**Lecture 4. Subjects of the civil law****.**

Citizens of the Republic of Kazakhstan and other physical persons

**Concept of physical person**

Physical persons are understood as citizens of the Republic of Kazakhstan, citizens of other states, and also stateless persons. Provisions of this Chapter are applied to all physical persons if other is not established by this Code.

**Legal capacity of citizens**

1. Capability have the civil laws and perform duties (civil legal capacity) is recognized equally for all citizens.

2. Legal capacity of the citizen arises at the time of its birth and stops death.

**Main content of legal capacity of the citizen**

The citizen can have on the property right property, including foreign currency, both within the Republic of Kazakhstan, and behind its borders if other is not established [by the Law](https://cis-legislation.com/document.fwx?rgn=80665" \o ") of the Republic of Kazakhstan "About anti-corruption"; inherit and bequeath property; to move freely on the territory of the republic and to choose the residence; to freely leave limits of the republic and to return to its territory; be engaged in any activities which are not forbidden by legal acts; create legal entities independently or with other citizens and legal entities; make any transactions which are not forbidden by legal acts and participate in obligations; have intellectual property right to inventions, works of science, literature and art, other results of intellectual activities; require compensation of material and moral harm; have other property and personal non-property rights.

**Name of the citizen**

1. The citizen acquires and performs the rights and obligations under the name which includes surname and name, and also at will middle name.

2. Cases of anonymous acquisition of rights by citizens of the rights and implementation of obligations or use of pseudonym (fictitious name) can be provided by the legislation.

3. The name received by the citizen in case of the birth, and also change of name are subject to registration according to the procedure, established by the legislation on civil registration.

4. The citizen has the right to change the name according to the procedure, established by legal acts. Change of name is not the basis for the termination or change of its rights and obligations acquired under former name, anonymously or under pseudonym.

5. The citizen shall take necessary measures for the notice of the debtors and creditors on change of his name and bears risk of the consequences caused by absence in these persons of data on change of his name.

6. The citizen who changed the name having the right to require entering of corresponding changes into the documents processed to his former name.

7. Acquisition of rights and obligations under name of other person is not allowed.

8. The citizen has the right to require prohibition of use of his name when it was made without its consent, except the cases provided by the laws of the Republic of Kazakhstan.

9. The harm done to the citizen as a result of unauthorized use of his name is subject to compensation according to provisions of this Code. In case of misstatement or use of name of the citizen methods or in shape, affecting his honor, advantage and goodwill, apply rules, [stipulated in Article 143](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000160" \o ") of this Code.

**Residence and legal address of the citizen**

1. The residence that settlement where the citizen constantly or mainly lives is recognized.

2. The residence of persons which did not reach fourteen years (juveniles), or the citizens who are under guardianship the residence of their legal representatives is recognized.

3. The citizen has the legal address used in the relations with physical persons and legal entities, and also the state.

Legal address of the citizen the place of its registration is recognized.

The order of registration of citizens is determined by the Government of the Republic of Kazakhstan.

4. The citizen has the right to require prohibition of use of information on its residence or legal address when it was made without its consent, except the cases provided by the laws of the Republic of Kazakhstan.

**Capacity to act of citizens**

1. The citizen's capability the actions to acquire and perform the civil laws, to create for itself civil obligations and to perform them (civil capacity to act) arises in full with occurrence of age of majority, that is on reaching eighteen-year age.

2. In case legal acts allow marriage before achievement of eighteen years, the citizen who did not reach eighteen-year age acquires capacity to act in full since marriage.

3. All citizens have equal capacity to act if other is not established by legal acts.

**Inadmissibility of deprivation and restriction of legal capacity and capacity to act**

1. Nobody can be limited in legal capacity and capacity to act differently, as in the cases and procedure provided by legal acts.

2. Non-compliance with the conditions established by legal acts and procedure for restriction of legal capacity and capacity to act of citizens or their right to be engaged in business or other activity attracts invalidity of the act of the state or other body which set the corresponding restriction.

3. The complete or partial refusal of the citizen of legal capacity or capacity to act and other transactions directed to restriction of legal capacity or capacity to act are insignificant, except as specified, when such transactions are allowed by legal acts.

**Business activity of citizens**

1. Citizens have the right to be engaged in business activity without formation of legal entity, except as specified, provided by this Code and other legal acts.

2. State registration of individual entrepreneurs consists in registration as the individual entrepreneur.

3. Rules of this Code which regulate activities of legal entities, being the commercial organizations respectively are applied to the business activity of citizens performed without formation of legal entity if other does not follow from the legislation or being of legal relationship.

4. Physical persons are subject to state registration as the individual entrepreneur according to the Entrepreneurial [code](https://cis-legislation.com/document.fwx?rgn=80123" \o ") of the Republic of Kazakhstan.

5. If the individual entrepreneur performs the activities which are subject to licensing, he shall have the license for the right of implementation of such activities.

The license is granted according to the procedure, established by the legislation of the Republic of Kazakhstan on permissions and notifications.

The government of the Republic of Kazakhstan has the right to establish the simplified procedure for issue of licenses to individual entrepreneurs.

