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**LEGAL CHARACTERISTIC OF THE ILLEGAL BUSINESS**

**Abstract.** Within development of the market relations of one of fundamental basis of economic stability of the state is business activity. Business is the independent, initiative activity of citizens, oralman and legal entities, directed to receiving income by use of property, production, sale of goods, performance of work, rendering services, based on the right of private property (private business), or on the right of economic maintaining, or operational management of the state enterprise (state business). Business activity is carried out from name, risk and property responsibility of the businessman. Small business entities are individual entrepreneurs without formation of legal entity and the legal entities, carrying out business, with an average annual number of workers, no more than hundred people and average annual income not over three hundred thousand monthly settlement indicators, the corresponding financial year, determined by the law on the republican budget and operating for January 1. Subjects of microbusiness are the small business entities, carrying out private business with an average annual number of workers no more than fifteen people or average annual income not over thirty thousand monthly settlement indicators. Subjects of average business are the individual entrepreneurs and legal entities, carrying out business and average annual income over 300 000 three hundred thousand monthly settlement indicators, 3 000 000-fold MRP, inclusive with the number of workers from 101 to 250 persons. Subjects of large business are the individual entrepreneurs and legal entities, carrying out business and answering to one or two of the following criteria: the average annual number of workers is more than two hundred fifty people and (or) average annual income over three million monthly settlement indicator. The state gives not only support, but also control on the introduction of the unified register.

**Keywords:** business activity, private property, economic maintaining, operational management, state business, legal entity, natural person, sector of economy, subject of business, trade secret.

Entrepreneurial activity is determined by the civil legislation of the Republic of Kazakhstan as an independent, carried out at your own risk activities aimed at systematically profit from the use of property, sale of goods, works or services by persons registered as such in accordance with the law [1].

But how is interpreted the concept of “entrepreneurship” in the Encyclopedic Dictionary entrepreneur: “Entrepreneurship - leading independent activity of the citizens, aimed at making profit or personal income, carried out on his behalf, under your financial responsibility, or under the legal responsibility of a legal entity. An entrepreneur may carry out any economic activities not prohibited by law, including commercial mediation, purchase, consulting and other activities, as well as securities transactions” [2].

We can find very interesting characteristic of business, contained in the book “market entrepreneurship”: “Entrepreneur in the activity aims to provide the necessary combination or blend of the required personal benefit from the public good for profit. ... Entrepreneurship is an activity that is associated with an investment in order to generate profits through a combination of personal benefit to the public good” [3].

Having considered the above definition of entrepreneurship, we can identify the main features of the business to be considered at a subsequent discussion of the research. The most important features of the business, in our opinion, include:

- Autonomy and independence of economic entities; any entrepreneur is free to make a decision on a particular issue, of course, under the rule of law;

- Economic interest. The main objective of business - obtaining the maximum possible profit. At the same time, pursuing their very personal interests a high profit, the entrepreneur contributes to the achievement of public interest;

- Economic risk and responsibility. The most for any calculations verified the uncertainty, the risk remains.

These essential features of entrepreneurship are interrelated and operate simultaneously. Article 180 of the Criminal Code of the Republic of Kazakhstan has fixed "illegal entrepreneurship", which has included in chapter 22 of the Criminal Code of the country "the crimes in the sphere of economic activity".

The adoption of the Constitution of the Republic of Kazakhstan in 1995, enshrines the right to the free use of each of their abilities and property for entrepreneurial and other economic activities, prompting lawmakers to recognize that law is independent object of the criminal law protection.

From this point of view, it is clear the position of the new Criminal Code of the Republic of Kazakhstan (adopted in July, 2014) about the responsibility for the various forms of abuse in the sphere of economic activity. This Criminal Code of our country works since January, 2015. In the articles of the Criminal Code of the Republic of Kazakhstan described the symptoms of conduct "illegal business", "illegal banking activity", and "so called entrepreneurship".

