



## Research Article

# FEATURES OF THE RIGHTS AND OBLIGATIONS OF SHAREHOLDERS OF COMPANIES (LLC AND JSC)

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## ABSTRACT

The article discusses the specifics of the rights and obligations of shareholders in business companies, the search for some problems in the exercise of their rights and ways to overcome them, ways to protect the rights of participants, including judicial protection and a legal mechanism for out-of-court settlement of disagreement between participants. The author discusses the basic rights of shareholders, ways to exercise them, as well as the obligations of shareholders in terms of scientific literature and the doctrine of Uzbek law. The author comes to the conclusion that a shareholder who has not completely contributed to the authorized capital of the company is liable to creditors for the company's debts. He believes that the rights and obligations of the participants should be considered in terms of the organizational and legal form of business entities, as the legislation gives the same rights and obligations to the shareholders of Limited liability companies (LLC) and Additional liability companies (ALC), and they differ from the rights and obligations of shareholders of JSC.

## KEYWORDS

Limited liability company, constituent document, share capital, share, share value, general meeting, foreclosure on a share, procedural documents, judicial acts,

## INTRODUCTION

The rights of the shareholders (participants) are primarily subjective rights. However, it should be taken into account 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 participant to the statutory fund of the company belongs to the company on the basis of property rights and does not give him any corporeal rights, nor does the company enter into a contract with the participant, but becomes a participant in complex corporate relations. The rights and obligations of the participants are studied as an integral part of the corporate relationship.

We believe that the rights and obligations of the participants should be considered in terms of the organizational and legal form of business entities, as the legislation gives the same rights and obligations to the shareholders of Limited liability companies (LLC) and Additional liability companies (ALC), and they differ from the rights and obligations of shareholders of JSC. In this regard, it should be noted that the legislation defines the rights and obligations of ordinary shareholders and holders of preferred shares in the JSC, as well as the rights of some participants of the LLC (ALC) different from other participants.

Discussion and results. Scholars classify the rights of shareholders of companies according to different forms and contents. Lomakin D.V. divides the rights of participants into basic and derivative rights (e.g. the participation of a shareholder in a joint stock company is a fundamental right, the right to demand payment of dividends is a derivative right). [1].

In some studies rights are studied according to their content into property and non-property

(organizational management) rights. [2] Moreover, the rights of participants can also be divided into active rights and passive rights, depending on the method of exercise of the rights. If the active rights are directly exercised by the participant on the basis of his own efforts and will (the right to review accounting documents), the passive rights are granted to the participant as a result of the exercise of the rights of the participants of the corporate relationship (e.g. notification of a participant about the general meeting, election to the Supervisory board).

According to Mogilevsky S.D., the rights of participants of a company are divided into fundamental rights (established by law) and additional rights (provided for in the constituent documents). Fundamental rights, in turn, are divided into conditional and unconditional rights. Unconditional rights are imperative in nature and cannot be limited by the participants themselves or by the management bodies of the company. Conditional rights may be exercised subject to certain conditions. [3]

The peculiarity of additional rights (obligations) is seen when the share is alienated, but such rights and obligations do not pass to the person who received the share.

In support of S.D.Mogilevsky's opinion, we propose to study the rights and obligations of the participants of a company as the rights and obligations provided by law and established by an agreement, in order to bring legal terms into line with the law. However, textbooks on the theory of state and law state law and agreement to be the main sources of law. [4]

The concept of corporate rights of a participant, I.Shitkina described as a set of organizational,

managerial (participation in the management of the company, monitoring the activities of management bodies, access the information about the activity of a company) and property rights (participation in distribution of profits, receipt of property upon liquidation of the company) of a participant arising from membership in a corporation. [5]. Furthermore, the preferential (specific) rights were suspended as a separate category of rights (the right of the participant to sue, the right to challenge the decisions of the governing bodies). [6]

In accordance with the law and the company's constituent documents participants of the company are guaranteed the rights to participate in the management of the company, receive information about the company's activities, review accounting and other document, participate in the distribution of profits, sell or otherwise alienate the share or its part in accordance with law and constituent documents, leave the company at any time in the manner prescribed by the constituent documents, receive the property or its value after settlement with all creditors in case of liquidation of the company.

The rights mentioned above are unconditional rights 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 exclusion of another participant in court, the participant's vote must not be less than ten percent of the total number of votes. 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.

