

Technology of Establishing an Inheritance Fund

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Abstract: *The article is devoted to the analysis of the amendments to the Civil Code of the Russian Federation concerning the inheritance fund, the procedure for its creation, management, and the rights of the beneficiary that became effective on September 1, 2018. The study revealed that the inheritance fund is one of the tools that expand the possibilities for the protection and management of inheritance. The article focuses on the study of issues of testamentary succession of shares of a joint stock company transferred into the ownership of an inheritance fund. Conclusions are drawn up regarding the peculiarities of the civil legal status of an inheritance fund and its activities as a legal entity, which significantly distinguish it from ordinary funds. As a result, some difficulties have been identified in determining of a fund creation procedure, the procedure for its management bodies forming, further forming of its property base and carrying out activities in the Russian Federation.*

Index Terms: *inheritance, inheritance fund, inheritance management, inheritance protection, testament, beneficiary.*

I. INTRODUCTION

Due to the changes in civil legislation that have entered into legal force and the emergence of a new institute of the inheritance fund, it is important today to understand the specifics of its creation and liquidation, formation of a legal entity's bodies, and regulation of property status and activities. The introduction of inheritance funds into the Russian civil law is the first attempt at systemic reform of inheritance law.

Federal Law # 259-FZ "On Amendments to the First, Second and Third Parts of the Civil Code of the Russian Federation" dated July 29, 2017 [1] provides for the possibility of special inheritance funds creation. They are used to transfer property by inheritance in the same way as the foreign funds are [2].

The purpose of an inheritance fund creation is to manage the inherited mass, that is, money, business, and other assets that remain after the death of the owner. The activity of such a fund is carried out indefinitely or for a certain period, in

accordance with the management terms specified in the testament.

Certain problematic issues, as well as the advantages of the inheritance funds were considered in the scientific papers drawn up by I.Z. Anyusheeva [3], S.P. Grishaev [4], O.A. Makarova [5], L.V. Schennikova [6], and other authors.

II. PROPOSED METHODOLOGY

A. The Method section describes in

In the research process, the authors were guided by general scientific and private-law methods of cognition; they most actively used general scientific methods such as analysis and synthesis, generalization and analogy, as well as special methods of cognition: formal legal method and legal analysis.

When learning, analyzing and systematizing the available scientific knowledge about the civil legal status of the inheritance fund, the logical-legal and legal cognition methods were used; the systemic-structural method and the simulation method were used to determine the organizational-legal form and the essential features distinguishing the inheritance fund from ordinary funds; when studying the legal basis of the inheritance fund and the formation of proposals for the regulatory framework improvement, the comparative legal method was used; when comparing an inheritance fund to other funds, the method of comparison was used. All these methods were combined with the techniques of logic and argumentation.

The application of the above methods allowed a comprehensive and complex analysis of the phenomenon: to identify problematic issues in the field of civil legal status of the inheritance funds in the Russian Federation, to analyze legislation, judicial practice and scientific literature.

B. Algorithm

The study of the technology of establishing an inheritance fund and the economic and legal aspects of its activity was based on a branching algorithm.

In the course of the study, the authors analyzed the norms of civil legislation and the authors' positions on the legal form of the estate. The processing of the existing legislative base regarding the introduction of an inheritance fund has shown the need to specify the rules on the purpose of the establishment and operation of the estate.

In order to eliminate the unresolved issues of establishing an estate, mechanisms for improving legislation were proposed.

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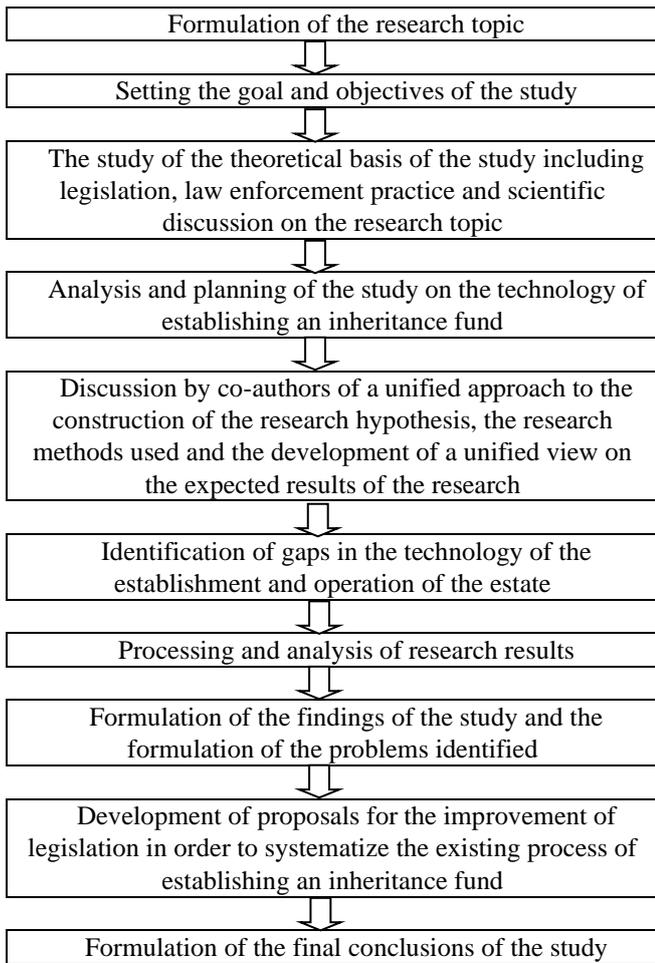
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C. Flow Chart



