

Technology of Inheritance Management in Societies

Svetlana Jurieвна Starodumova, Lubov Borisovna Sitdikova

Abstract: *The article deals with the in-depth analysis of ownership right as a result of inheritance of shares, equities (interests), rights of participation in a legal entity or its management in Russian corporate legal entities. The attention is drawn to the recent changes in Russian civil legislation on the new legal entity created for the purpose of managing the hereditary property – the hereditary fund, as well as the hereditary contract, as an alternative to the creation of the said fund. The transition of citizens' right to participation and management of the legal entity as a kind of corporate property rights is emphasized. Discussion issues concern legal foundations of shares when both property and non-property rights are transferred in the line with inheritance; considerations of observance and correlation of interests of legal persons and heirs in the process of shares inheritance are also studied. Certain proposals have been made to improve the civil legislation on the grounds of formal legal, comparative and other methods of research.*

Index Terms: *share, equity, right of participation, right of management, corporate rights, inheritance, corporate legal entities, hereditary fund, hereditary contract.*

I. INTRODUCTION

A. Introduction of the Problem

According to the cornerstone of the civil legislation, fixed in Clause 5 of Article 1 of the Civil Code of the Russian Federation (hereinafter referred to as the RF CC), the free movement of goods, services and financial means including objects of civic rights (Paragraph 1 of Article 129 of the RF CC) may move from one person to another in the order of universal succession, i.e. inheritance, if they are not limited in civil circulation.

Such specific objects of civil rights as shares, equities (interests) of economic partnerships, societies and production cooperatives compose also a part of inheritance according to Article 1176 of the RF CC. Issues of property and corporate rights inheritance arising from possession of these objects cause a number of problems of inheritance of business in commercial corporate organizations and were widely discussed at different levels. To improve the inheritance legislation, the meeting of the President of the Russian Federation Council on Codification and Improvement of Civil Legislation # 144-1/2015 held on July

13, 2015 adopted the Expert Opinion on the draft Federal Law # 801269-6 "On amendments to the first, second and third parts of the Civil Code of the Russian Federation and other legislative acts of the Russian Federation". Issues of inheritance were discussed at the St. Petersburg Legal Forum "Inheritance of business", at the Annual 4th Legal Forum for Law Practitioners "The main legal events of the Year" on October 6, 2015, etc.

As a result a range of amendments came into effect on September 1, 2018 and will become law on June 1, 2019. We will discuss them later in this article.

The content of civil rights arising from the possession of shares (equities) is quite diverse and does not have a single classification and full consolidation because it depends on the variety of legal entities and additional fixing of these rights in constituent documents or a corporate contract. The most detailed classification of corporate rights proposed by I.S. Shytkina is as follows:

- organizational and managerial rights (non-property ones):
 - 1) Rights related to participation in the management of a company;
 - 2) Rights related to exercising control over activities of a company's management bodies and the financial and economic state of a company;
 - 3) The right to receive information concerning activities of a company;
- property rights:
 - 1) The right to participate in the distribution of profits;
 - 2) The right to receive a part of a company's assets – the liquidation quota;
- preferential rights [1] and others.

The transfer of rights to shares, equities (interests) depend on the type of legal entity and the absence of a ban to carry out such transition in the legislation or in the charter of a legal entity.

II. METHOD

A. The Method Section

During the research the authors used such interdisciplinary and private legal methods of cognition as: historical and legal, formal and juridical, legal comparative, sociological, etc. The main method applied was systemic and structural which let to identify the most specific issues of ownership of shares and equities in corporate commercial legal entities. The combination of historical and legal and legal comparative methods contributed revealing specificity of historical conditions influence on development of inheritance application to corporate rights in general and prospects of such development in particular.

Revised Manuscript Received on May 06, 2019

Svetlana Jurieвна Starodumova, Russian State Social University (RSSU), Moscow, Russian Federation.

Lubov Borisovna Sitdikova, Russian State Social University (RSSU), Moscow, Russian Federation.



Technology of Inheritance Management in Societies

Formal and juridical method facilitated to analyze the legal norms regulating the procedures of transfer of shares and equities ownership in corporate legal entities.

Conclusions, suggestions and recommendations aimed at improvement of civil and corporate legislation are grounded on the basis of sociological method.

The systematic and structural method provided the authors with an opportunity to consider the peculiarities of the rights of heirs of corporate rights and legal entities which suffer changing of their membership in connection to hereditary succession.

B. Algorithm

The study of inheritance management technology in societies was based on a branching algorithm.

