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PROBLEMS OF LEGAL REGULATION OF TRANSACTIONS ON MERGERS AND ACQUISITIONS IN THE BANKING SECTOR OF THE REPUBLIC OF KAZAKHSTAN

Abstract. The article is devoted to the research of certain problems of legal regulation of mergers and acquisitions in the banking sector of the Republic of Kazakhstan on the basis of theoretical views on the concepts, features and motives of bank mergers and acquisitions and analysis of existing legislation. In particular, the authors draw attention to the problem of the discrepancy between the provision of the Civil Code of the Republic of Kazakhstan concerning the forms of reorganization to the Constitution of the Republic of Kazakhstan, as well as the lack of a unified approach in regulating relations in the field of reorganization of banks by the existing legislation. The urgency of the study of these issues is beyond doubt, since these aspects are analyzed from the position expressed by the President of the Republic of Kazakhstan on the "resetting" of the financial sector of the country in the Addresses to the Nation in 2017 and 2018, the provisions of the Strategic Development Plan of Kazakhstan until 2025 and the Program for Improvement of the Financial of the Banking Sector of the Republic of Kazakhstan carried out by the National Bank of Kazakhstan.

Based on the study of the mentioned problems, the authors propose recommendations for improving the current legislation in this field. The article also touches upon the issues of regulating the economic responsibility of bank owners, since regulation of these issues directly affects the financial position of banks and the achievement of management objectives of banks, including the success of mergers and acquisitions deals.

Key words: bank, banking sector, stability of the banking sector of the Republic of Kazakhstan, banking merger and acquisition deals, M&A deals in banking sector, bank reorganization, bank insolvency, advantages of banking transactions on merger and acquisition, economic responsibility of bank shareholders, banking legislation of the Republic of Kazakhstan.

Introduction. The concepts and advantages of mergers and acquisitions of banks are increasingly being discussed in Kazakhstan's business and scientific circles, the media and, of course, in state authorities and government. Concerning the attractiveness of using this mechanism for the purposes of achieving the stability of the banking sector, several scientific doctrines have been developed, which have been studying in details in economic science [1, 2]. According to international practice conducting mergers and acquisitions deals can be also considered as one of the instruments for resolving bank insolvency [3], since mergers and acquisitions all have one underlying motive: to protect or improve the strength and/or profitability of the dominant company, in other words, to maximize shareholder wealth [4]. In terms of banks such kind of deals lead a number of positive consequences in the form of improving the bank's financial stability through increase of profitability and market value of the bank, increase of the market share through expansion of the geographical boarders of providing banking services including extension of the branch network, diversification of banking products, increase in customer base, as well as more efficient management. Potential risks relate to the problems of integration and banks' reputation [5]. From this perspective, researchers are currently actively studying this subject on the examples of transactions on bank M&A especially evaluating the magnitudes of these costs and benefits [6].

It should be also noted that banking M&A deals are made not only at national level but they have been becoming as one of the international mechanisms of increasing profitability of shareholders. That is

why these issues are of increasing importance given the upward trend in both number and value of financial sector mergers, and increasing financial sector concentration levels in countries throughout the world [7].

Starting in the early 1990s, the consolidation within the international banking industry has steadily increased, leading to the present state of highly concentrated markets with just a few dominating players [8] and this tool is considered as a modern method of global credit risk management within every country and internationally [9].

President of the country in his addresses to the nation of Kazakhstan for 2017 [10] and 2018 [11], Strategic Plan of the Republic's Development until the year 2025 [12] stresses the need to provide stability of the bank sector, one of the effective measures among which is to improve the current legislation by exclusion of gaps and contradictions, and introducing additions and amendments to some legislative acts providing the norms aimed at improving the bank insolvency settlement regime particularly. That is why this research aimed at finding out the problems in legal framework regulating the issues of M&A deals conducting is actual and in demand. In addition, these issues are poorly studied and insufficiently developed due to the relatively short period of independence of the state itself and the development of its financial system.

It should be noted that the economic mechanisms of mergers and acquisitions have been reflected through the legal regulation of relations in the sphere of reorganization of banks in the forms of merger and acquisition in the legislation of the Republic of Kazakhstan, the peculiarities of which will be considered from the point of view of critical analysis in this paper.