**Property responsibility of the citizen**

1. The citizen answers for the obligations all property belonging to him, except for property on which according to legal acts collection cannot be turned.

**Bankruptcy of the individual entrepreneur**

1. Insolvency of the individual entrepreneur ([Article 52](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000058" \o ") of this Code) is the basis for recognition by his bankrupt.

2. Bankruptcy of the individual entrepreneur is recognized voluntary or forced procedure by the rules established by the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy. From the date of the introduction in legal force of determination of court about completion of the procedure of bankruptcy of the individual entrepreneur its registration as the individual entrepreneur voids.

3. In case of application to the individual entrepreneur of insolvency proceedings his creditors according to the obligations which are not connected with business activity, having also the right to impose the requirements if completion date according to such obligations came. The requirements of the specified creditors which are not declared by them in such procedure and also requirements which were not met in full from the estate are valid and can be shown to collection after bankruptcy completion of the procedures to the debtor as to physical person. The size of these requirements decreases by the amount of the had satisfaction in the course of bankruptcy of the debtor.

**Capacity to act of minors aged from fourteen up to eighteen years**

1. Minors aged from fourteen up to eighteen years make transactions with the consent of their legal representatives. The form of such consent shall correspond to form which is established by the legislation for the transaction made by the minor.

2. Minors aged from fourteen up to eighteen years have the right to dispose independently of the earnings, grant, other income and objects of intellectual property right created by them, and also to make small household transactions.

3. In the presence of good causes the court can limit or deprive of the minor right of the independent order the earnings, grant, other income and objects of intellectual property right created by it.

4. Minors aged from fourteen up to eighteen years independently bear responsibility according to the transactions made by them according to rules of this Article and bear responsibility for the harm done by their actions by rules of this Code.

**Capacity to act of minors aged up to fourteen years (juveniles)**

1. For the minors who did not reach fourteen years (juveniles), transactions are made from their name by legal representatives if other is not provided by legal acts.

2. Minors aged up to fourteen years (juveniles) have the right to make independently only the small household transactions corresponding to their age performed in case of their making.

**The consent of guardianship and custody bodies to transactions by the minor and for the minor**

Cases when on transaction by the minor and for the minor prior consent of guardianship and custody body is required can be established by legal acts.

**Right of minors to introduction of deposits to banks and order deposits**

1. Minors have the right to make contributions to banks and to dispose independently of the contributions made by them.

2. Their parents or other legal representatives dispose of the contributions made by someone addressed to the minors which did not reach fourteen years (juveniles), and minors which reached fourteen years independently dispose of the contributions made by someone on their name.

**Recognition of the citizen incapacitated**

1. The citizen who owing to mental disease or weak-mindedness cannot understand values of the actions or directs them, can be recognized as court incapacitated in this connection over it guardianship is established.

2. On behalf of the citizen recognized incapacitated transactions are made by his guardian.

3. In case of recovery or considerable improvement of health incapacitated the court recognizes it capable then from it trustee is removed.

**Legal incapacity of the citizen**

1. The citizen who owing to abuse of gamblings, bet, alcoholic drinks or narcotic substances puts the family in difficult financial position can be limited by court in capacity to act according to the procedure, established [by the Code of civil procedure](https://cis-legislation.com/document.fwx?rgn=1251" \o ") of the Republic of Kazakhstan. Over it guardianship is established. He has the right to make small household transactions independently. Make other transactions, and also receive earnings, pension and other income and it can dispose of them only with the consent of the custodian.

2. In case of the termination by the citizen of abuse of gamblings, bet, alcoholic drinks or narcotic substances the court cancels restriction of his capacity to act. Based on the judgment the guardianship established over the citizen is cancelled.

**Recognition of the citizen is unknown absent**

1. The citizen can be acknowledged according to the statement of interested persons as court is unknown absent if within one year in the place of his residence there is no information about him.

2. In case of impossibility to establish day of receipt of the last data about absent the beginning of unknown absence the first, following in what the last data about absent were received is considered, and in case of impossibility to establish this month - the first of January of the next year.

**Protection of property it is unknown absent**

1. Over property of person, acknowledged it is unknown absent, based on the judgment guardianship is established. From this property content is issued to persons whom it is unknown absent owed contain, and the tax debt is repaid and to other obligations it is unknown absent.

2. According to the statement of interested persons the guardianship and custody body can appoint the guardian for protection and property administration and before the expiration of one year from the date of receipt of the last data on residence of the absent person.

**Cancellation of the decision on recognition it is unknown absent**

In case of appearance or detection of residence of person, acknowledged it is unknown absent, the court cancels the decision on recognition it is unknown absent and about establishment of guardianship over its property.

**Announcement of the citizen dead**

1. The citizen can be, according to the statement of interested persons, is announced by the court which died if in the place of his residence there is no information about him within three years and if he was missing under the circumstances threatening with death or giving the grounds to assume his death from accident, within six months.

2. The serviceman or the other person, missing in connection with military operations, can be declared the dead not earlier than after two years from the date of the end of military operations.

