

Organizational Legal Forms for Social Entrepreneurship in the Republic of Kazakhstan

Abstract: This article includes an analyzes of first steps taken in Kazakhstan to create a legal and organizational framework for social entrepreneurship. The expediency to distinguish a specific type of legal entities (along with commercial and non-commercial legal entities) in the Civil Code of the Republic of Kazakhstan, as well as to regulate special organizational and legal forms for conducting social entrepreneurship is substantiated. The absence (at least in most cases) of traditionally understood financial investment relations in the establishment and financing of the activities of social entrepreneurship entities (and Social Economy as a whole) is stressed out. The need for the State to declare (as its political task) its focus on the formation of Social and Solidarity economy in Kazakhstan as a special sector of the national economy, including with the obligatory development of constitutional foundations to ensure the common good, recognition and observance of public interest, is emphasized. The objective need to create an effective system of social finance to support and develop Social Economy in Kazakhstan is substantiated.

Keywords: Kazakhstan, social entrepreneurship, Social Economy, social finance, organizational and legal forms (of legal entities)

Introduction

In 2021 legal definitions of such new concepts for our legal reality as “social entrepreneurship” and “subject of social entrepreneurship”, as well as legislative changes aimed at both registering social entrepreneurship entities and determining state support measures of social entrepreneurship, have been introduced into the legislation of the Republic of Kazakhstan.

These legislative and organizational novelties represent a very important step both to ensure conditions for more sustainable development of private business in our country, and to create a more inclusive, favorable and promising socio-economic environment for all categories of our fellow citizens (especially for those who are reasonably referred to and/or legally recognized as socially vulnerable groups of the population).

With such amendments in our legislation, the legal policy and practice of public administration in Kazakhstan has made notable progress towards harmonization with the activities of the European Union and many modern States to create conditions for the functioning of Social Economy.

At this stage we have based on the fact that at the level of the European Union the Social Economy is considered as a set of special organizations that conduct economic activities conditioned by the need to achieve socially significant goals and/or to solve socially significant problems [Daniela 2018, pp. 17–18], and such “mission-driven organizations are legally independent of the State” [Glänzel, Schmitz, Mildenerger 2012, p. 8].

Based on our comparative study research, which results are reflected in this article, it is also obvious to us that social entrepreneurship and Social Economy do not (at least, it should not) imply any inclusion in the circle of their organizations of those market-economy entities that are engaged in a regular entrepreneurial activity, even when they (as their one-off projects, charity or other similar form of socially beneficial projects) provide funding to, or offer other support of activities of, organizations of Social Economy.

In this regard, this article includes analysis and proposals for further development of Kazakhstani legislation to regulate organizational and legal forms for social entrepreneurship in our country. Certain necessary legislative amendments in this matter are proposed and explained.

About Those Who Are Engaged in the Social Entrepreneurship

Social entrepreneurship is carried out by people interested in the implementation of economically viable activities with its end result to be a solution of environmental problems, issues of fair trade, education, public health and health care, social justice, etc. [Ineza 2021, p. 1].

In the European Union, as a general definition, specially established private and social-mission-driven enterprises created with the freedom of membership in them and with their autonomy / independence from the State and other market participants have been proposed to be understood as the subjects (persons or entities) of Social Economy. And there two categories of such organizations which, by their respective regular activities, form Social Economy have been distinguished [Daniela 2018, p. 9].

As we understand, within the first category (Social Enterprises), they unite those corporate-type organizations that are created to meet needs of their members through participation of the organizations in market relations by way of production of goods, provision of services, offering guarantees or financing (to their members – *F.K.*).

The second category of social entrepreneurs (Social Business) seems to include those who provide non-market services [that is, those which, for various reasons, most often associated with insufficient profitability of the relevant activity, are not provided by ordinary entrepreneurs – *F.K.*] to, for instance, households, and whose income cannot be appropriated by those who created respective organizations established, control them or finance them (*i.e.* cannot be distributed in their favor) [Daniela 2018, pp. 9, 35, 39].

