

The Supreme Court's practice in commercial disputes

The commercial disputes chamber of the Supreme Court of Ukraine formed its legal opinions issued in the judgments of the second half of 2014 following review of court rulings on the grounds of unequal application of substantive law by the cassation courts.

Below are some opinions in relation to disputes on:

Execution, change, termination of agreements

Thus, pursuant to clause 2 of Article 651 of the Civil Code of Ukraine, the agreement may be changed or terminated upon the court judgment on demand of one of the parties to the agreement in case of significant breach of the agreement by the other party and in other cases specified by the agreement or law. Significant breach is a breach by the party, in result of which the other party is greatly deprived of what was expected upon execution of the agreement.

In particular, it is permitted to terminate the agreement due to significant breach of its terms, e.g. failure to pay indebtedness or termination of financing.

Recognition of transactions as void

By virtue of Article 39 of the Law of Ukraine on commercial entities dated 19 September 1991, there is no requirement to adopt the resolution of the general meeting on decrease of the charter capital of the entity upon alienation of property of such entity. Thus, it is wrong practice to regard resolution of the general meeting of the entity as mandatory in case of alienation of property of the entity.

In addition, alienation of property that is included in the charter capital does not indicate that the charter capital of the entity is decreased.

Corporate relations

Participation in the management of the entity through activities in the highest body of the entity (the general meeting) is one of the guaranteed rights of the participant of the entity. Failure to notify the participant on holding of the general meeting in accordance with the procedure prescribed by the charter is the gross violation of the participant's rights, which might serve as the ground to recognize resolutions of the general meeting of the entity as void. Failure to notify the participant on convocation and holding of the general meeting of the entity,

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at which such participant was excluded from the participants of the entity, is unconditional violation of his/her rights specified in Article 10 of the Law of Ukraine on commercial entities dated 19 September 1991.