

Alienation (sale) of corporate rights of a Ukrainian LLC

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1. General provisions

Under Ukrainian law, the rights of legal entities' shareholders (corporate rights) are a set of powers that belong to a person as a shareholder (including a founder) of a legal entity in accordance with the law and the company's charter.

A person acquires corporate rights from the moment he or she acquires ownership of a share in the company's authorised capital.

Possession of corporate rights entitles a person to:

- participate in the company's management;
- receive a share of the company's profit (dividends);
- receive a share of the property (assets) of the company being liquidated;
- receive information about the company's activities in accordance with the procedure established by the company's charter;
- to alienate, i.e. sell, corporate rights, in particular, a share in the authorised capital;
- have other powers determined by the company's charter.

2. Conditions for share alienation

The Law of Ukraine 'On Limited Liability Companies and Additional Liability Companies' (hereinafter – the 'Law') sets out the conditions for alienation of a share in the company's authorised capital to other company shareholders or third parties. At the same time, the Law clearly defines the essential terms of a share purchase agreement:

- a company shareholder is entitled to alienate its share (part of a share) in the company's authorised capital for payment or free of charge to other company shareholders or third parties;
- the company's charter may stipulate that alienation of a share (part of a share) and pledging it as collateral is permitted only with other shareholders' consent. The relevant provision may be included in or excluded from the charter by a unanimous decision of the general meeting attended by all shareholders of the company;

- a company shareholder has the right to alienate its share (part of a share) in the authorised capital only to the extent that it is paid up;
- a company's shareholder may request notarisation of the alienation transaction, pledge of such shareholder's share in the authorised capital of the relevant company or cancel such a request, and the information thereon shall be entered into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations in accordance with the procedure established by law. Such demand of a shareholder, as well as its cancellation by a shareholder, constitutes a unilateral deed and is subject to notarisation.

3. Pre-emptive right to acquire a share

The Law provides that company shareholders who intend to sell their share (part of a share) to a third party must notify the other company shareholders in writing and inform them of the price and amount of the share to be alienated and other terms of such sale.

If none of the company's shareholders notifies the selling shareholder in writing of his/her intention to exercise his/her preemptive right within 30 days from the date of receipt of the notice of the shareholder's intention to sell the share (part of the share), it is deemed that the shareholders have given their consent on the 31st day from the date of receipt of the notice. Such a share (part of a share) may be alienated to a third party on the terms and conditions communicated to the company's shareholders.

The spouse's consent should not be overlooked if the share is sold by an individual. If the seller of the share is married and the property rights (share in the LLC) are jointly owned by the spouses, the spouse's consent to the alienation is required. A notarised statement of the spouse's consent to the share alienation may also be submitted in advance.

4. Share sale and purchase agreement

The sale of corporate rights and shares in the authorised capital is formalised by a share purchase agreement. The Law does not prescribe the procedure for concluding a share purchase agreement, so the provisions of the Civil Code of Ukraine apply in this case.

The buyer may be either a legal entity or an individual. If the buyer is a legal entity, due attention should be paid to the execution of powers of attorney for its representative to sign the share purchase agreement. On behalf of a legal entity, the agreement may be signed by a person acting on the basis of its constituent documents or by a representative acting under a duly executed power of attorney.

A share purchase agreement is concluded in writing and signed by both parties. There is no legal requirement to notarise such an agreement. However, it may be notarised at the request of one of the parties. As per the general requirements for commercial agreements, the agreement must contain the essential terms and conditions: subject matter, price, and validity period. It will also be useful to specify in detail, in particular, the payment procedure, the moment of transfer of the share ownership, the procedure for acceptance and transfer of the share, the terms of making changes to the Unified State Register of Enterprises and Organisations of Ukraine and other essential terms.

5. Share transfer and acceptance certificate

A share transfer certificate to a share purchase agreement is used to document the actual transfer of a share from a seller to a buyer under the relevant share purchase agreement.

The deed is not an independent document; it is executed for the purpose of fulfilling the share purchase agreement previously entered into between the seller and the buyer, is notarised and is an integral part of the share purchase agreement.

The certificate is required for state registration of the buyer as a new member of the LLC. The share transfer and acceptance certificate shall contain only the following information: the fact of transfer of the share from the seller to the buyer, the amount of the transferred share and its nominal value, payment details and the buyer's and seller's identification data.

6. Registration of changes

Pursuant to the Law of Ukraine 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations', the following documents must be submitted to the state registrar to register the alienation of a share in the authorised capital of a limited liability company (or part thereof):

- an application for state registration of changes to the information about the legal entity contained in the Unified State Register;
- a proof of payment of an administrative fee;
- an acceptance and transfer certificate for a share (part of a share) in the company's authorised capital.

Both the person who alienated the share in the authorised capital of the company and the person having acquired it are entitled to submit an application for state registration of the change in the shareholders' composition to the state registrar.