About the Concept of Social Finance

In the view of what Social Economy is as “a different way of doing business” [SESBA project partnership 2016, p. 12], organizations / subjects of Social Economy cannot be considered as objects of capital investment.

Those investment relations that take place in relations between any commercial enterprise and its founders / participants do not arise within Social Economy when the relevant organization is set up or a third party provides financing to it in other forms. Even in the case of a Social Enterprise, the legal status of which may allow some limited distribution of its net income among its participants, the return of capital investments made available to it does not seem to be at least somehow probable. And in the case of social entrepreneurship of the second type (*i.e.* Social Business), such a return on investment is generally impossible.

In this regard, it is reasonably noted that Social Enterprises are often viewed by ordinary private investors as unattractive investments, and therefore such enterprises are often forced to rely on government subsidies, which (in doing so) can create problems for their (the enterprises’) autonomy [Glänzel, Schmitz, Mildemberger 2012, pp. 8, 11, 12]. In that context, there a variety of specific models of financing their activities that are acceptable for Social Enterprises to support their sustainability has been mentioned to exist [Fonteneau, Neamtan, Wanyama, Morais, de Poorter, Borzaga, Galera, Fox 2011, pp. 25–26].

In view of this fundamental circumstance, the essence of Social Economy pre-determines the development of a new concept and system of relationships called Social Finance, which would function to finance the Social Economy / Social Enterprises. The components of such a system are:

1. the subjects (persons) of Social Economy as objects or recipients of the financing, as well as
2. social investors and
3. special financing instruments, which instruments, as we believe, cannot be considered as means of capital investments [Glänzel, Schmitz, Mildemberger 2012, p. 8].

Within such a system, Social Enterprises and other entities of Social Economy (e.g. Social Business), their activities shall be considered as objects of social investments. To put it in other words, such entities shall act as recipients and users of various Social Finance instruments, or as beneficiaries of relevant social finance arrangements.

In turn, social investors (that is, sources of financing for Social Economy) are those who will not receive a direct financial return on their social investments and any gain in the form of money or other positive assets, but who aim to assist in obtaining a socially valuable effect from their social investments by meeting social needs of third parties, solutions of certain social problems [Glänzel, Schmitz, Mildenerger 2012, pp. 12–13].

At the same time, to qualify as instruments of Social Finance there can be any forms of financing Social Economy that support its sustainability, including membership in certain mutual financing organizations, operation of special funds, provision of special grants, equity and quasi-equity financing and other methods of financial support [Fonteneau, Neamtan, Wanyama, Morais, de Poorter, Borzaga, Galera, Fox 2011, pp. 25, 28].

About Organizational and Legal forms for Social Enterprises and Social Business

It has been recognized that there is no a single organizational and legal form for Social Enterprises and Social Business [European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs 2021]. Other jurisdictions offer separate organizational and legal forms for subjects of Social Economy [Fonteneau, Neamtan, Wanyama, Morais, de Poorter, Borzaga, Galera, Fox 2011, pp. 1–5]. At the same time, it is specified that all relevant organizations as subjects of Social Economy are characterized by the desire of the most vulnerable social groups to respond to their own needs through self-help (or mutual assistance / mutual support – *F.K.*) organizations [Daniela 2018, p. 15].

The need for regulation of separate legal and organizational forms for entities of Social Economy and Social Business is dictated by the fact that, though they can engage in entrepreneurial activity, they are restricted in the distribution of their net income among their founders / participants (or such distribution is generally inaccessible for them). That is why the organizational and legal forms of commercial (entrepreneurial) organizations may be unacceptable for social entrepreneurship.

Similarly, activities of organizations of Social Economy may be also impossible (or very limited) if they act in the form of non-profit organizations, which (although they are allowed to receive entrepreneurial income) cannot have profit-making as the main focus and the main purpose of their activities. At the same time, for subjects of

Social Economy, obtaining such income as a regular source of funding can be crucial. Therefore, at least, the development of legislation on non-profit organizations becomes relevant, including to ensure the efficiency of Social Economy.

