

## I. Beiträge

# Limited Liability Company Corporate Shares in Ukraine: Recent Challenges in Legal Doctrine, Legislation and Court Practice

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### I. General Remarks on the Legal Framework of LLC Shares in Ukraine

The limited liability company (товариство з обмеженою відповідальністю) is the most common kind of business entities and legal entities in general in Ukraine. There are 1.518.456 legal entities in Ukraine overall and 804.158 of them are LLCs, so LLCs make up 52.96% of all legal entities in Ukraine<sup>1</sup>. The figure will be even more impressive if one also takes into account 199 716 Private Enterprises to which the Supreme Court extended the legal regime of LLC<sup>2</sup>. On the other hand, 1498 Additional Liability Companies (ALC) being formally a separate kind of legal entities are also under LLC regulations with the only exception related to «additional responsibility» of members for company's debts (calculated on the basis of their contributions). It means more than a million (1 005 372) or 66,21% of legal entities in Ukraine are under the LLC regulations in total. Due to the popularity of LLCs, the most of business assets in the country are indirectly controlled by owners through ownership of shares in LLCs. That's why legal rules, corporate usages and practices established for LLC and its shares influence to a great extent all the corporate law of Ukraine and Ukrainian business and economics. Due to this fact the recent challenges in legal doctrine, legislation and court practice of LLC corporate shares are of great importance in Ukraine.

The legal issues related to LLC shares fall mainly in the scope of the Civil Code<sup>3</sup>, the Law of Ukraine “On LLCs and ALCs”<sup>4</sup> and the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs, and NGOs” (Law “On State Registration...”) <sup>5</sup>. Just as in ALC, general and limited partnerships, LLCs' shares (Ukrainian – *chastka*) are not arranged as securities, they are divisible and can be of different nominal values in the same company, unlike shares in joint-stock companies/JSC (Ukrainian – *aktsiia*), which are always issued as digital securities of the same nominal value. JSC shares are indivisible, allowing only the denomination of the entire set of shares as a whole.

It is worth noting the specific terminology used in Ukrainian legislation: in the general provisions of the Civil Code (Article 96-1), the term "share" (Ukrainian – *chastka*) is used as a generic concept and refers to all shares of all business entities, including JSC shares (Ukrainian – *aktsiia*), as well as shares (Ukrainian – *chastka*) in LLC, ALC, full partnerships, limited partnerships, agricultural cooperatives, as well as shares (Ukrainian – *pie*) in other types of cooperatives. This new legislative approach<sup>6</sup> aims to emphasize the common legal nature of shares across all types of business entities. Since JSC shares are digital securities, the accounting Depository System for rights to them includes two levels<sup>7</sup>:

<sup>1</sup> Hereinafter, the figures are provided in accordance with the official data of the Ukrainian State Statistics Service: The number of registered legal entities by organizational and legal forms of business as of October 1, 2024 by Ukrderzhstat. URL: [https://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU\\_2023/ks\\_opfg/ks\\_opfg\\_1024\\_ue.xls](https://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2023/ks_opfg/ks_opfg_1024_ue.xls).

<sup>2</sup> Decision of the Commercial Court of Cassation of Supreme Court dd. 03.03.2018 proceedings 907/167/17. URL: <http://www.reyestr.court.gov.ua/Review/72645204>; Decision of the Great Chamber of Supreme Court dd. 29.06.2021 proceedings 916/2813/18. URL: <https://reyestr.court.gov.ua/Review/98531899>.

<sup>3</sup> Civil Code of Ukraine: Law of Ukraine dd. 16.01.2003. N435-IV. (with amendments).

URL: <http://zakon2.rada.gov.ua/laws/show/435-15>.  
<sup>4</sup> On Limited Liability Companies and Additional Liability Companies: Law of Ukraine dd. 06.02.2018. N2275-VIII. (with amendments). URL: <https://zakon.rada.gov.ua/laws/show/2275-19>.

<sup>5</sup> On State Registration of Legal Entities, Individual Entrepreneurs, and NGOs: Law of Ukraine dd. 15.05.2003. N755-IV. (with amendments). URL: <https://zakon.rada.gov.ua/laws/show/755-15>.

<sup>6</sup> Article 96-1 was implemented into Civil Code in 2022

<sup>7</sup> On depository system of Ukraine: Law of Ukraine dd. 06.07.2012 N5178-VI. (with amendments). URL: <https://zakon.rada.gov.ua/laws/show/5178-17>.

- depository institutions (banks or other licensed entities founded as LLC or JSC) open securities accounts for interested parties to which shares are credited: the depository entities notify the Central Depository of each fact of shares being credited;

- the Central Depository (the only entity in Ukraine endowed with relevant functions, founded as a Public JSC) maintains a register of owners of each issuer registered securities, (at JSC those are primarily shares), on the basis of data reported by the depository institutions.

The Depository System is under control and regulation of National Commission on Securities and Stock Market.

