

Statutory Regulation of Small and Medium-Scale Entrepreneurship in Kazakhstan

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Abstract: In this article, the issues of statutory regulation of small- and medium-scale entrepreneurship in Kazakhstan were analyzed. The problems of a business in its function as an object of right and a subject of entrepreneurial activity were considered. The circumstances of the development of small- and medium-scale entrepreneurship in Kazakhstan were analyzed. This article also deals with the issues of participation of self-employed entrepreneurs in the sphere of small- and medium-scale entrepreneurship. Statistic data of the Agency for Statistics of the Republic of Kazakhstan are provided with respect to the growth of the share of small- and medium-scale entrepreneurship in the GDP.

Key words: Entrepreneurial activity • Entrepreneurship in the Republic of Kazakhstan • Legislation of the Republic of Kazakhstan • Self-employed entrepreneur

INTRODUCTION

The Law of the Republic of Kazakhstan "On Private Entrepreneurship" dated January 31, 2006 (hereinafter referred to as the Law "On Private Entrepreneurship") breaks up subjects of private entrepreneurship into subjects of small-, medium- and large-scale entrepreneurship (hereinafter referred to as SME) (Article 6 Clause 2). Such categorization by the Law is based on certain resource-related indicators (the most important ones) of an enterprise, which are owned by their members (founders) as a property, though the Law does not say anything about enterprises.

In this view, it is obvious that by differentiating the subjects of entrepreneurship, the Law in fact classifies an enterprise as a property complex (Article 119 of the Civil Code of the Republic of Kazakhstan), because the annual average number of employees (labor resources) and the annual average asset value [1] are the objective indicators of an enterprise and not of a the subject of entrepreneurship. Therefore, it is more correct to say small, medium and large enterprises and their legal status – a self-employed entrepreneur, commercial organizations (legal entities) who represent these enterprises in economic relations as subjects of entrepreneurship.

Problems of an enterprise in its function as an object of right and a subject of entrepreneurial activity, the interconnection of the concepts "enterprise", "organization" are one of the most discussed ones both in the economic science and the science of law [2, 145, 154] and require special research. We will only state those aspects, which are required for our research.

In its function as an object of civil rights, an enterprise acts as a property complex with respect to a self-employed entrepreneur, or to be more precise, as a total of substantial, intellectual and personal elements organized duly in order to achieve economic goals (production of goods, performance of works, rendering of services) [3, 172]. A self-employed entrepreneur conducts his entrepreneurial activity only using one or several of such commercial objects (mini plants and other production units, warehouses, etc.).

MATERIALS AND METHODS

The formally logical method of research conventional for legal science was used as the basic method for this article. In the research, other special methods were used, as well, including functional analysis of legal phenomena, systemic and structural approach and historical analysis.

Body of the Work: Small-scale entrepreneurship, which consists of small businesses, performs in a market economy its own function that is unique to it only. Particularly, it is the quick response to the market demand for goods, works and services, the production of goods in small series, which is not profitable for large production structures, the avoidance of excessive management levels, etc.

Development of small- and medium-scale production creates advantageous environment for economic recovery: competitive environment develops; additional job positions are created; the consumer sector is expanded. Development of small businesses leads to saturation of the market with goods and services, improvement of export potential, better utilization of local natural and human resources, etc. Therefore, it may be no accident that, during recent years, in the Western Europe countries, the US and Japan, small business is represented with the community of small and medium enterprises. The major part of them in these countries are small enterprises with 20 and less employees. Small enterprises are efficient both in the consumer product sector and as manufacturers of particular units and mechanisms, semi-products and other elements, which are in demand for manufacturing finished products and which are cost-prohibitive for being produced by large enterprises [4, 92].

For example, in the USA, small and medium firms produce about 40% of the gross national product and half of the gross product of the private sector and provide creation and implementation of nearly half of innovations in the sphere of science and technology [4, 92]. Small-scale entrepreneurship has great reserves, which can be used efficiently in Kazakhstan, including using them in the form of self-employed entrepreneurship.

Upon announcement of the transition to the market economy in the Republic of Kazakhstan, which targeted establishment of legal environment for developing private entrepreneurship, especially the SME, a number of laws of historical importance were enacted in a sequence in Kazakhstan. Those were:

- The Law of the Republic of Kazakhstan "On Protection and Assistance of Private Entrepreneurship", dated July 4, 1992, which determined main methods and forms of protecting and supporting private entrepreneurship and, what is more important, which stated the governmental

policy of refusing from direct intervention in private entrepreneurial activity, thus ensuring maximum freedom for private entrepreneurs, protection of commercial secrets and liability of public bodies and officials for violation of rights of private entrepreneurs;

- The Law of the Republic of Kazakhstan "On Governmental Support of Private Entrepreneurship", dated June 19, 1997, which stated the following principles of governmental support of small-scale entrepreneurship: the principle of prioritized development of small-scale entrepreneurship in the Republic of Kazakhstan; the principle of comprehensiveness of governmental support of small-scale entrepreneurship; the principle of availability of the small-scale entrepreneurship supporting infrastructure and currently taken measures for all subjects of small-scale entrepreneurship; the principle of international cooperation in the sphere of protection and development of small-scale entrepreneurship;
- The Law of the Republic of Kazakhstan "On Self-Employed Entrepreneurship", dated June 19, 1997. This law targeted the enforcement of the citizens' rights for freedom of entrepreneurial activity, stated by the Constitution of the Republic of Kazakhstan and the formation of a system of governmental warranties for self-employed entrepreneurship [5, 23-27].

