the improvement of the Civil Code, it is necessary to determine both the strategy for the development of civil legislation and the issues of its phased tactical implementation. We must have a clear idea of what we have and what we need to do to develop civil legislation in the coming years and in the prospect for 5-10-20 years ahead. We must plan the work on creating a legislative base and consistently, persistently implement it.

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We believe that work on the Concept of the new edition of the Civil Code of the Republic of Uzbekistan could become the core of the work on civil legislation in general, which would allow building a harmonious system of normative and legal acts that effectively regulate market relations. It seems that the new version of the Civil Code should be based on the Concept of civil-law policy.

Legal policy is a guaranteeing type of policy, because it is aimed at streamlining the legal sphere, which is civilized and orderly in economic, social, national and other relations. Therefore, ill-conceived and weak legal policy, coupled with an imperfect and indispensable legal basis, with contradictions in legal acts, with unconcerned priorities, leads to permanent disruptions in the implementation of economic policies, significantly hampers civil turnover, hinders the development of the state. This actualizes the task of sensible, planned formation of the consistent activity of state bodies to regulate relations in the field of entrepreneurship.

Civil law policy is a systematically, consistent and stable activity of state bodies based on the Constitution of the Republic of Uzbekistan and the national legal doctrine on the formation of an effective mechanism of civil law regulation, the mechanism of implementation and protection of civil rights. It is characterized by a comprehensive approach to optimizing the civil law base, convergence of the domestic law and order with the rules of regulation of relevant property and non-property relations in developed European states, the implementation of positive foreign experience in the transformation of civil law into legal doctrine.

The purpose of the legal policy in the civil law sphere is to ensure, through consistently organized legal means, a real guaranteed possibility of exercising and protecting subjective civil rights and legitimate interests, creating an integrated system of legal regulation of these relations.

It should be noted that the most productive changes in civil legislation are related to consistent, systemic measures for the formation of mechanisms for the implementation of civil rights (corporeal, obligatory, corporate), when the system of norms regulates a certain sequence of actions leading the subject to the actual receive of the kindness. This is the task of any developed

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law and order, associated with intellectual, material, and time costs. The concept of development of civil legislation of the Republic of Uzbekistan will be a direct reflection of the legal policy of the state in the sphere of property and personal non-property relations. And if the Concept of Development of Civil Legislation of the Republic of Uzbekistan, first of all, is aimed at improving the current regulatory framework, the Concept of Civil and Legal Policy as a whole determines the strategy for the development of private law, generalizes the developing civil doctrine, fixes the main priorities in the development of civil law institutions.

In particular, it is proposed:

The chapter on legal entities should be substantially revised. Adopting separate laws on joint-stock companies and on limited liability companies, etc., Uzbekistan has chosen the most economical way. The next step should be to eliminate duplication in the Civil Code and individual laws of the same provisions. So the section of the Civil Code on intellectual property duplicates the law on copyright and related rights by 80%, the heads of the Civil Code on leasing, and about the pledge duplicate similar laws. The exclusion from the Civil Code will be correct all that is duplicated in special laws.

To refine and develop the provisions of the Civil Code under a state contract for the supply of goods and contracts of contracting in order to better protect the rights of the supplier, producer of agricultural products.

A number of new institutions which without market relations are impossible should be included in the Civil Code: usufruct (right of use), the right of development, etc., which will give a new impetus to the development of market relations and the strengthening of the property rights of entrepreneurs.

It is extremely important to include in the Civil Code the chapter "Registration of property", which provide for the maintenance of public registers, rights and obligations of registrars, the legal consequences of registering property in the register. Include a brokerage contract and a factoring agreement in the Civil Code. Also, the provisions of international conventions on checks and bills should be adopted in the Civil Code.

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To refuse from the subdivision of a number of contracts for subspecies, in particular, contracts for purchase and sale (supply, retail, etc.), lease agreements (vehicles, etc.) and contracts of a different kind, since such a division in practice, does not justify itself, but only excessively formalizes the actions of entrepreneurs and limits their initiative.

Expand and add to the sections: "hereditary law", "application of the norms of private international law to civil-law relations", as their enforcement causes many problems.

The introduction of the necessary changes and additions to the Civil Code is an urgent task of the development of civil legislation, which is not just for Uzbekistan. Similar work on the Civil Code is already under way in Russia, Azerbaijan, Armenia, Tajikistan and other countries.

The development and adoption of a new version of the Civil Code will bring Uzbekistan closer to the world standards of legal regulation of economic relations in society, an impetus to the development of entrepreneurship and attraction of investments.

