



Legal nature of shares in authorized capital of limited liability companies: comparative legal analysis

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ABSTRACT

This article explores the legal nature of shares in the authorized capital of limited liability companies in Uzbekistan, France, Germany, the United Kingdom, and Mongolia. It examines the definition and classification of shares as objects of civil law, emphasizing their dual nature as both property and a bundle of corporate and associated rights and obligations. These rights and obligations are proportionate to the participant's contribution to the company's authorized capital. The article analyzes the conceptual and legal frameworks that categorize shares as "other properties" under Article 81 of the Civil Code of Uzbekistan and compares this approach with the legal treatment in other jurisdictions. By identifying commonalities and differences, the article concludes that a share embodies a participant's economic and managerial interests in the company, regulated by civil law principles. This comparative analysis offers insights into the broader understanding of shares in limited liability companies across diverse legal systems.

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Mas'uliyati cheklangan jamiyatlar ustav fondidagi ulushlarning huquqiy tabiati: qiyosiy-huquqiy tahlil

ANNOTATSIYA

Kalit so'zlar:

ulushlar,
ulushlarning huquqiy tabiati,
korporativ huquqlar,

Ushbu maqolada O'zbekiston, Fransiya, Germaniya, Buyuk Britaniya va Mo'g'ulistonda mas'uliyati cheklangan jamiyatlarning ustav fondidagi ulushlarning huquqiy tabiatini

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ustav fondi,
ulushlarning o'tishi

tadqiq qilinadi. Ulushlarning fuqarolik huquqi obyektlari sifatidagi ta'rifi tahlil qilingan bo'lib, ularning mulkiy va korporativ huquqlar va majburiyatlar kompleksi sifatidagi ikki tomonlama tabiatiga e'tibor qaratadi. Ushbu huquq va majburiyatlar kompaniyaning ustav kapitaliga ishtirokchining hissasiga mutanosibdir. Maqola O'zbekiston Fuqarolik Kodeksining 81-moddasiga muvofiq ulushlarni "boshqa mol-mulk" sifatida tasniflaydigan konseptual va huquqiy asoslarni tahlil qiladi va ushbu yondashuvni boshqa yurisdiksiyalarda ulushlarning huquqiy muomalasi bilan taqqoslaydi. Maqolada umumiylik va farqlarni aniqlash orqali ulush ishtirokchining kompaniyadagi iqtisodiy va boshqaruv manfaatlarini ifodalashini va bu fuqarolik huquqi tamoyillari bilan tartibga solinishini xulosa qiladi. Ushbu qiyosiy tahlil mas'uliyati cheklangan jamiyatlarda ulushlarning kengroq tushunilishini taqdim etadi.

Правовая природа долей в уставном капитале обществ с ограниченной ответственностью: сравнительно-правовой анализ

Ключевые слова:

доли,
юридическая природа
долей,
корпоративные права,
уставный капитал,
переход долей.

АННОТАЦИЯ

В статье исследуется правовая природа долей в уставном капитале обществ с ограниченной ответственностью в Узбекистане, Франции, Германии, Великобритании и Монголии. Рассматриваются определения и классификация долей как объектов гражданского права, уделяя особое внимание их двойственной природе: как имущественных объектов и как комплекса корпоративных прав и обязанностей. Указанные права и обязанности соотносятся с размером вклада участника в уставный капитал компании. Особое внимание уделено анализу концептуальных и правовых основ, определяющих доли как «иное имущество» в соответствии со статьей 81 Гражданского кодекса Узбекистана. Также проведено сравнение данного подхода с правовым регулированием в других юрисдикциях. На основе выявления общих черт и различий делается вывод, что доля представляет собой совокупность экономических и управленческих интересов участника в компании, регулируемых принципами гражданского права. Сравнительный анализ, представленный в статье, позволяет глубже понять особенности трактовки долей в обществах с ограниченной ответственностью в различных правовых системах.

Nowadays, there is currently no legal clarity in determining the legal nature of shares in Uzbek legal doctrine due to the fact that clear theoretical and legal views on the legal nature of the share in the authorized capital of a limited liability company have not

been fully developed. As a result, a number of problems arise in law enforcement and judicial practice, in particular, in practice in such matters as the conclusion and execution of transactions on the alienation of shares, as well as state registration of shares.

The legislation uses the concepts of "participant's share" and "share in the authorized capital", based on the fact that the authorized capital of the company consists of the shares of the participants, they can be accepted as synonymous terms. At the same time, the Law also uses the term "contribution", which, in our opinion, implies property or property rights included in the authorized capital of the company for the formation of the share, that is, the share of the participants is formed from contributions.

