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The types of corporations in the legislation of the Ukraine, France, Germany and the USA : (basic items)

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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The types of corporations in the legislation of the Ukraine, France, Germany and the USA (basic items)

Legislations of France and Germany are the most similar to the legal system of Ukraine. The difficult and specific legal system of the USA essentially differs from the legal system of Ukraine.

It is possible to subdivide the corporations by many legal criterions: 1) by legal status; 2) by the purposes of activity; 3) by the legal regime of property; 4) by the staff of founders; 5) by the character of participants' rights; 6) by the way of organization etc.

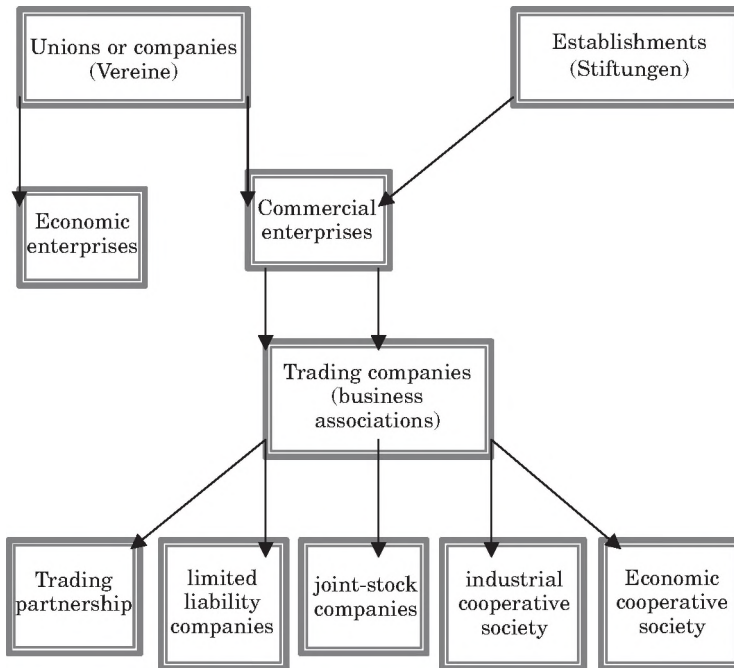
In the European Union the common classification by a legal status has been accepted. There are two types of corporations: these of public law and of private law. In Germany there are unions or companies (Vereine) and establishments (Stiftungen). Companies and unions can be divided into economic and commercial enterprises. Among trading companies (business associations) there are trading partnership, limited liability companies, joint-stock companies, industrial and economic cooperative societies (see table 1). The peculiarity is that companies can be both personable and not personable. The last includes a complete trade partnerships that are not legal entities, however, recognized under the law as carriers of certain civil rights and obligations and may sue and be sued in court.

Companies can be created for the purpose of conducting the economic, commercial enterprise or without that. If business is the purpose of the company's creation and activity – it is an economic, trading society (or the economic union).

It should be noted that terminology of German law makes no distinction in terms applicable to such models, the Ukrainian law instead recognizes the distinction between partnerships and companies. German law in all cases in relation to the total trading companies (that are not considered as legal entities), joint-stock companies and limited liability companies use the same term "Gesellschaft".

Table 1

Types of corporations in Germany



Commercial (trade) associations – *Personenhandelsgesellschaften* – are divided into two types: full commercial partnership (*Offene Handelsgesellschaft*) and limited partnership (*Kommanditgesellschaft*).

In full partnership associations the participants are fully and severally liable. The purpose of a general partnership is trading activity. This means that by the form and extent it should conform to the concept of commercial activities. Therefore, the very general partnership is a merchant.

In a business turnover the full association operates under uniform firm. The firm of the full association should contain a surname of at least one of its participants and indications on the organizational-legal form. The name of the full association can include also surnames of all participants.

A general partnership is an independent economic unit which has its own name, may be a creditor and a debtor, may acquire property rights and other proprietary rights, may also act as a plaintiff and a defendant.

Unlike the Ukrainian legislation, the full association in Germany is not a legal entity – it has no legal personality. It is a so-called solidarity association. The property of participants of such associations belongs to them jointly: a separate participant of the association, which owns an individual share in it, does not get a separate quota (shares) in the association's property.

Quite often in the business of a merchant a person is involved only for his property investments – an individual or an entity. In the end of each business year the part of profit is paid to the private participant. The responsibility of the private participant for debts is limited by the sizes of its contribution. At the termination of the association the private participant has the right to receive the contribution in the monetary form.

An important feature of a limited liability company under German law is that this legal form may be used not only for doing business but also for any other activity that does not contradict the law.