The objectives of the criminal law are prevent the actual transfer of business activity in the sphere of illegal or "underground" economy, and accordingly, its withdrawal from the control of the state, which usually entails non-compliance with the legal obligations of entrepreneurs to the state and citizens.

Article 180 of the Criminal Code of the Republic of Kazakhstan is directed against this illegal business, which is, at least, caused large-scale damage or associated with the generation of income, or carried out with other qualifying features.

The business activity in the field of production, trade, services, production work, etc. is carried out the statutory registration or licensing procedure. Such activities may be widespread, but the criminal liability arises only in cases where this activity represents a significant danger to the public and prohibited by the criminal law.

Object of the crime are the social relations, governing entrepreneurial activities in good faith and protected by the criminal law. Professor Z. A. Neznamova believes that the generic composition of the object of the crime to the social relationships that provide the normal, established procedure for state business. The author agrees with this definition of a generic object of illegal business [4].

The immediate object of the crime are legitimate business interests, the normal state of the economy, the interests of customers, partners and other individuals and organizations, as well as the financial interests of the state as the result of illegal business, which creates the possibility of an uncontrolled state, its income tax authorities.

Supporting and protecting the business, government, at the same time, ensure its legality, it exercises control needed to ensure the interests of the state, society and the legitimate rights and interests of citizens. The state bans or restrictions on certain activities, failure of which makes these activities illegal [5].

Article 180 of the Criminal Code of the Republic of Kazakhstan "Illegal Business" consists of two parts. The first part of the article provides the basic structure of the offense, and the second - provides the qualifying circumstances. The main part of the offense is delimited by the character action.

Implementation of business activity without the registration or without a special permit (license) in cases where such a permit (license) is required, including any acts constituting the registration or permit entrepreneurial activity or inactivity, consisting of dereliction of duties imposed by law.

This procedure is characterized by three features: the commission described the wrongful act of socially dangerous consequences in the form of a large damage that is caused to the citizens, organizations or the state, and a causal link between the act and the damage incurred.

The objective side, along with the acts, also includes the removal of a large amount of income.

Identify signs of illegal business, the legislator has provided, and form the commission of the act:

- 1) Carry out business activities without registration;
- 2) Carry out business activities without a special permit (license);
- 3) Carry out business activities in violation of the licensing conditions.

The first form - entrepreneurial activity without registration. Under the entrepreneurial activity without registering means occupation without evidence produced in due course. The status of the entrepreneur acquired after registration. This is a mandatory requirement of the current legislation (Articles 25, 52, 53, 54 of the Civil Code of the Republic of Kazakhstan).

The order of business registration of the citizens defined in Art. 25 of the Civil Code of the Republic of Kazakhstan, the procedure for registration of business entities engaged in commercial activities, defined in Art. 53. A citizen has the right to engage in entrepreneurial activities without forming a legal entity from the moment of state registration as an individual entrepreneur. The head of a peasant (farmers) economy, carrying out activities without establishing a legal entity, an entrepreneur from the moment of state registration of a peasant (farmers) economy. Since then, the activity becomes legitimate enterprise. Therefore, it is illegal entrepreneurial activity without any registration or before the date of registration.

Implementation of business activity without registration: such activities prior to the submission of documents required for registration, or even after the filing of such documents, but before it was an act of state registration of such activities (if such act had taken place). Justified refusal to register the business makes last illegal.

Entrepreneurial activity is illegal and is recognized in the event that its activity is carried out in the period of appeal against the decision to refuse registration (before the entry into force of the court that the denial of registration to be unfounded, of course, provided that this decision took place) [6].

The offense is missing if entrepreneurial activity is registered in accordance with the law changes and additions to the constituent documents, or changed the legal form of the company (except for enterprises with the foreign investment).

The second form of the analyzed crime – carry out business activities without a special permit in cases where such permission is required. An entrepreneur may carry out any activities, as defined in the Charter. The only exceptions are for those activities, which are prohibited by the law of the Republic of Kazakhstan.