The law also stipulates that a general meeting may be convened on the initiative of the participants of the society, who have at least one-tenth of the total number of votes of the participants, to convene a general meeting of the participants. In addition, it is as well stipulated that a participant of the company may pledge his share in the statutory fund 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 taken into account that the constituent documents of the company may provide for an even greater number of votes to make such a decision.

The rights of several participants differ from the rights of the sole participant of the company.

For instance, a single participant is not entitled to leave the company, 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 participant of a company from leaving the company. [7] The inclusion of this provision 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.

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 and the company's constituent documents. For example, the Civil Code provides for the rights of a participant to file a lawsuit to invalidate an agreement concluded 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 agreement entered into by the company's governing bodies exceeding their authority, preferential acquisition of a

share (part of a share), participation in the bankruptcy proceedings as an interested party in cases of signs of bankruptcy according to Insolvency Law.

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 participants. In other words, the company's constituent documents may provide for disproportionate distribution of rights, e.g. they may entitle a certain person a preferential acquisition right regardless the size of his share in statutory fund, limiting the possibility of changing the maximum size (for example, the ratio of shares of a participant should not be more than 40 percent) or the ratio of shares of participants (the ratio of shares should not exceed or be less 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), selling by the participant 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 participants of the company, the prohibition of pledge of shares and increasing the company's statutory fund at the expense of third parties.

Article 9 of the law contains a list of obligations of the company's participants, which stipulates the obligation to contribute in the manner, amount, methods and terms provided by law and the company's constituent documents and not disclose

confidential information about the company's activities. It is also noted that the participants of the company may have other obligations provided by law and the constituent documents of the company. In addition to these obligations listed in the law, the participants of the company may specify other obligations in the constituent documents of the company. According to V. Belov, based on the principle of dispositiveness, participants in corporate relations should be able to independently determine the content of such relations with their own risks through the constituent documents and agreements of the legal entity. The legislature should be limited to establishing in the constituent documents of a limited liability company the grounds and procedure for voluntary and compulsory withdrawal from the company, as well as the possibility of introducing certain mandatory restrictions on compensation payments. [8]

The analysis of case law related to corporate disputes reveals that in most cases, the formal and superficial approach of the participants to the process of forming the constituent documents, the lack of clear agreements on the obligations of the participants causes many issues. This can be observed in the case law, especially in cases where in the statement of claim the participant does not allow the society to operate by his actions (inaction) or seriously complicates it.

I.T. Tarasov studied the rights of the shareholder in three different ways and classified the rights of the sole shareholder, the majority shareholder and the minority shareholders separately [9], while G.F. Shershenevich claims the rights of shareholders participation in income (dividend right), the right to property remaining after the liquidation of the JSC, the right to personally participate in the affairs of the JSC

(through the election of the shareholder to supervisory board, audit committee). [10]

Article 26 of the Law of the Republic of Uzbekistan "On joint-stock companies and protection of shareholders' rights" lists the rights of shareholders. This norm also stipulates that the participants as those of an LLC (ALC) may have other rights in accordance with the company's charter. It should be noted that not all of these rights are purely corporate rights. Because most of these rights are also present in civil law and other areas of law. For example, the right of a shareholder to be included in the register of shareholders of the respective company is an optional right. That is, when a person acquires ownership of a share, the authorized state body is obliged to add it to the register. The right to join associations and other non-governmental non-profit organizations in order to protect their rights, represent and defend their interests in the state body authorized to regulate the securities market, as well as in court, receive a statement from the depot account, free disposal of received dividends are considered to be constitutional rights.

Article 30 of the Constitution of the Republic of Uzbekistan stipulates that all state bodies, public associations and officials of the Republic of Uzbekistan must provide citizens with access to documents, decisions and other materials affecting their rights and interests, Article 34 provides the right to associate, Article 44, guarantees the right to defend one's rights and freedoms in court and to appeal to the courts.

The shareholder's right to receive dividends and the right to dispose of it are also formed and regulated on the basis of fundamental property rights. The right of a shareholder to receive a part of the property in accordance with their share in case of liquidation of the company is also based on the right of ownership.

Because when a company is liquidated, the corporate relationship itself does not exist.

The right to participate in the management of the company by voting at the general meetings of the JSC and receive information on financial and economic activities of the JSC manifests all its elements as a fundamental corporate right. There are no such elements in other areas of private law.