Unlike in the case of JSCs, in LLCs and other business entities information about shareholders and the nominal value of shares derived from the value of shareholders' contributions is recorded in the public digital database Unified State Register of Legal Entities, Individual Entrepreneurs, and NGOs (Unified Register) provided by Law "On State Registration...". The Unified Register is run by the Ministry of Justice of Ukraine; amendments to entries in the register may be requested by notaries, state registrars and enforcement agents (only as for registration of arrest of assets). Thus, all shares are arranged not as paper documents (certificates) but as digital records: in securities accounts at depository institutions (JSC *aktsiia*); or in the Unified Register (*chastka* of any other business entity, primarily LLC). In any case, ownership of a share is confirmed by a current statement as of a specific date: a statement from the securities account for JSCs; or a statement from the Unified Register for other business entities. The arrangement of JSC shares as securities makes them fully-fledged financial instruments that can be freely traded on financial markets, unlike the shares of other business entities.

At the same time, LLC and ALC shareholders may, by unanimous decision of the general shareholders meeting, transfer the record-keeping of the company's shares to the newly established (launched in 2024) digital Share Accounting System maintained by the Central Depository responsible for accounting of JSC shares as well as other securities<sup>8</sup>. This "quasi-depository" system is

<sup>8</sup> Article 15-1 of the Law of Ukraine dd. 06.02.2018. N2275-VIII "On Limited Liability Companies and Additional Liability Companies". URL: <https://zakon.rada.gov.ua/laws/show/2275-19>; articles 27-1 – 27-4 of the Law of Ukraine dd. 06.07.2012 N5178-VI "On depository system of Ukraine: Law of Ukraine". URL: <https://zakon.rada.gov.ua/laws/show/5178-17>; Rules for Maintaining the Accounting System of Shares in Limited Liability Companies and Additional Liability Companies: Approved by Resolu-

accessible for extra-fees, it provides accounts for LLC shares and brings the accounting of LLC shares closer to JSC standards but does not equate them in terms of their legal regime for use.

The new Share Accounting System introduces more reliable conditions for protecting ownership rights from unauthorized interferences compared to the Unified Register. It offers a much more advanced system for recording the acquisitions of shares, as well as ensuring settlements for share sale-purchase transactions and enables effective joint ownership for the LLC shares. Another important feature of the new System is the integration of an effective registration for encumbrances on shares and the introduction of escrow accounts for transactions involving LLC shares. At the same time the Unified Register provides recording only for judicial interim orders on shares, while contractual encumbrances (including pledges) are recorded in a different register – the State Register of Encumbrances on Movable Property which is not adapted well enough for encumbrances on shares. The use of escrow accounts for transactions related to LLC shares accounted in the Unified Register is entirely impossible.

The advantages of the options provided by the Share Accounting System are obvious, and the need to create such tools was discussed for a long time before they were introduced. Their implementation is undoubtedly a step forward. However, unfortunately, these innovations have been incorporated not into the common Unified Register managed by the Ministry of Justice, but into a separate and special system controlled by the National Commission, which is available only for an additional fee to those LLCs which choose to use it. As a result, LLCs have been split into two categories: those whose shares are recorded in the Unified Register (less advanced) and those in the System (more advanced). The creation of this separate System was the result of lobbying by the National Commission. It appears that the Unified Register should also be improved to provide functionalities similar to those currently available in the Share Accounting System.

## II. The legal nature of LLC share: theoretical background

Regarding the nature of shares, there has long been a debate in Ukraine between the following points of view: a share was directly viewed as proprietary rights of participation in a company<sup>9</sup> as proprietary

tion of National Commission on Securities and Stock Market dd. 17.05.2023 N525. URL: <https://zakon.rada.gov.ua/rada/show/v0525863-23>.

<sup>9</sup> Shimon, S., 2013. Suschnost korporativnyih prav: neskolkko remarok k nauchnoy diskussii [The Es-

rights that can thus be objects of legal relations<sup>10</sup>; as a certain "comprehensive" right consisting of a set of corporate rights being a transferable object of civil rights (including ownership rights)<sup>11</sup>; as a proprietary right certifying property participation being at the same time an object of civil legal relations insuring transferability of proprietary corporate right<sup>12</sup>. Furthermore, some researchers entirely denied the necessity of the share as a concept and legal institute, noting that the shareholder owns not the corporate share but the corporate rights themselves<sup>13</sup>. One can see there is no huge difference between the aforesaid positions because their common point is that the corporate share, as a legal

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sence of Corporate Rights: A Few Remarks on the Academic Debate]. *Leges si Viata*. issue 7, pp. 38–39.

<sup>10</sup> Spasybo-Fatieieva, I., Dudenko, T., 2005.

Pravova pryroda mainovykh i korporatyvnykh prav, yikh oborotozdatnist ta deiaki aspekty zastavy [The Legal Nature of Proprietary and Corporate Rights, Their Transferability, and Certain Aspects of Pledge]. *Yurydychnyi radnyk*. Issue 2, p.29.

<sup>11</sup> Luts, V. V., Vasyliieva, V. A., Kibenko, O. R., Spasybo-Fatieieva, I. V., et al., 2010. *Korporatyvne pravo Ukrainy* [Corporate Law of Ukraine]. Kyiv : Yurinkom Inter. P.165.; Vasyliieva, V. A., 2010.

