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CLAIMS WORK LEGAL SERVICES ENTITIES OF BUSINESS ENTITIES

The article is focused on the analysis of the claims settlement procedures with the aim to provide the effective and appropriate work conditions of the enterprise. The role, content and the significance of the claims management by the law departments and the propositions to its improvement are under the study.

Key words: claim, legal service, claims settlement procedures.

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Претензійна робота юридичної служби суб'єктів господарювання

У статті досліджується поняття претензійної роботи, що здійснюється з метою забезпечення належних умов роботи підприємства, роль, зміст та значення претензійної діяльності юридичної служби суб'єктів господарювання, пропозиції щодо її вдосконалення.

Ключові слова: претензія, юридична служба, претензійна робота.

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Претензионная работа юридической службы субъектов хозяйствования

В статье исследуется понятие претензионной работы, которая осуществляется с целью обеспечения надлежащих условий работы предприятия, роль, содержание и значение претензионной деятельности юридической службы субъектов ведения хозяйства, предложения относительно ее совершенствования.

Ключевые слова: претензия, юридическая служба, претензионная работа.

Introduction. The fundamental issue towards the growth of Ukraine as law-based state and formation of the civil society is development and realization of the steps targeted at the increasing of the effectiveness of the organizations and enterprises as economic agents. The absence of the effective economic stability and the lack of effective economic relations between legal entities are viewed as the determinants of disputes between different levels of legal entities. These factors reveal the destructive processes at the enterprise law department workflow and the decrease of the effectiveness of the problems settlement.

Under such conditions that do not respond to the European Union requirements Ukraine has a long way to go before it is considered as the associate member of the EU. European society demands the

government to implement the complex economic reform. Such government support programs as for small and middle businesses, growth of the social welfare, self-realization programs, protection of human rights and fundamental freedoms, availability of the qualified social services for the Ukrainians should be included in the reform program.

One of the main factors in solving this task is the scientific support of the appropriate reform processes. The fundamental issue here is the analysis of the aspects of the enterprise law department workflow as integral structure and management system. The topicality of our paper is motivated by: 1) the necessity of a complex analysis of the role and place of the enterprise law departments and organizations in the claims settlement procedures and 2) the absence of the fundamental researches of the

present topic and legal concepts of the derivative work.

Independence of Ukraine, political and social-economic changes aimed at building the democratic law-based state considerably changed the system of the social management. These factors significantly influence the forms and methods of the economic management, legal support of industrial and manufacturing sectors, strengthening of the economics, state, labour, manufacturing and technological discipline on different levels and in spheres of the economy of the country. Legal aid programs are aimed at realizing these tasks and at protection of rights and economic interests of the economic agents.

Analysis of the recent researches. The role and place of the law departments at the enterprise is considerably studied by I. V. Honchar, A. M. Dolgopolo, V. T. Kapritsa, O. B. Oliinyk, H. M. Samilyk et al. The problems of the claims settlement procedures of the legal entities were analyzed by the mentioned scholars.

The objective of the paper is to analyze the role, content and the significance of the enterprise law departments and the propositions for its work improvement.

Investigation. The role of the legal services is constantly growing as in the process of building the law-based state the issue of legality is important – mutual understanding, undeviating observance of laws by all state bodies, organizations, authorities and citizens in all the spheres of the social life. The work of the lawyer of the enterprise play important role in dealing with the legality, as the work of the enterprise depends on lawyer's principles, professionalism, experience and ability to cooperate with people. The protection of the rights and legal interests of the enterprise, business or organization mostly depends on the functioning of the legal service offices.

I. V. Honchar, V. T. Kapritsa and H. M. Samilyk define the defense of the rights and interests as the organization and effective conducting of the claim and complaint procedures [1, p. 4].

We focus on the content and meaning of the claim settlement procedures of the law department

of the enterprise and on the analysis of the solutions for its improvement.

The main task of the legal service of the law departments is to resolve disputes with the aim to ensure the effective work of the enterprise.

Proceeding the claims is one of the effective means for the rights protection [6, c. 66]. One of the main benefits available to contractors is the ability to claim violation of obligations and the enterprise can protect own interests and demand rehabilitation of rights violated by all parties to the dispute.

The authors of the book «Complaint and Claim Procedures of the State Tax Service of Ukraine» state that claiming as the means of dispute resolving is a set of actions taken by one party whose rights have been violated to facilitate the settlement of a dispute with the party who has violated the rights. Claiming is the dispute resolution processes by means of complaint procedures [1, p. 6].

Claim, as I. V. Honchar, V. T. Kapritsa and H. M. Samilyk state, is a written document sent by a party who considers its rights or interests have been violated to the another party demanding the rehabilitation of rights or interests without third party intervention [1, p. 6].

