

МАТЕРІАЛИ ДЛЯ САМОСТІЙНОЇ РОБОТИ

Бігняк Олександр Володимирович,

кандидат юридичних наук, доцент, доцент

кафедри права інтелектуальної власності та корпоративного права

Національного університету «Одеська юридична академія»

LECTURE COURSE OF CORPORATE LAW

LECTURE 3. FEATURES OF LEGAL STATUS OF CERTAIN TYPES OF CORPORATIONS

For centuries the optimal ways of attracting and retaining capital were evolving; they incorporated in various legal forms known as companies and corporations.

A joint-stock company is one of the types of economic societies; its statutory capital is divided into a certain number of shares of equal nominal value, the corporate rights of which are confirmed by the shares. Joint-stock companies are divided by their type into public joint-stock companies and private joint-stock companies.

The peculiarities of the joint-stock company result from the definition; they define the special character of its legal status:

- it is an economic organization of corporate type, a variety of economic entity;
- it belongs to companies being associations of capital, in which the property elements dominate the personal ones (in order to participate in a joint-stock company it is sufficient to make a property contribution: to pay a share, and a personal participation (working) in the management of the company is usually optional);
- the statutory capital of the company has a shared nature, it is formed by issuing and selling shares to individuals and/or entities;
- it has a public status of issuer of securities (shares, bonds), it is a legal person which, in its own name, issues shares and agrees to fulfill the liabilities resulting from the conditions of their issue;
- individuals and entities who purchase the shares of joint stock companies, receive the status of shareholders whose rights and liabilities are stipulated by law;
- a special feature of the joint-stock company is the limited liability of its shareholders:

they are responsible for the company's liabilities only to the extent of their shares.

Positive and negative features of joint stock companies

Joint stock companies have gained significant popularity because of their positive features. However, these companies have many negative features which require state regulation in order to reduce hazardous displays of such features to the public.

Positive features of JSC include:

- an ease of creation of a significant capital;
- limited risk of a shareholder within the amount paid for the shares, which favors the attraction of significant number of members (shareholders) and concentration of capitals;
- stability of JSC's property base, as it usually does not affected by withdrawal of a shareholder (this is done by alienation of shares to other persons which does not lead to a decrease of the company's property base);
- non-obligatory personal participation of shareholders in the activity of a JSC, which facilitates membership in it and thus attracts new shareholders and their funds;
- an ability to involve large masses of people into membership in open-type JSCs and accordingly, profit distribution between them;
- applicability in different fields of the economy (banking, insurance, investment, industry, agriculture, transportation, etc.) and in all economy sectors: state, municipal, private, as well as creation of mixed-type JSCs;
- utilization of JSC form in the process of deregulation and privatization;

- an ability to control JSC via ownership of controlling interest (for a strategic investor) without spending funds on the purchase of all shares.

Negative features of JSCs:

- complexity and duration (especially for public JSC) of creation;
- significant requirements for minimal statutory fund and complexity of change of this fund;
- ignoring the interests of the minority;
- an ability to form an executive body of employees and non-obligatory requirement of personal participation by shareholders results in alienation of the latter from the management of the JSC;
- complexity of JSC management and control on its executive body on the part of the shareholders due to the presence of a system of bodies: general meetings of shareholders, the board, the supervisory board, the audit committee;
- an ability of abuse on the part of the founders in connection with an ease of accumulating the funds;
- attraction to monopoly;
- an ability to control the JSC via ownership of controlling interest, if such control is exercised to the detriment of the JSC and its shareholders;
- a significant degree of government regulation of the company.