Korporatyvne pravo yak ob'iekt spadkovykh prav. [Corporate Rights as an Object of Inheritance Rights]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy*. issue 23, p. 110.

<sup>12</sup> Kravchuk, V. M., 2010. Prypynennia korporatyvnykh pravovidnosyn v hospodarskykh tovarystvakh [Termination of Corporate Legal Relations in Commercial Companies]. Abstract of Dr.Hab. Thesis. Yaroslav Mudryi National Law University, Kharkiv. pp.7, 10-11.

<sup>13</sup> Rabovska, S. Ya., 2007. Spadkuvannia prav zasnovnyka (uchasnyka) korporatyvnoho pidpriemstva [Inheritance of the Rights of a Founder (Member) of a Corporate Enterprise]. Abstract of Ph.D. Thesis. Taras Shevchenko National University of Kyiv. p.4.; Pelypenko, E., 2014. Normativnoe regulirovanie zaloga korporativnykh prav: predlozheniya po sovershenstvovaniyu zakonodatelstva [Regulatory Framework for the Pledge of Corporate Rights: Proposals for Improving Legislation]. *Leges si viata*. issue 12/2. P. 96.; Butrin, N., 2014. Korporativnye prava kak samostoyatelnyy predmet pravovoy sdelki [Corporate Rights as an Independent Subject of a Legal Transaction]. *Leges si Viata*. issue 5. p. 38.; Oprysko, M. V., 2014. Dohovory pro vidchuzhennia korporatyvnykh prav [Contracts for the Alienation of Corporate Rights]. Abstract of Ph.D. Thesis. National Academy of Internal Affairs, Kyiv, p.14; Kravchenko, S. S., 2007. Yurydychna pryroda prav uchastnykiv hospodarskykh tovarystv [The Legal Nature of the Rights of Members of Commercial Companies]. Ph.D. Thesis. Koretskyi Institute of State and Law, Kyiv, p.5, 81.

category, carries no separate substantive meaning and is synonymous with the such concepts as "set of corporate rights," "corporate right," or "right to participate in a company," which, in turn, are also viewed as a set of corporate rights.

However, this approach ignores JSC shares (*aktsiia*) that are classified as securities, meaning that they cannot be reduced to the rights they certify, as a symbol certifying something is always distinct from what it certifies. This creates a dilemma: it is necessary either to recognize the fundamental difference between JSC shares as securities and other shares or to acknowledge the certifying nature of all shares in all business entities (primarily in LLCs) and their irreducibility to the corporate rights they certify. In Ukrainian doctrine, there is a fairly widespread perception of the fundamental similarity between JSC security shares (*aktsiia*) and LLC shares<sup>14</sup>. A JSC security share (*aktsiia*) is seen as a specific case of a share itself, with similar if not the same legal nature, the only difference from LLC being that a JSC share is recognized as a security, which determines the distinctions in its legal regime. Thus, if a JSC share (*aktsiia*), as a security, has lost its documentary form and is transformed into a digital record and is a transferable symbol of corporate rights, the share in an LLC can similarly be recognized as a transferable symbol of corporate rights. Like a JSC share (*aktsiia*), it is sold and purchased, pledged and inherited, and also exists as a digital record, although it does not have the properties of a security.

So, a concept was developed that provides for the following provisions: any share (JSC or LLC; arranged as a security or not) is a transferable symbol of corporate rights to a company existing as a digital record; the person who acquires ownership of a share gains corporate rights to the company; the share identifies the person vested with corporate rights to a company; the owner of the share simultaneously becomes the holder of corporate rights; consequently, the legal fact of acquiring a share results in the emergence of a combination of two legal titles of the person – the primary title of the owner of the share and the derivative title of the member in the company; these legal titles are complementary and indivisible – they supplement each other and only together provide the person

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<sup>14</sup> Kravchuk, V. M., 2009. Prypynennia korporatyvnykh pravovidnosyn v hospodarskykh tovarystvakh [Termination of Corporate Legal Relations in Commercial Companies]. Lviv: Krai. P.28.; Zakharchenko, A M. 2017. Upravlinnia ob'iektamy derzhavnoi vlasnosti: hospodarsko-pravovi aspekty [Management of State-Owned Assets: Business and Legal Aspects]. Dr.Hab. Thesis. Institute of Economics and Law Research of National Academy of Science, Kyiv, p.57-58.

with the full scope of rights intended to protect their proprietary interests in the company<sup>15</sup>.

This concept was essentially incorporated into Ukrainian legislation: in 2022, the Civil Code of Ukraine was supplemented with Article 96-1, providing that corporate rights arise at the moment when ownership of a share (*“chastka”*, *“aktsiia”*, *“pie”* or other item certifying a person's participation in a legal entity) is acquired. So, all the shares are legally recognized now as items certifying participation in legal entities, ownership rights for a share emerge simultaneously with corporate rights from a share, i.e. LLC shares are transferrable symbols of corporate rights for LLC.

There was a significant unclarity in Supreme Court jurisprudence as to this subject in the last few years before the aforesaid law was issued, and this rule helped resolve at least two pressing issues in judicial practice: (1) the nature of an LLC share and (2) a discrepancy between the moment of ownership for the share and the corporate rights arising from the share.