The legal basis for the regulation of the reorganization processes has a significant role in achieving the above objectives, however, the legislation in this area is imperfect and requires its revision and improvement. At the same time, the legal regulation of the reorganization of banks has its own significant features due to the exclusivity of the legal status of banks [13], since it requires analysis and consideration of not only the civil legislation that directly regulates these issues, but also the banking legislation of the Republic of Kazakhstan, which establishes a number of requirements, non-observance of which entails the inability to commit such reorganization of such financial organizations, as well as the requirements of the legislation of the Republic of Kazakhstan in the field of competition protection.

We would like also to take attention to the one of research of the various takeover legislations of 41 Western and developing economies. The authors of this research expect that merger laws have an important impact on merger activity. They distinguish between merger laws that positively and negatively affect the frequency of acquisitions in a given country. Merger laws stimulating mergers may have beneficial effects when the industry concentration is not at its optimal level. They can then create efficiency gains from integration. However, stricter laws can have negative implications as well by preventing some profitable acquisitions from succeeding. The authors conclude that national laws do not have a significant effect on domestic or cross-border merger flows, after controlling for time effects and market conditions [14]. To our mind, it can be explained by the nature of the law to be just a form of regulation of economic relations. At the same time the quality of legislation can contribute achieving the benefits of bank transactions on mergers and acquisitions, supporting stability of financial system and development business initiatives due to the regulating and protective nature of the law, since it stipulates the main framework or the order of execution of transactions.

Thus, this paper is devoted to some problems in legal regulation in the field of bank reorganisation in the light of conducted policy of the Republic of Kazakhstan. These issues have not been well studied, since the financial system of the country is in the process of development, the country is a developing state with about 30 years of independence. Current state of bank sector of economy demonstrates the problems including bank insolvency, which have to be eliminated with proper legal regulation either.

Methods of research. For the purposes of identifying problem aspects in the legal regulation of the reorganization of banks in the form of mergers and acquisitions and the elaboration of sound recommendations and proposals for its development and improvement, an analysis of the program documents for the development of the Republic of Kazakhstan, the current legislation of the Republic of Kazakhstan was carried out, as well as domestic and foreign literature devoting these issues was reviewed and analyzed.

As mentioned above, the President of the Republic of Kazakhstan defined the task of "resetting" the country's financial sector in his address to the nation of Kazakhstan "Third Modernization of Kazakhstan:

Global Competitiveness" dated January 31, 2012. The National Bank of Kazakhstan, as the body responsible for regulating, controlling and supervising the financial market and financial organizations, and helping to ensure the stability of the financial system, was instructed to work out a set of measures to improve the banking sector, which involves clearing the balance sheets of banks from "bad loans" and, if necessary, ensuring their capitalization by shareholders. To achieve this objective, the National Bank should have a greater scope of powers in order to perform operational control over the state of banks and to take necessary actions against banks without waiting for a formal breach on their part on the ground of a risk-based approach [15].

The task of "resetting" the financial sector was repeated in the Address of the President to the nation of Kazakhstan in 2018, where the Head of the state indicates the need to complete the cleaning of the bank portfolio from "bad" loans, drawing attention to the fact that the owners of banks should bear economic responsibility recognizing the losses [16].

It should be noted that on 30 June 2017, the NBK launched a Program for Improvement of the Financial Stability of the Banking Sector of the Republic of Kazakhstan [17] aimed to improve the financial sustainability of ailing banks. The program seeks to maintain stability and confidence in the banking system and ensure that NPLs are adequately provisioned and do not pose a threat to the overall financial system [18]. According to the data of this Program as of July 1, 2017, the loan portfolio (main debt) of the banking sector amounted to KZT 15,533.3 billion. Overdue loans accounted for 28.3% (KZT 4,392.3 billion) of the loan portfolio, with overdue loans exceeding 90 days (NPL) accounting for 10.7% (KZT1,663.0 billion). In accordance with the Program, the National Bank should identify problem banks on the basis of effective supervision and implement an effective regime for resolving insolvent banks. In order to restore and/or settle non-viable banks within the framework envisaged by the Program, it is proposed particularly to apply bank reorganizations through mergers and acquisitions .