In the Republic of Uzbekistan since 2014 there is a system of registrations of the rights of creditors' rights to the property of debtors granted as security for the performance of obligations, as well as restrictions on the rights of the debtor imposed by law to dispose of property and use it and other requirements related to ensuring proper performance by the debtor of its obligations), which is registered in the Lien Register established under the Central Bank of the Republic of Uzbekistan (GUP Lien registry). This system is one of the most advanced systems not only in the region, but also in the whole CIS and Europe.

At the same time, at the present time in connection with the fact that the provisions of the Law of the Republic of Uzbekistan "On the lien registry" are largely not coordinated with other legislative acts regulating the system of transactions with collateral, as well as due to the fact that every day the types economic relations, there is a need for further development of a secured transactions system that would enhance transparency in the financial market and ensure an appropriate system of priorities for various encumbrances.

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In order to take more fully into account the nature of the violated civil rights, it is necessary to establish a more differentiated graduation of the limitation periods, increasing the specified time limits for certain requirements, for example, claims for protection of rights to land plots, claims for compensation for harm caused to life or health, claims related to family and hereditary relations. At the same time, it is necessary to strictly limit the statute of limitations on the requirements of the state (state bodies) for recovery from the citizens of property damage caused to the state (3 years). At present, the general character has acquired penalties from citizens on overpayment of pensions for them, the alleged unreasonable overstating of pensions due to the errors of civil servants, computer failures, and etc. which are occurred 5-15 years ago.

It is also proposed to recover the damage inflicted on the state not more than three years after the filing of the claim, regardless of the reasons for their infliction, with the exception of damage caused by the crime.

Developing legislation of the Republic of Uzbekistan provides for the wide introduction of alternative methods of dispute resolution (negotiations, mediation, mediation, arbitration, etc.), which are largely perceived from other law and order.Meanwhile, in the process of these procedures, the running of the statute of limitations is not suspended. This state of affairs increases the risks of using these procedures and does not contribute to their development.

For the development of alternative methods of dispute resolution and protection of the interests of their participants, the law should provide for the suspension of the running of the limitation period for the term of alternative resolution of the dispute. At the same time, it is necessary to establish the time of suspension of the limitation period, taking into account the definition of the beginning of the alternative dispute resolution process, and the moment when the suspension of the limitation period has expired, taking into account the definition of the end of the specified process, so as to exclude abuses using alternative dispute resolution methods for artificial prolongation or reduction of the term limitation of actions.

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Civil-law regulation of the status of legal entities is characterized by a multiplicity of existing laws, not in all relevant to each other, and the Civil Code. Some laws are different with low legal and technical level and ineffective in their practical application. It seems desirable to legally consolidate the division of legal entities from the organizational structure to the corporations (built on the basis of membership) and unincorporated legal entities. The first include economic societies and partnerships, production cooperatives and most non-profit organizations, and to the second -unitary enterprises, funds and institutions.

This will allow to regulate in a general way (to a certain extent uniformly even for commercial and non-commercial organizations) not only the governance structure and status (competence) of corporate bodies, but also a number of their internal relations that cause practical disputes (the possibility of challenging decisions of general meetings and other collegiate bodies, conditions for withdrawal or exclusion from the number of participants, etc.).

It is advisable to strengthen the rules of Article 45 of the Civil Code on the property (tort) liability of the bodies of a legal entity to the relevant legal entity, which must be solidary (with several "willful" bodies of the legal entity or with their collective nature) and, as a rule, guilty, cases of gross negligence (negligence) or risk unjustified under the terms of the turnover (for example, alienation of the property of a legal entity in the presence of a conflict of interest over substantially undervalued price, lack of due diligence in choosing a counterparty and / or preparing terms of the transaction, etc.).

A normal entrepreneurial risk, justified by the terms of the turnover, should exclude the responsibility of these persons. It is also necessary to declare null and void the conditions of contracts between the head (other person representing the legal entity) and the legal entity itself, which restrict or exclude the property responsibility of the body (head) of the legal entity.

The current legislation does not establish any specific features of the legal capacity of foreign legal entities registered in offshore zones - on the territory of foreign states that provide preferential tax treatment and (or) do not require the provision or disclosure of information in the conduct of financial transactions. Meanwhile, offshore companies are often used for

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abuse in civil circulation (artificial creation of an imaginary conscientious acquirer, concealment of illegal manipulation of shares and shares, "raider seizures", etc.).