(1) The Supreme Court simultaneously applied two conflicting approaches to the legal nature of LLC shares. In June of 2021, the Supreme Court issued 2 rulings: one of them clearly distinguished rights to the LLC Share (property rights) and rights from the LLC share (participation/corporate rights), i.e. there are: 1. share; 2. rights to the share; 3. rights from the share<sup>16</sup>. The other decision stated that the share itself is a bunch of corporate rights and obligations associated with the participation in the Company<sup>17</sup>. In the light of article 96-1 Civil Code it is obvious that share itself is something different from the rights it evidences as a transferable symbol.

(2) The doctrine-based approach that "a person may be the owner (co-owner) of a share but does not necessarily have the right to participate in the company"<sup>18</sup> was for a long time followed by

Ukrainian courts as “the moment of acquiring rights to a share... (ownership rights) and the moment of acquiring rights from the share (the right to participate in the company) differ and may not coincide in time”<sup>19</sup>. In other words, not every owner of a LLC share was considered a member of the company. This assumption was implemented into mainstream judicial practice that led to various distortions. For instance, courts held that acquiring a share in ownership was not sufficient for obtaining title of being a member of the LLC; subsequent "joining" to the LLC based on a decision of the general meeting of members was also required<sup>20</sup> and the acquirer of a corporate share was unable to influence the company's members if they ignored the fact of the share's transfer. This concept also raised the following question: Does the title of a company member remain with the seller of the share during the period between the buyer acquiring ownership rights to the share and admission to the company? The Supreme Court recognized the title of a member of a company only for a person who is the owner of a share<sup>21</sup>, which necessarily implied that a person loses their title as a member of the company simultaneously with losing ownership of the share. This, in turn, meant that until the buyer acquires the title of a member of the company, there is a certain interim period when the position of the company's member remains, so to speak, "vacant". During this time, the company's general shareholder meetings should be held without of either the seller or the buyer of the share, which already belongs to the buyer as an investment but, for some strange reason, is not represented at the meetings by the votes of any individual. It also followed from the “owning a

<sup>19</sup> Decision of the Great Chamber of the Supreme Court dd. 08.06.2021 proceedings 906/1336/19 URL: <https://reyestr.court.gov.ua/Review/98235822>

<sup>20</sup> On Certain Issues of the Practice in Disputes Arising from Corporate Legal Relations: Resolution of the High Commercial Court of Ukraine Plenum dd. 25 of February 2016 N4. URL: <http://zakon4.rada.gov.ua/laws/show/v0004600-16>; Decision of the Commercial Court of Cassation of Supreme Court dd.13.11.2018 proceedings 910/605/18. URL: <https://reyestr.court.gov.ua/Review/77821192>; Decision of the Commercial Court of Cassation of Supreme Court dd. 24.10.2018 proceedings 911/3773/17. URL: <https://reyestr.court.gov.ua/Review/77431908>; Decision of the Commercial Court of Cassation of Supreme Court dd. 10.10.2019 proceedings № 911/2218/18. URL: <https://reyestr.court.gov.ua/Review/85014645>.

<sup>21</sup> Decision of the Commercial Court of Cassation of Supreme Court dd. 31.10.2018 proceedings 914/2259/17 URL: <http://reyestr.court.gov.ua/Review/77624321>.

<sup>15</sup> Smitiukh, A. V., 2018. Korporatyvni prava ta korporatyvni pai (chastky): teoretyko-pravovi aspekty [Corporate Rights and Corporate Shares (Stocks): Theoretical and Legal Aspects]. Odessa: Phoenix. p.593.

<sup>16</sup> Decision of the Great Chamber of the Supreme Court dd. 08.06.2021 proceedings 906/1336/19 URL: <https://reyestr.court.gov.ua/Review/98235822>

<sup>17</sup> Decision of the Great Chamber of the Supreme Court dd. 29.06.2021, proceedings 916/2813/18 <https://reyestr.court.gov.ua/Review/98531899>.

<sup>18</sup> Kravchuk, V. M., 2010. Prypynennia korporatyvnykh pravovidnosyn v hospodarskykh tovarystvakh [Termination of Corporate Legal Relations in Commercial Companies]. Abstract of Dr.Hab. Thesis. Yaroslav Mudryi National Law University, Kharkiv. p.14.

share without participation in the company” that there could be a series of successive owners of the share who transfer the share to each other without acquiring the title of member and, accordingly, without registering all these individuals in the Unified Register. The Supreme Court recognized such a practice as possible even in case where the share constituted 100% of a LLC<sup>22</sup>. All these absurd paradoxes of judicial practice were put to an end with the adoption of Article 96-1 of the Civil Code of Ukraine, which unequivocally established the inseparable and unconditional connection between ownership of shares and participation in a company.

Nevertheless, significant contradictions concerning LLC shares persist in Ukrainian legislation and judicial practice, as discussed below.