3. In the afternoon of death of person declared in the dead day of the introduction in legal force of the judgment about the announcement is considered his dead. In announcement cases to the dead of person, the missing person under the circumstances threatening with death or giving the grounds to assume his death from accident, the court can recognize as day of death of this person day of his expected death.

4. Based on the judgment which took legal effect about the announcement of person by the dead, makes record about his death in registers. Consequences of record are same, as well as records about the actual death.

**Consequences of appearance of person declared the dead**

1. In case of appearance or detection of the place of stay of person declared the dead, the relevant decision is cancelled by court.

2. Irrespective of time of the appearance the citizen can demand from any face of return of the saved property which gratuitously passed to this person after the announcement of the citizen with the dead.

3. If the property of person declared the dead was alienated by his legal successor to the third parties who by the time of appearance of person did not pay completely purchase price, then passes right to claim of outstanding amount to been.

4. Persons to whom the property of the citizen declared the dead passed according to paid transactions shall return it this property, and in the absence of property at them to compensate its cost if it is proved that at the time of property acquisition they knew that the citizen declared the dead is in live.

5. The alienor of property knowing at the time of alienation that person declared the dead is in live performs duty of return, solidary with the acquirer, or cost recoveries of property.

6. If the property of person declared the dead passed on inheritance right to the state and was realized, then after cancellation of the decision on the announcement of person by the dead to it the sum realized from realization of property taking into account its market value on the date of payment returns.

**Legal entities**

**Concept of the legal entity**

1. The legal entity the organization which has on the property right is recognized, ([Article 188-194](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000211" \o ") of this Code) economic maintaining ([Article 195-201](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000219" \o ") of this Code) or operational management ([Article 202-208](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000228" \o ") of this Code) the isolated property also answers this property for the obligations, can acquire and perform on its own behalf the property and personal non-property rights and obligations, to be claimant and the defendant in court. The legal entity shall have separate balance or the estimate.

2. The legal entity has seal with the name. This requirement does not extend on legal entities who are subjects of private entrepreneurship, except as specified, provided by this Code and the laws of the Republic of Kazakhstan.

**Types and forms of legal entities**

1. The organization which is pursuing commercialization as main objective of the activities (the commercial organization) or not having commercialization as such purpose and not distributing gained net income between participants (non-profit organization) can be the legal entity.

2. The legal entity, being the commercial organization, can be created only in the form of the state company, economic partnership, joint-stock company, production cooperative.

3. The legal entity, being non-profit organization, can be created in the form of organization, public association, joint-stock company, consumer cooperative, fund, religious consolidation and in other form provided by legal acts.

3-1. The legal entity, being non-profit organization and containing only at the expense of the government budget, can be created only in the form of public institution.

4. Legal entities can create associations ([article 110](https://cis-legislation.com/document.fwx?rgn=3634" \l "A000000117" \o ") of this Code).

5. The legal entity acts on the basis of this Code, the law on each of forms of legal entities, other legal acts and constituent documents.

**Legal capacity of the legal entity**

1. The legal entity can have the civil laws and perform the duties connected with its activities according to this Code. The commercial organizations, except for the state companies, can have the civil laws and perform the civil duties necessary for implementation of any, the types of activity which are not forbidden by legal acts or constituent documents.

In the cases provided by legal acts for the legal entities performing certain types of activity opportunity to be engaged in other activities can be excluded or limited.

The legal entity can be engaged in separate types of activity which list is determined by legal acts only based on the license.

2. Legal capacity of the legal entity arises at the time of its creation and stops at the time of completion of its liquidation. Legal capacity of the legal entity in field of activity on which occupation receipt of permission is necessary arises from the moment of receipt of such permission and stops at the time of its withdrawal, expiration or recognition invalid in the procedure established by legal acts of the Republic of Kazakhstan.

3. Legal capacity of the legal entity, being non-profit organization and containing only at the expense of the government budget (public institution), is determined by this Code and other legal acts of the Republic of Kazakhstan.

**The rights of founders (participants) to property of the legal entities created by them**

1. Concerning the isolated property of the legal entity his founders (participants) can have the liability or corporeal rights.

2. Economic partnerships, joint-stock companies and cooperatives concern to legal entities on whose property their participants (founders) keep liability laws.

3. The organizations having property on the right of economic maintaining or the right of operational management treat legal entities on whose property their founders keep the property right or other corporeal right.

4. Public associations, funds and religious associations treat legal entities on whose property their founders (participants) do not keep property rights.

5. The rights of founders (participants) to property of the legal entities of other forms of business created by them are determined by legal acts of the Republic of Kazakhstan.

### **Bodies of a Legal Entity**

      1. A legal entity shall acquire civil rights and assume obligations only through its bodies which operate in accordance with legislative acts and the foundation documents.

      2. Thes of the procedure for appointing or electing the bodies of a legal entity and their powers shall be defined in legislative acts and the foundation documents.

### **The name of a Legal Entity**

      1. A legal entity shall have its name, which permits to distinguish it from any other entities.

      The name of a legal entity shall consist of its name and an indication of its organizational and legal form. It may contain any additional information provided for by legislation.

