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OWNERSHIP RELATIONS AS PRECONDITIONS FOR THE EMERGENCE OF LEGAL RELATIONSHIP IN JOINT-STOCK COMPANIES

Abstract. The authors of the article have analyzed the understanding of ownership as a central entity and the main regulator of economic relations within a joint-stock company. It has been stated that ownership is associated with such categories as «property» and «right», which raises a considerable number of methodological issues originated by the formation of joint-stock companies' ownership and shareholders rights in relation to the ownership. Particular attention has been paid to the fact that ownership in such a company as an economic category performs a certain function, which consists in the formation of a considerable amount of capital on the most profitable for all persons involved in this process, in order to its maximum profitable use. It has been noted that if we talk about the ownership of a joint-stock company, then it is formed by the issue of shares, and accordingly, the company, which is interested in attracting significant funds, conducts open placement, the proceeds of which are accumulated to use in its business activities. The authors have provided arguments in favor of other positive aspects of stock ownership that make it universal and capable of application wherever there is the need to accumulate significant amounts of funds and limit the scope of liability.

It has been concluded that ownership in a joint-stock company as an economic category performs a certain function, which makes it not only an economic, but also a legal category. This function is to generate a large amount of capital in the most profitable terms for all persons involved in this process, for its maximum profitable use. The category of «stock ownership» is used when referring to the legal regime of ownership in a joint-stock company — the ownership rights of the shareholders for the shares and the ownership rights of the company for the property, which in their implementation intersect and affect one another.

It has been supposed that the most appropriate model, to which stock ownership tends, is confidential property, ideology and practices of trusts. However, it is quite clear that its application in Ukraine in the present state of legal regulation is hardly worth supporting.

Keywords: stock ownership, property, a share, a shareholder, joint-stock company, charter capital.

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ВІДНОСИНИ ВЛАСНОСТІ ЯК ПЕРЕДУМОВА ВИНИКНЕННЯ ПРАВОВИХ ЗВ'ЯЗКІВ В АКЦІОНЕРНИХ ТОВАРИСТВАХ

Анотація. Проаналізовано розуміння власності як центрального утворення та головного регулятора економічних відносин у рамках акціонерного товариства. Зазначено, що власність пов'язується з такими категоріями, як «майно» і «право», у зв'язку з чим виникає значна кількість методологічних питань, породжених формуванням власності акціонерних товариств і прав акціонерів щодо неї. Звернуто увагу, що власність у такому товаристві як економічна категорія виконує певну функцію, яка полягає у формуванні значного за обсягом капіталу на найвигідніших для всіх осіб, втягнутих у цей процес, умовах з метою максимально прибуткового його використання. Зауважено, що якщо говорити про власність акціонерного товариства, то вона формується шляхом емісії акцій, а відповідно, товариство, яке зацікавлене у залученні значних коштів, провадить відкрите їх розміщення, кошти від придбання яких акумулюються для використання у його підприємницькій діяльності. Наведено аргументи на користь інших позитивних сторін акціонерної власності, що роблять її універсальною і здатною до застосування скрізь, де є потреба в акумулюванні значного обсягу коштів і обмеження масштабів відповідальності.

Зроблено висновок, що власність в акціонерному товаристві як економічна категорія виконує певну функцію, завдяки чому стає не лише економічною, а й правовою категорією. Ця функція полягає у формуванні значного за обсягом капіталу на найвигідніших для всіх осіб, втягнутих у цей процес, умовах з метою максимально прибуткового його використання. Категорія «акціонерна власність» уживається, коли йдеться про правовий режим власності в акціонерному товаристві — права власності акціонерів на акції та права власності товариства на майно, які при їхньому здійсненні перехресшуються і чинять вплив одне на одне.

Зазначено, що найбільш вдалою моделлю, до якої тяжіє акціонерна власність, є довірча власність, ідеологія і практика трастів. Проте цілком зрозуміло, що її застосування на теренах України в сучасному стані правового регулювання навряд чи варто підтримувати.