### III. Legislative inadequacy: Deed of Transfer as an improper ground for transfer of title for LLC share

One of the peculiarities of Ukrainian legislation regarding LLC shares is that the ground for re-registering a share from the seller to the buyer in the Unified Register and as a result for the transfer of a title for a share is not the sale-purchase agreement itself but the deed of transfer of the share signed by the parties under this agreement (this rule is established by art. 1 part 1 para. 8 of the Law “On State Registration...”). The Supreme Court interpreted this rule as follows: “the sale-purchase agreement may provide that ownership rights for the share passes to the buyer at the moment when the sale-purchase agreement is signed, but the expression of will of both parties is necessary for the transfer of possession ... [and] the deed of transfer is an instrument that shows the parties’ expression of will to transfer possession from the shareholder to acquirer of the share”<sup>23</sup>.

It appears that the joint expression of will by the parties is primarily embodied in the agreement, while the deed of transfer, in its original understanding, serves as a confirmation of the transfer of physical control over a tangible, material item delivered in fulfillment of the agreement. The primary purpose of confirming the transfer of an item is to document the seller’s performance of the obligation and, potentially, to establish the moment when the risks of accidental loss of the item transfer to the buyer. However, the performance of an

agreement by the seller of an intangible digital record, such as a corporate share, cannot involve its physical, material transfer. Therefore, the deed of transfer of a corporate share (as understood in Art. 1 part 1 para. 8 of the Law “On State Registration...”) and the Supreme Court’s ruling of June 8, 2021, in the proceeding 906/1336/19 essentially embodies only a derivative reiteration of the parties’ initial expression of will. As such, it becomes an instrument of influence by the transferor. This act cannot confirm payment by the acquirer for the share, it only confirms the absence of claims by the transferor against the acquirer on this matter (which may be unfounded) and records the transferor’s reiterated and decisive consent to the alienation of the share. Thus, the deed of transfer of a share in an LLC appears to be an inadequate instrument for amending of the Unified Register and transferring both ownership rights to the share and participation rights associated with it to the acquirer.

It seems correct that if any property rights to a share in an LLC, which are recorded in the Unified Register, arise, change, or terminate based on a contract, such a contract (not deed of transfer issued under such contract) should be registered in the Unified Register. Registration should be a condition for the validity of contracts, and the absence of registration would render the contract null and void.

It is worth noting that no deeds of transfer are required for shares accounted in the quasi-depository optional Accounting System for LLC shares launched in March 2024 but it is necessary to cancel the requirement to provide a deed of transfer for shares accounted in the Unified Register as well.

### IV. Legislative insufficiency: remedies for LLC shares

Another relevant issue in this field is the list of remedies available for LLC shares. The most important aspect of judicial practice on this issue is the courts’ understanding that an “exhaustive list of remedies for LLC shareholders is provided by Art. 17 of the Law “On State Registration...”<sup>24</sup> The court decisions based on remedies from this list provide grounds for amending the Unified Register, so the “proper” remedies for LLC shares are strictly limited by the following options<sup>25</sup>:

<sup>22</sup> Decision of the Commercial Court of Cassation of Supreme Court dd. 21.02.2021 proceedings №911/1149/19. URL:

<https://reyestr.court.gov.ua/Review/95305157>.

<sup>23</sup> Decision of the Great Chamber of the Supreme Court dd. 08.06.2021 proceedings 906/1336/19 URL: <https://reyestr.court.gov.ua/Review/98235822>

<sup>24</sup> Decision of the Great Chamber of the Supreme Court dd. 22.10.2019 proceedings 923/876/16.

URL: <https://reyestr.court.gov.ua/Review/85614604>

<sup>25</sup> Decision of the Great Chamber of the Supreme Court dd. 17.12.2019 proceedings 927/97/19. URL: <https://reyestr.court.gov.ua/Review/86654703>; Decision of the Great Chamber of the Supreme Court dd. 18.03.2020 proceedings 466/6221/16-a.

- to define the amount of a company's capital and the sizes of shares (Art. 17 part 5 para. 3 subpara. «д» of the Law „On State Registration...”);

- to recover (claim from possession) the share from the defendant (Art. 17 part 5 para. 3 subpara, «е» of the Law „On State Registration...”).

The application of these remedies involves numerous complexities, resulting in significant inconsistency in judicial practice. The Supreme Court frequently issues decisions that explicitly acknowledge shifts in its legal groundings. One such complexity, for instance, is a change in the members and the composition of shares of an LLC following the emergence of a disputed situation. In one case<sup>26</sup>, the Supreme Court noted that while the plaintiff chose the correct remedy (to define the amount of the company's capital and the sizes of shares), the claims were nevertheless drafted in a wrong way. The plaintiff failed to consider amendments in the amount of the company's capital and the composition of members that occurred after the plaintiff's expulsion from the company, as well as the rights and interests of the other members of the company. The Supreme Court stated that to ensure a balance of interests, the plaintiff should have requested an increase of the company's capital, as it existed at the time of filing the claim, by the amount of the plaintiff's share. Based on the nominal value of each member's share, the plaintiff should have sought to establish a new percentage distribution of the members' shares (which would result in a smaller percentage for each member). Thus, selecting the proper remedy (to define the amount of the company's capital and the sizes of shares), the plaintiff must formulate claims taking into account changes in the company's capital and the composition of the members' that occurred after

their expulsion, as well as the rights and interests of the other members of the company.

