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NON-PROPERTY CORPORATE RIGHTS AS THE OBJECT OF NOTARY PROTECTION UNDER THE CIVIL LEGISLATION OF UKRAINE

Formulation of the problem. In modern conditions of progress of market economy the activity of corporate legal entities has acquired the special value. In this regard, as well as taking into account the need to improve the investment climate in Ukraine, it is advisable to pay special attention to the issues of effective protection of the rights of participants of such legal entities. At the same time, it is difficult to deny the fact that the corporate relations are not limited to property. As of today, the problems of notarial protection of non-property corporate rights are still relevant.

The analysis of the recent researches and publications. Many scholars have devoted their works to the study of the legal protection of non-property corporate rights, including: O.V. Bihniak, V.M. Kossak, S.S. Kravchenko, V.M. Kravchuk, I.B. Sarakun, A.V. Smitiukh, O.M. Velykoroda, V.H. Zhornokui and many others. Since, the problems of notarial protection of the non-property corporate rights need further research.

The purpose of this scientific article is to analyze the legal regulation of non-property corporate rights as the object of notarial protection and to develop the author's position on these issues.

The presentation of the main material. Corporate rights have a dual structure and have been divided into non-property and property rights, although this issue has been still controversial among the scientific community, and some researchers generally deny the non-property nature of corporate rights or point to their derivative nature and interdependence on property.

D.I. Dedov categorically has stated that all the rights of shareholders, participants are property in their nature, given that their main interest is to preserve and increase their capital, and therefore profit; the rights defined by law are the tools to protect this interest [1, p. 388]. O.M. Velykoroda also has noted that corporate rights, including the right to participate in management as one of the powers of corporate rights, do not belong to personal non-property rights [2, p. 35].

We agree with the position of the group of scholars who believe that corporate includes both property and non-property rights (V.M. Kossak, A.V. Smitiukh, V.H. Zhornokui, etc.). At the same time, I.B. Sarakun, without denying the existence of non-property corporate rights, still emphasizes the dominant role of property rights [3, p. 22]. O.V. Dolynska believes that property and non-property corporate rights are related and do not exist without each other [4, p. 193].

We consider the position of researchers, who have emphasized the independent nature of non-property corporate rights, to be more rational. Thus, A. V. Smitiukh has noted that non-property corporate rights can not be derived from property, they should

be equivalent to property rights in importance [5, p. 25]. T.M. Alforova, developing this position, has noted that the property and non-property rights of participants of companies are equivalent, because only in their harmonious totality they allow to realize the legitimate interest of a participant of the company [6, p. 90].

Of course, it can't be denied that there is a connection between non-property and property rights, but there are no prerequisites for claims about the derivative nature of non-property corporate rights. Non-property rights are intended to mediate the non-property participation of participants (shareholders, members of cooperatives) during the activity of corporate organizations.

Thus, the scientific search for the content of corporate relations allows us to state the dichotomous division of corporate rights into non-property and property and at the same time come to a reasonable conclusion that despite the fact that there is a connection between these rights, non-property rights have become the independent category.

Regarding the designation of the studied type of corporate rights, we agree with the conclusion that the use of the term "personal" is incorrect, because in etymological essence it indicates an inseparable connection with a person and their inalienability. However, for example, a participant (shareholder) may participate in a general meeting and vote through his representative. In addition, erroneous, in our opinion, is the point of view of experts who call these rights organizational [7, p. 14; 8, p. 11]. In this regard, V.H. Zhornokui has emphasized that organizational legal relations are ancillary to property and non-property relations, they can not exist separately [9, p. 96].

Therefore, to denote these rights, it is advisable to use the term "non-property".

The prevailing position in scientific doctrine is that non-property corporate rights include:

- 1) the right to participate in the management of a corporate company, the content of which covers a number of powers;
- 2) the right to withdraw from the corporate company;
- 3) the right to information about the activities of the corporate company.

It should be noted that the scope and content of non-property corporate rights granted to participants (shareholders, members) differ depending on the type of organizational and legal form of the corporate organization.

Having clarified the conceptual and categorical and classification of non-property corporate rights, we should reveal their legal nature in terms of studying the peculiarities of the notary's performance of the functions and tasks assigned to him.

It also should be noted that the main notarial acts performed by a notary in order to ensure the realization of non-property corporate rights are the certification of documents (unilateral transactions) and certification of the signatures of participants in corporate relations.

The notarial form of protection of corporate rights is an integral attribute of ensuring the observance and inviolability of the rights and legitimate interests of corporate entities, as well as protection against abuse and illegal actions during the certification of local documents of corporate entities.