In turn, in case when Social Economy allows individuals to act as its subjects, then, for the above reasons, the form of individual entrepreneurship (as the form has been regulated in Kazakhstan) may also be unacceptable. At the same time, in this case, it may be necessary to introduce a special form for the purpose, for example, of a social individual entrepreneur.

In any case, whatever the legislative decision regarding the classification of legal entities and regulation of organizational and legal forms for subjects of social entrepreneurship (in general, the such of Social Economy), when determining the organizational and legal forms for them, it is advisable to remember that their common characteristic is that: (1) the system of management and conduct of the business of each of such enterprises is determined by collective ownership and (2) such enterprises shall be managed, and their activities shall be run, based on the principles of participation of their members (participants, founders) in its management and the way of respective decision-making should be democratic [Fonteneau, Neamtan, Wanyama, Morais, de Poorter, Borzaga, Galera, Fox 2011, pp. 7–8].

Recognition of the Concept of Social Entrepreneurship in Kazakhstan

For Kazakhstan, the concept of social entrepreneurship is the new one. The solution of socially significant problems and tasks of social integration of vulnerable segments of the population was an important area of activity of the earlier existed Soviet Union. However, in the absence of entrepreneurship, moreover – with the legislative prohibition of entrepreneurship, during the Soviet era these tasks were solved in different ways. Nevertheless, the first steps have already been taken to form a legal and organizational basis for social entrepreneurship in the Republic of Kazakhstan.

In particular, the Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Matter of Entrepreneurship, Social Entrepreneurship and Mandatory Social Health Insurance” (the “Law on Social Entrepreneurship”) [The Law of the Republic of Kazakhstan of 24 June 2021 “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Matters of Entrepreneurship, Social Entrepreneurship and Mandatory Social Medical Insurance” No. 52–VII] has been adopted in 2021, and respective changes and additions have been made to some of legislative acts of the Republic of Kazakhstan currently in effect.

An essential aspect is that it is planned to form and maintain a Register of social entrepreneurs. A draft of the Rules for maintaining such a Register has already been developed and placed for public discussions [Draft of the Rules 2021, p. 11].

In addition (according to local mass media), organizational measures are already being taken by the State to develop labor skills and stimulate jobs, ensure social integration of certain categories of citizens, an Atlas of new professions and competencies in Kazakhstan has been formed, and appropriate social services are being created.

The Concept of the Social Code of the Republic of Kazakhstan has been developed, which (although it does not have, and should not have, the purpose of regulating social entrepreneurship) will be based on (as one of the three basic principles for the Code) the principle of solidarity and responsibility of the State and citizens [A press release 2021 on: 12].

At the same time, it seems that (if not immediately, then in the foreseeable future) the Social Code will regulate the activities and instruments of financial support of the Social / Solidarity Economy. Such legal framework to be created by norms of the Social Code seems to be both justified and the most expedient.

As for the Law on Social Entrepreneurship, its adoption (no matter how imperfect or incomplete its content may be) corresponds to global trends in social development, reflects (to a certain extent) international and foreign experience. This is an important step towards the formation of Social Economy in Kazakhstan.

But this is only the first step towards the perception of the concept of social entrepreneurship by the legal system of Kazakhstan and of the implementation of the concept in the reality of Kazakhstan.

About the Main Tasks of Social Entrepreneurship in Kazakhstan

They have been defined in Article 79–2 of the Entrepreneurial Code [The Entrepreneurial Code of the Republic of Kazakhstan of 29 October 2015], www.online.zakon.kz] and include both: 1. ensuring participation of business entities (entrepreneurs) in solving social problems, promoting / facilitating their solution, and 2. in accordance with the understanding of Social Economy accepted in the developed jurisdictions, assistance in ensuring employment of socially vulnerable segments of the population, creating opportunities for them equal with other citizens to participate in socially useful activities, as well as promoting goods produced by social entrepreneurs, their works and services including those produced / performed / rendered with personal labor participation of socially vulnerable people. At the same time, these norms apply only to those who are classified as socially vulnerable groups of the population according to the instructions in Article 79–3 of the Entrepreneurial Code.

