



## Problems of Protecting the Rights of Participants (Shareholders) in Limited Liability Companies in the Republic of Uzbekistan

*Mr. Asliddin Habibullayev*

*Attorney in "BUSINESS LEGAL SERVICES" advocacy bureau in Tashkent, Uzbekistan*

*asliddin.xabibullaev@bk.ru*

**Abstract:** The present scientific work considers the issues that remain unsolved in the field of protection of rights of participants of limited liability companies in the Republic of Uzbekistan.

**Keywords:** Republic of Uzbekistan, limited liability companies, participants, corporate law.

### Introduction

A limited liability company (LLC) is an organisational and legal form of a business entity established on the model of common share ownership. Disagreements between the participants of a corporation arise on the basis of opposite mutually exclusive goals and interests of the parties to such a conflict, aimed at achieving the goal of losing the legal status of one of the parties.

The effectiveness of protection of the rights of participants of common share property, in particular, limited liability company, is directly dependent on the availability of procedural guarantees - legal means designed to create at all stages of a corporate conflict favorable conditions for the unhindered exercise of procedural rights granted to persons participating in the case.

The relevance of the topic of the study is conditioned by the practical significance of the problems arising in resolving corporate conflicts related to the restoration of rights to a share in the authorized capital, which was lost as a result of dishonest actions. Despite the high practical significance of these issues, this legal phenomenon remains one of the most unexplored. In addition, some legal provisions receive in practice an ambiguous interpretation, which often leads to violation of the rights and legitimate interests of participants of a limited liability company and third parties. The legislator, providing for the possibility of transfer of a share (part of a share) of a LLC participant to another person, does not detail the peculiarities of various transactions of a dispositive nature, which raises issues of practical uncertainty.

### Main part

A number of issues concerning the choice by LLC participants of the appropriate method of protection of violated rights remain unresolved. Numerous legal conflicts between LLC participants and the companies themselves testify to the low efficiency of a number of institutes of substantive and procedural law in terms of protecting the rights of LLC participants.

The economic turnover itself and law enforcement practice testify to the fact that infringement of property rights and interests of participants is one of the most acute and widespread areas that give rise to numerous corporate disputes and conflicts, often accompanied by various abuses. Among the most typical and widespread are abuses related to the increase of the authorised capital (accompanied by the dilution of shares of individual participants), decisions on the distribution of LLC profits, manipulation of the share conversion ratio in the course of reorganisation, the procedure of voluntary and compulsory offer and ousting of minority shareholders, as well as a number of other categories of abuses. In most cases, these categories of abuses may not be associated with any damage to the LLC, but may cause substantial damage to the property status of the participants.

Despite the fact that certain mechanisms for protecting the rights and interests of LLCs and its participants have been established in the corporate law of the Republic of Uzbekistan to date, these means



of protection are hardly sufficient for the purposes of real restoration of violated property rights and interests of LLC participants, and do not allow to protect them even from many fairly typical categories of abuse (including those outlined above). First of all, we are talking about an indirect model of protection, which implies the possibility of contesting transactions and recovering damages from the executive body and controlling participants in favour of the LLC on the basis of derivative claims brought by the participants and the executive body of the LLC on its behalf. It is the indirect model of protection that has been widely developed at the level of legislation, doctrine and law enforcement practice in our country (especially the institutions of challenging extraordinary transactions and liability of the executive body). However, this model, although it can in some cases indirectly restore the violated property interests of participants, in practice often turns out to be completely ineffective for the purposes of protecting the interests of participants rather than the LLC itself, especially in the situation when it comes to causing direct damage to participants that is not derived from the damage to the LLC.