Also, serious concern caused by innovations introduced into the Civil Code, which are difficult to explain or inexplicable in general in the context of the provisions of the Constitution, the Civil Code and other laws. So in connection with the changes in Art.990 and 15 of the Civil Code, as amended by the law of the Republic of Uzbekistan of December 15, 2000, the court decision can compensate damages caused by illegal actions (inaction) of state bodies by officials of these bodies (unlike the previous right of recourse to the guilty person).

Judicial practice widely uses this provision of the Civil Code, imposing a duty to compensate losses directly to officials of state bodies (usually khokims - heads of municipal entities) guilty of causing losses to legal entities and individuals, thereby violating the fundamental principles of liability of legal entities for their actions workers, tk. a legal entity representing the state (khokimiyat) is thus exempted from responsibility for the actions of its leader, and the latter, as an individual, does not compensate and is not in a position to reimburse the losses incurred. As a result, the victims remain without compensation to them for damages caused by the state authority acting on behalf of the state, which contradicts the main provisions of the Civil Code and the general legal order of the Republic of Uzbekistan. It is also difficult to explain the logic of the legislator, who in September 2010 amended Article 1147 of the Civil Code of the Republic of Uzbekistan ("The right to refuse the inheritance").

Earlier established in this article, the period for refusing the inheritance was 6 months. With the innovation, the refusal became perpetual (in the text, literally: "The heir has the right to refuse the inheritance at any time from the opening of the inheritance"), taking into account the fact that the inheritance law of Uzbekistan does not set a time limit for the acceptance of the inheritance, and now there is no time for refusal inheritance, we received a previously unknown world jurisprudence incident (deadlock) and in addition to it a new institution hereditary ownerless property, now the

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acceptance of the inheritance is not regulated by the terms, and can be implemented in a year, five or ten years.

It is not known who will carry out such a long term protection of the hereditary property (and if is it business?) Or the transfer of the rights and obligations of the deceased insured (part 1, article 946), the liquidation of legal entities, the owner of the property has died, but there is an heir who does not accept the inheritance Undefined time, etc.

It is advisable to leave in civil law two main types of household entities: joint-stock companies and limited liability companies. There are no sufficient grounds for the preservation of societies with additional responsibility (Article 63 of the Civil Code), which have not received practical dissemination.

Ensuring fulfillment of obligations

Pledge- It is recommended to consider the issue of guaranteeing the rights of the first and second stages, namely, the ability to use the mortgaged property to meet their requirements primarily in front of the claims of the pledgee. The very fact that the debtor does not have any other property, except for being pledged, testifies to the need for the debtor to apply the procedures provided for by the insolvency (bankruptcy) law.

It is necessary to regulate the procedure for the pledgee to leave the pledged property with him, and also determine from when the pledge holder becomes its owner.

It is advisable to protect the rights of third parties who at the time of the acquisition of movable property did not know and should not have known that it is in pledge. To this end, the pledgee should not have the right to enforce, and the pledge should be declared terminated.

It is necessary to consolidate the basis for the creation of a system for recording pledges of movable property that would allow the pledgees to deposit information on the pledge in it, and to receive this information to third parties.

Such a system should have an informational, not a legal nature and protect the rights of third parties.

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The block of provisions aimed at regulating the use of the results of intellectual activity in information and telecommunications networks (including the Internet) requires special attention. To the questions arising in this sphere, it is necessary to carry the possible expansion of the circle of protected objects. There is a need to define the legal characteristics of Internet sites and other complex information resources, to ensure the possibility of disposing of rights to objects united in such resources in a single complex.

For cases of use of objects of copyright and related rights in electronic form it is advisable to provide for additional opportunities for the disposal of rights to such facilities, in particular, to develop a mechanism for issuing rights to authorize free use of specific results of intellectual activity within the limits specified by it.

This will avoid the need to conclude licensing agreements when using such results of intellectual activity in information and telecommunications networks in cases where the right holder wants to allow the company to freely use the object within its boundaries. In this case, the interests of both the right holder and the users of the relevant object will be protected.

It is proposed to adjust the range of limitations of the exclusive right in order to establish an exact list of cases and conditions for the free use of copyright and related rights in information and telecommunications networks. At the same time, it seems reasonable to equate the use of objects of copyright and related rights in information and telecommunication networks to cases of their broadcast or by cable.

One of the most important issues, without which it is impossible to ensure effective protection of the results of intellectual activity in information and telecommunication networks, is the definition of the conditions for prosecuting persons providing access to the information and telecommunications network, the operation of resources in the network and the placement of relevant facilities (providers). It is advisable to provide for the responsibility of the provider for placing the corresponding result of intellectual activity in the network without the right holder's consent, but only if the conditions for the application of such responsibility are clearly defined in the law.

