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Сравнительный анализ семейно-правового и гражданско-правового регулирования имущественных отношений супругов при осуществлении деятельности корпоративной организации

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Аннотация

В данной статье автором проводится сравнительный анализ семейно-правового и гражданско-правового регулирования имущественных отношений супругов при осуществлении деятельности корпоративной организации. Отмечается, что правильное определение содержания семейного правоотношения позволит, определить спектр норм, содержащихся в гражданском и семейном законодательстве. По мнению автора особое внимание следует уделять доле как разновидности совместно нажитого имущества и оценочной категории актива и пассива юридического лица. Обладание долей в юридическом лице наделяет ее владельца правом корпоративного участия и управления, получения дивидендов (доходов), части имущества после ликвидации юридического лица.

Ключевые слова: имущественные отношения, брак, корпоративная организация.

Comparative analysis of family law and civil law regulation of spouses' property relations in the course of corporate activities

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Abstract

In this article, the author conducts a comparative analysis of the family and civil law regulation of property relations of spouses in the course of the activities of a corporate organization. It is noted that the correct definition of the content of the family legal relationship will allow to determine the range of norms contained in civil and family law. According to the author, special attention should be paid to the share as a variety of jointly acquired property and the valuation category of an asset and liability of a legal entity. Possession of a share in a legal entity gives its owner the right to corporate participation and management, receive dividends (income), part of the property after the liquidation of the legal entity.

Key words: property relations, marriage, corporate organization.

Current family law in Art. 2 of the Family Code of the Russian Federation [1] establishes a list of public relations to which this legislation is subject to distribution, including property and personal non-property relations between spouses. From the moment of marriage, spouses form new social relations that significantly affect not only the legal status of spouses, but also their relationship with third parties, society and the state.

So, for example, Chapter 7 of the Family Code of the Russian Federation regulates the legal regime of spouses' property. In accordance with Art. 34 of the Family Code of the Russian Federation to the joint property of the spouses, in particular, will include:

— income of each spouse from entrepreneurial activity (dividends of participants);

— securities (stocks, bonds, issuer's options, registered equity securities, bearer equity securities, promissory note, mortgage, bill of lading, check);
— units (investment unit of a unit investment fund);
— contributions to the share capital of a full partnership or a limited partnership;
— shares in the authorized capital.

It should be borne in mind that by virtue of a direct indication of Art. 35 of the Family Code of the Russian Federation, transactions made by one of the spouses on the disposal of the common property must imply consent to such transactions of the second spouse. This provision should be applied to business activities. The participation of both or one of the spouses in the management of a legal entity, the implementation of entrepreneurial activity through the exercise of property rights is important for determining the property status of spouses [2].

In our opinion, a peculiar tendency to expand inter-industry relations between civil and family legislation is visible. Firstly, since these legal relations are connected with the corporate right of participation and management in a legal entity, carrying out entrepreneurial activity, the norms of civil law apply to these legal relations. Secondly, these legal relationships affect property relations between spouses and should be governed by family law.

When regulating each property relationship, especially the one related to entrepreneurial activity or corporate management law in a legal entity, it is necessary to take into account both its specificity and relevant legal norms [3].

For example, when dividing joint sewn property - stocks, shares, shares in the authorized capital - it is necessary to take into account the features of the constituent documents of a legal entity (charter), which may prohibit or restrict a person's right to acquire the status of a participant without prior consent of other participants of such a legal entity. If it is not possible to

include a new participant in the legal entity, the real value of the share is paid to the second spouse [4, 5].

In the event of a division of the share in the joint venture capital of a business partnership (full partnership, partnership in faith), the spouse applying for the status of a full partner (partner in faith) must acquire the status of an individual entrepreneur before receiving it [6], otherwise compensation will be paid to him. It has its own specifics that a parties entered into a corporate agreement between the parties to a limited liability company and a joint stock company, the subject of which is the procedure and conditions for disposing of property of a legal entity, the sale of shares (stocks) to other members of the corporation, and the right to vote at a general meeting in a certain way [7].

In our opinion, special attention should be paid to the share as a variety of jointly acquired property and the valuation category of an asset and liability of a legal entity. Possession of a share in a legal entity gives its owner the right to corporate participation and management, receive dividends (income), part of the property after the liquidation of the legal entity. That is why in the case of the division of jointly acquired property between spouses or inheritance of a share in the event of the death of one of the spouses, it is necessary to correctly determine what legal norms - family and (or) civil law - this legal relationship will be regulated. Thus, property relations between spouses are subject to regulation by various legal norms. The correct definition of the content of the family relationship will allow, accordingly, to determine the range of norms contained in civil and family law.

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