It should be noted that in Article 79–2 of the Entrepreneurial Code, one of the tasks of social entrepreneurship has been defined as “ensuring the participation of business entities in solving social problems, including through the introduction of social innovations and assistance in the provision of social services”.

It seems that this provision of the Entrepreneurial Code incorrectly defines such a task specifically for social entrepreneurs, because it is the area of activity that is (or should be) a task for public administration in promoting social entrepreneurship.

In this case, it looks obvious that it is inexpedient to recognize the entrepreneurial activity itself as social entrepreneurship (even if the respective entrepreneurs “participate in solving social problems”). It seems that for such entrepreneurs it is possible to provide for (and they even should be provided) separate (other than for social entrepreneurship) measures of state encouragement, incentives or support in order to induce them to participate in solving social problems.

The introduction of such a legislative norm in the Entrepreneurial Code is seen as incorrect perception of foreign experience. For example, it is obvious that it was not considered while drafting the aforementioned amendments to the Entrepreneurial Code that in the EU countries the state policy for solving problems of social entrepreneurship is based on the following two pillars:

1. creation of eco-system for Social Economy to enhance multiplication of Social Enterprises; and
2. support citizens' ability to self-organize in creation and running Social Enterprises [Borzaga, Galera 2016, p. 19].

And those two pillars pre-determine specific formulation and/or content of relevant legislative provisions.

It means (apart from other important aspects) that those who are considered as external source of financing Social Enterprises, even if they are qualified as social investors, are not recognized as social entrepreneurs or Social Enterprises. However, they can be considered as significant components of an ecosystem for Social Economy.

About Significance of Social Innovations

As noted above, legal regime for social entrepreneurship in Kazakhstan provide for introduction of social innovations to solve social problems. In this regard, one should note that in accordance with the experience developed in foreign jurisdictions, the use of innovative approaches is manifested to exist in the management of the activities of a social entrepreneur.

In this context, innovation should primarily relate to the management activities of the social entrepreneurs themselves; innovations should contribute to the achievement of the goal of a Social Enterprise / organizations of social entrepreneurship, and not of a public administration [Ineza 2021, p. 5].

In connection with this, imperfection of the legal technique should be noted. Particularly, such shortage can be seen in that how the concept of “innovations” is defined in Article 79–1 of the Entrepreneurial Code. Such definition was introduced

“for the purposes of this Code” (that is, the Entrepreneurial Code – *F.K.*). But it can have a meaning only for those aspects which exist within the framework of the content of subparagraph 1 of Article 79–1 of the Entrepreneurial Code. The different focus of various norms of the Entrepreneurial Code (which Code does not regulate the social entrepreneurship only) shall also determine a different significance of innovations used in a particular area of application of the Code.

Taking into account the above, it seems appropriate not only to clarify the tasks of social entrepreneurship, but also to correct the definition of the legal term of “innovations” and clearly (at least, clearer) indicate the significance of innovations in the sphere of social entrepreneurship.

About Support Measures for Social Entrepreneurs Provided for in the Laws of Kazakhstan

As noted above, the recognition of a person as a subject of social entrepreneurship means the availability for the person of special measures of organizational, legal, methodological and financial support provided for in the law.

Particularly, Article 232–1 of the Entrepreneurial Code provides for the list of the types of state support for social entrepreneurship. An analysis of the content of that Article of the Entrepreneurial Code allows to conclude that many (if not most) of the envisaged (and others that will be developed in the future) measures to support social entrepreneurship (first of all, measures of a financial and other property nature) for ordinary entrepreneurs should not be available.

In any case, for such ordinary entrepreneurs, participation in the system of supporting measures for social entrepreneurship, including a Social Finance system, should be limited only to their role of social investors, and not of social investees.

About Legal Definition of Social Entrepreneurship in Kazakhstan

Article 79–1 of the Entrepreneurial Code provides for the following definition of social entrepreneurship in the Republic of Kazakhstan: “Social entrepreneurship is the entrepreneurial activity of subjects of social entrepreneurship, contributing 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 (i.e. “Categories of subjects social entrepreneurship” – *F.K.*).