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A serious shortcoming of the Civil Code of Uzbekistan is the abundance of references in articles to "legislation" (more than 80), which disavows not only the provisions of specific articles, but also the Civil Code and other laws.

For example, art.200 of the Civil Code: "Undisputable collection of debts for obligations, including debts on payments to the budget, is allowed in cases provided for by law." According to the law of the Republic of Uzbekistan on regulatory and legal acts, the laws include decisions of the heads of districts, regions (khokims), orders of ministers, etc.

It turns out that the regional khokim or the minister has the right to decide on the indisputable collection of debts, which, of course, is a violation of the jurisdiction of the parliament, such regulatory provisions should be determined only by law. Even more intolerant is the use of references in the articles of the Civil Code on ownership and obligations. It seems necessary to provide for collision regulation of certain types of relations, taking into account the accumulated experience and world trends.

It is advisable to provide collision rules aimed at determining the law applicable to the liability of legal entities for the debts of their subsidiary legal entities. It is advisable to consider the possibility of including a relevant conflict of laws clause providing for the application of the personal law of the subsidiary company, as well as subsidiary conflict bindings, which help to adjust the result taking into account the circumstances of the particular case (in particular, by applying the right of the place of business of the subsidiary legal entity).

Particular attention in the development of the new version of the Civil Code should be turned to the processes of globalization of the economy that are taking place in the world and the corresponding changes in civil legislation, the task of which is to regulate the already established economic relations and create opportunities for their further development.

Without the adoption of a modern (in new edition) Civil Code, economic reforms that are currently being actively implemented in Uzbekistan will in many respects be slowed down, which in the end will adversely affect the development of the market economy in the Republic of Uzbekistan and reduce the inflow of foreign investment into the republic .

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Great importance in the realization of the rights of citizens and legal entities is the developed procedural legislation and the court that exercises the most important state function on the basis of law - security of the state to protect the rights and legitimate interests of individuals and legal entities on the basis of equality and fairness.

The judiciary is an indispensable element of the state mechanism in any society. This was well understood by all legal scholars, regardless of the era in which they lived, and the countries to whose citizens they belonged. The Russian pre-revolutionary scientist I.E. Engelmann wrote: "With insufficiently developed civil law or the vicissitudes of its individual rules, a private person can still ward off the harmful consequences for him by introducing detailed rules into all sorts of contingencies into contracts and conditions, but the action of incorrect and illogical decisions of the process is no longer possible to turn away. They inflict, inevitably, harm on the entire civil system, weakening the people's sense of truth and justice, undermining the legal system at its root. The harmful influence of bad civil law in many cases can be eliminated by a right and swift court, but the best civil code remains a dead letter in an irregular and slow process. "

In his address to the Oliy Majlis on December 22, 2017, the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, substantiated the need for judicial reform; in particular, he noted that: "This year began a large-scale work to ensure the true independence of the judiciary. In particular, in order to further improve the structure of the courts and the system of selection and appointment of judges, the Supreme Judicial Council was created. The Council established effective public control over the selection and appointment of judges. We need to continue reforms in this field. I think that for this purpose it would be expedient to create a commission for the promotion of the independence of the judiciary under the Oliy Majlis.

This commission, based on the generalization of citizens' appeals, issues rose during direct meetings and through parliamentary inquiry, should analyze the real situation and, together with the Supreme Court and the Supreme Judicial Council, take measures to solve the problems identified.

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To ensure the true independence of the judiciary, firstly, it is necessary to protect judges from the factors that influence the administration of justice. It is important to identify cases of interference in the investigation and work of the court, to increase responsibility for this and to ensure the inevitability of punishment. "

In the above-mentioned Address of the President of the Republic of Uzbekistan, further directions of judicial reform were identified, identified on October 21, 2016 in the Decree of the President of the Republic of Uzbekistan "On Measures for Further Reforming the Judicial and Legal System, Strengthening Guarantees of Reliable Protection of Citizens' Rights and Freedoms".

In the development of this judicial reform in December 2017, the Civil Procedure Code, the Economic Procedural Code and the Administrative Procedure Code of the Republic of Uzbekistan were adopted.

At the same time, measures should also be taken to improve the quality of judicial work, the qualifications of judges, and as our President has repeatedly noted, justice is the main condition for the work of judges and the decisions they make.

Yes, the judges are independent, but they are required to follow the law and obey it. In this regard, there is still a lot of work and efforts to train judges –to be honest, independent, objective and guided only by law and justice.