Types of joint stock companies

Depending on the method of creation and the order of alienation of shares, the JSCs are traditionally divided into two main types: public and private joint-stock companies, each having their own characteristics. In particular, public and private JSCs are differentiated by:

- the order of allocation of shares (in public ones, through subscriptions and free sale on the stock market; in private ones, by allocating among the founders);
- the order of movement of members (in public joint stock companies it is free, in private ones it is somewhat limited because the shares of such company are not sold/bought on the stock exchange);
- the types of shares issued by these companies (PJSC may issue both registered shares and bearer shares, while the private one, only registered shares);
- the order of creation (in public JSC it is quite difficult due to allocation of shares among obviously indefinite

number of persons by subscription, and, consequently, by the stages not typical for private JSC: registering information about the shares (published), announcement of subscription, procedure of subscription, solving, at the founding meeting, issues related to the results of the subscription);

- the list of issues required for consideration at the founding meeting (in a public joint-stock company it is more significant due to the results of the subscription for the shares of a public joint-stock company);
- the amount of liabilities and responsibilities of the founders: the founders of public joint stock companies have more significant ones due to the subscription for the shares (a liability to return to the persons who subscribed for the shares the amount they paid, if creation of a public joint-stock company did not occur).

A limited liability company is a company with a statutory capital divided into shares the size of which is determined by the constituent documents.

The maximal number of members of a limited liability company can reach 100 persons.

Members of the company are responsible within their contributions.

Constituent documents of a limited liability company shall include information on the size of the share of each member, the size, composition and procedure of making contributions, the amount and procedure of formation of the reserve fund, the order of transfer of shares in the statutory capital.

The statutory capital of a limited liability company shall be paid by the members before the end of the first year from the date of state registration.

A member of a limited liability company is entitled to sell or otherwise cede his share (its part) in the statutory capital to one or more members of this company.

Alienation of a member's share (its part) in the limited liability company to third parties is allowed, unless otherwise provided by the company's articles.

The company's members enjoy the preemptive right to purchase shares (a part thereof) from a member in proportion to the size of their shares, if the company's articles or an agreement between the parties does not foresee another order of exercising this right. Purchase is made at the price and on the terms on which the share (a part thereof) was offered for sale to third parties. If the company's members do not exercise their preferential right within one month after the notice of intention to sell the member's share (a part thereof) or within such other period specified by the company's articles or

raw materials, manufacturing of products and rendering other services to meet consumer needs of its members.

The given definitions of production and consumer cooperatives provide grounds to distinguish the features under which they differ: the scope of economic activity, association of individuals in production cooperatives and associations of individuals and/or entities in consumer cooperatives; different purpose of activities, because the production cooperatives are created for profit and consumer cooperatives are created to meet consumer needs of their members. The main difference between these cooperatives is the belonging of the first ones to business entities, and the belonging of the others to non-business entities (Art. 84, 86 of the Civil Code).

Unlike other types of corporations, such as economic entities which create a statutory fund, the consumer and production cooperatives are characterized by the formation of an undivided and mutual funds.

The Law of Ukraine *On Cooperation* contains two concepts of mutual fund: the fund formed with equity contributions of the cooperative's members upon creating the cooperative (Art. 2), the property of the cooperative formed by the shares (including additional ones) of the members and associate members (Art. 20).

However, consumer and production cooperatives, besides the mutual fund, also have an indivisible fund, which is an obligatory fund formed by entrance fees and deductions from the income of the cooperative and is not subject to distribution among the shareholders.

The Law of Ukraine *On Cooperation*, besides the indivisible and mutual funds, foresees the creation in the cooperative of other funds, namely: the special fund, the reserve fund. The purpose of the reserve fund is to provide cover for possible losses (damage) of the company; the special fund's purpose is not clearly defined, it is only mentioned that it shall be used upon the decision of the management bodies.

Consumer and production cooperatives are created on the basis of membership.

The procedure of joining consumer and production cooperatives can be divided into several stages: 1) submission of a written application, making the contribution and share in the manner and amount defined by articles; 2) decision of the executive body on the member's admission to the cooperative; 3) approval of this decision by the general meeting.

Membership in consumer and production cooperatives is due to the origination of title to a share.