Shareholders may have other rights in accordance with the law and the company's charter, such as participants in the LLC (ALC). The exercise of rights by a shareholder must not violate the rights and legally protected interests of other shareholders. The right to access information in JSC is a fundamental right. Therefore, it requires a close examination.

Conditionally, such a right can be divided into two parts. The first is the right that the participant can demand, that is, if the participant requests an information from the company, it must provide such information. The second one is to grant an information on specific circumstances to the company's participant. For instance, it must inform the participants about the holding of the general meeting, the issues on its agenda in the manner prescribed by law.

The Law on "On joint-stock companies and protection of shareholders' rights" does not contain an article summarizing the obligations of shareholders. Liabilities of shareholders are listed in the relevant sections within certain circumstances.

We consider that setting a provision summarizing the obligations of shareholders will create convenience in application and bring the structure of the law in line with the Law "On limited liability companies and

additional liability companies” and other legislative acts.

The specific features of the rights and obligations of the participants of the company stem from the organizational legal form of the company. Some aspects and difference of rights and obligations of the participant and shareholder are considered below.

While the rights related to the distribution of profit from activities of JSC depend on the type (ordinary, preferred) and number of shares, the share of the participant of the LLC is not divided into types.

Publication of reports depends on the will of participants of LLC, but it is mandatory for the JSC.

The formation of the reserve fund is carried out at the request of the participants of LLC, whereas the foundation of reserve fund of the JSC is obligatory.

The consent of the other participants for the alienation or transfer of the share may be required in the LLC, but no such limitation may be set for the alienation of shares.

All the participants may take part in the management of the company, whereas some shareholders (owners of preferred shares) may not participate in management of the company. Only ordinary shareholders are entitled this right in JSC, since preferred shares are not considered to be elective shares, however, preferred shareholder, unless otherwise provided, may not participate in management of the company.

Although the legislation allows the statutory documents set the conditions on calculation of votes and distribution of profit different from those of legislation, participant of JSC with the dominant status

in the statutory fund holds the corporate control, basic decisions depend on his will.

Article 69 of the Law on "On joint-stock companies and protection of shareholders' rights" states that voting at the general meeting of shareholders is carried out on the principle of "one voting share of the company — one vote", except in cases of cumulative voting on the election of members of the Supervisory Board of the company. Other method of calculation of votes of participants of LLC may be set through the amendment to the Charter of the company.

According to Article 70 of the Law voting at the general meeting of shareholders on issues on the agenda is carried out by voting ballots or remotely using information and communication technologies. The possibility of remote exercise of their rights by a member of an LLC is not provided for by law.

While the statutory fund of LLC (ALC) establishes the same rights and obligations regardless of the number of shares of participants, there are certain differences in the exercise of the rights of minority shareholders with the majority shareholder in JSC. For this reason, a clear example of this is the fact that the law provides that it is possible to establish a committee of minority shareholders to protect the rights and legitimate interests of minority shareholders.

The law establishes the right of shareholders to demand the purchase of shares belonging to them back by the JSC, but such a right is not provided for in the participants of the LLC (ALC) (to demand the purchase of a share).

While the extraordinary general meeting of the JSC can be held on the basis of the written request of shareholders who own at least five percent of the

voting shares of the society, in LLC (ALC) the participants are held on the basis of the request of the participants of the society, who have at least a tenth of the total number

The participant of the company has the right to leave the company at the desired time, but the shareholder does not have such a right.

When it comes to receiving dividends in the JSC itself, there are different aspects of the rights of the owner of the preferred share that if the owner of the common share receives the dividend based on the profit of the JSC and in proportion to his share, the owner of the preferred share has the right to receive dividend regardless the company gets the profit or not. Shareholders who are owners of shares which are also voting has the right of placement of emission securities and have the right to receive them on a preferential basis, there is no preferential purchase right of the share holder who does not have the right to vote.

Also, with a statement of claim for loading the obligation to buy all or a certain part of the shares back by a joint-stock company, only those shareholders who have a voting stock have the right to apply. In addition, in a way that does not exceed the quantitative content of this body to the Supervisory Board of the society and the Audit Commission (audit), candidates can only be presented by shareholders with the right to vote.

The legislation guarantees that at the time of liquidation of JSC, holders of preferential shares are entitled to receive the funds invested in the shares in the first place. And ordinary stockholders have the right to receive part of the property of society in accordance with their respective share.