Certain activities require a special permit. In Kazakhstan, the main list of these activities and the procedure for obtaining a license contained in the decree of the Government of the Republic of Kazakhstan dated January 14, 2016 “On licensing of certain activities” [7]. Resolution of the Government approved a list of activities licensed in the territory of regions, cities of regional importance, which include: medical practice (except for the treatment of patients suffering from infectious and oncological diseases), public demonstration of films and videos, the organization and content of sweepstakes and gambling institutions, activities for the production of food, veterinary practice and pharmaceutical activity, motor activity of passenger in the maintenance and operation of gas stations, tourist and excursion activities, etc.

Licensing of specific activities provided by separate laws and regulations of the Republic of Kazakhstan. For example, the law “On private detective and security activities”, Law of the Republic of Kazakhstan “On Education”, the Law “On psychiatric care and guarantees of citizens' rights in its provision” and others. In accordance with the requirements of law, entrepreneurial activity is illegal if carried out at all without a license or during the execution of the license prior to its receipt.

The third form of the analyzed crime is to carry out business activities in the violation of the licensing conditions. Breach of license – it's non-compliance in the implementation of business requirements specified in the special permit (license). This form of crime will occur if a person with a license for a certain kind of activity will begin to engage in other activities. For example, a doctor with a license to engage in private medical practice begins to treat patients suffering from cancer or veterinarian having a license to engage in veterinary practice. Of course, it treats people. Violation of the licensing terms can be expressed in the business in the area, where the activity permitted by license or after the expiration of the license prior to its extension.

However, the commentary to the Criminal Code of the Russian Federation A. E. Zhalinsky believes that such a sign of illegal business as activities not specified in the license, it is necessary to refer to a breach of licensing conditions. We believe that the above topic refers to business without a special permit.

If the employer for violations of the law deprived of the license, the continuation of its business activities should be classified as a business without the special permit.

It is well known, that the crime is an alternative structure. It will be completed or after the effects have come in the form of large-scale damage to the citizens, organizations or the state. Therefore, the construction of the objective side of the crime being analyzed by the material and formal elements.

Illegal business, causing major damage to the citizens, organizations or the state, is the composition of the material, since the crime is considered to be completed as soon as major damage. Illegal business, combined with the generation of income in a large amount is formal structure, and therefore considered as completed from the moment of committing any of the specified disposition. Article 180 of the Criminal Code of the Republic of Kazakhstan involves the illicit extraction of income in a large amount. Under this article was recognized a large amount of income, the amount of which exceeds two hundred times the minimum wage. However, the definition of large-scale damage caused by illegal business to individuals, organizations or the state, has not received a legal interpretation and is estimated category.

Recognition caused by an individual entrepreneur or a commercial organization major damage depends on their financial position, extent and quality of the property caused by physical, organizational and other damage. Recognizing the damage major decided by the court, based on the specific circumstances of the case. Below we take a look on especially illegal business qualifications related to the definition of major damage.

The subjective aspect of illegal business is determined by the fault of a direct or indirect intent. The perpetrator is aware that engaged in business without registering, or carries on business, for employment which requires a special permit (license) or that is engaged in this activity in violation of the licensing conditions, foresees the possibility or inevitability of causing large-scale damage to the citizens, organizations or the state, and wishes or deliberately admits causing such damage, or is indifferent to it. The offender may also be aware that extracts from illegal activities income on a large scale and wish the extract.

So, if it's illegal business, causing large-scale damage to the citizens, organizations or the state, is directed into a person in any form of intent. For example, the possible harm to human health as a result of negligence employment medical practice in violation of licensing conditions.