In another case, the court further denied the claims to define the amount of the company's capital and the sizes of shares by a person who had never held the title of an LLC member at the time of the proceeding<sup>27</sup>.

The Supreme Court regards the claim to define the amount of the company's capital and the sizes of shares as a most appropriate, most desirable and universal remedy. However, another claim provided by the Law “On State Registration...”, the claim for the recovery of a share should, in the Court's view, be applied only in cases where the defendant unlawfully acquired the plaintiff's share or where the share was obtained from someone who lacked the legal authority to transfer it<sup>28</sup>.

An analysis of judicial practice reveals that other remedies for shares not provided for in the Law “On State Registration ...” (such as a claim to nullify a contract<sup>29</sup> or to transfer the buyer's rights to a person whose preemptive acquisition right for a share is violated<sup>30</sup>) can only be pursued if they are followed in the same lawsuit by a claim explicitly specified in the aforesaid Law (to define the amount of the company's capital and the sizes of shares / to recover or claim the share from defendant's possession). One can see that such a traditional remedy as recognition of ownership rights is not among the acknowledged remedies for LLC shares, and it has been held by the Supreme Court that it «does not meet the requirements of a proper and effective legal remedy, as far as being awarded

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URL:

<https://reyestr.court.gov.ua/Review/89083012>;  
Decision of the Great Chamber of the Supreme Court dd. 01.04.2020 proceedings 813/1056/18.

URL:

<https://reyestr.court.gov.ua/Review/88952188>.  
Decision of the Great Chamber of the Supreme Court dd. 22.10.2019 proceedings 923/876/16.

URL:

<https://reyestr.court.gov.ua/Review/85614604>;  
Decision of the Commercial Court of Cassation of Supreme Court dd.18.05.2022 proceedings 914/1191/20. URL:

<https://reyestr.court.gov.ua/Review/104442999>;  
Decision of the Commercial Court of Cassation of Supreme Court dd.28.09.2022 proceedings 910/4277/21. URL:

<https://reyestr.court.gov.ua/Review/106608492>.  
26 Decision of the Commercial Court of Cassation of Supreme Court dd.31.08.2022 proceedings 924/700/21. URL:  
<https://reyestr.court.gov.ua/Review/106202089>.

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27 Decision of the Commercial Court of Cassation of Supreme Court dd.14.06.2023 proceedings 686/26335/21. URL:

<https://reyestr.court.gov.ua/Review/112227366>.

28 Decision of the Commercial Court of Cassation of Supreme Court dd.11.12.2023 proceedings 907/922/21. URL:

<https://reyestr.court.gov.ua/Review/115859002>.

29 Decision of the Commercial Court of Cassation of Supreme Court dd.31.08.2022 proceedings 924/700/21. URL:

<https://reyestr.court.gov.ua/Review/106202089>.

30 Decision of the Great Chamber of the Supreme Court dd.01.06.2021 proceedings 910/2388/20. URL:

<https://reyestr.court.gov.ua/Review/97967345>;

Decision of the Commercial Court of Cassation of Supreme Court dd.24.11.2021 proceedings 925/1130/20. URL:

<https://reyestr.court.gov.ua/Review/101673452>;

Decision of the Commercial Court of Cassation of Supreme Court dd.11.12.2023 proceedings 907/922/21. URL:

<https://reyestr.court.gov.ua/Review/115859002>.

there is no ground to amend the State Register»<sup>31</sup>. At the same time proprietary rights other than ownership cannot be protected effectively by the claim to determine the amount of capital and the size of shares.

Courts, of course, are bound by current legislation, and the provisions of the Law “On State Registration...” are indeed formulated in a way that makes claims to recognize ownership of a share in an LLC not reasonable, as they do not create legal grounds for amending the Unified Register. However, this is abnormal, as ownership is a fundamental property right, and the recognition of ownership is a primary and common remedy to protect it. Determining the distribution of corporate shares among LLC members is an important issue, but it is derivative of the issue of ownership rights to these shares: a member’s share correlates with the shares of other members in a specific proportion because it belongs to them by ownership, not vice versa. Due to the insufficient institutionalization of LLC shares in Ukraine's legal system, they are perceived as something “relative”: a member's share in a company is determined only in relation to the shares of other members, expressed as a percentage of the company’s capital. It would seem reasonable to implement direct identification of LLC shares, particularly through the assignment of identification numbers to be recorded in the Unified Register.

Since the approaches of judicial practice to share-related remedies are entirely shaped by the restrictive provisions of the Law “On State Registration...”, they have no relevance to shares which are recorded not in the Unified Register but in an alternative Share Accounting System, which is excluded from the scope of the mentioned Law. This will enable a revision of the system of remedies for shares within the System and allow the full use of traditional proprietary remedies.

The potential implementation of proprietary rights for shares other than ownership (such as usufruct or the right of use) into Ukrainian legal system will also, over time, require amendments to the Law “On State Registration...” and lead to an expansion of the range of remedies for shares recorded in the Unified Register.