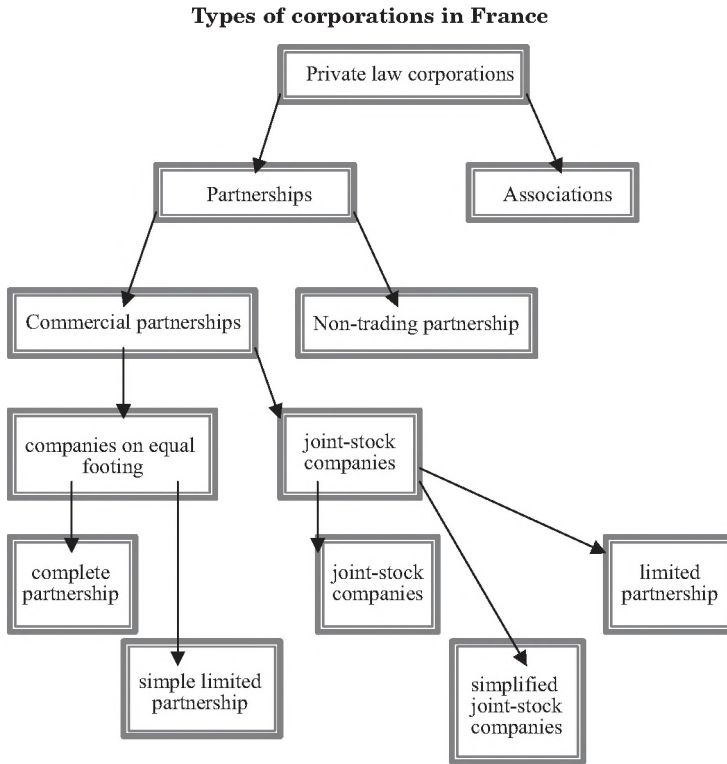
A joint-stock company is defined as a company with its own legal personality – it is a legal entity. The company satisfies obligations to creditors only with the property. Thus, shareholders risk only the means enclosed by them in actions acquired. Limited partnership on shares is a kind of joint-stock company. This is a commercial partnership with an independent personality, in which at least one party is responsible to the creditors of unlimited partnership (personally answering participant or so-called full), and other participants participate in the authorized capital stock divided into actions, without personal responsibility for association's obligations (so-called limited partnerships shareholders).

In France private law corporations are divided into partnerships and associations. There are two types of partnerships: commercial and non-trading¹. Trading companies are subdivided in the companies on equal footing (a complete and simple limited partnership) and joint-stock companies (joint-stock and simplified joint-stock companies, limited partnership – see table 2). The peculiarity of limited partnerships is that the published reports are not needed.

The full association-company, which members act as businessmen and bear unlimited and joint liability for association's obligations, including company debts. This is the association of individuals and entities. According to French law a general partnership is a legal entity. Its members have the status of a merchant. They are jointly responsible for debts of the association and bear full (unlimited) responsibility. Thus it is important to consider that the rule about responsibility of participants of the full association on its debts operates not only during the existence of this legal person but also continues within five years after its liquidation. The participant can alienate the share only with the consent of other participants. For violation of this requirement the criminal liability in the form of imprisonment or in the form of the penalty is established.

¹ И.С. Канзафарова, *Гражданское и торговое право зарубежных стран*, Отдельные институты: Уч.пособие, „Одиссей”, 2003, р. 65.

Table 2



As for the limited partnership this legal form is not widespread. In Ukraine such partnership is called „faith-based”.

A simple limited partnership is a company on equal-footing which includes two types of participants: one or more single-parent members who are responsible for the company’s debts in proportion to their contributions, rather than on the status of a merchant; full members who have the status of members with full responsibility and a merchant with an unlimited and joint liability.

Among the members of this association there may be legal persons and individual businessmen. While general partners have the same status as a members of the general partnership, and apart from them in a limited partnership is involved a limited partner – those parties that do not bear a full and shared responsibility for the debts of the partnership and respond only to the extent of the size of their deposits.

In the United States there are partnerships and corporations. Corporations are divided into public and private corporations. There are also “half-public” corporations (which are created to satisfy population’s needs, for example, corporations in the field of water-supplying). Private corporations

are subdivided in business and non-profit corporations. There are a lot of types of commercial corporations: closely held and publicly held; sole and aggregate; domestic and foreign, etc.²

In European countries there are other types of associations: cartels, syndicates, industrial holdings, financial groups, trusts and concerns (monopoly union).

On the basis of what is presented above it is possible to draw a conclusion that a limited liability and joint-stock companies are the most significant and widespread organizational-legal forms of enterprise activity. Ways of forming the national legislations are the same in many countries. However, due to the peculiarities of national legislation, each country has its own specifics. Common element for nearly all countries is the use of various forms of organization of a legal entity.

In many countries a limited liability company and joint-stock company are the most important and common legal forms of entrepreneurial activity. This is because the company takes a form of organization of big business which allows to attract finance for entrepreneurial activities, as well as to contribute the most convenient and efficient business management. Limited Liability Company serves primarily to small and medium businesses.

Nowadays in Ukraine we can already speak about the superiority of joint-stock companies and limited liability companies, whose legal status is adequately regulated by the national legislation. Other legal forms of legal entities, especially given the country's economic development, deserve close attention and legal implementation through the adoption of laws regulating their legal status.

Streszczenie

Rodzaje korporacji w ustawodawstwie Ukrainy, Francji, Niemiec i USA (podstawowe zagadnienia)

Słowa kluczowe: gospodarka rynkowa, korporacje, aspekty porównawcze.

Ukraińskiemu przejściu do gospodarki rynkowej towarzyszyło pojawienie się różnych form organizacyjno-prawnych działalności korporacji. Szerokie zagraniczne doświadczenie w organizacji pracy przedsiębiorstw odgrywa istotną rolę w poprawie cywilnego ustawodawstwa Ukrainy. W niniejszym artykule wyróżniono główne rodzaje korporacji na Ukrainie, we Francji, Niemczech i USA oraz dokonano charakterystyki porównawczej korporacji ukraińskich i zagranicznych.

² W. Burnham, *Introduction to the Law and Legal System of the United States*, 1997, p. 476–483.