

паліцай – politzei; калькаванне: Дом Урада – Government House; ЦБК – Central Executive Committee, сельсавет – Village Soviet; НКВД – People's Commission for Home Affairs; тлумачэнне, апісанне: Лікбез – Literacy Campaign; аналагі: таварышы – comrades, брыгадзір – foreman, міліцыя – police station; аднаасобнік – out on your own; серадняк – average peasant/middle farmer; парабак – labourer/ hired hand, вясковы – local man/ village.

Такім чынам, лексіка з нацыянальна-культурным кампанентам патрабуе пры перакладзе добрых ведаў нацыянальных асаблівасцей краіны, яе геаграфіі, фальклору, гісторыі і культурнай спадчыны.

Кожны народ мае свае традыцыі ў найменні тых ці іншых культурных з'яў. Пытанне перадачы культуралагічных рэалій з адной мовы на іншую яшчэ канчаткова не вырашана.

Існуюць два пункты гледжання: прыстасоўваць пераклад да законаў роднай мовы, ці, па-магчымасці, захоўваць асаблівасці арыгіналу. Што выбраць у кожным канкрэтным выпадку – залежыць ад дасведчанасці і таленту перакладчыка і ад таго чытача, якому тэкст адрасуецца.

## **THE MAIN ASPECTS OF COMPANY FORMATION MATTERS IN GREAT BRITAIN IN COMPARISON WITH THE PROCESS OF CREATION OF COMMERCIAL LEGAL PERSONS IN BELARUS**

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The problem of formation of companies in foreign states, and in Britain in particular, is exceedingly interesting in both: scientific and practical aspects. The analogical procedure in our country, certainly, is not ideal (in fact it needs serious amendments) and the research of the international experience will undoubtedly help to reform it. The United Kingdom has enjoyed a system of company registration since 1844. Today, company registration matters are dealt with in law, by the Companies Act 1985 and the updating legislation contained in the Companies Act 1989. The mentioned Act is not the only source of legal regulation of this problem.

There are four main types of company in Great Britain:

1. Private company limited by shares – members' liability is limited to the amount unpaid on shares they hold. This includes those community interest companies (CICs) which are private companies limited by shares.

2. Private company limited by guarantee – members' liability is limited to the amount they have agreed to contribute to the company's assets if it is wound up. This includes all RTM (Right to Manage) companies-, common-hold associations and those community interest companies which are companies limited by guarantee.

3. Private unlimited company – there is no limit to the members' liability.

4. Public limited company (PLC) – the company's shares may be offered for sale to the general public and members' liability is limited to the amount unpaid on shares held by them. This also includes community interest public limited companies (that is, CICs which are PLCs).

The Companies Act generally allows one or more persons (physical or legal) to form a company for any lawful purpose by subscribing to its memorandum of association. A public company or an unlimited company must have at least two subscribers. However, a sole incorporator has no right to run his company alone. At least, there should be one director, one secretary and one shareholder (the shareholder can be simultaneously either the director, or the secretary).

Director is responsible for business management and management of the company. In general terms anyone can be a company director, but there are some rules. For instance, you can't take this post if:

- you are an undischarged bankrupt or disqualified by a court from holding a directorship, unless given leave to act in respect of a particular company or companies;
- in the case of PLCs or their subsidiaries, you are over 70 years of age or reach 70 years of age while in office, unless you are appointed or re-appointed by resolution of the company in general meeting of which special notice has been given.

There is no minimum age limit in the Companies Act for a director to be appointed in England and Wales. However, he or she must be able to consent to their own appointment. In Scotland the Registrar will not register for any company the appointment of a director under the age of 16 years old.

Director's rights and power, and also a duty are stated in constituent documents. It is not authorized to unique director of the company to be its secretary simultaneously.

Any physical or legal person can be a secretary and in most cases formal qualifications are not required. However, a public company secretary must be formally qualified. The secretary answers before registration chamber for the appropriate organization of the reporting of the company according to requirements of the law.

*The British national registrar is called the registration chamber of Great Britain (Companies House).* This organ has three main offices and several branches responsible for registration of the company in England and Wales, in Scotland and Northern Ireland. Except for registration Companies House is engaged in dissolution of the companies, and also check and store the information on the registered companies and provide access by all interested person to these data, as well as it is stipulated by the current legislation.

In Great Britain you can form a company in two ways (to be more precise, you may choose a ready made company or a custom made company). A ready-made company is an already registered legal entity with its own name and number that has undergone the process of incorporation but has never performed any business transactions. Such legal persons «are waiting» for their future owner. Ready-made companies are available from company formation agents. If you incorporate a company yourself (custom made company), you will need to send a number of documents, together with the registration fee, to the Registrar of Companies.

Having decided to found the company, it is desirable to check up preliminary in the Registration chamber its name to avoid in the further unnecessary losses of time in case the name will be rejected. For the name of a new company it is not necessary to take the name similar addressed to already operating company or conterminous with the registered trade mark. Even having received the certificate on registration, you can appear involved in a judicial suit with the firm defending the rights to this name. Similar problems will arise, if the name of your company will coincide or will be similar to the name of the public or governmental organizations. Additional explanations will have to direct to Companies House if you have decided to use in the name of your private limited company a word «group» or «international». It is considered, that such form of managing is intended first of all for conducting fine or average business. Any instruction on global character of activity will demand a separate substantiation.

