



Transfer of Participant's Share in The Charter Capital of a Limited Liability Company by Way of Legal Succession: Challenges and Solutions

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Abstract: This article examines the inheritance-based transfer of a participant's share in the charter capital of a limited liability company. The author analyses the interplay between civil, family, and corporate legal norms, focusing on legal constraints, shareholder consent requirements, and procedures for the payment of the share's actual value. The paper also draws upon foreign legal practice and theoretical perspectives to suggest solutions to practical legal issues.

Keywords: Limited liability company, share, inheritance, legal succession, company charter, consent, actual value.

Introduction: The peculiarity of the transfer of a share in a limited liability company by way of legal succession (inheritance) lies in the fact that such relations are regulated by the norms of civil law (inheritance), family law, and corporate law.

To begin with, if we consider the general foundations of inheritance, Chapter 66 of the Civil Code sets out the general provisions on succession, according to which inheritance is carried out by will and by law. According to Article 1113 of the Civil Code, all rights and obligations belonging to the decedent at the time of the opening of the inheritance, which do not cease upon death, are included in the estate. However, the second paragraph of part two of this article stipulates that membership in legal entities such as commercial organizations and other institutions, and the rights of participation in them, unless otherwise provided by law or contract, are not included in the inheritance.

At the same time, according to Article 20 of the Law “On Limited Liability Companies,” shares in the charter capital of the company are transferred to the heirs of individual participants and to the legal successors of legal entities that are participants of the company.

In our view, the issue of the transfer of rights and obligations of a company participant to an heir requires the partial application of the relevant provisions of the Civil Code, as the acquisition of participant status is governed by corporate legislation.

It is noteworthy that even within the Civil Code itself, when addressing the transfer of shares in the charter capital of a company to the heirs of individuals and the legal successors of legal entity participants, it is stipulated that the rights associated with the personality of the participant – namely, the non-property (organizational) rights, such as the right to participate in the management of the company – do not form part of the estate.

In accordance with the legislation, until the inheritance is accepted by the heir of the deceased participant of the company, the rights of the deceased participant shall be exercised by the person indicated in the will, and the obligations shall be fulfilled by that person. In the absence of such a person, the rights and obligations shall be exercised and fulfilled by a manager appointed by a notary.

If the company’s charter provides that the consent of the participants is required for the transfer of a share (or part of a share) in the charter capital of the company to heirs or legal successors, or for the distribution of a share (or part of a share) among the participants of a dissolving legal entity, such consent shall be deemed to have been obtained if, within thirty days from the date of request to the company participants – or within another period specified in the charter – written consent from all participants is received, or if no written refusal has been received from any of the participants.

In cases provided for in parts fourteen, fifteen, and sixteen of Article 20 of the Law “On Limited Liability Companies,” if the participants of the company refuse to give consent to the transfer or distribution of a share (where such consent is required by the company’s charter), the share shall be transferred to the company. In such a case, the company must pay the heirs of the deceased participant, the legal successors of a reorganized legal entity participant, or the participants of a dissolved legal entity participant – depending on the circumstances – the actual value of the share, calculated on the basis of the company’s accounting records for the last reporting period preceding the date of death, reorganization, or

dissolution. Alternatively, with their consent, the company may transfer to them property of equivalent value in kind.

From the above provisions, it can be concluded that certain restrictions may apply for an heir to receive a share in a company by way of inheritance. As noted by Ye.A. Sukhanov, who theoretically justified the existence of such restrictions, legislation may introduce exceptions to the general rules of inheritance in order to protect the interests of participants in collective entities (corporate participants) under market conditions.

According to Remizova, who conducted research in this field, these exceptions are said to be based on the theory of the dichotomy of the status of the share recipient found in American legislation regarding the inheritance of shares. Under this theory, the recipient of the share may hold one of two statuses: first, as an assignee; and second, as a member of the corporation.

These exceptions primarily arise from corporate legal relations, that is, in the process of transferring shares by way of inheritance, family law and corporate law norms often come into conflict. This conflict is especially evident when the surviving spouse claims the deceased spouse’s share in the company as part of the inheritance.

According to Article 23 of the Family Code of the Republic of Uzbekistan, property acquired by the spouses during the marriage, as well as property acquired before the official registration of marriage using the couple’s joint funds, shall be considered their joint property, unless otherwise provided by law or the marriage contract. Furthermore, part two of the same article specifies that movable and immovable property, securities, shares, deposits, and interests in the capital of credit institutions or other commercial organizations, as well as any other property acquired by the spouses during the marriage – regardless of whose name it is registered in, or which spouse made the monetary contribution – shall be considered their joint property.

In such cases, according to some researchers, the norms of family law should take precedence – meaning that the rights of the spouse who is not a participant in the company must be recognized with respect to the share. In this context, it is necessary to refer to the decision of the Constitutional Court of the Russian Federation concerning uncertificated (document-free) shares. The Court held that if uncertificated securities are acquired by one of the spouses during the marriage, they are considered to be part of the couple’s joint property.

Another problematic issue in these legal relations concerns the timing of the transfer of a share by inheritance. As a general rule, the moment of transfer

of the share to the heirs is considered to be the time when the amendments to the company's charter – based on documents confirming the heirs' right to the share – are registered with the state.