Ключові слова: акціонерна власність, майно, акція, акціонер, акціонерне товариство, статутний капітал.

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ОТНОШЕНИЯ СОБСТВЕННОСТИ КАК ПРЕДПОСЫЛКА ВОЗНИКНОВЕНИЯ ПРАВОВЫХ СВЯЗЕЙ В АКЦИОНЕРНЫХ ОБЩЕСТВАХ

Аннотация. Проанализировано понимание собственности как центрального образования и главного регулятора экономических отношений в рамках акционерного общества. Указано, что собственность связана с такими категориями, как «имущество» и «право», в связи с чем возникает значительное количество методологических вопросов, порожденных формированием собственности акционерных обществ и прав акционеров в отношении нее. Обращено внимание, что собственность в таком обществе как экономическая категория выполняет определенную функцию, состоящую в формировании значительного по объему капитала на более выгодных для всех лиц, втянутых в этот процесс, условиях с целью максимально прибыльного его использования. Отмечено, что если вести речь о собственности акционерного общества, то она формируется путем эмиссии акций, а соответственно, общество, заинтересованное в привлечении значительных средств, осуществляет открытое их размещение, средства от приобретения которых аккумулируются для использования в его предпринимательской деятельности. Приведены аргументы в пользу других позитивных сторон акционерной собственности, которые делают ее универсальной и способной к применению везде, где есть необходимость в аккумулировании значительного объема средств и ограничения масштабов ответственности.

Сделан вывод, что собственность в акционерном обществе как экономическая категория выполняет определенную функцию, благодаря чему становится не только экономической, но и правовой категорией. Эта функция состоит в формировании значительного по объему капитала на самых выгодных для всех лиц, втянутых в этот процесс, условиях с целью максимально прибыльного его использования. Категория «акционерная собственность» употребляется, когда речь идет о правовом режиме собственности в акционерном обществе — праве собственности акционеров на акции и праве собственности общества на имущество, которые при их осуществлении перекрещиваются и влияют друг на друга.

Предполагается, что наиболее подходящей моделью, к которой тяготеет акционерная собственность, является доверительная собственность, идеология и практика трастов. Однако, в целом, ее применение в Украине в современном состоянии правового регулирования вряд ли следует поддерживать.

Ключевые слова: акционерная собственность, имущество, акция, акционер, акционерное общество, уставный капитал.

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Introduction. In terms of forming the market economy in Ukraine, there is a change in the scale of economic and social values — private property acquires the key significance. Ownership allows each person to realize his personal freedom as a necessary precondition for the realization of his personality, property and, as a consequence, the various values of society.

Research analysis and problem's setting. N. M. Alieinikova, V. O. Shapovalov, O. V. Holovatenko, I. V. Spasibo-Fatieieva and other specialists studied the problematic issues of stock ownership within economic and legal aspects. However, despite the studies of these scholars, it is worth noting that there is no single integrated approach that would answer the question of the

essence of economic relations of ownership as a prerequisite for the emergence of legal relationship of stock ownership within a joint-stock company.

Research results. Ownership is traditionally understood as the main regulator of economic relations. Ownership is usually associated with such categories as «property» and «right», which raises a number of methodological issues arising from the formation of joint-stock companies' ownership (hereinafter referred to as «JSC») and the rights of shareholders regarding the ownership. Their resolution should be in several directions, one of which is property relations.

The following two basic concepts have remained for many centuries: «property — right» and «property — function», i.e. ownership as complete, absolute, not limited by nobody and nothing, or ownership as a good that simultaneously performs a specific function for both a person and for society in the whole — to meet certain needs. It is obvious that the current state of social relations clearly indicates that the second concept is more acceptable and applied in practice [1, p. 55—59; 2, p. 48—52]. Thus, ownership in the JSC as an economic category serves a certain function, which assists it to become also a legal category. This function is to generate a large amount of capital in the most profitable terms for all persons involved in this process, the conditions for its maximum profitable use. If we talk about the ownership of the JSC, then it is formed by the issue of shares — this is the difference between this organization and others. A company that is interested in involving significant funds, conducts an open issue of shares, the proceeds of which are accumulated for using in its business activities. There are also many other benefits of stock ownership that make it really versatile and capable of being used wherever there is the need to collect significant amounts of money and limit the scope of liability.