III. RESULTS

It is revealed that the inheritance fund lacks the fundamental characteristics of such a legal form of a non-profit organization as a fund, since the non-commercial nature is not obvious, the operating conditions are not disclosed, there are no obliging requirements to report according to the established rules, therefore, the inheritance fund should occupy a completely separate place in the system of legal entities envisioned by the Russian civil law, since it is not a non-profit organization exclusively.

It has been established that under the new provisions of the civil legislation of the Russian Federation the inheritance fund has material features that significantly distinguish it from conventional funds; however, in our opinion, the inheritance fund still has to remain a fund as the organizational and legal form of non-profit unitary legal entities. It is advisable to clarify some law provisions defining the features of the legal status of the inheritance fund, including the goals of its creation and activities that are close to the goals of ordinary funds creation and operation, for example: managing the inheritance to achieve certain socially useful goals.

It was determined that the beneficiary has the right to exercise control over the activities of the inheritance fund, including the compliance with management conditions, and in case of the inheritance fund management conditions violation, which results in losses for the beneficiary, the latter has the right to demand their compensation. In addition, the

beneficiary has the right to request information about the activities of the fund only in cases stipulated by the fund charter. The beneficiary is also entitled to demand compensation for damages arising from the violation of the inheritance fund management terms, if provided for by the charter of the fund. In our opinion, it seems appropriate to secure these provisions in the law.

IV. DISCUSSION

Pursuant to article 123.17 of the Civil Code of the Russian Federation, a fund is a unitary non-profit organization that does not have membership, established by individuals and/or legal entities on the basis of voluntary property contributions and pursuing charitable, cultural, educational or other social, socially useful purposes. In accordance with Article 123.20-1 of the Civil Code of the Russian Federation, an inheritance fund is deemed to be created in pursuance of a person's will and on the basis of his/her property, such a fund must manage the property of that person received in inheritance indefinitely or for a specified period [7].

The peculiarities of the inheritance fund result from the special purpose of its creation – the management of a person's property received in the order of inheritance (when the testator founds such fund [8]). In our opinion, this formulation of the goal, in contrast to the society-focused, socially useful goal of ordinary funds creation, is of private nature, not socially useful, and is related to the need to manage and preserve the inheritance of a particular person. It should also be noted that the testators are not limited in their right to indicate a wide range of persons as beneficiaries of the fund, which can bring together the ultimate goal of an inheritance fund creation and a generally useful, social, charitable, etc. goal. However, based on the provisions of the law, an inheritance fund may be created with identification of a specific person, in whose private interests the inheritance will be managed, as the beneficiary of such fund. This provision has been criticized by L.V. Shchennikova, who noted that Russian inheritance funds are not declared charitable, can be created only after the death of the testator (while foreign funds can be created during the life of a person), and the laws of such countries as Germany or Austria make no exceptions for these funds in the general provisions on funds; they only mention that a deal on a fund establishment may be envisaged in the testament, and the general provisions on funds will apply to such fund [6].

The purpose of an inheritance fund creation (managing the inheritance of a certain person) inevitably affects the scope of its legal capacity, which is special, like that of any non-profit organization. Thus, in accordance with clause 3 of Article 123.20-1, unlike conventional funds, the inheritance fund does not have the right to receive property from other persons free of charge, except for receiving property by inheritance from a founding person [9].

It should also be noted that the procedure for an inheritance fund creation is also quite peculiar; a fund is created after the death of the founding person if such order is contained in his testament.

Therefore, at the time of fund creation, the legal personality of the legal entity's sole founder is terminated. If, after his/her death, nothing prevents the creation of a fund, it will exist in isolation from its founder, which is generally acceptable for unitary organizations, in which participation rights do not arise. Being an artificial construction and the result of a high-level rule of law development, the inheritance fund independently exists in a society outside the ownership and regardless of the will of a certain individual [2].

