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Organisational Legal Forms for Social Entrepreneurship under the Law of Kazakhstan

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Introduction of the legal term of Social Entrepreneurship into the law of Kazakhstan: The Law dated 24 June 2021 № 52-VII

- The Law dated 24 June 2021 № 52-VII on amendments into certain legislative acts concerning entrepreneurship, social entrepreneurship and mandatory medical insurance:
 - (1) Entrepreneurial Code amended with the notion and a legal term of social entrepreneurship (“SE”), indication of what are the main tasks / aims of the SE, pointing out and categorization of those who can be engaged in social entrepreneurship, setting out requirements to a Register of social entrepreneurs, as well as listing measures of the state support of SE (starting from January 2022);
 - (2) provisions to support SE similarly to small business in terms of a land use for construction added to the Land Code;
 - (3) the Budget Code amended to indicate that the state budget on it different levels shall include expenses to support SE;
 - (4) the Law on Local state governance and self-governance amended to oblige local authorities to implement measures of state support of SE in accordance with the Entrepreneurial Code;
 - (5) the Law on State Property amended to allow preferential terms to subjects of social entrepreneurship to lease state property without the right of redemption.
- Responds to global trends, reflects (to a certain extent) international and foreign practices.
- Important development, but it is only the first step to introduce SE into the law and reality of Kazakhstan.

Introduction of the legal term of Social Entrepreneurship into the law of Kazakhstan: the notion of SE and social entrepreneurs

- Art. 79-1 of the Entrepreneurial Code: **“Social entrepreneurship is the entrepreneurial activity of social entrepreneurship entities that contributes to the solution of social problems of citizens and society, carried out in accordance with the conditions provided for in Article 79-3 of this Code [categories of social entrepreneurs]”.**
- Individual entrepreneurs and legal entities (except for large businesses) can be considered as social entrepreneurs provided for that they are (i) recognized as such being registered in a Register of subjects of SE and (ii) categorized in the Register according to requirements of Art. 79-3 of the Entrepreneurial Code and the Rules related to formation and maintenance of the Register [*a draft exists, yet to be approved*].

Introduction of the legal term of Social Entrepreneurship into the law of Kazakhstan: main tasks of SE

- Arts. 73-2 and 73-3 of the Entrepreneurial Code provides for two-dimensional understanding of SE: (1) support of vulnerable and marginalized citizens through a system of inclusion and support of their productive and profitable employment or other activity and (2) encouraging entrepreneurs to participate in solution of social problems.
- Looks like the approach accepted in Poland where *“Policy schemes supporting social enterprises consist of two pillars: support measures addressing all enterprises that fulfil specific criteria, and support measures addressing social economy/non-profit organisations”*.
- Art. 232-1 of the Entrepreneurial Code lists types of state support of SE which, in addition to those provided to SME, include formation of infrastructure of such support, tax incentives, financial support for social entrepreneurs (including subsidizing the interest rate on loans issued by second-tier banks and for payment of lease of state property), preferential terms for lease of state property, information and methodological support of social entrepreneurs, assistance in interregional co-operation and search for business partners, organization of professional education and increase of qualification, provision of state grants for specific purposes).

Introduction of the legal term of Social Entrepreneurship into the law of Kazakhstan: deficiency and need for further development of legal framework

- Legal definition of SE is too general and insufficient. Need to be clarified based on the following understanding.
- SE is not a mere entrepreneurship; it is combination of business activity and pursue of social mission where the later is predominant.
- SE is a business (a focused systematic and continued during a considerably long period of time activity) not a project and therefore an adequate legal framework for SE is required, including developing legal forms for SE and effective models for financing social entrepreneurs.
- Clear separation of entrepreneurship and social entrepreneurship is needed (i.e. tasks listed in Art. 79-3 of the Entrepreneurial Code shall be changed and support measures for social entrepreneurs shall be separated from preferentials to entrepreneurs who simply “*participate in solution of social problems*”).

Definition of social entrepreneurs is required

- Common term used globally – “social enterprise”. The term exists, no unified legal definition.
- Polish colleagues mention significance of establishing clear legal definition (from the ‘main problem’ for development of SE to indication of academic and legislative consensus. The concern is shared.
- The EU proposal of common understanding of the notion of the social enterprise: it is an entity / organization : (1) for whom social [public] activity or pursuing the goal of the common good is the cause of commercial activity, often due to a high level of social innovation; (2) whose profits are mainly reinvested to achieve this social goal, (3) whose method of organization or ownership structure [in relation to the business] reflects the mission of the enterprise and involves the use of democratic principles or principles of participation, or with an emphasis on social justice. And these criteria shall apply in aggregate.
- Earlier in the document of the European Commission, the third of these criteria was set out in a different version, which seems less general, but contains some more specific requirements for the management structure of a social enterprise, in particular, management by a social entrepreneur based on accountability, transparency and a way of innovation in such issues such as the involvement of employees, consumers and stakeholders who are affected by the economic activities of the enterprise.
- Thus, on the basis of this definition, researchers identify three key characteristics of a social enterprise: the entrepreneurial nature of the activity, the social significance of the activity, and the specifics of the enterprise management structure. It is noted that the combination of these three characteristics can be expressed in different ways, but such a combination must be balanced for the purposes of defining the scope of social enterprises