      The name of a legal entity shall be indicated in its foundation documents.

      It shall be prohibited to use in the name of a legal entity, names which contradict the requirements of legislation or the norms of public ethics; the proper names of persons, unless they coincide with the names of participants, or where the participants failed to obtain the permission from those persons (their heirs) to use the proper name;

      2. Under a specific name, a legal entity shall be included into the National Register of Business Identification Numbers.

      The name of the legal entity shouldn’t entirely or partly duplicate the name of the legal entities registered in the Republic of Kazakhstan.

      The name of a legal entity which is a commercial organization, after the registration of the legal entity, shall be its business name.

      A legal entity shall have an exclusive right to use its business name. A person who illicitly uses somebody else's business name must terminate the use of such a name and to compensate the losses caused, pursuant to the requirement of the owner of the right to the business name.

      The rights and obligations of a legal entity which are associated with the use of a business name shall be determined in legislation.

      4. The use of references to official names of the state bodies of the Republic of Kazakhstan established by legislative acts, acts of the President and Government of the Republic of Kazakhstan in the business names, service signs, trademarks of the legal entities which are not state bodies shall be prohibited.

### **The Location of a Legal Entity**

      1. The place where the permanently operating body of a legal entity is situated shall be recognized as the location of that legal entity.

      2. The location of a legal entity shall be indicated in its foundation documents with the inscription of its full address.

      3. In relations with third parties, a legal entity is not entitled to refer to the inconsistency of the actual address with the address entered in the National Register of Business Identification Numbers. At that, third parties are entitled to send mail and other correspondence to the legal entity both at the address entered in the National Register of Business Identification Numbers and at the actual address.

### **The Founders of a Legal Entity**

      1. A legal entity may be founded by one or several founders.

      2. The owners of the property or the bodies and persons authorized by them, and any other legal entities in the cases specifically provided for by legislative acts may be founders of a legal entity. At the same time the legal entities which own the property on the basis of a right of economic jurisdiction or operational management, may be the founders of other legal entities with the consent of their owners or the bodies authorized by their owners except the cases provided for by the Laws of the Republic of Kazakhstan.

      3. The founders of the legal entity cannot have any advantage over other members of the legal entity, who are not its founders, except in cases stipulated by legislative acts of the Republic of Kazakhstan.

### **Foundation Documents of a Legal Entity**

      1. Unless otherwise provided by this Code and legislative acts of the Republic of Kazakhstan, a legal entity carries out its activities on the basis of:

      1) the charter and the constituent treaty;

      2) the charter;

      3) the charter and a written decision on establishment of a legal entity (decision of the sole founder) if a legal entity is established by one person.

      In cases provided by legislative acts of the Republic of Kazakhstan, a legal entity that is a non-profit organization may act on the basis of a general provision on organizations of this type or a model charter, the content of which is determined by the relevant authorized state authority.

      A legal entity that is a subject of small, medium and large scale business may carry out its activities on the basis of a standard charter, the content of which is determined by the Ministry of Justice of the Republic of Kazakhstan.

      2. The foundation agreement of a legal entity shall be entered into and its charter shall be approved by its foundation parties. No foundation agreement shall be entered into if a commercial organization is established by one person.

      3. The foundation documents of a non-commercial organization and of a state-owned enterprise, must define the objects and aims of the activities of that legal entity.

      Foundation documents of a business partnership, joint-stock company and a production cooperative may provide the objectives and purposes of their activity.

      4. In the foundation agreement parties (founders) undertake to create a legal entity, define the procedure for their joint activities to create it, the conditions for the vesting into its ownership (business authority, operational management) of their property and for their participation in its activities. The agreement shall also define the terms and procedure for the distribution of net income between the founders, management of the business of the legal entity, cessation of founders and approve its charter, unless it is otherwise provided for by this Code or legislative acts concerning specifics of legal entities.

      Any other provisions may be included into a foundation agreement by the consent of the founders.

      4-1. The decision of the sole founder shall contain the provisions of transfer of ownership (economic management, operational management) the property and other solutions that do not contradict to the legislation of the Republic of Kazakhstan.

      The decision of the sole founder-legal entity is taken by the authorities that have the right to make such decisions in accordance with the legislation of the Republic of Kazakhstan and the charter of the legal entity.

      5. The name of a legal entity, its location, procedure for the formation and the competence of its bodies, provisions of the reorganization and termination of its activities shall be provided I n the charter.

      If a legal entity is established by one person, then a procedure of the formation of the property and the distribution of profits shall also be defined in its charter.

      Other provisions which do not contradict legislation may be specified in a charter.

      6. In the case of contradictions between the foundation agreement and the charter of the same legal entity, their provisions must apply as follows:

      1) those of the foundation agreement, when they are associated with internal relationship of founders;

      2) those of the charter, when their application may have significance for relations of the legal entity with third persons.

      7. Any interested parties shall have the right to peruse the charter of a legal entity.

### **The State Registration and Re-Registration of Legal Entities**

      1. A legal entity which is a non-profit organization is subject to state registration with the judicial authorities.

      A legal entity that is a commercial organization is subject to state registration with the State Corporation "Government for Citizens", except for cases stipulated by the legislative acts of the Republic of Kazakhstan.