The current Law "On Private Entrepreneurship" has normalized all standards, which regulate private entrepreneurship and united them in a single statutory act. This Law along with the Civil Code of the Republic of Kazakhstan and other statutory acts constitute a solid legal basis for private entrepreneurship, including the self-employed entrepreneurship.

According to the optimistic data of the Agency of Kazakhstan for Statistics, the share of SME in the GDP equaled to: in 2005 – 17.8%; in 2006 – 17.5%; in 2007 – 20.4%; in 2008 – 18.6%; in 2009 – 20.4%; in 2010 – 20.2% [6].

On the one hand, it is a certain result within a short period, because entrepreneurship in Kazakhstan appeared only in 1990s and, for the Kazakhs, it is a new phenomenon that requires being studied and mastered. On the other hand, in the circumstances of severe economic competition, globalization and integration of

economic systems, these values are not sufficient at all. And Kazakhstan faces here serious problems. These are:

- Underestimation by majority of entrepreneurs of the role of special skills and knowledge of conducting entrepreneurial activity, business education and additional personnel training;
- Facts of bureaucratic tyranny caused by entrepreneurs' poor knowledge of their rights;
- Facts of corruption, which have become more covert [7].

According to the results of comprehensive monitoring research of the Damu Fund made in 2009-2010, majority of enterprises in the SME sphere keep on struggling hard for survival. Lack of financial, material, technological and intellectual resources for upgrade, diversification and expansion of business is the persistent problem of the SME. At that, an estimation of the status of business development according to the results of the poll would be as follows:

- Sufficient resources both for supporting the business and for growing and upgrading - 18%;
- Sufficient resources for supporting the business and lack of resources for growing and upgrading - 36%;
- Sufficient resources for supporting the current business only - 39%;
- Lack of resources even for supporting the current business - 18%;
- Financial position is critically poor - 3%.

According to the mentioned research, the small and medium business, especially self-employed entrepreneurs and even more peasant farms, still feel being unwanted clients of second level banks. The share of entrepreneurs of these categories who applied for loans to banks in 2010 significantly reduced if compared to 2009 [8]. This all seriously emphasizes the necessity of upgrading the SME and improving mechanisms of its statutory regulation.

According to the Law "On Private Entrepreneurship", self-employed entrepreneurs can be both subjects of small- and medium-scale entrepreneurship. The Law states annual average number of employees working based on labor employment as the criteria for placing a self-employed entrepreneur into a certain category of entrepreneurship. E.g. a self-employed entrepreneur who

has no employees or who has less than 50 employees is a subject of small-scale entrepreneurship and if he has over 50 employees, he is classified as a subject of medium-scale entrepreneurship.

Among the criteria of assigning the status of SME to a self-employed entrepreneur, unlike legal entities, the Law "On Private Entrepreneurship" does not state the annual average value of assets in monthly calculation indexes, which are set by the law on the republican budget for relevant financial year. To our opinion, the Law takes into account the capabilities of a self-employed entrepreneur, which are limited both by his own involvement and by other condition of enterprise's operation (Article 7), as well as by the limit of engaging not more than 50 employees in case if he intends to make use of the legal regime established for subjects of small-scale entrepreneurship.

According to the Law "On Private Entrepreneurship", self-employed entrepreneurs conducting the following activities cannot receive the status of subjects of small-scale entrepreneurship: activity related to dealing in narcotic and psychotropic substances and their precursors; production and(or) bulk sale of excisable products; grain storage at grain reception centers;

Lottery conducting; activity in the sphere of gaming and show business; extraction, refining and sale of oil, oil products, natural gas, generation and sale of electric and heat power; activity related to dealing in radioactive materials; banking activity (or certain types of banking operations) and insurance activity (except for acting as an insurance agent); audit activity; professional activity in the securities market; credit bureau activity (Article 6, Clause 4).

Obviously, this clause does not stipulate complete prohibition of these activities, therefore an entrepreneur can be engaged in these activities, but he will operate under the status of medium-scale entrepreneurship. These types of entrepreneurship are regulated in more detail by corresponding industry-related statutory acts. Both general and special provisions of civil law complement each other and, using permits and prohibitions, guide the behavior of self-employed entrepreneurs in the direction that is more beneficial for them and useful for the society and the state.

Self-employed entrepreneurship assumes conducting the activity by a single citizen or a group of citizens. The Law "On Private Entrepreneurship" distinguishes individual and joint entrepreneurship.