A legal framework for social enterprises in Kazakhstan

- Proposed EU understanding of the social enterprise shall serve as a basis for legal definition of subjects of SE in Kazakhstan.
- A general term of a "subject of SE" is introduced in Kazakhstan. And it is not sufficient because: (i) it simply points to individual entrepreneurs and legal entities, (2) which are included in the Register of subjects of SE, and 3) whose activity is conducted to solve established tasks of SE (Art. 79-2 of the Entrepreneurial Code).
- A form of individual businessmen for SE (though it might not be an organization) seems acceptable. But it should better be not an individual entrepreneurship, but a social individual entrepreneurship (as a separately regulated form for SE).
- Allowing legal entities to be engaged in SE requires: (i) separate kind of legal entities (in addition to commercial and non-commercial organizations) and (ii) special organizational legal forms for such legal entities. Forms for SE existing in other countries have not been provided for in Kazakhstani law (although generally all of them are either corporate form, associations or foundations). *"It is recognised all over the world for being linked to four large historical families of organisations: cooperatives, mutual societies, foundations and associations which all have been characterised by the impulse of the most vulnerable social groups to respond to their own needs through self-help organization"*.
- The Civil Code shall be respectively amended because: (i) SE is not an activity of commercial organizations, (ii) forms of non-commercial organization may not help to pursue social inclusion and motivation of vulnerable groups of people, as well as it prevents use of many financing models for SE.
- The Entrepreneurial Code may gain some significance if develops appropriate legal basis and framework for SE.

To create legal forms for social enterprises: what to remember / to do

- SE is the business, not a project.
- Social mission is the first and prevailing. And the notion of common good (which is reflected in the Constitution of the Republic of Kazakhstan to a little extent) is to be developed in the law (both, in doctrine and legal framework).
- Inclusivity and motivation mechanisms for vulnerable and marginalized groups of people.
- Specific organizational and internal governance in a social enterprise: the management structure and business management system of such an enterprise is determined by collective property and the principles participation of the members (participants, founders) of the enterprise in its management as well as democratic way of decision-making.
- No capital investment relations exist in the most cases of formation of social enterprises. Special models of financing of those who are engaged in SE are to be elaborated and practiced.
- Innovation: special areas of application of innovative approaches in the implementation of SE are highlighted, which is specifically manifested in the management of the activity of a social entrepreneur [the notion of innovations defined in Art. 79-2 of the Entrepreneurial Code needs to be corrected: innovations shall primarily relate to managing activities of a social entrepreneurs, not to state governance, they should help to meet the purpose of a social enterprise].

Conclusion

- The ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference in June 2008, already recognized that *“productive, profitable and sustainable enterprises, together with a strong social economy and a viable public sector, are critical to sustainable economic development and employment opportunities”*.
- There is no consensus exists on what is the Social Economy. Some views suggest that *“the social and solidarity economy (SSE) is a concept that refers to enterprises and organizations, in particular cooperatives, mutual benefit societies, associations, foundations and social enterprises, which specifically produce goods, services and knowledge while pursuing economic and social aims and fostering solidarity”*.
- The European Economic and social committee defines Social Economy as: *«The set of private, formally-organised enterprises, with autonomy of decision and freedom of membership, created to meet their members’ needs through the market by producing goods and providing services, insurance and finance, where decision-making and any distribution of profits or surpluses among the members are not directly linked to the capital or fees contributed by each member, each of whom has one vote, or at all events take place through democratic and participative decision-making processes. The social economy also includes private, formally-organised organisations with autonomy of decision and freedom of membership that produce non-market services for households and whose surpluses, if any, cannot be appropriated by the economic agents that create, control or finance them»*.
- Whatever is the definition of Social Economy, (i) its development *“is a trend that can be observed in countries with different levels of economic development and different legal systems”*, (ii) no doubts that social enterprises are fundamental part of it, and (iii) Kazakhstan is to undertake much more in order to create appropriate legal framework and entire ecosystem for existence of Social Economy for sustainable growth and prosperous future.

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БОЛЬШОЕ СПАСИБО!

MANY THANKS!