What are merger and acquisition? Merger is the corporate combination of two or more independent business corporations into a single enterprise, usually the absorption of one or more firms by dominant one. A merger may be accomplished by one firm purchasing the other firms assets with cash or its securities or by purchasing the other shares or stock by issuing its stock to the other firms' shareholders in exchange for the shares of the acquired firm. Acquisition occurs when one entity takes ownership of another entity's stock equity interest or assets. It's the purchase of one business or company by another company or business entity [19]. From the position of jurisprudence, the merger of legal entities is the establishment of a new legal entity with the transfer of all rights and obligations of two or more legal entities to it and the termination their activities. The acquisition of a legal entity is the termination of one or more legal entities with the transfer of all its or their rights and obligations to another legal entity [20]. This difference in the forms of reorganization entails a difference in the implementation of the reorganization process. A legal entity is considered as reorganized, except for cases of reorganization in the form of acquisition, from the moment of registration of newly emerged legal entities. Thus, when reorganizing a legal entity by acquisition with another legal entity, the first of them is considered to be reorganized from the moment of entering the information on the termination of the activities of the acquired legal entity into the National Register of Business Identification Numbers (Clause 4, Article 45 of the Civil Code of the Republic of Kazakhstan). During reorganization, all rights and obligations of the reorganized legal entity or a part thereof are transferred to other subjects of law, i.e. there is a universal succession [21].

The main legal act, which provides the basic framework for the establishment, functioning, reorganization and liquidation of legal entities as subjects of civil legal relations, is the Civil Code of the Republic of Kazakhstan [22]. According to clause 1 Article 45 of this Code, the reorganization of a legal entity (merger, acquisition, division, separation, transformation) is carried out by decision of the owner of his property or the body authorized by the owner, founders (participants), as well as the body authorized by the constituent documents of the legal entity, or by decision of the judiciary in cases provided for by legislative acts of the Republic of Kazakhstan. Legislation of the Republic of Kazakhstan may provide for other forms of reorganization. At the same time, the Civil Code also provides for the provision that the reorganization of joint-stock companies is carried out taking into account the specifics established by the legislative act of the Republic of Kazakhstan on joint-stock companies. Taking into account that banks can be established in the organizational and legal form of the joint-stock company (cl.1 Art.15 of the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan" [23]), the

provisions of the Law of the Republic of Kazakhstan "On Joint-Stock Companies" [24] on these issues are to be considered and analyzed. Turning to this Law, we find the provision that the company's reorganization (merger, acquisition, division, separation, transformation) is carried out in accordance with the Civil Code of the Republic of Kazakhstan, taking into account the specifics established by the legislative acts of the Republic of Kazakhstan (cl.1 Art.81). The reference norm to the legislative acts of the Republic of Kazakhstan above leads to the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan", in cl. 1 Article 60 of which there is a provision that voluntary reorganization (merger, acquisition, division, separation, transformation, converting) of banks (bank holdings) can be carried out by decision of the general meeting of shareholders (participants) with the permission of the authorized body. The procedure for issuing permission for a voluntary reorganization of a bank (bank holding) or refusal to issue this permit is determined by a regulatory legal act of the authorized body.

By analyzing and literally interpreting the norms of the above-mentioned legislative acts, it can be concluded that the Civil Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Joint Stock Companies" do not provide for such form of reorganization as converting envisaged by the Law of the Republic of Kazakhstan "On Banks and Banking Activity". And if the Civil Code of the Republic of Kazakhstan contains a blanket rule that other forms of reorganization may be envisaged by the legislation, then the Law of the Republic of Kazakhstan "On Joint Stock Companies" indicates that only the specifics of reorganization in the forms listed in it are established by legislative acts of the Republic of Kazakhstan.