      The procedure for state registration shall be determined by the legislation of the Republic of Kazakhstan.

      2. State registration data, including the name of legal entities, and for commercial organizations - the company name, are included in the National Register of Business Identification Numbers.

      3. A legal entity shall be deemed to be created from the moment of its state registration.

      4. Branches and representations shall be registered in accordance with the procedure established by legislative acts.

      Branches and representations shall be subject to re-registration in the event that they change their name.

      5. Violation of legal entity formation procedure established by the law or noncompliance of its foundation documents with the law shall cause the refusal to register the legal entity. The refusal to register on the basis of non-expedience of the formation of a legal entity shall not be allowed.

      The refusal of state registration, as well as the evasion of such registration, may be appealed in accordance with the procedure established by the Laws of the Republic of Kazakhstan.

      6. A legal entity shall be subject to re-registration in the following cases:

      1) reduction of the size of the charter capital;

      2) change of name;

      3) alteration of the membership of participants in business partnerships (except for the business partnerships, in which maintaining of the register of members of an business partnership is carried out by the professional participant of the paper market, who carries out activities in maintaining the system of registers of securities holders).

      Amendments introduced to foundation documents on specified grounds shall be invalid without the re-registration of the legal entity.

### **Branches, representative offices and other separate structural subdivisions of a legal entity**

      1. A branch is a separate subdivision of a legal entity located outside its location and carrying out all or part of its functions, including the representation functions.

      2. A representative office is a separate subdivision of a legal entity located outside its location and carrying out protection and representation of the interests of a legal entity that performs transactions and other legal actions on its behalf, except for the cases provided for by legislative acts of the Republic of Kazakhstan.

      3. Branches and representative offices are not legal entities. They are endowed with property by the legal entity that created them and act on the basis of the provisions approved by them.

      4. Legal entities have the right to establish other separate structural subdivisions, except for the cases established by laws.

      Another separate structural subdivision of a legal entity is a territorially separate subdivision, at the location of which there are stationary workplaces that perform part of the functions of a legal entity. The workplace is considered stationary if it is created for a period of more than one month.

      Another separate structural subdivision of a government agency is established in cases directly stipulated by laws.

      5. Heads of structural subdivisions (branches and representative offices) of public associations are elected in accordance with the procedure stipulated by the charter of the public association and the regulations on its branch or representative office.

      Heads of structural subdivisions (branches and representative offices) of religious associations are elected or appointed in accordance with the procedure stipulated by the charter of a religious association and the regulations on its branch or representative office.

      Heads of branches and representative offices of other forms of legal entities are appointed by the authorized body of a legal entity and act on the basis of its power of attorney.

### **The Liability of a Legal Entity**

      1. Legal entities, except for special financial companies, state Islamic special financial companies, financed by the founder of institutions and state enterprises, are responsible for their obligations with all their property.

      An institution shall be liable for its obligations with the funds at its disposal. When those are not sufficient the liability for the obligations of an institution shall be borne by its founder.

      A public enterprise shall be liable for its obligations with the funds at its disposal.

      When funds of a state owned institution are not sufficient, the liability for its obligations shall be borne by the Government of the Republic of Kazakhstan or the administrative-territorial unit by the means of the appropriate budget.

      Special financial company shall be responsible for its obligations in manner required by the legislation of the Republic of Kazakhstan on project financing or securitization.

      A state Islamic special financial company is responsible for its obligations with the money at its disposal.

      2. An founder (participant) of a legal entity or the owner of its property shall not be liable under its obligations, and the legal entity shall not be liable under obligations of founder (participant) of the legal entity, or of the owner of its property, except for the cases stipulated by this Code, other legislative acts, or the foundation documents of a given legal entity.

      3. The founder (participant) and (or) an official found guilty of intentional bankruptcy in the proceedings on administrative offenses or criminal proceedings, in case of insufficient funds from a legal entity following the results of bankruptcy proceedings, shall bear subsidiary liability to creditors.

      4. A legal entity shall bear liability before third persons under obligations assumed by a body of the legal entity in excess of its powers established by the foundation documents, except for cases stipulated in paragraph 11 of Article 159 of this Code.

### **Reorganization of a Legal Entity**

      1. Reorganization of a legal entity (merger, acquisition, division, separation, transformation) shall be carried out upon the decision of the owner of property or the body authorized by the owner, the founders (participants), and also the body authorized by the constituent documents of the legal entity, or by decision of the judicial bodies, stipulated by legislative acts of the Republic of Kazakhstan. Legislation of the Republic of Kazakhstan may provide for other forms of reorganization.

      Reorganization of a legal entity - voluntary pension savings fund, insurance (reinsurance) organization, Insurance Compensation Guarantee Fund, special financial company, payment institution is carried out taking into account the specifics stipulated by the legislation of the Republic of Kazakhstan on pensions, insurance and insurance activities, Insurance Compensation Guarantee Fund, project financing and securitization, payments and payment systems.

