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Issues of Determining the Legal Nature and Place of the Corporate Contract

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Abstract: This article highlights the issues of corporate governance, ensuring the organization of relations between the participants of the company, their rights, obligations and the procedure for their implementation.

Keywords: corporate agreement, corporate relationship, corporate governance, shareholder, members of the company, civil law contracts.

The rights and obligations of a company participant or shareholder are determined both by legal documents and by separate clauses of the founding documents and relevant regulations. However, in addition to complying with the above provisions, corporate management must ensure the organization of mutual relations between the participants of society's activities, which can be done by concluding a corporate agreement aimed at determining their rights, obligations, the procedure for their implementation and their responsibility in this area.

Regulations on corporate contracts in foreign countries are strengthened at the legislative level. For example, the right to enter into a corporate contract is provided for in Article 7 of the Law of Ukraine "On Limited and Additional Liability Companies". D. Juravlev, A. Korotyuk, K. Chijmar, analyzing the above-mentioned standard, distinguish the following features of the corporate contract: the corporate contract is free; it shall be made in writing; the date of conclusion and validity period must be specified in the contract; the content of the corporate agreement is confidential and can be disclosed unless otherwise specified by law or the agreement; the provisions of the contract have precedence over other contracts that conflict with the provisions of the corporate contract concluded by its party (a contract concluded by a party to a corporate contract in violation of such a corporate contract is void if the other party to the contract knew or should have known about such a violation); an irrevocable power of attorney may be issued in accordance with the provisions of the corporate agreement; a corporate contract can be concluded only by company members (individuals and/or legal entities). [1, 27 p]

A. Svintsitsky believes that a corporate agreement can be concluded between the participants of the society and the creditors of the society. [2] In our opinion, this opinion is controversial. The content of the corporate agreement is a set of conditions under which it is concluded. At the same time, legal relations arise from the corporate contract, the content of which is recognized as the rights and obligations of the participants, which are established in it. The terms of the corporate contract regulate the actions of the entities participating in it and find their legal expression through their rights and obligations.

One of the most controversial issues is the issue of determining whether a corporate agreement belongs to the civil-legal agreements. One of the aspects that should be paid attention to is that if this corporate contract is considered to have a civil-legal nature, then it is to determine the position of this contract in the system of civil-legal contracts. It is known that one of the main classifications of civil legal contracts is based on the principle of "dichotomy". Based on this, the three most important pairs of contracts are distinguished: one-sided and two-sided, paid and free, real and consensual. Before determining the position of this or that type of agreement in these listed pairs, it is necessary to distinguish the obligation arising from the contract. The implementation of this classification in relation to the corporate contract creates certain difficulties, because the construction of the usual obligation is manifested in the section of mutual rights and obligations of the creditor and the debtor.

In its "main" part, the corporate contract includes the obligation to jointly exercise corporate rights, so we can only talk about the general obligation of all participants, the fulfillment of which none of the participants has the right to demand against themselves personally. In addition, the corporate agreement is made to act as a "single agreement" of all parties, not to satisfy the personal needs of the participant through the actions of the partner. It will be necessary to solve this non-standard situation and find a place for the corporate contract among the civil legal agreements.

Most scholars who consider a corporate contract to be a civil contract usually classify this contract as mutual (bilateral). In particular, V. V. Rublev, [3, 45-55 p] and P. S. Nasten. [4, 61-68 p] Apparently, this conclusion is based on the majority of the participants of the corporate agreement. However, the decisive factor in this matter is not the number of participants, but the mutual obligations arising under the contract. At the same time, the above scholars or other authors do not indicate what mutual rights and obligations arise for the parties to the corporate contract.

Another part of the representatives of the scientific community even believes that the corporate contract does not create a civil obligation due to the special scope of its activity - corporate relations. Corporate relations are an independent type of private law relations. [5, 526 p] The relations arising from the corporate contract do not ensure the circulation of goods between the participants, therefore, there are opinions in the scientific literature that they should be considered as relative relations not related to obligations. [6, 4-10 p] It has also been argued that a corporate contract creates a non-proprietary obligation arising from the conclusion of pre-contractual agreements. [7]

As a corporate contract, as a civil contract, it is possible to clearly see the obligation created by this contract and, from this, form a certain point of view regarding unilateral obligations and mutual agreements. In our view, a corporate agreement binds the parties to the exercise of corporate rights under pre-agreed conditions. It also provides for the condition of the turnover of shares (shares) under predetermined conditions. The latter obligation is based on the principles of reciprocity, as it provides for the alienation and acquisition of objects of civil rights. [8]

Determining the nature of the obligation to jointly exercise corporate rights is somewhat complicated. In this case, it is unlikely that there will be a double obligation, since the voice of one of the parties to the contract may not correspond to the voice of the other or others. In addition, the emergence of a unilateral obligation in a corporate contract is also controversial. Because each of the parties is obliged to vote in a certain way, but in this case it is necessary to identify the person who has the right to demand it. In other words, it is necessary to determine the "counterparty" who has the right to demand voting in a certain way, because the obligation binds certain persons and is therefore called relative. In the absence of a "counterparty", a corporate contract cannot be called a unilateral obligation or a bilateral obligation.

If we pay attention once again to the issue of the joint exercise of corporate rights - the obligation created by the corporate contract - we will see that all attempts to find a mutually

opposite party are unsuccessful. The fact is that none of the participants can demand the fulfillment of obligations to him personally from the other participant or from all other participants, and this is very appropriate, because the parties are united for joint participation, and it is not aimed to satisfy their personal interests at the expense of a specific person (debtor).