The analysis of these norms reveals several problems: the first problem is that the forms of reorganization (according to the Civil Code of the Republic of Kazakhstan) and the specifics (the Law of the Republic of Kazakhstan "On Joint Stock Companies") can be established in the first case in legislation, and in the second case in legislative acts. This is illogical, since the forms of reorganization is the basic concept specifics of which can be envisaged in legislation and not vice versa, and this demonstrates the contradiction of legislative acts. Taking into account that the codes occupy a higher level in the hierarchy of normative legal acts [25], it would be fair to say that namely the legislation of the Republic of Kazakhstan regulates relations in the field of reorganization of legal entities, and the contradiction of acts is eliminated by applying the rule on the hierarchy of norms of regulatory legal acts. At the same time, the reorganization of legal entities involves the solution of a number of issues of succession, within the framework of which the rights and obligations of the reorganized legal entities are transferred.

In legal literature, the concept of reorganization is viewed as a way to terminate existing legal entities with the simultaneous emergence of new legal entities and the transfer of rights and obligations of the former to the second in the order of universal succession [26]. We can agree with this definition with a certain adjustment regarding the specifics of reorganization in the form of acquisition stipulating by the legislation of the Republic of Kazakhstan. As it was mentioned above, under cl.4 Art.45 of the Civil Code of the Republic of Kazakhstan a legal entity is considered as reorganized from the moment of registration of newly emerged legal entities excepted reorganization in the form of acquisition. When reorganizing a legal entity by acquisition with another legal entity, the first of them is considered to be reorganized from the moment of entering the information on the termination of the activities of the acquired legal entity into the National Register of Business Identification Numbers. Thus, as applied to the legislation of the Re-public of Kazakhstan, such form as acquisition does not entail the establishment of a new legal entity, but is carried out by transferring the rights and duties of the entity being acquired in the succession to the organization to which the acquisition is directly effected.

At the same time, according to cl.3 of Article 61 of the Constitution of the Republic of Kazakhstan, such important social relations and fundamental principles and norms, which relate to the legal personality of legal entities, civil rights and freedoms, obligations and liabilities of legal entities , as well as issues of ownership and other proprietary rights should be regulated directly by laws as normative legal acts of the Parliament of the Republic of Kazakhstan adopted under the special stipulated procedure. As is known, law (as a normative legal act) and legislation (as a set of normative legal acts) are not identical concepts. In this regard, it can be concluded that the fundamental issues of reorganization and, above all, its forms should be regulated exclusively by normative legal acts in the form of laws, and clause 1 of Article 45 of the Civil Code of the Republic of Kazakhstan has to be appropriately amended in order to eliminate the contradiction to the Constitution as the basic law of the state. It should be also noted that the above-

mentioned problem of the discrepancy between the Civil Code of the Republic of Kazakhstan and the Constitution of the Republic of Kazakhstan has not only a technical nature of the inconsistency of the current legislation, but also provides the possibility of regulating the reorganization of legal entities by subordinate legislation. This may be used as a soil for corruption.

The contents of the above-mentioned norms of the Civil Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Joint Stock Companies" and the Law of the Republic of Kazakhstan "On Banks and Banking Activities in the Republic of Kazakhstan" involve various forms of reorganization of legal entities, since the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan" specifies such a form of reorganization as converting of banks, which is not known to the Civil Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Joint Stock Companies". The reference norm of the Law of the Republic of Kazakhstan "On Joint Stock Companies", which contains a provision that specifics of reorganization in the forms listed in this Law are also established by legislative acts of the Republic of Kazakhstan, doesn't eliminate this discrepancy, since the single possible organizational and legal form of establishment of bank is joint stock company, which doesn't provide for such form of reorganization as converting even it relates just to banks. Thus, it seems necessary to amend the Law of the Republic of Kazakhstan "On Joint-Stock Companies" specifying also such a form of reorganization as converting, which can be applied exclusively to banks.

The Law of the Republic of Kazakhstan "On Joint-Stock Companies" provides for the concept of merger of entities (Clause 1 of Article 82) as the emergence of a new entity by transferring all property, rights and obligations to it on the basis of a merger agreement and in accordance with the deed of conveyance of two or more entities with the termination of their activities. The charter capital of an entity established by the merger of companies is equal to the sum of equity capital of the entities being reorganized minus the investments of one reorganized company into another reorganized company.

Article 83 of this Law establishes the concept of acquisition of an entity to another entity as cessation of the activities of the acquired company with the transfer of all the property, rights and obligations of the acquired company to another company in accordance with the deed of conveyance.