In this context, we agree with the conclusion of O.V. Bihniak, formulated by him in his dissertation research, that in corporate law notarial form of protection

is not an institution of preventive justice, here plays an important role certifying, confirmatory nature of the notary, which legally fixes rights to prevent possible violations in the future. Therefore, it is advisable to talk about the control direction of the notary's actions when certifying signatures on documents that mediate corporate relations [10, p. 340].

The notary, performing notarial acts, certifying transactions, local documents of legal entities of corporate type must establish the person whose signature certifies, check the legal capacity of the person who applied for the notarial act, require the necessary documents for the notarial act, etc. [11; 12]. Therefore, we can state that in order to ensure the proper level of protection of corporate rights, the notaries have been endowed with the necessary scope of powers.

It should be noted that compliance with the statutory procedure for notarial acts minimizes the possibility of committing offenses and serves as the effective and efficient means of protection in the exercise of corporate relations by such non-property rights as the right to information, access, participation in corporate governance.

It should be mentioned that the participants of the company may exercise their powers, which are part of the right to participate in the management of corporate entities, personally or entrust their implementation to others on the basis of singular succession by issuing a power of attorney. In this regard, we should recall the views of S.S. Kravchenko, who in his work has stressed that powers of attorney ensure the exercise of the right to participate in the general meeting of those persons who can not for one reason or another to do so: sick, elderly, business trip, etc., ie if a person can not do it alone [13, p. 19]. As a general rule, a power of attorney issued by an individual is the subject to notarization.

Regulations on shareholder representation have been detailed in Art. 39 of the Law of Ukraine "On Joint Stock Companies", the provisions of Part 1, 3 of which have stipulated that the shareholder's representative at the general meeting of the joint stock company may be an individual or an authorized person of a legal entity. Power of attorney for the right to participate and vote at the general meeting, issued by an individual, is certified by a notary or other officials who perform notarial acts [14].

In this context, we are in solidarity with the position of T.V. Davydiuk, who has emphasized the need to indicate in the power of attorney at the general meeting of shareholders the task of voting, ie the list of issues on the agenda of the general meeting indicating how to vote [15, p. 9].

In addition, it is worth mentioning about the right of the participant to establish and cancel the requirement of notarization of the authenticity of his own signature when making decisions that affect the activities of a corporate company. This right has been regulated by the provisions of Part 2 of Art. 5 of the Law of Ukraine "On Limited and Additional Liability Companies". As can be seen from this rule, such a requirement or its cancellation is the unilateral transaction by the legal nature and is the subject to mandatory notarization. A participant who intends to establish or cancel a requirement is obliged to apply to the registrar with a request to enter in the Unified State Register information on the requirement of notarization of the participant's signature when making decisions on the activities of the legal entity [16].

Within the subject of our study, it is worth outlining the above-mentioned control direction of the notary's actions while the realization by the participants of the limited and additional liability companies such a right as participation in the general meeting of participants by providing their will in absentia. This right has been of particular interest to us given that in accordance with the provisions of the valid legislation of Ukraine, if a person participates in the highest governing body by providing his will to vote on the agenda in writing, the authenticity of his signature on this document is the subject to notarization. In addition, the constituent document may set requirements for the certification of the will of the participants during the survey, including the need for notarization of the signature of the participant of the company [16].

Also, Part 5 of Article 17 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations" has stipulated that for state registration of changes to the information on the composition of participants of limited and additional liability companies, the applicant submits an application to withdraw from the company. The authenticity of the signature on such a statement is notarized with the obligatory use of special forms of notarial documents. If, in accordance with the law or the company's charter, the consent of other participants to withdraw from the company is required, such consent is also submitted and the authenticity of signatures on it should be also notarized [17].

Therefore, we support the position of O.V. Bihniak, who in his work has focused on the protective function performed by the notary due to the imperative requirement regarding the notarization of the application for withdrawal of participants from the company [10, p. 340].

The requirement of notarization of the signature on the application for withdrawal also applies to cases of submission of such an application by a participant of the full partnership, which was established for an indefinite period (Article 126 of the Civil Code of Ukraine [18]).

By submitting an appropriate application for withdrawal, the participant certifies his will to terminate the corporate relationship with the company. Therefore, the consequence of withdrawal is the termination of participation in the company (membership in a cooperative or agricultural cooperative) and, accordingly, automatically causes a change in the composition of members of the corporate organization. Undoubtedly, V.M. Kossak has been convincingly arguing that the exit gives rise to a binding legal relationship between the former participant (member) and the business association itself [19, p. 26].