The interests of investing capital by various entities of market relations are embodied within the structure of ownership in the JSC, which is characterized by the distribution of charter capital into shares, to which the blocks of shares correspond. The latter belong to different categories of shareholders. Thus, the capital of the JSC and the capital of its shareholders coincide, focusing on those values that are attractive to each of them. For the JSC, it is funds received from the placement of shares, and for shareholders — the shares themselves, which provide a set of rights for them [3, p. 11]. Shareholders depending on the number of shares realize their aspirations related to the volume of corporate rights. And vice versa, depending on the financial capabilities of a shareholder, who has acquired a smaller or larger block of shares, he or she acquires access to management and satisfies his or her property interest by receiving dividends or exchange rate difference from the sale of shares at the stock market. In other words, shareholders, having different purpose, buy the appropriate number (blocks) of shares. Therefore, there is a direct relationship between the structure of stock ownership (that is, those who and to what extent formed the capital of the JSC) and the corporate management, between ownership relations and corporate relations in the JSC. This approach does not exclude any aspect of relationship with the shareholder's participation — persons who have invested their capital in the JSC through the acquisition of shares in the latter. Such persons as shareholders both acquire the full range of options of the owner (the owner's powers), and the full range of those rights that are called corporate rights, and it is such a close and obvious relationship that one should not even argue.

Thus, methodologically correct is the statement about the ownership structure, since the status of corporate management depends on the distribution of the charter capital into the block of shares, and therefore the income of the shareholders as owners, which the capital invested in the joint-stock company brings to them. Such a vision facilitates in understanding the essence of the whole complex of relations «corporate ownership — corporate management» [4, p. 8—36; 5, p. 240].

Domestic economic science has traditionally studies the so-called «stock ownership» («stock ownership form») [6; 7]. The legal literature does not use such a category, but even often refuses to use the terminology, which refers to forms of ownership, although it is sometimes preserved in the law. An example would be the norms regulating the organization of different forms of ownership or the rights to property belonging to certain persons in different forms of ownership.

In order to gain a deeper understanding of the unlimited multiplicity of relationship, entered by the owner and those qualities acquired by his right, to trace the alteration of objects of his right and powers, it is necessary to combine, to connect separate abstractions in a certain way into a new concept, that is, to synthesize all relationships into unified whole. This is exactly that happens, when it comes to stock ownership in the context of JSC ownership and stockholders, which is the synthesis of numerous relations with the realization of property, corporate and obligation rights.

Finally formulated concept, as a result is a kind of sum, a collection of different abstractions, or abstract concepts that reflect certain qualities, sides and relationships of the subject matter. Such a «deduced» concept arises from the consistent complementation and refinement, expansion and synthesis of individual abstractions, reflecting the different sides and relationships between the actions of specific individuals. Thus, there is a transition from individual abstractions to specific concepts, which can be traced through the method of transition from abstract to concrete, the use of which will help in the study of ownership relationship within JSC.

The essential value of stock ownership is: 1) in its designation as a accumulator of capital, and so that the whole will be greater than the sum of its parts; 2) in the direct relationship with corporate management [8, p. 18]; 3) in the high degree of profitability it provides; 4) in the mobility of capital that is mobile as much as the stock market is mobile; 5) in the concentration of capital, which allows to determine the directions of its application, and therefore the availability of products and services and prices for them; 6) the economic component of corporate ownership grows into social and political, since corporate capital addresses numerous social issues, including stability, social guaranteeing, jobs, etc., and also determines the political situation in the country, including the direct and indirect involvement of big business representatives in political life [5, p. 242—243].