In the course of the study, the authors processed and analyzed the norms of civil legislation, court practice materials providing for the order of actions of the heirs of stocks and shares in society, as well as the authors' points of view on the possibility (impossibility) of accepting an inheritance in a corporate legal entity. Depending on the presence or absence of conditions in the legislation and (or) the company's charter about the possibility of acceptance of new members into the company, the options for inheriting property or receiving compensation from the impossibility of inheritance were considered.

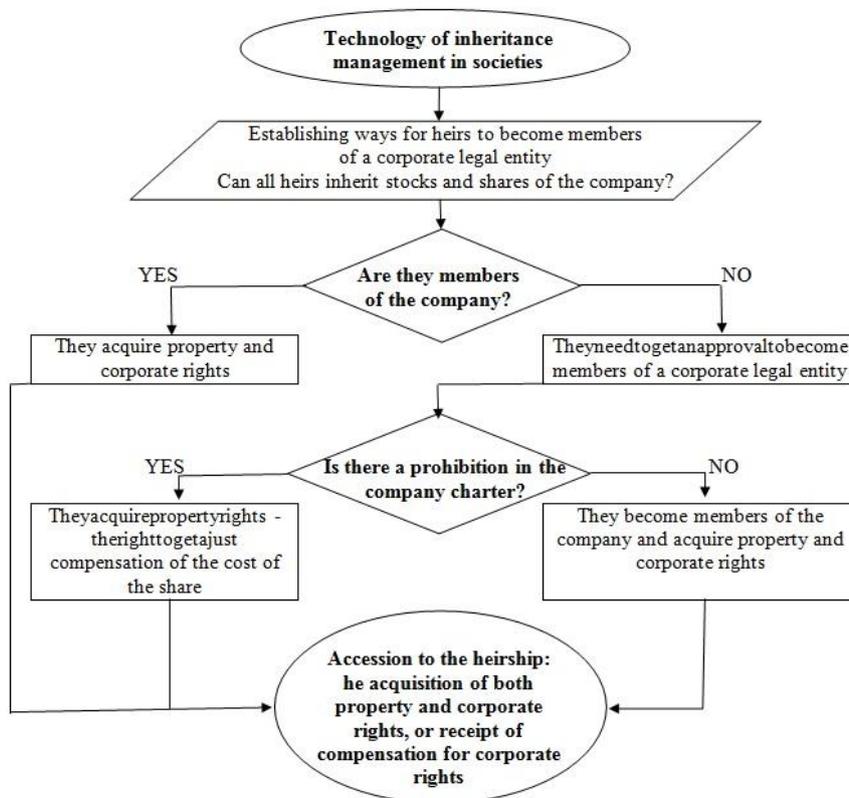
In order to eliminate the unresolved issues of managing the

inheritance of stocks and shares in the company, mechanisms for improving legislation were proposed.

We have identified the following stages of the study conducted:

1. Formulation of the research topic.
2. Setting the goal and objectives of the study.
3. The study of the theoretical basis of the study including legislation, law enforcement practice and scientific discussion on the research topic.
4. Analysis and planning of the study on the inheritance of companies' stocks and shares entailing the emergence of rights to participate in and distribute profits related to the financial and economic state of society.
5. Discussion by co-authors of a unified approach to the construction of the research hypothesis, the research methods used and the development of a unified view on the expected results of the research.
6. Identification of gaps in civil law.
7. Processing and analysis of research results.
8. Formulation of the findings of the study and the formulation of the problems identified.
9. Development of proposals for the improvement of legislation in order to systematize the existing process of inheritance of stocks and shares in companies.
10. Formulation of the final conclusions of the study.

C. Flow Chart



III. RESULTS

It was revealed that the existence of the right of heirs to inheritance of equities (interests) indicates only the preferential right to receive an equity (interest) if they are the members of a limited liability company (production

cooperative), or can qualify for membership in a corporate legal entity in the absence of a ban on such entry under the charter, or acquire the right to receive fair compensation of an equity value.

It was determined that the surviving spouse has property rights for a half of an equity in the partition of property and according to the provisions Articles 34 and 39 of the Family Code of the Russian Federation the remainder of the equity passing in succession needs the consent of other members of the company, because the rights of membership or participation (i.e. corporate rights) do not automatically arise in successors. The study has identified that the shares being a kind of security certify not only the property but also non-property rights such as the right of a shareholder to participate in the management of a joint stock company.

We consider that in order to reach the stable civil turnover in the case of succession of shares the State should provide the legislative rules of realization of such actions by the State itself, namely: shares should be transferred to the balance of a joint stock company with subsequent selling at a price not lower than their market value; the preferential right of a joint stock company and its shareholders must be secured to repurchase such shares at a reasonable price in the subsequent selling of shares by the State.

In order to protect the interests of a company where shares and equities will be inherited it is necessary to legislate the obligation of heirs to notify the said company of the receiving of the Certificate of Inheritance, otherwise they should possess only the right to pay the real value of the equity as a person who has not shown due care for the acquired property which potentially determines the ability of a person to continue normal economic activity.