A notary, who has opened an inheritance case, is obliged to apply to the authorized state body for state registration of the inheritance fund within three working days from the date of the opening of the inheritance case after the death of the founding person. Previously, (s)he should offer the persons specified in the decision on the fund establishment or persons, who may be determined in the manner prescribed by the decision on the establishment of the fund, to join the fund's bodies and obtain their consent thereto [3, 5].

After the testator's death, the notary will transfer a copy of the decision on the inheritance fund establishment, together with the inheritance fund charter, to the authorized state body. Another copy of the decision, together with the charter and the terms of the inheritance fund management, shall be transferred to the person acting as the sole executive body of the fund. In cases provided for by the testament, the notary is obliged to transfer a copy of the decision on the inheritance fund establishment, together with the charter and terms of the inheritance fund management, to the beneficiary.

According to M.A. Kartashov, the order on the creation of an inheritance fund is an integral part of the testament, thereby expanding the scope of contractual inheritance. A testament order from the testator to create a fund gives rise to rights and obligations only in conjunction with another legal fact – the death of the testator (the opening of the inheritance) – and many scholars consider it a one-sided transaction with a deferred validity period. However, this transaction is an independent way of disposing of the testator's property in case of [2].

Particular attention should be paid to the peculiarities of the inheritance fund's property base formation. Such a fund is to be inherited by testament in the manner prescribed by the Civil Code of the Russian Federation. According to the current version of Article 1116 of the Civil Code of the Russian Federation, the legal entities specified therein and existing on the day of the opening of the inheritance as well as the inheritance fund established pursuant to the last will of the testator expressed in the testament may be called in for inheritance [7].

The fund is the heir, i.e. the owner of the property, but the exercise of the property right by such an heir is limited to the special purpose of the fund creation. For instance, the fund's charter may require obtaining the consent of the highest collegial or other body of the fund for the inheritance fund to carry out the transactions specified in the charter [10].

According to clause 4 of Article 123.20-1 of the Civil Code of the Russian Federation, the inheritance fund management terms must include provisions for transferring of the entire property of the inheritance fund or its part to certain third parties (beneficiaries) or certain categories of persons out of an indefinite number of persons in certain cases including the occurrence of circumstances, for which it

is not known whether they will arise or not [7]. The fund bodies may determine such persons independently in the manner prescribed by the management terms.

The procedure for transfer of all or part of the fund property, including income from the fund's activities, must be set forth in the management terms by indicating the type and size of the transferred property or the procedure for its determination. This includes the property right, the period or frequency of property transfer, as well as the circumstances, in which such a transfer occurs.

The above interpretation of the law provisions allows us to conclude that the inheritance fund's management terms may provide for the transfer of all of its property to a specific beneficiary, who is not the heir. After the transfer of all of the fund's assets, its continued existence does not make sense, and the fund can be liquidated.

Attention should also be paid to the procedure for the creditors' rights protection in the event of the inheritance transfer to the fund, which is not regulated by the new Law. According to clause 1 of Article 1175 of the Civil Code of the Russian Federation, each of the heirs is responsible for the testator's debts to the extent of the cost of the inherited property transferred to him/her [7]. In accordance with paragraph 60 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 9 "On judicial practice in cases of inheritance" dated May 29, 2012, all heirs, who accepted the inheritance, are liable for the inheritor's debts, regardless of the basis of inheritance and the mode of acceptance of the inheritance, as well as the Russian Federation, cities of federal significance Moscow and St. Petersburg, or municipalities, which receive the heirless property to their ownership in accordance with the inheritance procedure stipulated by law [11]. The heirs of the debtor, who have accepted the inheritance, become joint debtors within the cost of the inherited property transferred to them [12]. At the same time, according to paragraph 1 of Article 123.18 of the Civil Code of the Russian Federation, the property transferred the fund by its founder is the property of the fund. The founders of the fund do not have property rights in relation to the fund they have created and are not liable for its obligations, and the fund is not liable for the obligations of its founders. Despite this provision, it is advisable to assume that the inheritance fund, being the heir, must be liable for the testator's debts jointly with other heirs, otherwise its creation will become a kind of mechanism for avoiding responsibility for the testator's debts, although this provision will be another exception from the general rules on funds. Such authors as Anyusheeva [3], Kalacheva [13], Chistobaeva [14] share this point of view.

In this regard, the following question arises: how will the interests of the testator's creditors be protected if all the assets of the inheritance fund are fully transferred to the beneficiary, who is not the heir and not liable for the testator's debts in full compliance with the terms of management? In such a case, if the fund's assets are insufficient, the mechanism for protecting the rights of the testator's creditors is provided only by bankruptcy rules.