In this case, the notary performs his law enforcement function by identifying the person who applied for resignation, and de facto certifies his will. Given the fact that at the legislative level there has not been provided the mandatory prohibition on the possibility of filing an application for withdrawal from a full partnership, cooperative and agricultural cooperative through a representative, in our opinion, a representative may also submit a relevant application. In these circumstances, the notary must verify the authority of the representative.

Conclusions. From a systematic analysis of the provisions of the Procedure for notarial acts by notaries of Ukraine [11] we can conclude that during the performing

the notarial acts in connection with the realization of corporate rights, in particular, non-property, the notary must: establish the identity of applicants; check the scope of their legal capacity; find out whether the fact of the submitted applications corresponds to the true intentions and will.

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Summary

Derevyanko D. S. Non-property corporate rights as the object of notary protection under the civil legislation of Ukraine. – Article.

In modern conditions of progress of market economy the activity of corporate legal entities has acquired the special value. In this regard, as well as taking into account the need to improve the investment climate in Ukraine, it is advisable to pay special attention to the issues of effective protection of the rights of participants of such legal entities. At the same time, it is difficult to deny the fact that the corporate relations are not limited to property. As of today, the problems of notarial protection of non-property corporate rights are still relevant. Corporate rights have a dual structure and have been divided into non-property and property rights, although this issue has been still controversial among the scientific community, and some researchers generally deny the non-property nature of corporate rights or point to their derivative nature and interdependence on property. The scientific search for the content of corporate relations allows us to state the dichotomous division of corporate rights into non-property and property and at the same time come to a reasonable conclusion that despite the fact that there is a connection between these rights, non-property rights have become the independent category.

The prevailing position in scientific doctrine is that non-property corporate rights include: the right to participate in the management of a corporate company, the content of which covers a number of powers; the right to withdraw from the corporate company; the right to information about the activities of the corporate company. The scope and content of non-property corporate rights granted to participants (shareholders, members) differ depending on the type of organizational and legal form of the corporate organization.

It has been indicated in the article that the notarial form of protection of corporate rights is an integral attribute of ensuring the observance and inviolability of the rights and legitimate interests of corporate entities, as well as protection against abuse and illegal actions during the certification of local documents of corporate entities.

Key words: notary, non-property rights, corporate rights, legal entity, protection.

Анотація

Дерев'янюк Д. С. Немайнові корпоративні права як об'єкт нотаріальної охорони за цивільним законодавством України. – Стаття.

У сучасних умовах поступу ринкової економіки особливого значення набуває діяльність корпоративних юридичних осіб. У зв'язку із цим, а також беручи до уваги необхідність покращення інвестиційного клімату в Україні, доцільно особливу увагу приділити питанням ефективної охорони прав учасників таких юридичних осіб. Поряд із тим складно заперечувати той факт, що корпоративні правовідносини не вичерпуються лише майновим змістом. Станом на сьогодні проблеми нотаріальної охорони немайнових корпоративних прав також є актуальними. Корпоративні права мають двоїсту структуру та поділяються на немайнові та майнові права, хоча це питання й донині залишається дискусійним серед наукової спільноти, а окремі дослідники взагалі заперечують немайнову природу корпоративних прав або вказують на їх похідний характер та взаємозалежність від майнових. Наукові пошуки змісту корпоративних відносин дозволяють констатувати про дихотомічний поділ корпоративних прав на немайнові та майнові та водночас дійти обґрунтованого висновку, що, незважаючи на те, що між цими правами існує зв'язок, проте немайнові права є самостійною, рівнозначною категорією нарівні з майновими.

У науковій доктрині превалюючою є позиція, що до немайнових корпоративних прав належать: право на участь в управлінні корпоративним товариством, змістом якого охоплюється низка правомочностей; право на вихід із корпоративного товариства; право на інформацію про діяльність корпоративного товариства. Обсяг та зміст немайнових корпоративних прав, якими наділяються учасники (акціонери, члени), різняться залежно від виду організаційно-правової форми корпоративної організації.

У статті вказано, що нотаріальна форма охорони корпоративних прав є невід'ємним атрибутом забезпечення дотримання та непорушності прав і законних інтересів корпоративних суб'єктів, а також захисту від зловживань та протиправних дій під час посвідчення локальних документів корпоративних утворень.

Ключові слова: нотаріус, немайнові права, корпоративні права, юридична особа, охорона.