

FEATURES AND CLASSIFICATION OF RIGHTS OF THE SHAREHOLDERS (LLC)

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Abstract: *This material will discuss some issues, features and classifications of the shareholders of LLC, comparison between rights of shareholders of LLC and JSC, mechanism of exercising the rights of shareholders and protecting the rights of shareholders.*

Key words: *shareholder, exercising the rights, protecting the rights.*

In all legal systems of the world, special attention is paid to the problems related to the exercising and protection of the rights of the participants of the LLC, which is the main organizational and legal form of business activity. Including Uzbekistan, LLCs consists more than 320,000 of the more than 520,000 business entities, most of which are medium and small businesses²⁵. In the theory and practice of modern corporate law there are various models of the essence of LLC such as *shareholder oriented*, *labour oriented* and *state oriented*²⁶. Today it is understood that the goals, construction, management and all activities of the LLC should serve to ensure the realization of the rights of the participant of the LLC, to protect, and to serve his legal interests.²⁷

The rights of the shareholders are primarily a subjective rights. However, it should be borne in mind that corporate rights differ in their specific features from other subjective rights in civil law (mainly studied in two major groups: the right of obligation and the right of property). The share added by the shareholder to the charter capital of the company belongs to the company on the basis of property rights and does not give him any property rights, nor does the company enter into a contract with the shareholder, but becomes a participant in complex corporate relations. The rights of the participants are studied as an integral part of the corporate relationship.

In the literature, the rights of shareholders in companies are classified according to different forms and contents. D.V. Lomakin divides the rights of shareholders into *basic* and *derivative rights* (for example, the participation of a

²⁵ <https://stat.uz/uz/rasmiy-statistika/usreo-2>.

²⁶ Hansmann, Henry and Kraakman, Reinier H., The End of History for Corporate Law (January 2000). Қаpaиr: <https://ssrn.com/abstract=204528>

²⁷ R. Kraakman, J. Armour, P. Davies, L. Enriques, H. Hansmann, G. Hertig, K. Hopt, H. Kanda and E. Rock, The Anatomy of Corporate Law 2nd edn., Oxford, Oxford University Press, 2009. Б-103.

shareholder in a company is a fundamental right, the right to demand payment of a dividend is a derivative right)²⁸. In some literatures, rights are studied according to their content into property and non-property (organizational management) rights.²⁹ It can also be divided into active rights and passive rights, depending on the method of exercise of rights. If the active rights are directly exercised by the shareholder on the basis of his own efforts and will (acquaintance with the accounting documents), the passive rights are granted to the shareholder as a result of the exercise of the rights of the shareholder of the corporate relationship (notification of the general meeting).

According to Mogilevsky, the rights of shareholders in company are divided into *basic rights* (established by law) and *additional rights* (provided for in the constituent documents). In turn, basic rights are divided into conditional and unconditional rights. Unconditional rights are imperative and cannot be restricted by company shareholders and governing bodies. Conditional rights can be exercised under certain conditions. The peculiarity of additional rights is that when the share is alienated, such rights do not pass to the person who received the share.

In support of S.D. Mogilevsky's opinion, we propose to study the rights of the shareholders of the company as the rights provided by law and the rights established by agreement, in order to bring legal terms into line with the law. Indeed, textbooks on the Theory of state and law state (in Uzbekistan) that law and contract (agreement) are the main sources of law³⁰.

Shareholders of the company, in accordance with the Law On Limited and Additional Liability Companies and the company's constituent documents, participate in the management of the company, receive information about the company's activities and get acquainted with its books and other documents, participate in the distribution of profits, their share in the charter fund. The participants of the company are guaranteed the right to sell or otherwise alienate the share, to leave the company at any time in the manner prescribed by the constituent documents, in case of liquidation of the company, to receive the property or its value after settlement with all creditors. But this list is not exhaustive. In addition to the listed rights, the rights of the company's participants may also be provided for in the legislation. For example, in the Civil Code, a participant may file a lawsuit to invalidate an agreement entered into by the company in violation of its statutory objectives, an agreement entered into by a company without a license to engage in related activities, an

²⁸ Ломакин Д. В. Корпоративные правоотношения как составная часть системы гражданско-правовых отношений: на примере хозяйственных обществ: дис. ... д-ра юрид. наук. М., 2009. С. 89.

²⁹ Корпоратив хуқук: ўқув қўлланма/ Б.Умаров, Х.Атажанов, 2021 йил 12-бет

³⁰ Давлат ва хуқук назарияси: дарслик/Ш.Сайдуллаев, 2018 йил. 123-125-бетлар

agreement entered into by the company's governing bodies. These include the rights provided by law, such as preferential acquisition of a share (part of a share), participation in the bankruptcy proceedings as an interested party, if there are signs of bankruptcy in the Bankruptcy Law.