Such legal definition of social entrepreneurship seems to be too general. It does not contain clearly defined and legally significant criteria. Moreover, it allows its application even in relation to:

1. those entities that are not (conceptually or objectively cannot be considered) as subjects of social entrepreneurship, and

2. those activities that in their essence are not social entrepreneurship (in its generally accepted understanding in many other jurisdictions).

In order to avoid any ineffectiveness of the application of support measures to social entrepreneurship and formation of corrupt practices in implementing of such support, the legal definition of social entrepreneurship needs legislative clarification.

Here, it should be remembered that social entrepreneurship is not an ordinary entrepreneurship (as this term is defined in Article 2 of the Entrepreneurial Code and in Article 10 of Civil Code of the Republic of Kazakhstan [The Civil Code of the Republic of Kazakhstan (General Part) of 27 December 1994, as amended, www.online.zakon.kz]). Social entrepreneurship is a specific combination of an entrepreneurial activity and a focus on the implementation of a social mission, where the second component is predominant, and the possibility of distributing net income in money or other property, as well as any other return on monetary investments, is significantly limited or completely prohibited.

It should also be understood that social entrepreneurship is a business [SESBA project partnership 2016, p. 5]. That means, it is a regular and continuous implementation of appropriate economic activity on a systematic basis during a long time to achieve goals of such activity and to solve tasks within the framework of its social orientation.

In this regard, it is required to create an adequate legal basis for social entrepreneurship, including its adequate legislative definition, creation of new (special) organizational and legal forms for social entrepreneurship, development of effective models for financing social entrepreneurship and the formation of legal conditions for the functioning of the social finance system.

Taking into account the said above, a clear legislative separation of the concepts of entrepreneurship and social entrepreneurship is necessary. In addition, the tasks listed in Article 79–3 of the Entrepreneurial Code should be re-formulated, and the measures to support social entrepreneurs provided for in that Article should be separated from preferences for entrepreneurs who simply “participate in solving social problems”.

Legal Definition of “a Subject of Social Entrepreneurship” in Kazakhstan

The legal definition of the term “a subject of social entrepreneurship” introduced into the legislation of Kazakhstan is also insufficient in its content to understand what social entrepreneurship is and which of the subjects of entrepreneurial activity can be viewed as a social entrepreneur.

According to Article 79–1 of the Entrepreneurial Code, individual entrepreneurs and legal entities (with the exception of large business entities) (and only they – *F.K.*) can be considered being social entrepreneurs, provided that they are:

1. recognized as such through registration in the Register of subjects of social entrepreneurship and
2. included in this Register in accordance with the requirements of Article 79–3 of the Entrepreneurial Code and the Rules for the formation and maintenance of the specified Register (as noted above, the draft of such Rules exists, but has not yet been approved).

Being combined with the legal definition of “social entrepreneurship”, the legal term of social entrepreneur in current version of Article 79–1 of the Entrepreneurial Code means those persons:

1. simply indicates individual entrepreneurs and legal entities,
2. which are included in the Register of subjects of the social entrepreneurship, and
3. whose activities are aimed at solving social problems of citizens and society.

In addition, such individuals and organizations should maintain their compliance with criteria set forth in Article 79–3 of the Entrepreneurial Code to provide at least 50% of the jobs created by them for workers with social status and spend at least 25% of their total labor costs on remuneration of their labor, or to have income from the implementation of the stipulated socially significant activities in the amount of at least 50% of their total income and reinvest at least 50% of their net income in carrying out their activities in the framework of social entrepreneurship.

The Need for Legislative Clarifications

It seems that legal definitions of both social entrepreneurship and social entrepreneurs need to be essentially revised and clarified. In doing so, the following should be taken into account:

1. the possibility of conducting social entrepreneurship by an individual seems to be acceptable in the conditions of Kazakhstan; however, it seems that it would be more expedient for these purposes to avoid using the form of an individual entrepreneur, but specifically for the purposes of engaging in social entrepreneurship to regulate a special legal form of a social individual entrepreneur;
2. admitting participation of legal entities precisely as subjects of social entrepreneurship requires:

legislative recognition of another separate type of legal entities in Article 34 of the Civil Code of the Republic of Kazakhstan (in addition to commercial and non-commercial organizations)

regulation of special organizational and legal forms for such distinguished legal entities because organizational forms for social entrepreneurship that exist in other countries (in particular, a social cooperative, a mutual fund, etc.) are not provided for by Kazakhstani legislation (although, as a rule, all organizations of Social Economy operate in corporate forms, including acting as associations, or are funds).

