

**A.V. Smityukh**, Candidate of Juridical Sciences, Associate Professor  
Odessa I.I. Mechnikov National University  
The Department of Administrative and Commercial Law  
Frantsuzskiy Boulevard, 24/26, Odessa, 65058, Ukraine

## **ON THE LEGAL NATURE OF THE SHARE AT THE STATUTE CAPITAL OF THE COMMERCIAL COMPANY**

### **Summary**

The actual concepts of the share in the statute capital are critically investigated in the article. The author proposes the understanding of the share as a sui generis object of rights that may be regarded as a transferable substratum of the shareholder's rights designed to provide corporate format of the company through the possibility of the multiplicity of the shareholders as well as their changeability.

**Key words:** share, statute capital, commercial company.

**Formulation of the problem.** In many norms of legislation of Ukraine mentioned this category as a share in the authorized (share) capital of business entity (hereinafter - share). Its importance is seen from the fact that the business entity is defined in Part 1 st.113 Civil Code of Ukraine as a legal entity authorized (share) capital is divided into shares between the parties, alienation, inheritance shares is commonplace facts of everyday routine legal. However, the share category is problematic because the legislation does not determine its legal nature, and between scientists on the subject sustained discussion.

**Analysis of recent research and publications.** Among modern jurists dominated the following approaches to the legal nature of particles: some scientists understand how to share a set of corporate rights (N. Butryn, S.S. Kravchenko, S.Ya.Rabovska) or "generalized" right, which is, in turn, set of corporate rights (V.Vasylyeva, R.S. Fathuddynov) others understand as a share of property rights, which, however, is not

limited to a set of corporate rights are different from them (S.A.Bobkov, V.M. Kravchuk) , others - as a complex set of rights and obligations of participant (D.V. Lomakin, S.D.Mohilevskyy, L.A.Novoselova, V.V.Rozenberh, S.Shevchenko). However, in our opinion following the above approach can not formulate internally consistent concept of particles, and the rejection of the share category as such led to harmful effects.

**The purpose of the article** is to determine the nature, legal nature and functionality of the authorized share capital.

**Presenting main material.** First of all, you must make a critical analysis of approaches poimenovanyh above groups of scientists on the legal nature of the particle.

1. Most prevalent among Ukrainian scholars is the view the share as a set of corporate rights.

In particular, S.Ya. Rabovska completely eliminated the category of "share" of use and notes that the object's ownership share is not, and most corporate rights [1, p.4]. N.Butryn uses the terms "corporate rights" and "share in the authorized capital of" interchangeably [2, 38], explaining that considers the totality of corporate rights as the only oborotozdatnyy object [2, 37] and notes that in the treaties, which is mediated by the transition of corporate rights is precisely the subject of corporate law, and not share [2, 39].

This idea was formulated and developed in detail in my dissertation S.S. Kravchenko who thinks that's a fraction of the authorized (share) capital of the economic society is an expression of its corporate rights as the property of the participants of economic societies are corporate law [3 , p. 81], as a valid object with which transactions should be committed corporate law, and not share in the authorized capital [3, p.5].

1a. Adjacent to the previous group and researchers who understand share a little differently - as a kind of "generalized" right, which is, in turn, together with corporate rights.

V.Vasylyeva completely abandoned the use of the term "share" and considers "Corporate" oborozdatnyy as a single object, complex aggregate object of civil rights (including property rights), consisting of a series of subjective self Rights [4, 110]. Russian author defines R.S. Fathuddynov share in the legal sense as a subjective right to participate in the activities of society, that is, in turn, by a number of powers, the main of which is to participate in managing the affairs of society [5, p. 10].

Consequently, all of the above authors share as a legal category has no functional purpose and separate substantial load, and perceived as synonymous with the terms "set of corporate rights", "Corporate" or "the right to participate in society," which, in its turn, also seen as a set of corporate rights. It should also be noted that a set of corporate rights of these researchers regarded as indivisible.

By this point of view can make the following observations.

A. If the share - just a synonym for corporate rights that has its own essence, can we replace without any damage in the rule of law, the term "share" in the phrase "corporate rights"? In particular, Part 2 of Article 127 of the Civil Code of Ukraine will provide that in the case of the transfer of corporate rights (or partial) new participant to pass it in whole or the relevant part of the rights belonging to the participant, who gave corporate law (part thereof), and h .1 st.167 Civil Code of Ukraine will establish that corporate rights - a right of the individual, corporate rights which are defined in the share capital (assets) of economic organizations, including the eligibility of persons to participate in the management and further - below. In the original wording of the above law instead of italics phrase "corporate law" term "share". You can see that for such replacement, these rules completely meaningless, while in determining corporate rights arising classic *circulus in definiendo*.

This proves the existence of particles as a separate category, distinct from corporate rights, which has its own essence.

B. One of the above authors (N. Butryn) notes that corporate law, in its opinion, there are the founder (participant) with respect to any legal person, regardless of whether the formed authorized capital [6, 64] .