The subject of the crime can be both general and specific. The subject of the crime can be imputed to any individual, i.e., the citizen of the Republic of Kazakhstan, a foreigner or a stateless person who is required to register as an entrepreneur or to obtain the appropriate license to engage in certain activities. The subject – a person capable of the actions to acquire and exercise civil rights, create for themselves civic duties and perform them (civil capacity), including carrying out business activities.

The subject of the business activities in the case of violation of the licensing terms can lose the license. In the Republic of Kazakhstan making business with the individual person is possible only if he has almost achieved eighteen years old (Art. 20 of the Civil Code of the Republic of Kazakhstan).

Professor Z. A. Neznamova believes in entrepreneurial activity without registration of the subject of the crime may be any person who has attained 16 years of age. The legal literature concerns age limit culprit (sixteen or eighteen years of age) lost the urgency in connection with the introduction of the civil law concept of “emancipation”.

Part 2 of Art. 180 of the Criminal Code define aggravating circumstances of illegal business. They are: illegal business activity by an organized group, gaining income on a large scale, entrepreneurial activity by a person previously convicted for illegal enterprise or illegal banking activity.

According to Art. 35 of the Criminal Code of the Republic of Kazakhstan, the crime committed by an organized group, if it was committed by a stable group of the persons, who combined beforehand to commit one or more crimes. This variety is peculiar complicity professionalism and stability. Organized group is characterized by mandatory signs, which should include the preliminary agreement and sustainability.

Sustainability refers to the presence of an organized group of permanent links between the members and the specific methods of the preparation or commission of one or several crimes. On the stability of this criminal association indicates the duration of its existence in time. This may be the time elapsed since the formation of the group until the moment of the first of its participants planned crimes. This may be a period of time within which its members committed crimes. At the same time the length of the existence of such a group over time indicates a high degree of consistency in the criminal conduct of its participants.

In addition with the high degree of coherence and stability of the relations between the members of an organized group could indicate the existence of a plan of criminal activity labeled it the roles and functions of individual acts and operations. At the same time sustainability of links between the members of an organized group reflects not only the high degree of consistency of their behavior, but also the level of isolation, isolation from society, the criminal formation (with its own rules of communication, chain of command, discipline, etc.).

In the conclusion we would like to note, that each organized group is no longer just a participant in it, as a member regardless of the location and functions allocated to it in the implementation of the plan of criminal activity. This conclusion is confirmed by the fact that the law does not limit the participation in an organized group, or only the performing co-member actions, as is the case with “a group of persons”.

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#### ЗАҢСЫЗ КӘСІПКЕРЛІКТІҢ ҚҰҚЫҚТЫҚ СИПАТТАМАСЫ

**Аннотация.** Нарықтық қатынастар дамуының шеңберінде мемлекеттің экономикалық тұрақтылығының іргелі негіздерінің бірі кәсіпкерлік қызмет болып табылады. Кәсіпкерлік, жеке меншік құқығына (жеке кәсіпкерлік) немесе шаруашылық жүргізу немесе мемлекеттік кәсіпорындарды жедел басқару құқығына негізделген (мемлекеттік кәсіпкерлік), мүлікті пайдалану, тауарларды өндіру, сату, жұмыстарды орындау, қызметтер көрсету арқылы таза табысты алуға бағытталған азаматтар, оралмандар мен заңды тұлғалардың бастамашыл, жеке қызметі болып табылады. Кәсіпкерлік қызмет кәсіпкердің тәуекелдікке және мүліктік жауапкершілігіне байланысты жүзеге асырылады. Шағын кәсіпкерлік субъектілері республикалық бюджет туралы заңмен бекітілген және тиісті қаржы жылының 1 қаңтарында сәйкес келетін орташа айлық табысы айлық есептік көрсеткіштің үш мыңнан бір бөлігінен және орташа айлық қызметкерлер саны жүз адамнан аспайтын заңды тұлғалар және заңды тұлғаларды құрмай кәсіпкерлікті жүргізетін жеке кәсіпкерлер болып табылады.