Thus, it is advisable to amend the Civil Code (to the minimal extent, its Articles 34 and 35) regarding the legal status of legal entities, because:

1. social entrepreneurship is not the activity of commercial organizations, and
2. the forms of non-commercial organizations may not (at least, effectively) contribute to the expected social integration of vulnerable groups of the population and their motivation to participate in productive activities, and also do not provide for systematic economic activities aimed at generating entrepreneurial income, and impede or hinder the use of many financing models for social entrepreneurship.

Such legislative changes and additions should properly reflect the following fundamental points:

1. social entrepreneurship is a regular and purposeful economic activity; social entrepreneurship is not charitable projects of individual business entities conducting entrepreneurial activity or those functioning as non-profit organizations;
2. a social / socially significant mission is the primary and prevailing goal of the activity of any subject of social entrepreneurship / organizations of Social Economy; the concepts of the common good and public interest require significant theoretical development and legislative formulation in order for the legal and organizational basis of social entrepreneurship to be formed in the most expedient, reasonable and effective way;
3. the proper legal regulation of Social Enterprises is conditioned by the existence of an integral system of effective and diverse mechanisms that ensure inclusiveness and sufficient motivation for vulnerable and marginalized segments of the population with the aim of their social integration, which should be formed at the level of public policy using a systemic and integrated approach;
4. it is necessary to bear in mind the peculiarities of the organizational structure and management in Social Enterprises and other subjects of social entre-

preneurship: the management structure and business management system of such an enterprise / entity is determined by collective ownership and principles of participation of members (participants, founders) of the enterprise in its management, as well as by a democratic method of management and decision making;

5. the formation of a system of Social Finance is essential in order to create efficient and accessible sources of financing for social entrepreneurship for the relevant entities; at the same time, it should be remembered that in the overwhelming majority of cases, the establishment of Social Enterprises / social entrepreneurship entities, there is no investment relationship between the entity and its founders / participants.

Conclusion

Formation of Social and Solidarity Economy in Kazakhstan requires creation of an appropriate legislative and organizational framework for social entrepreneurship in our country, including implementation of significant changes and additions to the system of current legislation.

We believe that the concept of social entrepreneurship can receive an appropriate legal basis, provided that one of the declared and pursued goals of public policy in Kazakhstan is the formation of Social and / or Solidarity Economy.

Clarity and unambiguity in defining such a goal will make it possible to systematically reform legislation by defining the organizational forms of Social Economy, the system of state support for the subjects of Social Economy, as well as effective and very special mechanisms and instruments for financing their activities by the so-called social investors.

At the same time, the necessary clarity in the formulation of the relevant state policy and its consistent implementation will not only stimulate the development of Social Economy, but it will also help to create effective barriers to ineffective spending of the state budget funds in support of social entrepreneurs, to prevent formation of corrupt practices as well as to prevent a decrease in peoples' confidence in the State and discrediting the very idea of Social Economy.

Finally, for Kazakhstan, the perception of the above mentioned two concepts ("social entrepreneurship" and "subjects of social entrepreneurship") should serve as an additional incentive for the development of the legal institution of private-law subjects in general and reforming the system of legal entities in particular.

Taking into account the approaches to understanding Social Economy in developed jurisdictions and the peculiarities of the civil-law regulation of legal entities in Kazakhstan, as the very next step in such legislative development it seems the most expedient to be as follows:

Social Economy organizations should be distinguished as a separate type of legal entities (in addition to their existing division for commercial and non-commercial organizations),

special organizational and legal forms for such social entrepreneurship entities should be regulated, also depending on the content of the activities of each respective entity.

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