We believe we should agree with the thesis that the rights of members of any enterprise, but not any legal persons such inherent legal nature. However, if the corporate rights of the state as the state's LLC and as the founder of state enterprises have the same nature - why alienated corporate rights reserved by Open? The recognition of these rights requires recognition of the nature of a single unity of their legal regime. But human alienation founder of state enterprise contradicts the concept of public enterprise, change of ownership of state enterprises prior to its reorganization JSC (the privatization), or in a utility company (by transfer to municipal property) - with the state enterprise ceases.

Consequently, the recognition of a single natural human user Ltd. and human founder of the public enterprise, together with a statement of visual differences between the business entity and state enterprise (and wider - all unitary enterprises), which is the presence of particles in the ground and their absence in the second, is the argument in favor of the right not alienated as such, and the proportion that is purely functional tool - oborotozdatnym substrate corporate rights, designed to provide corporate nature of the enterprise because of the possible multiplicity of participants and their replacement.

C. Analysis of judicial practice shows that the requirement "to accept ownership of the share in the authorized capital" is an order of magnitude more popular than those of the plaintiffs' recognize corporate law. " This indicates that the proportion as something other than corporate rights has its own existence as a phenomenon of legal reality.

2. It should be noted also a group of lawyers who understand proportion as property law, which, however, is not limited to a set of corporate rights are different from them.

Thus, the Russian author S.A. Bobkov determines the amount of authorized capital as a property right, which is a quantitative expression in the form of par value and the partial value (as a percentage or fraction) with respect to share capital ownership status it confers subject by companies, and - as a consequence of a set of rights (both property and non-property) and obligations to society and other

stakeholders [7, p.66]. Similarly V.M. Kravchuk considers property right proportion, shape fixation property participation in business partnerships, which proves property involved in the company and is subject to civil relations by which oborotozdatnist provided corporate property rights [8, p.7, 10 -11].

Thus the object appears share rights (in particular - the object of ownership) is a form of fixation of other rights (corporate) and most recognized property rights.

In this regard it should be noted that S.S. Alyeksyeyev expressing universally position determines the subjective right as secured legal responsibilities of others as permissible conduct, owned by the eligible person in order to meet its interests [9, c.114] and stresses that elements of subjective rights are the powers of the eligible persons - own positive actions, the actions of others on prytyazannya to others [9, 118].

It is quite clear is the composition and powers of interests upravlenoyi person in respect of the ownership of the share as well as certain corporate rights. However, the contents of a property right that is allegedly part, remains unclear, and in our opinion, can not be understood.

Interest party affiliation to determine the proportion of it is realized through the ownership of share relevant powers and ownership interests by the company itself carried on through separate corporate law and relevant powers, while property rights, which seems to have particle content is blank.

Therefore, understanding how to share property rights other than aggregate corporate rights also can not accept.

It should also be noted that V.M. Kravchuk, unlike S.A. Bobkova argues that the subject of relationships, including transactions might not only share but also some (basic) corporate property rights (the right to dividend, the right to vote, the right to obtain the actual value of the share, etc.), and even more - the organizational rights, in particular - the right to vote, because we should recognize them as separate objects oborotozdatnist rights [8, p.11].

It should be emphasized that combines V.M. Kravchuk oborotozdatnosti recognition of certain corporate rights to the concept of individual particles as

oborotozdatnoho object - property rights, other than corporate rights.

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However, if some corporate property rights oborotozdatnymy recognized as such, then their set (complete or incomplete) are also oborotozdatnoyu therefore - Category particles retains meaning only for accounting purposes, while the share of the concept of rights as oborotozdatnoho object appears superfluous.

3. Finally, in Russia there is a group of researchers who believe share a complex set of rights and obligations of the participant.

These scientists are repelled from the thesis that even in 1912 expressed V.V. Rozenberh, noting that the share in the company of a set of rights and obligations of each friend about the company, known as the legal complex [10, 155]. D.V. Lomakin [11, 55], L.A. Novoselova [12, 207] and S.D. Mohilevskyy [13, 43] as well understood as a set share of property rights and obligations by the company relative to other participants and the company itself, the amount of which is determined depending on the size of the contribution of the participant.

These authors polemic with supporters understanding of how particles of law or set of rights, noting that the party has on society not only rights but also obligations, including making deposits, not to disclose trade secrets and confidential information, therefore - the proportion is not right or a set of rights [12, 206].

However, the thing is, in our opinion, not a fact that the share is not only the right but also the duty, and the fact that the share is not right or the right (which was based in detail above), and therefore - no rights plus duties.

4. In determining the legal nature of the particles should note the following. Supporters of the share as a special understanding of property rights states that "the share in the authorized capital no signs of things because they are not subject to the material world, because it is not a thing. Nor is it and money. Among mentioned in the Civil Code of Ukraine st.177 objects share can only be considered as property, property rights or other tangible benefit. According to the 190 CC Ukraine property as a special object, considered the thing, the totality of things and property rights and obligations ... share in the share capital can be classified as property rights " [14, 33] .

Similarly builds reasoning on which the share is not a private property right, and a set of rights, or the rights and obligations.