If we proceed from the general idea about the ownership as a person's right to a thing (Part 1 of the Art. 316 of the Civil Code of Ukraine), we can see from the first glance that there are no grounds to argue about any particular features of this right in the JSC. The latter is the owner of the enterprise (the only property complex), which he uses in the business activity for obtaining profit. Probably that is the reason why the science holds the point of view that corporate property is a set of real estate, property rights, works and services, information and technologies, intangible goods and other parts of national wealth, the right to use, own, dispose of which belongs to a particular corporation [9, p. 59]. However, it seems that such a definition is one-sided and does not take into account the specifics inherent in joint-stock relations, where property relations refract, like in a crystal. This definition does not take into account that there are such owners as shareholders. Therefore, there is the need to distinguish between their rights as owners and the rights as the JSC owner. Thus, the object of shareholders' ownership is shares — securities that give shareholders the right to part of the income from the entrepreneurial (and therefore profitable) activity of the JSC and other property rights, as well as the right to participate in management. However, these securities themselves do not provide any right to dispose even of that part of the property corresponding to the nominal or market value of the security — the share. At the same time, the nominal right to participate in the management can become a real opportunity only for those who were able to concentrate a controlling stake. The one who succeeded in this process has considerable potential for concentration of managerial power, and hence access to exercising authority over all assets of the JSC.

The peculiarities of ownership relations that intersect with corporate relations become more evident compared to private property. One of these peculiarities is that some private owners (owners of a controlling stake) are able to dispose not only of their property and the income, but also of someone else's property — the property of the JSC, and in some sense — the property of other participants. From this point of view, stock ownership acquires a kind of multiplicative private property. In this case, the magnitude of the multiplier is inversely dependent on the proportion formed by the controlling stake. Another its peculiarity is its associativity or generality of features.

Stock ownership is the property of many individuals and legal entities for a single assignment process with unevenly distributed rights. Some individuals and legal entities have the right to use the property, others — the right only to income (holders of preferred shares), others —

the right to income and to participate in management (owners of ordinary shares). Certain shareholders or their group may concentrate the rights conferring management power (through a controlling stake). At the same time, all JSC participants in one way or another transfer the management rights to a special body and special entities, which leads to the separation of the function of management and the concentration of private power in the hands of managers in large companies, especially with a scattered stake.

Therefore, unlike classical ownership relations the shareholder and the thing are separated in the scheme of stock ownership relations. It is important to note that this fact detracts from the understanding of stock ownership as a property right. The situation is different in regard to the ownership relations in the JSC: instead of the property or other valuables transferred for payment, the future shareholder receives not the owner's powers, but corporate rights of property and non-property character, but not the property that has materialized form.

In addition to indicated features of stock ownership, its direct management is essential. Outside parties are vested powers to manage the capital, but those having experience in this area — managers (officials of the JSC' management bodies). Such a scheme of relations was the result of a peculiar bargaining between the direct business activity of the owner with his responsibility for its results and the removal of shareholders from it for the use of their capital. That is, shareholders only receive benefits (in the form of dividends), but they are deprived of negatives, except for the risk of non-profitable use of their capital until its loss [10, p. 32]. Accordingly, since property relations are generally factual in the JSC, they become not subordinate to the general regulations on property (above all, the provisions of the Civil Code of Ukraine), which place property within a clear framework. Therefore, the property relations that are formed in the JSC do not fit the property law relations.

Conclusions. Ownership of a joint-stock company as an economic category performs a certain function, making it not only an economic category, but also a legal one. This function is to generate a large amount of capital in the most profitable terms for all persons involved in this process, in order its maximum profitable use. The category of «stock ownership» is used when referring to the legal regime of ownership in a joint-stock company — the shareholders' ownership rights for the shares and ownership rights of a joint-stock company for property, which in their exercise intersect and affect one another.

Perhaps, the most appropriate model that stock ownership tends for is confidential property, ideology, and the practice of trusts. However, it is quite clear that its application in Ukraine in the present state of legal regulation is hardly worth supporting.

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