The rights mentioned above are unconditional rights, which participants can enjoy on equal terms and without any obstacles. The law sets certain conditions for the exercise of certain rights. For example, in order to apply to the court for the expulsion of another shareholder, the participant's vote must not be less than ten percent of the total number of votes³¹. Of course, going to court is a constitutional right of every person, but if a participant with less than ten percent of the votes goes to court without complying with this requirement established by law, the court will refuse to satisfy the participant's claim without examining other grounds of the claim. In addition to that, it is prescribed in Article 19 of Plenum of the Supreme Economic Court of the Republic of Uzbekistan, "On Certain Issues of Resolution of Corporate Disputes by Economic Courts", that if the claimant's share or the total share of several participants is less than ten percent of the company's authorized fund (authorized capital) or if the claim is filed by the company itself, the claim must be rejected³².

Another example to the conditional right of the shareholder is to initiate a general meeting of shareholders. The law stipulates that a general meeting may be convened on the initiative of the participants of the company, who have at least one-tenth of the total number of votes of the shareholders, to convene a general meeting of the participants. Participant of the company may pledge his share in the charter capital of the company to another member of the company or, if it is not prohibited by the charter of the company, to a third party with the consent of the company. But this requires a majority vote of all participants in the company. It should also be borne in mind that the constituent documents of the company may provide for an even greater number of votes to make such a decision.

In addition to the rights provided by law, certain rights may be granted to certain participants in the process of founding the company or in accordance with the amendments and additions to the constituent documents in accordance with the decision of the general meeting of shareholders. For example, in the company's constituent documents, the right of preferential purchase may be given to a certain person in the first place, regardless of the size of its share in the charter capital, i.e. in proportion to its distribution. Limiting the possibility

³¹ <https://lex.uz/docs/4607985>

³² <https://lex.uz/docs/2453499>

of changing the proportion of participants (for example, the ratio of shares should not be less than or more than a certain amount), establishing a different procedure for determining the number of votes of participants (for example, voting based on the number of participants or having the same vote regardless of participation) unanimous decision on certain (all) issues (in this case, the participant with the lowest number of votes is guaranteed the right to participate in the management of the company), the participant sells his share to third parties with the consent of the remaining participants otherwise the waiver in their favor, as well as the transfer of shares to the heirs of individuals and legal successors of legal entities that are members of the company, the prohibition of pledge of shares, the prohibition of increasing the company's charter capital at the expense of third parties can be assumed.

G.F. Shershenevich claims the rights of shareholders (1) participation in income (dividend right), (2) the right to property remaining after the liquidation of the JSC, (3) the right to personally participate in the affairs of the JSC (through the election of the shareholder's supervisory board, audit committee).³³

The rights of a participant in a company with a single participant are different from the rights of participants in a multi-member company. For example, a single participant is not entitled to leave the community. Because there can be no company without a participant. For example, Article 26 of the Law of the Russian Federation "On Limited Liability Companies" prohibits a single member of a company from leaving the company³⁴. From our perspective, aforementioned norm of the law should be implemented in legislation of the Republic of Uzbekistan. The inclusion of this norm in the fifth paragraph of the first part of Article 8 of the Law as an exception serves to fill the gap in the exercise of the rights of a single participant.

There are certain differences in the exercise of the rights of a majority shareholder and a minority shareholder in the JSC, while the same rights and obligations are established regardless of the amount of shares in the charter capital of the LLC. A clear example of this is the fact that the law provides for the establishment of a committee of minority shareholders to protect the rights and legitimate interests of minority shareholders.

Similarly, if all participants in the management of the company participate in the management of the company (LLC), in the JSC such a right is granted only to the owners of ordinary shares. Because the preferred shares are not voting shares, the holder of the preferred share, in turn, cannot participate in the management of the JSC, unless otherwise provided. Shareholders who own

³³ Шершеневич Г.Ф. Курс торгового права. М., 2003. Т. 1: Введение. Торговые деятели. С. 432 - 437.

³⁴ https://kodeksy-ru.com/fz_ob_ooo/26.htm

voting shares also have the right to receive them on a preferential basis in the placement of shares and shares convertible into shares by the Company, the shareholder who does not have the right to vote does not have the right to preferential purchase. The law provides for the right of shareholders to demand the repurchase of their shares by the JSC, but does not provide for such a right for the participants of the LLC (demand to buy a share). The general meeting of participants is in any form the supreme governing body of the society. Participants perform their organizational and managerial functions in the community through general meetings. The law does not provide for such a right for the participants of the LLC (JSC), while the law provides for remote participation and remote electronic voting using information and communication technologies in the discussion of issues on the agenda and decision-making on the issues raised during the general meeting of the JSC. While an extraordinary general meeting of a JSC may be held at the written request of shareholders holding at least five percent of the company's voting shares, an LLC shall hold a general meeting at the request of the company's participants holding at least one-tenth of the total number of votes. There are differences between the rights of an ordinary shareholder and a privileged shareholder to receive dividends in the JSC itself. Also, only shareholders who have voting shares have the right to file a claim for the obligation to repurchase all or a certain part of the shares by the joint-stock company. In addition, candidates to the Supervisory Board and the Audit Commission (auditor) of the company may be nominated only by shareholders who have the right to vote, not exceeding the quantitative composition of this body.