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Therefore, it is advisable to impose restrictions on the execution of transactions on the disposal of the fund property until the repayment of obligations to the testator's creditors, or in certain cases such actions can be recognized as a form of abuse of the right, when in order to avoid liability to creditors all property is transferred in bad faith to third persons – beneficiaries, who are not heirs and not responsible for the debts of the testator.

Next, we should consider the features of the inheritance fund management. An inheritance fund is managed by a sole or collegial executive body, and a beneficiary does not have to be a part of it. In the cases stipulated by the charter, the highest collegial body and the board of trustees are created, and beneficiaries may be members of the highest collegial body.

The law provides for a special basis for the liquidation of the inheritance fund at the request of the beneficiary or an authorized state body, if its management bodies are not formed within a year from the day when the need for their formation arises (for example, the lack of a quorum in collegial bodies, the absence of a sole executive body). The property left after the liquidation of the inheritance fund is to be transferred to beneficiaries in proportion to the amount of their rights to receive property or income from the fund's activities, unless other rules are provided for by the inheritance fund management terms, including its transfer to other persons. If it is not possible to identify the persons, to whom the property remaining after the liquidation is to be transferred, then in accordance with the decision of the court, it should be transferred into the ownership of the Russian Federation, which is also a peculiarity of the inheritance fund [15].

The terms of management may provide for remuneration to the person, who exercises the powers of the sole executive body, members of the board of trustees, or members of other bodies of the fund for their duties performing. This rule is an exception to the general provisions of clause 4 of Article 123.19 of the Civil Code of the Russian Federation on funds, according to which the board of trustees of the fund operates on a voluntary basis [7].

It should also be noted that the charter of the inheritance fund and its management terms cannot be changed after its creation, except for a change on the basis of a court decision upon the request of any body of the fund in cases where it is impossible to manage it under previous conditions due to circumstances that couldn't have been foreseen at the time of the fund creation, and also if the beneficiary is found to be an unworthy heir, unless this circumstance was known at the time of the fund creation.

The rights of the inheritance fund beneficiary are inalienable, no court-enforced collection may be imposed on them against the beneficiary's obligations, they do not pass by inheritance or in the course of legal entity reorganization (except in case of reconstruction). Transactions made in violation of these rules are void [16, 17].

In case of violation of the inheritance fund management terms, the beneficiary shall have the right to demand reimbursement of the incurred losses only if the fund charter provides for this right.

An heir, who has the right to an obligatory share and at the same time is the beneficiary of the inheritance fund, loses the

right to an obligatory share if (s)he does not declare a waiver of the beneficiary's rights. At the same time, the court may reduce the size of the obligatory share of this heir if the value of the property due to him/her as a result of inheritance significantly exceeds the amount of funds required to support the person, taking into account his reasonable needs and existing obligations to third parties as of the succession commencement date, as well as average costs and his/her life level prior to the testator's death [18].

To date, in the Russian civil law science, the study of an inheritance fund creation is relevant; the authors reveal both positive and negative aspects of an inheritance fund creation. Among the positive aspects, the authors note the possibility for wealthy businessmen to keep their business after their death; ensure the comfortable and long-term life of their heirs and other persons after their death; not to allow the enterprise to stand idle for half a year waiting for the heirs to come into inheritance as required by law; the ability to support the development of science and art even after their death at the expense of the fund, etc. Among the negative ones, they identify the obligation to make a choice for those heirs, who have an obligatory share in the inheritance; additional duties imposed on notaries; the possibility to create funds only after death, not during lifetime, etc. [3, 19].

V. CONCLUSION

Thus, the analysis made it possible to establish that a fund is a unitary non-profit organization that does not have membership. The property of the fund is not divided into shares, interests, etc. Since there are no membership relations between the members of the fund, they do not elect any governing bodies. Other features of the fund as a legal entity, in particular the possibility of socially useful (charitable, cultural or other social) objectives establishing by a legal entity are not applicable to the inheritance fund.

It is also necessary to distinguish the organization of the inheritance fund from the expression of will in the testament on the transfer of money or other property to a charitable or other fund.

The inheritance fund acts as an heir, which is called upon to inherit property based on a testament after it is created in accordance with paragraph 2 of article 123.20-1 of the Civil Code of the Russian Federation. The notary, who commenced succession, is obliged to issue a certificate of inheritance to the fund within the time specified in the decision on the establishment of the inheritance fund, and the time limit cannot be more than six months from the date of the inheritance release in accordance with article 1154 of the Civil Code of the Russian Federation [7]. The testator makes the decision on the establishment of an inheritance fund. The inheritance fund as a non-profit organization has a special civil legal capacity and can carry out the activities stipulated in its charter. The name of the inheritance fund must necessarily include the words "inheritance fund", the law does not provide for any other requirements to the name of the inheritance fund. The names of the funds should not be repeated, which is checked during registration.

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