Therefore, in the first part, the corporate contract is considered to have the characteristics of a consolidated obligation. The fact that the corporate contract is not included in the scope of a contract that imposes unilateral or bilateral obligations does not mean that it is excluded from the list of civil legal contracts. This type of contract is also distinguished in civil law. Among them, the ordinary partnership agreement is particularly well known.

It is also important to determine the place of the corporate contract in the system of contracts concluded for a fee or for free. In the scientific literature, the "reimbursement" of the contract is interpreted in different ways. This is the "mutual property benefit" [9] and the compensation that the parties want to receive by entering into contractual relations [10] and others. Article 355 of the CC contains the definition of remuneration. In accordance with this norm, an agreement in which the other party must pay a fee for an obligation performed by one party or make another opposite payment is considered a contract concluded for a fee. On the other hand, an agreement that does not imply the obligation of one party to give something to the other party without receiving a fee or other reciprocal provision is considered a gratuitous contract. Therefore, the basis of legal distinction between contracts concluded for a fee and for free is the existence or non-existence of a countervailing provision.

Civilians who consider a corporate contract to be "made for a fee" show that the parties to it rely on the profits received by the economic entity to which they are parties. In addition, the law establishes a presumption of compensation for all civil contracts. The first thesis is somewhat controversial. In order for the contract to be considered concluded for consideration, the counterparty must receive a counter-payment from the counterparty (directly or indirectly). It is possible that the consolidated activities of the participants of the economic company may benefit them through dividends or an increase in the value of the shares, but this is not considered a payment provided by the counterparty. In general, the concept of economic benefit should be distinguished from the concept of "structure for payment" in civil law.

According to H.R. Rahmonkulov, "when each party presents property of equal value, payment acquires the color of equivalence. Equivalence of property relations requires them to be economically equal in value, in which case these relations are paid relations even in cases where equal value is determined according to the current prices. [11, 245 p]

According to I.B. Zakirov, "contracts concluded for consideration, one party receives payment in money or property in exchange for the transferred property, services rendered." [12, 601 p]

In our opinion, the conclusion of a certain type of agreement for a fee is primarily determined by the existence of conflicting rights and obligations of the parties to the contract. If the obligation is directed to only one party or if the status of "partnership" has arisen due to the participation of many people in the contract, the element of conclusion for a fee does not arise in such contracts. Therefore, in cases where there is a factor of "reciprocity" and in cases where "opposite presentation" is provided, it can be said that the contract was concluded for a fee. These aspects are not clearly visible in the corporate contract.

As to the argument about the presumption of consideration, it is more reasonable, but it cannot, however, affect our final conclusion that the contract is gratuitous. The fact is that each presumption, including the presumption mentioned in the third part of Article 355 of the CC, only means that the point of determination has been established. The presumption is not axiomatic and can be overcome. The presumption of compensation within the meaning of the third part of Article 355 of the CC is eliminated by the law or the content of the contract. In our opinion, the nature of the corporate contract, as a general purpose, its gratuity is rejected. From

the point of view of ensuring the circulation of shares (shares), a corporate agreement can be concluded both for a fee and for free.

The next pair of transactions is consensual and realistic. The basis of their differentiation is when they are considered structured. When agreement is reached on all important terms, a consensual contract is concluded. A contract deemed to have been concluded at the time of delivery of the thing is real. The legal basis of this division is Article 365 of the CC. The contract is recognized as concluded when the person who sent the offer accepts it (part one). If, in accordance with the law, the transfer of property is also required for the conclusion of the contract, the contract is considered to have been concluded from the moment of the transfer of the relevant property (second part). "The resolution of many issues depends on the moment of signing the contract, because its consequences begin to manifest from this moment. At the same time, the offer and its acceptance will be completed. [13, 768 p]

The construction of the corporate contract shows that this contract has a consensual nature, because the parties to the contract are required to exercise their rights in a certain way. That is, in order for the contract to be considered concluded and the obligation to be imposed on the parties, it will be enough to reach an agreement on this condition (voting in a certain way). In addition, signs of a consensual agreement appear in the second part of the construction of this contract in the corporate contract. Because the obligation to transfer shares (shares) does not show its true nature, because this transfer is not recognized as an element necessary for concluding a corporate contract, considering the fulfillment of the contract.

A corporate agreement is often recognized as a management tool, and its purpose is usually related to management in one way or another (the corporation in general or a specific situation) and provides for the following:

a) resolving disputes, "difficult situations" that have arisen or are expected to arise ("deadlock resolution" in English);

b) increase the level of corporate control by certain participants;

c) taking into account even the smallest aspects of intra-corporate relations;

d) ensuring corporate rights by neutralizing the undesirable actions of other participants (for example, as a result of limiting the relinquishment of participation shares) or fighting against a potential takeover;

e) ensuring future actions and (or) participation in management, for example (purchase of shares of the corporation). [14, 4-5 p]

There are different approaches to determining the nature of a corporate contract. For example, E.V. Zubova believes that a corporate contract is an independent type of civil-law contracts complicated by a corporate element. [15, 143-154 p]

Based on the above, the following conclusions can be formed:

A corporate contract is an agreement between the participants of a corporate-type legal entity on the realization of corporate rights by defining the ways of exercising corporate powers to achieve goals that do not conflict with the law and founding documents. fact, as well as informing the parties of the corporate contract about the content of the contract, in turn, these cases should be determined at the legislative level.

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