After the acquisition of all shares of the acquired entity, these shares are canceled, and the property, rights and obligations of the acquired company are transferred to the company to which the acquisition is made in accordance with the deed of conveyance signed by the heads of the executive body and the chief accountants of the reorganized companies and certified by the seals of the entities (if any).

The current legislation provides for the possibility of voluntary and forced reorganization. Let's consider the features of voluntary reorganization of banks.

The reorganization of banks has its own distinctive features stipulated in Articles 60, 60-1, 61 of the Law of the Republic of Kazakhstan "On Banks and Banking Activities in the Republic of Kazakhstan", since in addition to the decision of the General Meeting of Shareholders (Participants) for the reorganization requires the permission of the authorized body, i.e. the National Bank of the Republic of Kazakhstan. Thus, the decision of the General Meeting of Shareholders (Participants) of the bank (bank holding) is the basis for an application to the authorized body for obtaining permission to conduct a voluntary reorganization.

The following documents must be attached to the application for obtaining the permission of the authorized body to carry out the voluntary reorganization of the bank (bank holding):

a) decision of the supreme body of the bank (bank holding) on its voluntary reorganization;

b) documents describing the expected conditions, forms, procedure and terms of voluntary reorganization of the bank (bank holding);

c) financial forecast of the consequences of voluntary reorganization, including the bank's (bank holding's) settlement balance sheet after its voluntary reorganization and/or legal entities formed as a result of voluntary reorganization of the bank (bank holding).

In case of reorganization in the form of acquisition, an agreement on acquisition should be attached to this list of documents. The agreement on acquisition should be signed by the first heads of executive bodies of reorganized banks on the basis of a decision taken at the joint General Meeting of Shareholders of reorganized banks in accordance with the Law of the Republic of Kazakhstan "On Joint Stock Companies".

An application for permission to conduct a voluntary reorganization of a bank (bank holding) must be considered by the authorized body within two months from the date of its receipt. Upon receipt of the permit for voluntary reorganization from the National Bank, the reorganizing bank (bank holding) is obliged to inform all its depositors, customers, correspondents and borrowers about the forthcoming changes by publishing the relevant announcement in the mass media including the Internet resource of the bank within two weeks from the date of receipt of such permission.

The procedure of state registration or re-registration of legal entities establishing as a result of reorganization is carried out in accordance with the legislative act of the Republic of Kazakhstan – the Law of the Republic of Kazakhstan dated April 17, 1995 No. 2198 "On State Registration of Legal Enti-ties and Account Registration of Branches and Representative Offices" [27].

The listed terms for changing the legal status of a bank (bank holding) are common for all forms of bank reorganization, but they are not applicable to non-residents of the Republic of Kazakhstan if these companies are bank holdings or entities having the features of a bank holding when one of the following conditions is fulfilled:

– the availability of an individual credit rating not lower than the A rating of one of the rating agencies, the list of which is set by the authorized body, as well as written confirmation from the financial supervision authority of the country of origin of the bank holding, the entity having the features of a bank holding, which confirms that these entities – non-residents of the Republic of Kazakhstan are subject to consolidated supervision;

– the availability of an agreement between the authorized body and the relevant supervisory authority of the foreign state on the exchange of information, as well as the minimum required rating of one of the rating agencies. The minimum rating and the list of rating agencies are established by the normative legal act of the authorized body [28].

Article 60-1 of the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan" provides for features of voluntary reorganization of banks inherent just for the form of bank acquisition, however it is called "Features of Voluntary Reorganization of Banks". This demonstrates the imperfection of legal technique.

As it was mentioned above, the National Bank of the Republic of Kazakhstan may refuse to issue a permit for the voluntary reorganization of a bank (bank holding) under any of the grounds listed in Article 60-1 of the Law of the Republic of Kazakhstan "On Banks and Banking Activities of the Republic of Kazakhstan". These grounds are:

a) lack of appropriate decisions of the supreme bodies of reorganized banks (bank holdings);

b) violation as a result of the proposed reorganization of the interests of the depositors;

c) violation of prudential standards and other binding norms and limits as a result of the expected reorganization;

d) violation of the requirements of the legislation of the Republic of Kazakhstan in the field of competition protection as a result of the expected reorganization.