Микрокәсіпкерлік субъектілері болып қызметкерлерінің орташа жылдық саны он бестен немесе орташа айлық табысы айлық есептік көрсеткіш отыз мың аспайтын жеке кәсіпкерлікті жүзеге асыратын шағын кәсіпкерліктің субъектілері табылады. Орта кәсіпкерлік субъектілері кәсіпкерлікті жүргізетін қызметкерлер саны 101 адамнан 250 адамға дейін орташа жылдық табысы АЕК 3 000 000 еселенген мөлшерін қосқандағы орташа айлық есептік көрсеткіштің 300 000-астам табысы бар жеке кәсіпкерлер және заңды тұлғалар болып табылады. Ірі кәсіпкерлік субъектілері кәсіпкерлік қызметті жүзеге асыратын және келесі критерийлердің біреуін немесе екеуін қанағаттандыратын жеке кәсіпкерлер мен заңды тұлғалар болып табылады: қызметкерлердің орташа жылдық саны екі жүз елуден асады және (немесе) орташа жылдық табысы айлық есептік көрсеткіштің үш миллион еседен астамын құрайды. Мемлекет тек қана қолдау көрсетіп қана қоймайды, сонымен қатар бірыңғай тізілім енгізу арқылы бақылауды жүзеге асырады.

**Түйін сөздер:** кәсіпкерлік қызмет, жеке меншік, шаруашылық жүргізу, жедел басқару, мемлекеттік кәсіпкерлік, заңды тұлға, жекетұлға, экономика секторы, кәсіпкерлік субъектісі, коммерциялық құпия.



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## **ПРАВОВАЯ ХАРАКТЕРИСТИКА НЕЗАКОННОГО ПРЕДПРИНИМАТЕЛЬСТВА**

**Аннотация.** В рамках развития рыночных отношений одной из фундаментальных основ экономической стабильности государства является предпринимательская деятельность. Предпринимательством является самостоятельная, инициативная деятельность граждан, оралманов и юридических лиц, направленная на получение чистого дохода путем использования имущества, производства, продажи товаров, выполнения работ, оказания услуг, основанная на праве частной собственности (частное предпринимательство) либо на праве хозяйственного ведения или оперативного управления государственного предприятия (государственное предпринимательство). Предпринимательская деятельность осуществляется от имени, за риск и под имущественную ответственность предпринимателя. Субъектами малого предпринимательства являются индивидуальные предприниматели без образования юридического лица и юридические лица, осуществляющие предпринимательство, со среднегодовой численностью работников не более ста человек и среднегодовым доходом не свыше трехсот тысячекратного месячного расчетного показателя, установленного законом о республиканском бюджете и действующего на 1 января соответствующего финансового года. Субъектами микропредпринимательства являются субъекты малого предпринимательства, осуществляющие частное предпринимательство, со среднегодовой численностью работников не более пятнадцати человек или среднегодовым доходом не свыше тридцати тысячекратного месячного расчетного показателя. Субъектами среднего предпринимательства являются индивидуальные предприниматели и юридические лица, осуществляющие предпринимательство, и имеющий среднегодовой доход свыше 300 000 трехсот тысячекратного месячного расчетного показателя, 3 000 000-кратного МРП включительно, с количеством работников от 101 до 250 человек. Субъектами крупного предпринимательства являются индивидуальные предприниматели и юридические лица, осуществляющие предпринимательство и отвечающие одному или двум из следующих критериев: среднегодовая численность работников более двухсот пятидесяти человек и (или) среднегодовой доход свыше трех миллионно кратного месячного расчетного показателя. Государство оказывает не только поддержку, но также и осуществляет контроль путем введения единого реестра.

**Ключевые слова:** предпринимательская деятельность, частная собственность, хозяйственное ведение, оперативное управление, государственное предпринимательство, юридическое лицо, физическое лицо, сектор экономики, субъект предпринимательства, коммерческая тайна.

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