The name of a private company should terminate always in a word «Limited»; in the business documentation it is supposed to use the reduced writing «Ltd». The name of a public limited company must end with «Public Limited Company» or the abbreviation «PLC».

The formation documents are: a memorandum of association; articles of association; [Form 10](#); [Form 12](#). When forming a community interest company (CIC) the following documents are required in addition to those listed above: a community interest statement; an excluded company declaration. A memorandum of association sets out: the company's name; the region where its [registered office](#) is situated (in England, Wales or Scotland); its objects (what it will do). The object of a company may simply be to carry on business as a general commercial company. Other clauses to be included in the memorandum depend on the type of company being incorporated.

Such document as *Articles of association* sets out the rules for the running of the company's internal affairs.

[Form 10](#) gives details of the first director(s), secretary and the intended address of the registered office. As well as their names and addresses, the com-

pany's directors must give their date of birth, occupation and details of other directorships they have held within the last five years. Each officer appointed and each subscriber (or their agent) must sign and date the form.

[Form 12](#) is a statutory declaration of compliance with all the legal requirements relating to the incorporation of a company. It must be signed by a solicitor who is forming the company, or by one of the people named as a director or company secretary on Form 10. It must be signed in the presence of a commissioner for oaths, a notary public, a justice of the peace or a solicitor. [Form 12](#) must be signed and dated after all the other documents are signed and dated. This is because Form 12 confirms that all other registration requirements have been completed.

All company formation documents are subject to certain checks including checks of prospective officers against the [Disqualified Directors' Register](#). But the registrar doesn't survey the form and the tenor of the registration documents. But, as it has been already marked, the company lawyer, the director or the secretary must personally sign a special declaration (called Form 12) in which he guarantees the accordance of the mentioned papers to all the requirements of law. The British registrar actually uses the principle of post-registration check. It means that Companies House selectively verifies the formation documents of already incorporated companies. If any mistakes are found, the company will be simply dissolved. In this situation the law prohibits the incorporators to create other companies. The sanction is strict, but efficient. So, it goes without saying, that all the registration documents are composed extremely attentively.

The standard registration fee is £20. The premium service which provides incorporation on the same day as it receives the formation documents, if they are hand delivered before 3 p.m., costs £50. For users of the Software Filing service, the standard fee is £15 and the premium same-day service is £30. To be able to incorporate electronically, you must either purchase suitable software or develop your own software. It is important to mention that accelerate formation and the electronic one aren't admissible. After successful check of the name 5-6 working days on registration of the certificate on registration (Certificate of Incorporation) are required approximately. However, as it has been already mentioned, for an additional payment accelerating the procedure of registration of the company for one day is not excluded.

Well, in comparison with Great Britain, the process of creation of legal persons in the Republic of Belarus is more complicated. Making this comparison, I can mark the following aspects. The state registration of legal persons in Britain is fulfilled by a single organ of government. As a matter of fact, it is efficient to borrow this rule in our legislation. The British registrar doesn't use the preliminary legal check of the appropriate documents (it is substituted by

the selective post-registration examination), and the Belorussian registrar does. From my point of view it isn't necessary to introduce this practice in Belarus because it may lead to the violation of law. The procedure of registration in Britain takes 5-6 working days. For an additional fee it is possible to register a company in 1 day. As for our Republic this process generally takes about 1 month (in some cases this term can be prolonged till 2 months). But our legislation is constantly being modified: on the 10th of April 2006 the appropriate Decree of the President was changed. In particular, the general term of state registration of legal entities will be reduced to 20 days and moreover the principle of «single window» will be introduced. Both, Belarus and Great Britain don't have a single source of legal regulation of company formation matters.

## **АКТУАЛЬНЫЕ ПРОБЛЕМЫ СОВЕРШЕНСТВОВАНИЯ ПРАВОВОГО РЕГУЛИРОВАНИЯ СОЗДАНИЯ ЮРИДИЧЕСКИХ ЛИЦ В РЕСПУБЛИКЕ БЕЛАРУСЬ**

**А. П. Шевченко**

Изучение порядка создания юридических лиц в Республике Беларусь представляет несомненный научный и практический интерес. Потребность в более детальной, полной и всесторонней разработке настоящей тематики в значительной степени продиктована практикой, ибо процедура образования организаций в нашем государстве, на мой взгляд, нуждается в существенных изменениях. Таким образом, налицо актуальность выработки на теоретическом уровне наиболее приемлемого для Беларуси юридического механизма регламентирования указанного процесса на данном этапе ее развития.

Как известно, единого законодательного акта, посвященного правовому регулированию процедуры образования организаций в Республике Беларусь, не существует. основополагающие положения, которые регламентируют настоящую правовую проблему, содержит Гражданский кодекс. Данные стержневые начала развиваются и конкретизируются в целом комплексе нормативных актов об организациях отдельных видов. Представляется рациональным разработка и принятие двух законов о регистрации. Один распространялся бы на коммерческие организации, а второй регулировал бы учреждение некоммерческих юридических лиц. Такие законы закрепили бы основные принципы и скомпоновали «разбросанные» по различным законодательным актам правовые нормы, которые регламентируют вопросы образования соответствующих организаций.

Следующую проблему представляет многообразие регистрирующих органов. Видится весьма разумным семь существующих таких органов