      Reorganization of the joint-stock companies shall be carried out taking into account the peculiarities established by the legislation act of the Republic of Kazakhstan concerning joint-stock companies.

      2. Reorganization may be conducted voluntarily or compulsorily.

      3. A compulsory reorganization may be effected pursuant to the decision of judicial bodies in the cases specified by legislative acts.

      If the owner of the property of a legal entity, a body authorized by it, its founders or a body of a legal entity which is authorized to reorganize it by the foundation documents does not perform the reorganization of the legal entity within the term defined in the decision of the judicial body, the court shall appoint an administrator of the legal entity and order him (her) to carry out the reorganization of the legal entity. From the moment of the appointment of the administrator all the powers associated with the management of the legal entity's business shall be transferred to him (her). The administrator shall act on behalf of the legal entity in the court of law, compile the dividing balance sheet and present it for the approval of the court together with the foundation documents of the legal entities which emerge as a result of the reorganization of the legal entities. The approval by the court of the indicated documents shall be the basis for the state registration of the newly-emerged legal entities.

      4. A legal entity shall be regarded to be reorganized, except for the case of reorganization in the form of acquisition, from the moment of the registration of the newly-emerged legal entities.

      When reorganizing a legal entity by merging with another legal entity, the first of them is considered to be reorganized from the moment of entering information on termination of activities of the affiliated legal entity into the National Register of Business Identification Numbers.

### **The Legal Succession when Legal Entities are Reorganized**

      1. When legal entities merge, the rights and obligations of each of them shall be transferred to the newly-emerged legal entity in accordance with the delivery acceptance act.

      2. When a legal entity is acquired by any other legal entity, the rights and obligations of the acquired legal entity shall be transferred to the latter in accordance with the delivery acceptance act.

      3. When a legal entity is divided, its rights and obligations shall be transferred to the newly-emerged legal entities in accordance with the dividing balance sheet.

      4. When one or several legal entities are appropriated out of a legal entity, the rights and obligations of the reorganized legal entity shall be transferred to each one of them in accordance with the dividing balance sheet.

      5 . When a legal entity of one is transformed into a legal entity of another (altering its organizational and legal form), the rights and obligations of the reorganized legal entity shall be transferred to the newly-emerged legal entity in accordance with the delivery acceptance act.

### **The Delivery Acceptance Act and Diving Balance Sheet**

      1. The property rights and obligations of a reorganized legal entity shall be transferred to the newly created legal entity: in accordance with the delivery acceptance act in the case of mergers and acquisitions; and in accordance with the dividing balance sheet in the case of divisions and appropriations.

      The delivery acceptance act and dividing balance sheet must contain the provisions concerning the legal succession with regard to all the obligations of the reorganized legal entity with regard to all its creditors and debtors, including the obligations which are challenged by parties.

      2. The delivery acceptance act and dividing balance sheet shall be approved by the owner of the property of the legal entity or by the body which adopted the decision to reorganize the legal entity, and submitted together with the foundation documents for the registration of the newly-emerged legal entities or the introduction of amendments to the foundation documents of existing legal entities.

      Failure to present an appropriate delivery acceptance act or dividing balance sheet together with the foundation documents and also the absence of provisions concerning legal succession with regard to the obligations of the reorganized legal entity in them shall entail the denial of the state registration of the newly emerged legal entities.

      3. Property (rights and obligations) shall be transferred to a legal successor at the moment of its registration, unless otherwise provided for by legislative acts or in the decision concerning the reorganization.

### **The Guarantees of the Rights of Creditors of a Legal Entity in the Case of its Reorganization**

      1. Owner of property of a legal entity or the body that made the decision to reorganize a legal entity shall be obliged to notify the creditors of the reorganized legal entity thereof in writing. The period for filing claims may not be less than two months from the receipt of notices by the creditors of the reorganized legal entity.

      2. In the case of division or appropriation the creditor of a legal entity under reorganization shall have the right to demand a premature termination of the obligations, the debtor under which is that legal entity and compensation of losses.

      3. If the dividing balance sheet does not provide for any possibility to identify the legal successor of the reorganized legal entity or the legal successor has not enough property to fulfill the obligations aroused prior to the reorganization the newly-emerged legal entities as well as the legal entity from which another legal entity was appropriated shall be jointly and severally responsible for the obligations of the reorganized legal entity before its creditors.

### **Grounds for the Liquidation of a Legal Entity**

      1. Upon the decision of the owner of its property or the body authorized by the owner, as well as the body of the legal entity authorized by the constituent documents, the legal entity may be liquidated for any reason.

      The liquidation of a legal entity - a voluntary funded pension fund, an insurance (reinsurance) organization, an Insurance Payment Guarantee Fund, a special financial company shall be carried out taking into account the features provided for by the legislation of the Republic of Kazakhstan on pensions, insurance and insurance activities, the Insurance Payment Guarantee Fund, project financing and securitization.