A. M. Dolgopolo emphasizes that the main aim of claiming is to prevent the negative influence on the enterprise from the contractors by legal rules implementing. By proceeding the claims one enterprise points to another one to the wrong actions or omissions that have violated the interests of the claimant and demands correction of the inaccuracies or ambiguities voluntarily appealing to the normative acts or facts of the case. This is the principle of every claim. In case of the positive settlement the parties do not apply to the court [2, p. 54].

O. B. Oliinyk in his work «Documents in Economic Agreement and Economic Claim Procedures» states that letters with the arguments in support of action taken by one party to another concerning the violation of the obligations are called letters of claim [4, p. 125]. The author considers the claims to be the specialized documents in management with the following requirements: 1) be issued by the authorized body; 2) current legislation norms should be followed; 3) be accurate and should base on the facts and contain concrete propositions or in-

structions; 4) should answer its purpose and original claim form; 5) must be edited and properly drawn up [4, p. 7].

Though there is no clear-cut definition of the claim in the Economic Procedure Code of Ukraine from 06.11.1991 or in the Draft of Economic Procedure Code.

Claiming as dispute resolution is one of the additional means of protection the rights and the legal interests of the parties. By proceeding the claims one party points to another party to the wrong actions or omissions that have violated the interests of the claimant and demands correction of the inaccuracies or ambiguities voluntarily appealing to the normative acts or facts of the case.

Claiming in the dispute resolution scheme is targeted towards consideration of unreasonable demands and indisputable complaints by the court. The positive side of claim in the dispute resolution is the avoiding of the court applying that is connected with the financial expenses such as charges levying, commission, document preparation, travel expenses, etc.

The tasks of the law department of the enterprise in claim settlement procedures are: to provide the observance of the treaty obligations in all spheres; to guarantee rational usage of the physical, labour, financial resources, gas and energy, raw materials and other resources; to reduce and to eliminate of the inefficient expenses; to protect and to rehabilitate of the property rights and the interests of the enterprise; to ensure the liability for rights violations; to improve the economic indices and to prevent their violations [3].

Claims settlement procedures are mostly conducted by the law department of the enterprise. The author speaks about the decentralized case conduct when the claims procedures are conducted by the employees of the functional departments or the experts of the claiming departments and the advantage of such claiming framework is that the executive knows the essence of the dispute and the contractors he/she works with. Compromises can be reached in order to settle the dispute.

According to A. M. Dolhopolov, the practice of the law departments defines the general methods of the claims settlement procedures and its organizational forms. There should be the decree or instruc-

tions on the claims settlement procedures with the specification of the department or the person in charge responsible for the claim procedures in case of the breach of a contract at every enterprise. This department or the executive have the right to demand documents and materials from other departments necessary for the dispute resolution or responses to the claims [2, p. 55].

The control for the registering the claim and the responses to the complaints; summing up the results of the claims procedures; preparation the propositions in reelimination the drawbacks in the claims procedures are viewed as the functions of the law department of the enterprise.

The claim settlement procedures are done according to the recommendations of the Ministry of Justice of Ukraine «In the enterprise, agency or organisation» [5] and the appropriate bylaws, instructions drafted by legal bodies. Though these recommendations do not meet the present realities and there is a need in new bylaw on complaint and claim procedures by the legal entities regardless of the property form.

If the claim is sued by the executives some duties are be done by the law departments: to control claim settlement procedures, to prepare the documents, to manage and control claim procedures, to do briefings, to calculate analyses and teach claim settlement procedures. Claim responses prepared by other departments and the rejected claims are authenticated under the seal of law departments.

We agree that relegation of cases to other legal departments is justified by law departments workload and their obligations to pay attention to other legal issues. The control of the law departments workload should be done not by the cases amount relegation but by the increasing of the law department staff. A big amount of income and outcome claims affirms the problems both inside the enterprise and from the contractors' sides.

Conclusions. The success in claim settlement procedures depends on the information provided to the law department: specifying the service department, defining of the limitation period, mentioning the types of documents provided and the terms of these documents transferring (log file).

The law department should consider the claim terms while accepting the documents and make the

corresponding record in the log file. This is significant for the identification of the persons responsible for the documentation delaying in case of rejecting the claim and the impossibility to make claim due to expiration of the limitation period.

While discussing the new Economic Procedure Code of Ukraine the drawbacks of the issues on the alternative forms of the economic dispute resolving were under the study. Though the issues on the pre-trial dispute resolution procedures were not detailed. Our offer is: to add to the project the following definition of the claim «claim – is the written document (demand, complaint) sent by the person who considers that his/her rights and interests have been violated to the violator with the demand of rehabilitation and giving back the human and civil dignity without courts and judicial bodies interference».

The enterprise, agency or organization whose rights and interests have been violated with the aim to resolve the dispute with the violator send written claim to the respondent.

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