## V. Shares in LLCs as marital property

An unexpectedly problematic issue at the intersection of corporate and family law is the legal regime of LLC shares formed by company members who are married.

Ukrainian legislation recognizes the principle of joint marital property e.i. joint ownership of spouses over property acquired during marriage (Art. 60 of the Family Code of Ukraine)<sup>32</sup> without any reservations as to companies’ shares. However, in judicial practice, this principle has been applied without reservations only with respect to shares (“*aktsiia*”) in JSC but not for LLC shares (“*chastka*”).

Since 2007, for a significant period, courts maintained the position that a property contribution to an LLC, made by joint marital assets, becomes the property of the LLC and is therefore not subject to division between the spouses. Consequently, the spouse who is not a member of the LLC was entitled only to a share of the profits generated by the LLC and might claim compensation for the value of the contribution solely if the joint marital property was contributed to the LLC without their consent<sup>33</sup>. Thus, the courts ignored the fact that as for a member of an LLC the contribution transferred to the company’s ownership is not gifted but substituted with an LLC share of the same value, so the contribution within marital property is just replaced with a share. Meanwhile, for JSC shares the marital property was acknowledged without any grounds whatsoever for such a distinction.

In 2019, during the division of marital property, courts recognized the other spouse's unconditional right to claim the half value of a contribution made to an LLC by joint funds<sup>34</sup>. Here, it is evident that two distinct concepts are conflated: the contribution to the LLC, or corporate contribution (property owned by an individual and transferred to a company in order to acquire corporate rights evidenced by the corporate share) and the corporate share itself.

On the other hand, in a number of prominent cases of the higher courts of Ukraine in 2013<sup>35</sup>, 2018<sup>36</sup>

<sup>32</sup> Family Code of Ukraine: Law of Ukraine dd.10.01.2002. N2947-III. (with amendments). URL: <https://zakon.rada.gov.ua/laws/show/2947-14>.

<sup>33</sup> On the Judicial Practice in Cases Regarding the Right to Marriage, Divorce, Annulment, and Division of Marital Property: Resolution of the Supreme Court of Ukraine Plenum dd. 21.12.2007. N7. URL: <https://zakon.rada.gov.ua/laws/show/v0011700-07>.  
<sup>34</sup> Decision of the Civil Court of Cassation of Supreme Court dd. 11.12.2019 proceedings 638/19826/15-ц. URL: <https://reyestr.court.gov.ua/Review/86468310>.

<sup>35</sup> Decision of the Supreme Court of Ukraine. dd. 03.07.2013 proceedings №6-61ц13. URL: <https://reyestr.court.gov.ua/Review/32532909>.

<sup>31</sup> Decision of the Great Chamber of the Supreme Court dd. 22.10.2019 proceedings 923/876/16. URL: <https://reyestr.court.gov.ua/Review/85614604>.

and 2019<sup>37</sup>, the position was maintained that a LLC share, acquired with the joint funds of the spouses, is not their joint marital property and can be alienated by the spouse who is a member of the LLC without the consent of the other spouse. The need for the consent of the second spouse to alienate an LLC share purchased with joint marital funds was recognized in the judicial practice of Ukraine only in 2021<sup>38</sup>.

In 2023, the Supreme Court ruled that a LLC share acquired for joint marital funds constitutes marital property. The corporate rights for LLC associated with the share belong to the spouse who became a member of the LLC, while both spouses manage the share by mutual consent, the existence of which is presumed<sup>39</sup>. Finally, in 2024, the Supreme Court recognized that dividing marital property, the other spouse may claim the value of half of the corporate share in an LLC, which is distinct from the value of the contribution that has long since become the property of the LLC<sup>40</sup>. The court based its decision on the presumption of equivalence between the value of the contribution and the corporate share unless it is proven that the value of the share has changed as a result of the LLC's activities<sup>41</sup>. It is evident that courts do not divide an LLC share between spouses but instead leave the share with the spouse who is officially listed as a company member. The other spouse, in turn, may claim half the value of the share but not a half of the share itself.

Recognizing an LLC share as joint marital property while denying its divisibility (with the other spouse receiving not half of the share itself but only half of its value) seems peculiar. LLC shares are easily divisible, as they, unlike JSC shares issued as

securities, are not tied to any specific substrate. Moreover, a share in a business is often a far more attractive asset than simply receiving its monetary equivalent. It would probably be reasonable to grant the spouse the choice to either claim half of the share itself, thereby acquiring participant title, or half of its monetary value.