      2. A legal entity may be liquidated in accordance with a court decision in the following cases of:

      1) bankruptcy;

      2) recognition of registration of a legal entity as invalid, because of violations of legislation made in the formation of that legal entity, which cannot be eliminated;

      3) the absence of a legal entity, as well as the founders (participants) and officers, without which a legal entity may not operate for one year, at its location or the actual address;

      4) carrying out of activities in gross violation of the legislation:

      systematically carrying out of activities contradicting the statutory purposes of the legal entity;

      carrying out activities without a proper license or activities prohibited by legislative acts;

      5) in any other cases specified by legislative acts.

      3. The claim to liquidate a legal entity on the grounds indicated in the second paragraph of this Article, may be presented to the court by the state body to which the right to file such claims is granted by the legislative acts, and in the cases of bankruptcy - also by the creditor.

      By a court decision on liquidation of a legal entity, the obligation to liquidate a legal entity may be imposed on the owner of its property, the authority authorized by owner, the authority authorized to liquidate a legal entity by its constituent documents, the authority (person) that initiated the procedure for compulsory liquidation of a legal entity, or another authority (person), if the exercise of the functions of liquidating a legal entity by this authority (person) not contradictory to the Legislation of the Republic of Kazakhstan.

      4. If the value of property of a legal entity, in respect of which a liquidation decision is taken in the manner prescribed by paragraph 1 of this article, is not sufficient to satisfy the creditors' claims, such legal entity must be liquidated in accordance with the procedure established by the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy.

      5. Liquidation of certains of legal entities shall be possible, pursuant to a decision of the relevant body which is authorized by the state, on the grounds stipulated in legislative acts.

### **The Procedure for the Liquidation of Legal Entities**

      1. The owner of the property of the legal entity or the body that made the decision to liquidate the legal entity is obliged to immediately notify the judicial body or the State Corporation "Government for Citizens", which carries out the registration of legal entities, the state revenue body at the place of registration in writing or via an Internet resource with the use of an electronic digital signature about it.

      2. The owner of the property of a legal entity or a body which took the decision to liquidate the legal entity shall appoint the Liquidation Commission and establish the procedure and dates for the liquidation in accordance with this Code.

      From the moment that the Liquidation Commission is appointed, it shall acquire the powers associated with managing of the property and the business of the legal entity. The Liquidation Commission shall act in the court on behalf of the legal entity under liquidation.

      3. Liquidation committee publishes information on liquidation of a legal entity, as well as the procedure and deadline for filing claims by its creditors in periodicals distributed throughout the territory of the Republic of Kazakhstan. The period for filing claims may not be less than two months from the date of publication of the announcement of liquidation, except for cases of bankruptcy. In case of bankruptcy, the claims of creditors to the bankrupt should be declared not later than within a month from the date of publication of the announcement on the procedure for filing claims by creditors.

      A Liquidation Commission shall take steps to identify creditors and to recover debts, and also it shall give creditors written notice about the legal entity liquidation.

      4. Upon expiry of the period for creditors to file their claims, the Liquidation Commission shall compile the intermediary liquidation balance-sheet which shall contain information concerning the composition of the property of the legal entity under liquidation, the list of claims filed by the creditors, and also concerning the results of the examination of them.

      The intermediary liquidation balance-sheet shall be approved by the owner of the property of the legal entity or by the body which took the decision to liquidate that legal entity.

      When drawing up intermediary liquidation balance-sheet the property of the liquidating legal entity shall not include allocated assets, which are collaterals for the special financial company’s obligations in project finance, for the special financial company’s bonds during securitization, issued in accordance with the legislation of the Republic of Kazakhstan on project finance and securitization and mortgage property that is following collateral for the mortgage bonds: rights to claim under the agreement mortgage loan (including mortgage certificates), as well as government securities of the Republic of Kazakhstan in the cases where the ownership of the bonds came from their holders or transferred to them on transactions or on other grounds stipulated by legislative acts of the Republic of Kazakhstan. Specified property and leased assets shall be transferred by liquidation committee to the representative of mortgage bond holders, representative of creditors and (or) holders of bonds, representing, determined in accordance with the legislation of the Republic of Kazakhstan on project finance and securitization, to satisfy the claims of creditors.

      When drawing up an interim liquidation balance sheet, the property of a state Islamic special financial company being liquidated does not include the property sold to the state Islamic special financial company on the basis of a decision of the Government of the Republic of Kazakhstan. The specified property is transferred by the liquidation commission to the ownership of the Republic of Kazakhstan in the manner and within the terms determined by the Government of the Republic of Kazakhstan.

      5. If a legal entity under liquidation (except for state-owned institutions) is short of funds for the satisfaction of the creditors' claims, the liquidation commission shall carry out a sale of the assets of the legal entity in a public auction in accordance with the procedure established for the execution of court decisions.

      When selling pledged property included in the property of the legal entity being liquidated from a public auction, the requirements of pledge creditors are satisfied mainly to other creditors within the amount received from the sale of pledged property.

      In case of insufficiency of the sum from realisation of a subject of pledge the remained sum of requirements of the pledge creditor shall be satisfied in order of priority established by article 51 of the present Code.