However, this matter is also subject to scholarly debate. According to Novoselova, the inherited shares are considered transferred to the heirs only after the relevant amendments have been introduced into the company's charter. .

In her research on the timing of share transfers, the scholar Remizova identifies three prevailing views and argues that two situations must be distinguished. First, where the consent of the other participants is not required for the transfer of a deceased participant's share to the heirs. Second, where such consent is required, in accordance with the company's charter.

Let us first consider the case where no consent is required from the other participants. As previously noted, in such instances the share passes by way of inheritance from the moment the inheritance is opened. From a theoretical standpoint, since no consent is required for the transfer, it seems logical that the rights and obligations associated with the share should also pass to the heirs from the moment the inheritance is opened.

In her analysis of judicial practice, the researcher highlights that there are three distinct approaches taken by courts in determining the moment of transfer of a share on this basis:

1. From the moment the inheritance is opened;
2. From the moment the company is notified of the heir's right to the share;
3. From the moment the transfer of the share based on inheritance rights is registered by the state.

In examining the first position, it should be noted that under the general rules of succession, the heir acquires the right to receive their share of the estate (including a company share), unless they later renounce the inheritance, are disqualified from inheriting, or the will appointing them is declared invalid. This principle is enshrined in Article 1145 of the Civil Code.

Therefore, it can be concluded that the share in the charter capital of a limited liability company passes to the heir from the moment the inheritance is opened. If the company charter does not explicitly require the consent of the participants for such a transfer to heirs, then the heir obtains the status of a company participant.

However, in practice, there may be objective circumstances that make it impossible to admit heirs as participants in the company. For instance, if the inclusion of heirs would cause the number of

participants in the company to exceed the statutory limit of 50, the company would be required to reorganize into a joint – stock company or a production cooperative. In this case, we believe that it is reasonable for the participants to refuse consent, since they have a legitimate interest in preserving the current organizational – legal form of the company.

Furthermore, such reorganization may have economic consequences for the company. For example, under Article 52 of the Civil Code, reorganization may give creditors the right to demand early fulfillment or termination of obligations and compensation for damages if the company's legal status changes. Otherwise, the company may be subject to liquidation.

Another issue that gives rise to debate is the inclusion of a prohibition in the company's charter on the transfer of a share to the heirs of a deceased participant. Since there is no specific rule in the law regarding this matter, some scholars argue that such a prohibition should be considered invalid by default.

According to N. Mikheyeva, if the company's charter prohibits the transfer of a participant's share to their heirs after death, then there should not be provisions stating that the value of the share in the charter capital will be paid out to the heir without granting them the right to participate in the company's activities.

There are also opposing views on this issue. Various sources mention the possibility of prohibiting the transfer of a share by inheritance in the company's charter, although no legal justification is typically provided. This position is supported by Novoselova, who argues that the company's charter may include a prohibition on the transfer of a participant's rights and obligations to their heirs. Such a provision in the charter is seen as a form of prior dissent expressed by the participants of the company regarding the transfer of membership rights and obligations to heirs. In this case, the share is deemed to have transferred to the company from the moment the inheritance is opened.

Another issue that gives rise to legal discussion in these relations is the payment of the actual value of the share to the heirs. According to part fourteen of Article 20 of the Law "On Limited Liability Companies," if the company's participants refuse to consent to the transfer or distribution of a share (where such consent is required by the company's charter), the share shall be transferred to the company. In such cases, the company is obliged to pay the heirs of the deceased participant, the legal successors of a reorganized legal entity participant, or the participants of a dissolved legal entity participant the actual value of the share, calculated on the basis of the company's accounting data for the last reporting period prior to the date of death,

reorganization, or dissolution. Alternatively, with the consent of the relevant parties, the company may transfer to them property of equivalent value in kind.

In this context, the company's obligation to pay the actual value of the share and the heir's right to receive such payment arises from the moment any participant refuses to consent to the transfer or distribution of the share to the heirs of an individual participant, the legal successors of a legal entity, or the participants of a dissolved legal entity. This means that the company's duty to pay the actual value of the share arises from the date on which the first written refusal is received.

1. The payment of the actual value of the share may be carried out in two forms:
2. In monetary form;
3. In property in kind of equivalent value, with the consent of the heir.

It is important to emphasize that the company has the right, but not the obligation, to provide property in kind instead of paying the actual value in cash. The heir does not have the right to demand specific property of equivalent value instead of the monetary payment.

CONCLUSION

In conclusion, the transfer of a share in a limited liability company by way of inheritance is a complex legal institution located at the intersection of civil, family, and corporate law. Although the current legislation provides a general regulatory framework for this process, a number of uncertainties, ambiguities, and practical problems remain. These include: the treatment of non-property (organizational) rights attached to the share, the requirement of participant consent, the determination of the time of transfer, and the mechanisms for the payment of the actual share value by the company.

The analysis presented in this article demonstrates the need for further clarification of corporate law norms in this area and their harmonization with family and civil law. Additionally, taking into account comparative foreign legal experience, the development of norms that strengthen the legal guarantees for heirs in acquiring participant status remains an urgent task. Thus, resolving the legal challenges associated with the inheritance of a share in an LLC is of vital importance not only for safeguarding the rights of heirs, but also for ensuring the stability and continuity of the company itself.

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