However, the inconsistency of Ukrainian courts regarding the division of corporate shares between spouses is clearly illustrated by the following example. As previously noted, in 2021, the Supreme Court finally confirmed that an LLC share, acquired with the joint funds of spouses, is joint marital property and can not be alienated by one spouse without the consent of the other. However, it should be noted that while affirming the general principle that a corporate share acquired with joint marital funds constitutes joint marital property, the court upheld the rejection of claims to nullify an agreement for a share's alienation concluded without the spouse's consent. According to the circumstances of the case, initially, one of the spouses was the sole member of the company. Subsequently, the capital was significantly increased through additional contributions made by the other spouse and third parties. As a result, the Supreme Court concluded that "since the general meeting of founders decided to increase the Company's capital and distribute it among the founder (one of the spouses) and new members of the company, including the other spouse, from the perspective of family law, it must be concluded that spouses divided the company's capital, which was previously under joint marital property regime"<sup>42</sup>. The Supreme Court recognized that the initial corporate share was marital property, as it was formed by contributions classified as joint marital assets. However, it seems that if the entry of the other spouse into the same company is also based on joint marital funds, this does not terminate their marital ownership of the existing share. On the contrary, the marital property of the spouses extends to the newly formed corporate share as well. The spouses may divide the existing share that is in their marital property, as it was formed by contributions derived from marital assets or acquired using joint funds. In such a case, the resulting corporate shares would become the personal private property of each spouse. However, this requires explicit and unequivocal expression of intent.

<sup>36</sup> Decision of the Civil Court of Cassation of Supreme Court dd. 10.10.2018 proceedings №569/6236/16-ц. URL:

<https://reyestr.court.gov.ua/Review/77473482>.

<sup>37</sup> Decision of the Commercial Court of Cassation of Supreme Court dd.26.11.2019. proceedings 907/738/16. URL:

<https://reyestr.court.gov.ua/Review/85937533>.

<sup>38</sup> Decision of the Great Chamber of the Supreme Court dd.29.06.2021 proceedings 916/2813/18. URL:

<https://reyestr.court.gov.ua/Review/98531899>.

<sup>39</sup> Decision of the Commercial Court of Cassation of Supreme Court dd. 16.03.2023 proceedings 911/2780/20. URL:

<https://reyestr.court.gov.ua/Review/109673256>.

<sup>40</sup> Decision of the Civil Court of Cassation of Supreme Court dd. 01.05.2024. proceedings 334/9558/15. URL:

<https://reyestr.court.gov.ua/Review/118892944>.

<sup>41</sup> Decision of the Great Chamber of Supreme Court dd.10.04.2024. proceedings 760/20948/16-ц. <https://reyestr.court.gov.ua/Review/118520073>.

<sup>42</sup> Decision of the Great Chamber of Supreme Court dd. 29.06.2021 proceedings 916/2813/18. URL: <https://reyestr.court.gov.ua/Review/98531899>. In proceedings 916/2813/18 courts dealt with shares of private enterprises. However, as previously noted, the legislative regulation of LLCs applies to private enterprises.

The disputed situation in this case is fundamentally different: It concerns not the division of an existing share but the formation of a new one. Just as the contribution was part of the marital property, the share formed through this contribution should also remain marital property. Thus, both shares – the one initially formed and the one formed later should belong to the spouses as joint marital property. The disposition of these shares must be carried out by mutual consent, but the corporate rights associated with these shares may be exercised by each spouse at their discretion.

## VI. Conclusion

An undeniable achievement in recent years in the institutionalization of LLC shares has been the legislative enshrinement in the Civil Code (Article 96-1) of a conceptual framework based on the understanding of the nature of shares in all companies, primarily LLC shares, as transferable symbols certifying corporate rights. This also recognizes the inseparability of the titles of an LLC member and the owner of a share, which immediately resolved a number of problematic issues and eliminated some absurd paradoxes in the judicial practice of Ukrainian courts.

It is an urgent necessity to improve the registration of rights to shares in the Unified Registry of the Ministry of Justice to at least approximate its capabilities to those provided by the newly established Share Accounting System, such as ensuring the registration of all types of encumbrances on shares in the Unified Registry.

Also the deed of transfer of an LLC share appears to be an inadequate instrument for amending the Unified Register data and transferring both the ownership rights to the share and the participation rights deriving from the share to the acquirer: the performance of the obligation by the seller of an intangible digital record, such as a corporate share, cannot involve its physical, material transfer. It would be more appropriate if any proprietary rights to an LLC share based on a contract were registered directly in the Unified Register. In this case, the contract itself (not the deed of transfer issued under it) should be a ground for registration. Such registration should be a prerequisite for the validity of the contract, with the absence of registration rendering the contract null and void.

It seems reasonable to implement a direct identification of LLC shares, particularly through the assignment of identification numbers to be recorded in the Unified Register and to extend a range of remedies for shares accounted in the Register in order to allow the full use of traditional proprietary remedies enabling first and foremost claims on recognition ownership. The potential

implementation of proprietary rights for shares other than ownership (such as usufruct or the right of use) into Ukrainian legal system will also, over time, lead to an expansion of the range of remedies for shares recorded in the Unified Register.

There is also visible progress in judicial practice in recognizing LLC shares as marital property: although corporate rights are held and exercised by only one spouse, a corporate share formed from marital assets also becomes the marital property of both spouses. However, the next step should be to allow the other spouse, based on the divisibility of LLC shares, to claim not only the monetary value of a portion of the share but also a portion of the share itself.

Similarly, it should be recognized that if the other spouse contributes marital property to the LLC where the first spouse holds a share formed from marital property, their joint ownership of the existing share does not cease. On the contrary, the spouses' joint ownership extends to both shares, while the corporate rights attached to the shares are exercised by each spouse at his or her own discretion.