In disclosing the legal nature of the share, it is first necessary to clarify whether the rights conferring the share are a *material right*, an *obligation* right or an *object of corporate law*, an exclusive or relative right. It should be noted that there has been sufficient debate in legal doctrine and scientific debate on each of the above issues.

Researcher Fahrutdinov also analyzes the share from a lexical and grammatical point of view, raising reasonable questions about whether the share is part of the property mass in the authorized capital of LLC, but to what extent this part can be an object of civil relations.

Based on the norms established by the LLC Law, a part of the share can also be transferred, indicating that the share is a divisible material as an object of civil law.

First, to determine the legal nature of the share, we turn to the norm of the Civil Code concerning objects of civil relations. Article 81 of the Civil Code stipulates that the objects of civil rights include *materials, including money and securities, other goods, property, including property rights, works and services, inventions, industrial designs, science, literature, works of art and other results of intellectual activity, as well as personal non-property rights and other material and intangible assets*, but the legal nature of the share is not specified.

France. For example, according to Article 529 of the Civil Code of the French Republic, shares (interests) and bonds are defined as moveable property. However, these views can only be applied to relations related to the transfer of shares and do not cover the liabilities of the share owner (participant) arising from the ownership of the share. In France, limited liability companies are primarily structured as Société à Responsabilité Limitée (SARL) and Société par Actions Simplifiée (SAS).

In a SARL, ownership is divided into "parts sociales" (company shares), which are not represented by physical certificates. These shares are registered and documented in the company's articles of association. The minimum share capital required to establish a SARL is €1, providing flexibility for small and medium-sized enterprises.

Shares in a SARL are not freely transferable. Any transfer to a third party requires the approval of shareholders representing at least half of the company's shares, unless the articles of association stipulate a higher majority. This restriction ensures control over the company's ownership structure.

Germany. GmbH shares are not represented by physical certificates but are documented in the company's shareholder list. Each shareholder's ownership percentage corresponds to their contribution to the company's share capital. According to German GmbH law, shares may be freely disposed of and are transferable by inheritance which means that they are fully circulated in civil law relations. Notarial form is required for a contractual obligation to assign, as well as for the assignment itself.

The 2008 reform, known as MoMiG (Law for the Modernisation of the German Limited Liability Company Law and the Prevention of Misuse), introduced provisions to enhance the security of share transactions. Section 16(3) GmbHG allows for the acquisition of shares in good faith, provided the transferor is listed as the shareholder in the commercial register's shareholder list. This reform aimed to protect bona fide purchasers from undisclosed claims.

Great Britain. In Companies Act 2006, Section 541, it is established that the shares or other interest of a member in a company are personal property (or, in Scotland, moveable property) and are not in the nature of real estate (or heritage).

A share represents a portion of ownership in a company, conferring specific rights and obligations upon the shareholder. Legally, shares are considered a form of property, specifically a "chose in action," meaning they are intangible rights enforceable by legal action. This classification was articulated in the case of *Borland's Trustee v Steel Brothers & Co Ltd* [1901] 1 Ch 279, where Farwell J. described a share as "the interest of a shareholder in the company measured by a sum of money... but also consisting of a series of mutual covenants entered into by all the shareholders."

Mongolia. The Company law of Mongolia /2011/ does not limit the usage of the word "shares" to only apply to joint stock companies, but also to be used for limited liability companies as well, which is in contrast to other countries that maintains a distinction between the terms, "shares" and "contribution", based on the composition of a given company.

Regardless of the term used, the classification of property, as defined in the Article 84 of the Civil Code of Mongolia, does not give us a clear picture on whether a share in a limited liability company is considered a tangible or intangible property. This ambiguity is further deepened by the the Article 7 of the Law on Pledging Movable and Intangible Assets /2015/, where it specifically did not categorize whether shares are movable property or intangible assets.

From the outset, it might be easy to define "shares" as a tangible property, given its nature that it can be transferred from one person to another, meaning that it intrinsically is a commercial object. However, the answer may get murkier, when one ponders regarding the concept of what "shares" represent in a company and what legal consequence that it can create for its holder.

Shareholder's acceptance into a company comes with the price of turning one's property into company's property and in return, earns one a seat at the table to decide the fate of a legal entity and its capital therein. This separation also comes with a set of rules for a shareholder to follow in exercising one's right as a shareholder, such as being restricted from freely disposing one's shares to third parties or limited fiduciary duties in some cases.

When viewed from this perspective, one might be tempted to answer the foregoing question by stating that while shares are indeed commercial objects, the concept that it represents in corporate law can be classified more accurately as a "property right" that one may exercise against the corporation itself, other shareholders and third parties and that this property right is merely governed by statutory regulations and any founding documents that shareholders might have agreed upon to govern their behavior in relation to the company.