According to the Program for Improvement of Financial Stability of the Banking Sector of the Republic of Kazakhstan realized by the National Bank of Kazakhstan, the use of mechanisms, which include, inter alia, bank reorganization procedures are regulated by law, but there is a high probability that the volume of transferred assets will not cover the obligations of the troubled bank. In this regard, the President of the country in his Address to the Nation in 2018 emphasizes that the owners of banks should bear economic responsibility recognizing the losses. The withdrawal of funds from banks by shareholders in favor of affiliated companies and individuals must be recognized as a serious crime. Thus, financial stability in the banking sector is supposed to be achieved through increasing the responsibility of bank shareholders.

The current legislation regulates stipulates responsibility of shareholders in the form of its restriction. According to cl. 1 of Article 81 of the Civil Code of the Republic of Kazakhstan, the shareholders of the joint-stock company are not liable for its obligations and bear the risk of losses related to the activities of the company, within the value of their shares, except for cases stipulated by legislative acts. Clause 2 of Article 3 of the Law of the Republic of Kazakhstan "On Joint Stock Companies" contains the same provision, but also provides for the only exception in the legislation for the State Corporation "Government for Citizens", the subsidiary liability for the obligations of which is borne by the Government of the Republic of Kazakhstan.

Before giving any proposals for amendments to the current banking legislation of the Republic of Kazakhstan regarding the extension of the responsibility or liability limits of shareholders, it is necessary to consider the concept of economic responsibility, which is not provided by the current legislation. Nevertheless, the specialists engaged in the research of this concept express different points of view, and they state the controversial nature of this term.

The research devoted to this concept usually consider it as a component of social corporative responsibility (Carroll) [29]. At the same time, some studies of the corporate social responsibility (hereinafter referred to as "CSR") conducted within the framework of the EU Commission have gotten rid of the concept of economic responsibility in general. The EU Commission provides own definition to CSR as "the responsibility of enterprises for their impacts on society" (EU Commission 2011). This position is considered by some researchers as leading to the exclusion of the study of economic action and economic affairs as objects of responsibility or objects of research in CSR studies. John Maurice Clark, a leading institutional economist, argues that economic responsibility is essential for CSR models, since businesses are economic actors and they have to be economic responsible actors. John Maurice Clark's approach to this definition is that the foundation of the concept of economic responsibility from an economic perspective is economics of responsibility and it is a shaky foundation of economic responsibility in modern CSR's models [30]. Csaba Lentner, Krisztina Szegedi, Tibor Tatay refer to the famous study of social corporate responsibility by Archie Carroll, who introduced “the Pyramid of Corporate Social Responsibility”, the foundation of which is economic responsibility. Under their approach economic responsibility is the traditional reason for having banks, in other words to increase the owners’ welfare, ensure profitability and growth. One of the means of this is financial innovation. Since individual and corporate financial interests are constantly changing, banks create new opportunities for risk management and the effective mediation of resources. This involves developing new products, redefining the existing ones and creating new channels. Interaction with stakeholders has a crucial role in determining these new products [31]. Thus, we can argue that there is no unambiguous approach to the concept of economic responsibility in economic science. Meanwhile, regulation of economic relations finds its consolidation in legal norms and, therefore, although the legislation does not provide for the term "economic responsibility", nevertheless responsibility for violations in the sphere of economic relations is provided for in various branches of law.