Such distinctive aspects in the implementation of rights can also be seen in the participants of the LLC

(ALC). For example, if a participant in a society that is a resident of Uzbekistan left and/or was expelled from the ranks of the participants in the society, then the participant has the right to demand from the society the real value of the share that belongs to him. The real value of the share depends on the accounting statements of the company, and is paid at the expense of the difference between the value of the net assets of the company and the amount of its authorized fund. According to Article 56 of the law "on investments and investment activities", a foreign investor will have the right to withdraw his share in the property of the enterprise in the form of money or goods in accordance with the market value in the event of the liquidation of a foreign investor.

### CONCLUSION

Considering the specifics (differences) of LLC and ALC participants, undoubtedly their obligations as participants in corporate relations have to be underlined. In the case that the participant in the LLC has not formed his contribution, within the framework of the value of the unpaid part of the contribution to the obligations of the company, the debtor with the company is liable to the receivables. That is, in the case that the participant of the LLC does not fulfill his obligation (to the proper extent) related to the formation of the statutory fund, he is obliged to give a solidar reply before the creditor of the LLC together with the LLC. In case of submission in court of a claim for the solidary collection of arrears on the basis specified in Article 3 of the law in relation to the LLC and its participant, the state of formation (non-formation) of the participant's statutory fund for the collection of arrears from the participant of the LLC has to be studied and resolved.

And in the ALC, the participant is liable for the value of his contributions in a solid manner in the amount

determined by the Constituent documents of the company. The highest amount of liability of ALC participants is provided for by its charter. In case of failure to fulfill the obligation (to the proper extent) of the ALC according to the content of this norm, the creditor must first make a request to the ALC. In the event that the creditor's request is not satisfied, the participant of the ALC will have a subsidized liability to his creditor, and will be liable for the same amount if the value of the contribution is specified in the charter.

If the legislation establishes the obligation of shareholders of the JSC to hold a general meeting of shareholders and make appropriate decisions on certain issues within a period of no more than three months from the date of state registration of the company (Article 14), participants of the LLC (ALC) do not have such an obligation.

### REFERENCES

1. Ломакин Д. В. Корпоративные правоотношения как составная часть системы гражданско-правовых отношений: на примере хозяйственных обществ // Автореф. дисс.... докт. юрид. наук. М. – 2009. – Т. 66.
2. Корпоратив хуқуқ: ўқув қўлланма/ Б.Умаров, Х.Атажанов, 2021 йил 12-бет
3. Целовалников А.Б Особенности управления и контроля в акционерных обществах, созданных в процессе приватизации государственного и муниципального имущества: эволюция современного законодательства: Автореф. дисс.. канд. юрид. наук. М., 2004. -67 с.
4. Mogilevskiy S.D., Samoylov I.A. Korporatsii v Rossii: pravovoy status i osnovi deyatel'nosti [Corporations in Russia: Legal status and basics]. Moscow, Delo Publ., 2006. Available at: <http://lawlibrary.ru/izdanie58647.html/>.
5. И.Шиткина Корпоративное право. М., 2017. С. 365.
6. И.Шиткина Корпоративное право. М., 2017. С. 369.
7. [https://kodeksy-ru.com/fz\\_ob\\_000/26.htm](https://kodeksy-ru.com/fz_ob_000/26.htm)
8. Корпоративное право. Актуальные проблемы теории и практики, В. А. Белов [и др.] 70, 76-бет
9. Тарасов И.Т. Учение об акционерных компаниях. М., 2000. С. 410 - 411.
10. Шершеневич Г.Ф. Курс торгового права. М., 2003. Т. 1: Введение. Торговые деятели. С. 432 - 437.
11. Chuvashева M.V. Osobennosti obrasheniya vziskaniya na dolyu ili chast doli uchastnika v ustavnom kapitale obshestva s ogranichennoy otvetstvennostyu [Features of Foreclosure on a Share or Part of a Participant's Share in the Authorized Capital of a Limited Liability Company]. Available at: <https://lawfirm.ru/article/index.php?id=4137/>.
12. Burov N. Obrashenie vziskaniya na dolyu uchastnika obshestva [Foreclosure on the share of a member of the company]. Available at: <https://de-jure.ua/obrashhenie-vzyskaniya-na-dolyu-uchastnik/>.