Corporate law also knows other rather strong means of protecting the rights and interests of LLC and its participants, which have been widely developed in the law and law enforcement practice, as well as deep doctrinal development. First of all, we are talking about the institutions of exclusion of participants and contesting decisions of participants' meetings. However, even these remedies are often ineffective for the purposes of protection of violated property rights and interests of participants. Thus, the institution of exclusion of participants not only does not allow to restore the violated property interests, but also implies payment by the company of the actual value of the share in favour of the excluded participant, which may have a negative impact on the property status of the LLC and indirectly of its participants. Challenging corporate decisions, although in some cases it allows to invalidate decisions infringing on the property interests of certain participants, often turns out to be an inaccessible method of defence given the significant legislative restrictions on its use (e.g. very short limitation period, conditions for challenging corporate decisions, grounds for rejection of claims by the court), which are caused by significant risks for the stability of economic turnover in connection with the use of the table. In addition, this method of defence is also ineffective when it comes to challenging so-called negative corporate decisions (e.g., decisions not to pay dividends).

At the same time, LLC participants still do not have access to compensatory ways of protecting their property interests in situations where the indirect model of protection, for one reason or another, does not allow achieving the relevant goal. Such a fundamental property right of participants as the right to receive dividends also remains unprotected (and largely declarative). In conditions of full and almost unlimited discretion of the general meeting of participants on the issue of dividend declaration by the legislator and courts, the position of the controlling participant becomes decisive, which often leads to numerous abuses and payment of actual dividends by other means without participation of minority shareholders in profit distribution.

Thus, the arsenal of remedies to protect the property rights and interests of LLC participants remains very limited, and the available remedies are not always effective. Strange as it may seem, one of the least developed means of protection of property rights and interests of participants is the institute of damages, which is the most basic and fundamental method of protection of civil rights and most clearly characterises the compensatory and restorative nature of civil liability.

However, even when the damage to the property rights and interests of the members is a consequence of the damage caused by the LLC, reliance on the indirect model of protection realised by means of a derivative action does not always allow for the actual restoration of the violated property rights and interests of the members. For example, when the indirectly injured member has already sold his shares, when the corporation was voluntarily liquidated and the damage was discovered later, when the damage is caused by the controlling member and related directors, etc. This also raises the question of whether the existing arsenal of participant protections is sufficient and whether it should be expanded.

At present, in the conditions of insufficient development of the direct model of protection in domestic corporate law, law enforcement practice, realising the obvious injustice of leaving participants of business companies without proper protection, resorts to an expansive interpretation of the existing norms,



allowing the mixing of direct and indirect action. The most common way of such confusion is to identify the interests of the corporation and the interests of its specific participants in a particular dispute. However, such a method, in our opinion, is not optimal, as it, on the one hand, does not allow achieving the goal of effective protection of property rights and interests of participants, and on the other hand, creates additional difficulties, reducing the level of legal certainty and increasing the level of instability of turnover.

The use of a statement of claim is far from always possible to restore the violated property interests of participants and in cases where the damage caused to them is only a consequence of damage to the LLC. Compensation of reflected losses to participants may be particularly relevant in the following situations: infringement of interests of minority shareholders; infringement of interests of participants who are neither controlling nor minority shareholders; in case of legal or actual impossibility of compensation of losses by the company itself; in case of sale of shares by a participant who has incurred reflected losses; in case of failure to file an indirect claim or conclusion of a settlement agreement by the company.

At the same time, the hypothetical admissibility of indemnification of reflected losses gives rise to a set of problems, due to which this institution has not found support in continental European legal orders and is very limitedly used in common law countries. In particular, the institute of reflected losses gives rise to the problem of double indemnification (and the corresponding problem of double liability), the problem of infringement of the interests of the company's creditors and other company participants, the problem of intrusion into the competence of the company's management bodies, and the problem of multiple and competing claims.

## **Conclusion**

A number of issues concerning the choice by LLC participants of the appropriate method of protection of violated rights remain unresolved. Numerous legal conflicts between LLC participants and the companies themselves testify to the low efficiency of a number of institutions of substantive and procedural law with regard to the protection of the rights of participants in business companies.

Gaps in the legislation on LLCs, as well as contradictory law enforcement practice do not currently allow for effective judicial protection of LLC participants.

The effectiveness of protection of the rights of LLC participants depends not only on the quality of legal regulation and correct application of substantive law norms, but also on the perfection and correct use of procedural norms, on the availability of procedural guarantees - legal means designed to create at all stages of legal proceedings favourable conditions for the unhindered exercise of procedural rights granted to persons participating in a case.

## **List of references:**

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