Speaking about the expansion of the limits of the liability of bank shareholders on the organization's obligations, we would like to note that at the beginning of the 18th century, the shareholder's liability for the debts of the joint-stock company established by him was full, but as a consequence of the industrial revolution and the growing desire of the shareholders of production companies to obtain a limited liability, it had became a general rule by 1850, and almost in all states. Only a few states left the rule of full liability in their legislation [32]. At the same time, currently in the countries of the Anglo-Saxon system of law there is a doctrine of judicial origin known as "piercing/lifting the corporate veil", providing for the possibility of imposing liability (in certain situations) directly to the persons controlling the company for its obligations. Under the actual UK law a company is a “limited company” if the liability of its members is limited by its constitution. It may be limited by shares or limited by guarantee. (Companies Act 2006) [33]. However, there are very few legislative exclusions from this rule. For instance, the insolvency law provides for some cases when a company director or other responsible person may be forced by a court to make a contribution to the company's assets as a punishment for its wrongful acts (Insolvency Act 1986, §§ 212-214). This rule was stipulated due to the often used practices of applying the limited liability of the organization as the legal way to avoid liability and cheat creditors. The supporter of this doctrine in Russia is Anton Ivanov, the Chairman of the Supreme Arbitration Court of the Russian Federation, who believes that its implementation "into Russian arbitration proceedings will be one more step ... to the social responsibility of business". Moreover, a certain judicial practice has already appeared in this field in Russia [34]. Thus, this initiative has a real practice of application.

The Law of the Republic of Kazakhstan "On Joint-Stock Company" contains the norm concerning the right of a shareholder owning five and more percent of the voting shares of the company alone or in aggregate with other shareholders to apply to the judicial authorities on its own behalf in the cases provided for in Articles 63 and 74 of this Law with a requirement to compensate company losses by the company's officials, as well as to demand return all the profit (income) obtained by officials and (or) their affiliated

entities as a result of taking decisions on the conclusion (proposal for conclusion) of major transactions and (or) transactions in which there was an interest (sub-cl.7) art.14). This provision can be considered as a possibility provided by the current law to compensate losses and provide financial stability of a bank through the mechanism for bringing liability of officials of the joint-stock company.

Applying the fundamentals of the above-mentioned economic responsibility theories and the "piercing/lifting the corporate veil" doctrine, and taking into account the indicated directions for the development of legislation by the President in the context of establishing the economic responsibility of shareholders, it seems possible to consider the issue of introducing subsidiary liability of shareholders for the bank's obligations, similar to the liability of the Government of the Republic of Kazakhstan for the obligations of the State Corporation "Government for Citizens".

We believe that the list of responsibilities of shareholders provided by Article 15 of the Law of the Republic of Kazakhstan "On Joint Stock Companies" has to be expanded in such fields as: bank management for the interests and good of the organization, the liability established by the laws of the Republic of Kazakhstan for the damage caused by actions and (or) inaction of the shareholders, and for losses incurred by the bank, as well as ensuring proper control over the management of the bank.

Conclusions. The study of certain problems of legal regulation of bank mergers and acquisitions in the light of ensuring the financial stability of the banking sector has revealed the need to bring the current legislation of the Republic of Kazakhstan regulating relations in the sphere of bank reorganization in accordance with the Constitution of the Republic of Kazakhstan and excluding inconsistencies in legislative acts in this field.

The study found that mergers and acquisitions deals can be used in the framework of the measures aimed to ensure the stability of the banking sector of the Republic stipulated by the Program for Improvement of Financial Stability of the Banking Sector, approved by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30.06.2017, however, using these mechanisms for resolving bank insolvency can be economically unjustified in case of exceeding the liabilities of the problem bank over the volume of assets transferred.

The article justifies that the law is a form of expression and regulation of existing economic relations (i.e. economic relations are the contents, and the law is the form of their fixing and regulation) and, therefore, achieving the desired effect from the selected measures for the financial stabilization of the banking sector directly depends on what regulation these economic measures and economic relations have received in the current legislation. In this regard, in order to ensure the financial stability of the banking sector through increasing the responsibility of bank shareholders, it is proposed to consider the issue of stipulating in the legislation of the Republic the subsidiary liability of shareholders for the obligations of the bank, as well as to expand the list of responsibilities of shareholders directed at improvement of bank management, control over the bodies managing the bank and bearing responsibility by the officials of these bodies. This will contribute to the formation of a responsible and competent approach in the management of banks and their transactions, including mergers and acquisitions, as well as ensuring the stability of their financial situation.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ БАНК СЕКТОРЫНДА БІРІГУ ЖӘНЕ ЖҰТЫЛУ БОЙЫНША КЕЛІСІМДЕРДІ ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ КЕЙБІР МӘСЕЛЕЛЕРІ