Individual entrepreneurship is conducted by a single individual unassistedly using property owned by him or used by virtue of other right that allows utilization and (or) disposal of the property. This means that:

- Firstly, no one is entitled to forbid him or her to conduct certain type of legal entrepreneurial activity, including his or her spouse. The Law in this case assumes full independence of each of the spouses that is predetermined by the priority of legal personality and capability of every citizen. The only limitation applicable to conducting individual self-employed entrepreneurship is the usage of common property by a citizen. According to the Law “On Private Entrepreneurship”, one of spouses who has decided to conduct entrepreneurship, using the common property of spouses, must obtain the consent of the other spouse for using the property. Such consent can be executed as a standalone document, marriage contract or another agreement.

Besides, Article 7 Clause 2 Paragraph 3 of this Law for some reason states: “in order to conduct individual entrepreneurship, an individual uses common property of spouses, which requires consent of the other spouse for such usage, unless otherwise stated by laws (*highlighted by me*).” This provision, to our opinion, is a direct breach of the constitutional right of a citizen for ownership and therefore requires to be eliminated;

- Secondly, the fact that a self-employed entrepreneur conducts his activity through his own labor, which is understood as reasonable activity targeting adjustment of the environment for satisfaction of his needs; transformation of substantial and intellectual resources into a product that is in social or personal demand; and production of goods and services. Obviously, the product of the individual labor of a self-employed entrepreneur can (or must) be expressed in a monetary value form as income or earning received as the result of the product sale. In the process of his personal labor, a self-employed entrepreneur interacts with the subjects of labor and instruments of labor as well as with the environment. At that, his interaction with subjects and instruments of labor is predetermined by the level of technology development and production automation [9].

At the same time, it is to be taken into account that the concept of personal labor of a self-employed entrepreneur includes not only the production of substantial products (rendering services, fulfilling work) with his hands and creation of intellectual products by his creative work, but also and mainly the fact that he manages his production (commercial) enterprise, i.e.: unassistedly and single-handedly defines main directions and types of entrepreneurial activity; the nomenclature of produced goods (fulfilled works and rendered services); coordinates his activity with other market players, enters into contracts; and arranges the work on fulfilling contractual and other obligations; etc. In other words, within his entrepreneurial activity, a self-employed entrepreneur performs a huge number of particular legal, organizational, technical and physical actions. As noticed by V.A. Tikhomirov [10, 33], a self-employed entrepreneur from this point of view acts both as a top manager and as a performer.

- Thirdly, a self-employed entrepreneur is entitled to use not only his own, but also hired labor by entering into labor contracts with citizens (individuals) in compliance with the labor legislation and use the labor of individuals and legal entities based on civil contracts. At that, the Law “On Private Entrepreneurship” does not stipulate any limited number of persons who can work at a self-employed entrepreneur under labor contracts. The number of employees (not exceeding 50) only affects the status of a self-employed entrepreneur as a subject of small-scale entrepreneurship.
- Fourthly, a self-employed entrepreneur within his entrepreneurial activity involves economic resources (property) that he holds in ownership or by virtue of other right, which allows him to use and(or) dispose of the property, uses his intellectual potential and innovative technology, etc. The property of the citizen and the right for its utilization at his own discretion are protected by the Constitution. Nevertheless, the right of ownership has certain restrictions, one of which is the restriction determined by the legal regime of joint property. Therefore, in cases when a self-employed entrepreneur in his entrepreneurial activity uses joint property of spouses, as it was said before, he must receive the consent of his(her) spouse in advance [11, 175-208].

CONCLUSION

According to the Law, when conducting individual self-employed entrepreneurship, a citizen can use the property that he holds not only in ownership, but also by virtue of other rights. To our opinion, such rights can include proprietary rights for another person's things (limited proprietary rights), namely:

- Possession (in cases, when it has an independent nature not connected with the ownership right and the right of use);
- Easements;
- Rights that enforce fulfillment of obligations (the right of pledge, the right of retention);
- Right of natural resource use (the right of land use, the right of subsoil use, the right of water use, etc.);
- Rights to housing (the right of tenant, the rights of owner's family members for use of dwelling, the right for life-long occupation of dwelling owned by another person under a contract or by virtue of legacy, the right of cooperative member for cooperative dwelling before buying it out, etc.);
- Right for a thing transferred under contracts not stipulated in the above clauses (the right for a leased thing, the right for a thing received under trust, the right for a thing received for storage, the right for a thing transferred under lease, the right for a thing transferred under a work contract. etc.) [12, 34-35].

Thus, a self-employed entrepreneur according to the legislation of the Republic of Kazakhstan is one of the main and most important subjects of the SME. Along with that, he can participate in the SME in the form of both private entrepreneurship and joint entrepreneurship, which can be:

- Entrepreneurship of spouses conducted using joint property of the spouses;
- Family entrepreneurship conducted using joint ownership of a peasant farm or joint ownership of privatized dwelling;
- Simple partnership in which entrepreneurship is conducted using joint shared property.

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