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This approach is obviously an attempt to consider specific legal phenomenon (share) as a special case of a straight poimenovanyh in the Civil Rights kinds of objects, however, have been proven above, the share can not be reduced to the proprietary rights of the entirety of the rights or the rights and duties. Features formulation st.177 and 190 CC Ukraine are to that referred to in st.177 CC along with things and property rights "other assets", in turn disclosed in the 190 CC as "a thing set of things, property rights and obligations. " However, if in st.177 CC expressly mentioned in addition to things and property rights as money, securities, results of operations, services, results of intellectual and creative activities regulated by other legal norms, possibly, the researchers just trying to reduce to property rights as and all of these categories.

We believe we should recognize the special legal nature of particles as separate property, property rights sui generis, which should be directly poimenovanyy among objects of civil rights in the above norms Civil Code of Ukraine, and - in st.139 Chapter 14 " Property entities "and Chapter 18" Corporate Law. Corporate Relations "(st.st.167-172) of the Civil Code of Ukraine.

We agree with D.V. Stepanovym who rightly points out that the share in the authorized capital "is neither a monetary amount or a separate law or set of rights or securities or substitute security ... is a legal instrument, the nature and the purpose of which is disclosed in the role that he played during the entire period of the LLC "[15, 62].

The share has a distinct investment specifics, she, unlike many other objects of rights does not exist outside investment activities. Share as an object of rights arising from the fact that a certain person transfers property oborotozdatne as a contribution to the ownership of the company (in terms of investment law - investment) and consequently loses ownership of such property. Instead, such a person acquires the ownership of certain oborotozdatnyy equivalent - a share that is a substitute, substitute contribution (in terms of investment law - the object of investment). Share is not a

separate property right, a set of corporate rights and corporate rights and responsibilities, it is only oborotozdatnym substrate corporate rights sui generis. Corporate law is followed by part: he and only he who owns the shares - he has corporate law, and therefore - the participation in society.

In businesses other than corporate (state, municipal, private) founder loses ownership of the contribution that the company transferred the right of business or operational management, respectively - does not get a share in the property as oborotozdatnyy equivalent contribution. But the rights of the founder on the company, other than ownership of the share or ownership of the property company, that is - the right to receive profit and their property after the liquidation, the right to manage the affairs of the company and others., Occur in any enterprise and is not oborotozdatnymy can not be the subject of contracts. Oborotozdatnoyu is the proportion (if any).

Given the importance particles for economic turnover, necessary, in our opinion, is their identification numbers and registration of rights to them in the Unified State Register of Legal Entities and individuals - entrepreneurs (in all kinds of economic partnerships in addition to equity) and recognition that action identification not only corporate rights of a shareholder on the company, but also ownership of a stake in BP.

It should also be noted that the vast majority of modern Ukrainian lawyers that explore issues of legal nature of the particles are repelled from a certain doctrinal basis that was formulated I.V. Spasybo-Fateeva follows: authorized capital "does not exist as a separate object of civil law, it is only accounting and legal means ... not subject to expropriation as such. You can not designate: ownership of the share capital. It is impossible to foreclose on it. At the same time, the authorized capital divided into shares, and therefore its share should have the same legal regime as a whole, ie the entire share capital. If so, then the laws of logic and proportion can not be the object of ownership can not be alienated, that is, to be in circulation " [16, 9-10].

Indeed, if we just follow applicable law terminology, "share in the authorized capital", "share in the contributed capital" is only a part, the percentage of such capital, it should have all the signs and is not more than accounting abstraction.



However, do not be absolute terminology legislation - is something that can be improved or changed.

In particular, V.M. Kravchuk, realizing the contradictory and imprecise nature of the term "share in the authorized (share) capital" offers to replace it with the term "participation share" or "share" [8, p. 11], a Russian researcher D. Lomakin also uses the term "share of" not tied to the category of "capital" [17, 153].

**Conclusions and suggestions.** We agree with the idea of terminological weaken the link between the concepts of "share" and "capital", which propose to use the term "corporate share" or "corporate pie."

Such share (share) is not an arithmetic index, the percentage derived from capital entity that has all the properties of the whole and is meant only as a part of (ie not purely accounting and accounting value), by contrast, the primary phenomenon with its own existence is the share (share ) - as a substitute member of the contribution made by specific, as an independent and self-sufficient object rights sui generis, return capital - is no more than is necessary for the specific purposes of accounting the total value of contributions participants, respectively, formed by these deposits (shares) .

So we understand corporate share (corporate share) as a substitute transferred to the ownership of a business partnership and corporate deposit facility oborotozdatnyy rights, ownership of which is registered in the Unified State Register of Legal Entities and individuals - entrepreneurs or certified event and gives its owner the participation in a business partnership, and as a result - the relevant law on such economic society and other stakeholders (corporate law).

In our view, this definition completely reveals the essence of corporate shares (corporate share) as a special type of property and property rights sui generis - oborotozdatnoho substrate corporate rights, designed to provide corporate nature of the enterprise because of the possible multiplicity of participants and their replacement.

Also, the share of corporate (corporate units) as a special kind of property, should be directly poimenovani among objects of civil rights in Chapter 13, "Things.

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