A share is property contribution of the member for the creation and development of the cooperative, which shall be effected by transfer of the property to the cooperative, including money, property and land plots.

Attention should be paid to the character of exercising the right to participate in the management of the cooperative, namely, the right to vote at the general meetings of members. After all, one of the principles of cooperation is the principle of granting to the cooperative's members one vote at the general meeting.

This review provides an opportunity to distinguish the features of the legal status of consumer and production cooperatives. First, the formation in the cooperatives of mutual and indivisible funds, not the statutory fund, as it happens in the economic entities.

Second, creation of a cooperative is not only on the basis of association of property contributions, but also on the basis of membership.

Third, membership in a cooperative results in arousal of title to a share, as opposed to economic entities, where the rights of the members originate from their share, a part in the statutory (shared) capital.

Fourth, a special procedure of exercising the right to participate in the management of the cooperative.

ним редактором таких широко визнаних підручників як «Аграрне право», «Кооперативне право» та «Земельне право», які витримали декілька перевидань і за якими, без будь-якого перебільшення, досі навчаються студенти-правознавці вищих юридичних навчальних закладів країни.

Найбільш результативною діяльністю Віталія Івановича як вченого проявились у період становлення незалежної української державності в якості наукового консультанта Комітету Верховної Ради України з питань правової реформи та члена Комітету законодавчих ініціатив при Президентові України. Його знання як досвідченого правознавця і мудрої людини, його фундаментальні наукові праці та аргументовані пропозиції, які у свій час були сформульовані в монографічних виданнях «Право власності в споживчій кооперації», «Сучасна аграрна політика України: проблеми становлення», «Право власності за Конституцією України» та інших дослідженнях, стали основою для розробки проектів і прийняття чисельних законодавчих актів з аграрного, земельного, кооперативного та інших галузей вітчизняного права.

Особливо слід зазначити невтомне працелюбство і плідну наукову працю Віталія Івановича, що не одноразово відзначалися урядовими нагородами України та вітчизняними і зарубіжними почесними званнями. Однак найвищим його досягненням було утворення, широке визнання й успішне функціонування української аграрно-земельної правової школи. Наукові праці та фундаментальні видання В.І. Семчика і сьогодні користуються посякденним попитом серед широкого кола наукових співробітників і викладачів вищих навчальних

закладів, аспірантів і студентів, які проводять свої дослідження на засадах його наукових здобутків. Вони безпосередньо сприяли і сприяють фаховій підготовці та духовному збагаченню початківців та молодих спеціалістів.

Нажаль, ми не були близькими друзями, але все ж міг би засвідчити деякі невід'ємні особисті риси В.І. Семчика як мудрої людини. Ними були людяність і добропорядність, обов'язковість і відповідальність, скромність і відвертість, доброзичливість і щедрість. Він широко надавав свої енциклопедичні знання, накопичений науковий досвід і широкий світогляд молодим науковцям. Ним було підготовлено стільки кандидатів юридичних наук, що сьогодні навіть важко всіх перерахувати. Його батьківське піклування і безкорисну допомогу відчували сотні молодих вчених, у визначенні долі яких Віталій Іванович приймав безпосередню участь. Чисельні учні В.І. Семчика з глибокою вдячністю розповідають про його справедливо вимогливе ставлення до них. Він сприймався ними у якості взірця наукового керівника і мудрого вчителя.

Безперечно, Віталій Іванович Семчик був одним із активних провідників і засновників вітчизняного аграрного, земельного та кооперативного права. Він наполегливо відстоював становлення української правової державності та національної правової системи, осучаснення суспільних відносин та оновлення багатонаціонального суспільства у незалежній українській державі. Такі віддані патріоти своєї вітчизни, талановиті вчені і мудрі люди, яким був Віталій Іванович Семчик, залишають після себе незабутні справи, яскраву пам'ять про себе і назавжди залишаються у наших серцях.