Nevertheless, “shares” are regarded as a tangible, movable property in Mongolia as opposed to intangible rights or property rights, given that the Clause 3, Article 84 of the Civil Code of Mongolia limits intangible rights to the following:

(i) subjective rights and cause of actions that creates a profit to their owner; or (ii) subjective rights and cause of actions which entitles a person to make a demand from third parties; and (iii) intellectual properties”

The foregoing definition limits intangible rights to contractual/subjective rights and in the context of corporate law in Mongolia, intangible rights will be limited to contractual demands a shareholder may have against the company, and its shareholders. Further, statutory rights that apply to shareholders are regarded to be attached to one’s status as a shareholder in a company. This view is further solidified by the fact that share pledges are registered by the state registration authority in their “movable property pledge registration”.

However, the lack of clear definition of shares as a tangible property or a property right may create further complication in the future as the Company law of Mongolia does not have any regulation which pertains to requiring consent of the other shareholders of a company when it comes to pledging one’s shares in a limited liability company. Albeit, this gap is often times filled by lawyers who are drafting the constituent documents of a given company, this still creates a question on whether a bank that acts as a pledgee has a right to vote on behalf of the shareholder while in the possession of a pledged share or may bypass the right of first refusal established by the Company Law when it comes to exercising its rights as a pledgee to have the shares sold by auction.

Russian Federation. S.D. Mogilevsky, analyzing the views of modern legal scholars on the legal nature of shares, notes that there are 4 concepts of the legal nature of a participant’s share in an LLC. These are:

- the material-legal concept of the legal nature of the share;
- the obligation based concept of the legal nature of the share;
- property-legal concept of the legal nature of the share;
- corporate-legal concept of the legal nature of shares.

A number of scholars suggest defining it as a material right, a law of obligation, or a type of corporate law in order to reveal the legal nature of a share. For example, O. Lomidze, when considering the issue of the rights of the participants of the limited liability company, shows that these rights are related to the right of obligation, and on this basis conducted research.

This may also be because there is a priority view in the special literature that the share in the LLC is recognized as a property right, and its purchase or other alienation should be carried out in the form of transfer of rights in accordance with the rules of the exchange of persons in the obligation of civil law. This view is called the concept of obligation-law. According to it, the share of the company is considered as an object of the right of obligation and its transfer can be transferred through a session.

Also, R. Bevzenko believes that “a share in the authorized capital is a symbol, a sign of rights belonging only to a participant of the company... It is only a number that shows the ratio of interest, fraction, share of the authorized capital paid by the person and the total amount of capital.” At the same time, the object of legal relations is not a share in the authorized capital, but a set of rights of the participant.

One of the national researchers, M. Saidov, having studied the scientific approaches to the share so far, emphasizes that the rights arising from the share are a component of corporate law in a complex form, and recognizes the processes of exercising the rights of participants as an element of corporate relations. "Corporate law is a set of legal norms that determine the rights and obligations of the subjects of corporate relations, regulate external and internal social relations related to the activities of the corporation."

At the same time, to date, in assessing the legal nature of the share, the view that the share is a set of rights and obligations in the doctrine of law has been sufficiently substantiated among the scientific community.

Therefore, according to the general rule, when a participant contributes to the authorized capital, the added property (property rights) and rights to it are transferred to the society, and the participants are deprived of their exclusive rights to this property. At the same time, participants will continue to use this property economically through community management mechanisms. For this, they are given a special set of rights, and it is the nature of these rights that has so far caused debate in academic circles. The basic view in this area is that participants exercise indirect ownership of property through these rights, but the rights are no longer *tangible but corporate*.

Summing up the legal nature of the share, Fahrutdinov notes that the complex nature of the share in the authorized capital is a combination of signs of absolute and relative rights, as a result, the share as a right of participation does not fall within the scope of exclusive or relative legal relations, it is a subjective right (*sui generis*) of its own kind.

According to the general definition, a share in limited liability companies is a property right that provides its owner with a set of rights of a proprietary and non-property nature in relation to the company.

Based on the above, it can be concluded that the share in the authorized capital of a limited liability company is a set of property (corporate and other related to them) rights and obligations of the participant. These rights and obligations are determined in relation to the amount of the participant's contribution. In determining the status of a share as an object of civil law, the share falls under the category of "other properties" according to Article 81 of the Civil Code.

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6. For example, §18-101(a) of Delaware's Limited Liability Company Act specifically opts for the term "contribution" with regards to defining the concept of a person's contribution towards limited liability company as a member.

7. In *Re Sears Hometown and Outlet Stores, Inc. Stockholder Litigation*, C>A.No.2019-0798-JTL, Page 53

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