Аннотация. Мақала қазақстан республикасындағы бірігу және жұтылу бойынша келісімдерді құқықтық реттеудің жеке мәселелерін ғылымдағы банктік бірігу және жұтылу түсініктері, ерекшеліктері және мотивтеріне қатысты теориялық дүниетаным және қолданыстағы заңнаманы талдау негізінде қарауға арналған. Жиі-

рек, авторлар қазақстан республикасының азаматтық кодексінің қазақстан республикасының конституциясын қайта ұйымдастыру нысаны бойынша ережелер арасындағы сәйкессіздік мәселесіне, сонымен қатар банктерді қайта ұйымдастыру саласында қатынастарды реттейтін құқықтық негіздің заңнамасымен реттеуде бірыңғай әдістеменің жоқтығына көңіл бөлуде. Осы мәселелерді зерттеу өзектілігі еш күмән тудырмайды, себебі аталған аспектілері қазақстан республикасының президентімен 2017 және 2018 жж. Жолдауларындағы мемлекеттік қаржылық секторын «қайта қосу» бойынша міндеттері, мемлекетте іске асырылатын қазақстан дамуының 2025 жылға дейін стратегиялық жоспарының ережелері және қазақстанның ұлттық банкімен жүзеге асырылатын республиканың банктік сектордың қаржылық тұрақтылығын арттыру бағдарламасы тұрғысынан талданады. Аталған мәселелерді зерттеу негізінде авторлармен берілген саладағы қолданыстағы заңнаманы жетілдіру ұсынымдары ұсынылады. Сонымен қатар мақалада банк меншік иелерінің экономикалық жауапкершілігін реттеу мәселелері талқыланады, себебі аталған мәселелерді әрекет ететін құқықпен реттеуден банктердің қаржылық жағдайы және бірігу және жұтылу бойынша келісімдерді жүзеге асыруды қоса алғанда оларды басқару мақсаттарына қол жеткізу тікелей байланысты болады.

Түйін сөздер: банк, банк секторы, қазақстан республикасының банк секторының тұрақтылығы, банктердің бірігу және жұтылу бойынша келісімдер, банктерді қайта ұйымдастыруы, банктердің дәрменсіздігі, банктердің бірігу және жұтылу бойынша келісімдердің артықшылықтары, банк акционерлерінің экономикалық жауапкершілігі, қазақстан республикасының банктік заңнамасы.

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НЕКОТОРЫЕ ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ СДЕЛОК ПО СЛИЯНИЮ И ПОГЛОЩЕНИЮ В БАНКОВСКОМ СЕКТОРЕ РЕСПУБЛИКИ КАЗАХСТАН

Аннотация. Статья посвящена рассмотрению отдельных проблем правового регулирования сделок по слиянию и поглощению в банковском секторе республики казахстан на основе существующих в науке теоретических воззрений относительно понятия, особенностей и мотивов банковских слияний и поглощений и анализа действующего законодательства. В частности, авторами обращается внимание на проблему несоответствия между положением гражданского кодекса республики казахстан о формах реорганизации конституции республики казахстан, а также отсутствию единого подхода в регламентировании законодательством правовой основы, регулирующей отношения в сфере реорганизации банков. Актуальность исследования этих вопросов не вызывает сомнений, так как указанные аспекты анализируются с позиции высказанной президентом республики казахстан задачи по "перезагрузке" финансового сектора страны в посланиях 2017 и 2018 гг., положений реализуемых в государстве стратегического плана развития казахстана до 2025 года и программы повышения финансовой устойчивости банковского сектора республики осуществляемой национальным банком казахстана. На основе изучения названных проблем авторами предлагаются рекомендации совершенствования действующего законодательства в данной сфере. Также в статье затрагиваются вопросы регулирования экономической ответственности собственников банков, так как от регламентирования указанных вопросов действующим правом напрямую зависит финансовое положение банков и достижение целей управления ими, включая осуществления сделок по слиянию и поглощению.

Ключевые слова: банк, банковский сектор, устойчивость банковского сектора республики казахстан, сделки по слиянию и поглощению банков, реорганизация банка, несостоятельность банков, преимущества банковских сделок по слиянию и поглощению, экономическая ответственность акционеров банка, банковское законодательство республики казахстан.

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