      6. Payment of money to creditors of the liquidated legal person shall be made by the liquidation commission in order of priority established by article 51 of the present Code, according to the intermediate liquidation balance sheet, since the date of its approval. Features of distribution of property of joint-stock companies shall be established by the legislation of the Republic of Kazakhstan on joint-stock companies.

      If the property of the legal entity being liquidated contains pledged property, the pledge creditor shall have the right to satisfy its claims by accepting pledged property in kind.

      The Liquidation Commission within ten working days from the date of receipt of the notification from the pledge creditor on acceptance of the pledged property in kind carries out its assessment.

      The transfer of pledged property to the pledge creditor shall be made after the assessment, taking into account the requirements stipulated by parts five and six of this paragraph.

      If the estimated value of the pledged property, less the expenses incurred for the assessment of the pledged property, is greater than the claims of the pledge lender, the difference shall be returned by the pledge lender to the property of the legal entity being liquidated.

      If the estimated value of pledged property less expenses incurred for assessment of the pledged property is less than the claim of the pledge creditor, the claim of the pledge creditor in the amount of the difference shall be satisfied in order of priority established by Article 51 of this Code.

      7. Upon completion of the settlements with creditors, the liquidation commission shall compile the liquidation balance-sheet, which shall be approved by the owner of the assets of the legal entity, or by the body which adopted the decision to liquidate the legal entity.

      8. The assets which remain upon the satisfaction of creditors' claims shall be used for the purposes indicated in the foundation agreements.

      9. In the event that a public enterprise in liquidation is short of assets, and in the case of an institution in liquidation being short of monetary resources funds for satisfying the claims of creditors, the latter shall have the right to appeal to the court with an action to satisfy the remaining amount of claims at the expense of the owner of the assets of the enterprise or institution.

      10. Liquidation of a legal entity is considered complete, and a legal entity - ceased its activity after entering information about this in the National Register of Business Identification Numbers.

### **Article 51. Satisfying the Claims of Creditors**

      1. In case of liquidation of a legal entity, except for cases of bankruptcy, the claims of its creditors shall be satisfied in the following order:

      1) on a first-priority basis, the claims to discharge aliments withheld from wage and (or) other income as well as the claims of citizens to whom the enterprise in liquidation bears the liability for causing harm to life and health, by way of capitalizing appropriate periodic payments shall be satisfied;

      2) secondly - calculations shall be made for remuneration for labor and payment of compensation to persons who worked under an employment contract, payment of arrears for social contributions to the State Social Insurance Fund, mandatory pension contributions, deducted from salaries, mandatory professional pension contributions, on deductions and (or) contributions for mandatory social health insurance to the Social Health Insurance Fund, as well as payment of fees under copyright contracts, except for the cases when part of the amounts of claims in accordance with the legislative act of the Republic of Kazakhstan regulating bankruptcy matters shall be satisfied in the fifth turn;

      3) in the third place - creditors' claims on the obligations secured by the pledge of the property of the bankrupt being liquidated shall be satisfied within the limits of the security amount, except for the claims of creditors - holders of mortgage bonds secured by the pledge of the rights of claim under the housing mortgage loan agreements (including the pledge of mortgage certificates), state securities of the Republic of Kazakhstan in cases when the ownership of the said bonds has arisen for their holders or has passed to them under transactions or on other grounds, provided provided by legislative acts of the Republic of Kazakhstan, and also requirements of creditors which are satisfied according to a part of second point 5 or a part of second point 6 of article 50 of the present Code;

      4) on a fourth -priority basis, the tax and other compulsory payment debt shall be repaid.

      5) in the fifth turn - settlements with other creditors in accordance with the legislative acts of the Republic of Kazakhstan, as well as with the pledge creditors in cases provided for by part three of paragraph 5 and part six of paragraph 6 of Article 50 of this Code;

      2. The claims of each priority shall be satisfied upon the complete satisfaction of the claims of the previous priority.

      3. If assets of a legal entity in liquidation are not sufficient, they shall be distributed among the creditors of each relevant turn in proportion to the amounts of claims which are subject to satisfaction, unless otherwise is provided for by law.

      4. In the case of the refusal of the liquidation commission to satisfy the claims of a creditor or of an evasion from their consideration, the creditor shall have the right, prior to the approval of the liquidation balance-sheet of a legal entity, to appeal to the court with the action against the liquidation commission. Upon the decision of the court, the claims of the creditor may be satisfied at the expense of the remaining assets of the legal entity in liquidation.

      5. The assets which remain upon the satisfaction of the claims of creditors of the legal entity, shall be transferred to its owner or the founders (participants) which have corporeal rights to those assets or any obligatory rights to the legal entity, unless otherwise provided for by legislation or the foundation documents of the legal entity.

      6. The claims of creditors which are not satisfied because of a shortfall of assets of the legal entity in liquidation and also those which are not claimed before the approval of the liquidation balance-sheet shall be deemed to be satisfied.

      Also the claims of creditors which are not recognized by the liquidation commission shall be deemed to be cancelled, unless the creditor appeals to the court with the action, as well as the claims the satisfaction of which was denied to the creditors by the court.