IV. DISCUSSION

Shares and equities inheritance differ from each other. As a general rule, upon expiry of the term of acceptance of the inheritance the heirs of shares enter the company and become their participants (Paragraph 3 of Article 1176 of the RF CC). Under the provisions of Paragraph 6 of Article 93 of the RF CC, an equity in the registered capital of the company passes to the heirs of legal persons and successors of legal entities who are participants of the company.

Membership in a production cooperative and a limited liability company is determined by personal qualities of the future participant and requires the prior consent of the general meeting of members as a basis for the creation of rights and obligations (Article 8 of the RF CC), and also depends on the absence of prohibition of such actions in charters of these legal entities (Article 1176, Paragraph 8, Article 21 of the Federal Law "On limited liability companies" (hereinafter referred to as the LLC Law)). Otherwise, the cooperative or the company should pay the heirs an effective value of the entity (interest) of the deceased member of the cooperative (company).

The effective value of the equity (in the absence of consent to membership in the company) is defined (according to Clauses 5, 8 of Article 23 of the LLC Law) on the basis of the accounting data of the company as the benefit for the last reporting period preceding the death of the participant of the company.

In any case, the issue of determining the volume of property

and corporate law (Paragraph 3 of Article 48 of the RF CC) is still relevant and complex in respect to inheriting shares (equities).

It is worth to underline that the property rights to shares (equities) and corporate rights which volume is proportional to the size of shares (equities) belonging to a person have different legal nature.

According to V.K. Andreyev and V.A. Laptev, the right to participate in a commercial corporation is the corporate property of its participant the object of which is composed of the share of participation, the property right those cannot be clearly assigned to the Contract or Property Law. However, such unity of both obligatory and proprietary aspects of the right of corporate ownership of a member of a commercial corporation does not mean that the right of participation is different, for example a managerial consideration. In Article 2 of the RF CC the right to participate differs from the management rights by the conjunction "or" [2].

Corporate property of a participant due to entrepreneurial activity of commercial corporate legal entities receives ownership certainty in the case of alienation of the share of participation inside a legal entity or third parties, including transition in order of universal succession, etc. The size of the corporate property of a participant depends on the results of entrepreneurial activity of the corporation but not only on the value of the participant's initial contribution. The right of participation reflects also the legal connection on making contributions of founders (participants) to a legal entity and other forms of influence of participants on business activity which are manifested in decisions of the supreme body of a legal entity, i.e. the General Meetings of its participants (members) [2].

The current legislation allocates several ways of joining a corporate legal entity by heirs:

- 1) through the procedure of succession of shares (equities) of surviving spouse;
- 2) entering into inheritance by the third parties under the will or by the law.

Inheritance of the spouse's share has its own features. On the one hand, according to Paragraph 2 of Article 21 of the LLC Law, it is possible to establish consent to the entry of only one new participant, as the surviving spouse does not correspond this status because under Article 34 of the Family Code of the Russian Federation (hereinafter referred to as the RF FC) he or she already possesses rights to have an equity in the authorized capital. At the same time, if the participants of the company did not give consent to enter the business, the surviving spouse can acquire only property but not corporate rights. On the other hand, in order to obtain the status of a participant a legal fact is necessary, i.e. joining a person to a corporate legal entity and this process does not depend on property rights for sharing an equity in the authorized capital of the company, an appropriate restrictive clause to the charter of a legal entity can be added at the stage of its creation.



However, the surviving spouse has already the property rights to the equity but he or she is not yet authorized as an USRLE (Official Single Register of Legal Entities) member.

According to V. Andreyev, the legal regime of joint property of spouses arises only in case of property partition. But corporate property (including ownership of equity) has a specific legal nature, and the corporate rights do not arise "automatically" [2].

It is worth to consider that Paragraph 3 Article 65.2 of the RF CC interprets the share of participation as a real loss of property value, while Paragraph 3 of Article 48 of the said code establishes separate property rights belonging to the participant.

Corporate rights (the right to participate in the management of the company first of all) relate to personal non-property rights and in accordance with the provisions of Article 3.1112 of the RF CC are not an integral part of an inheritance but can be transferred to its heirs alongside with the transition of the property component of an equity into the authorized capital of the company unconditionally or subject to the consent of other participants of the company. As far as the nature of securities remains a controversial issue, E.A. Kirillova suggests that it would be more correct not to limit the content of inheritance only by property (as said in Article 1112 of the RF CC) but to specify that the non-property rights belonging to the testator and other intangible goods should be inherited in the cases expressly stipulated by the law, as well as if it derives from the nature of the aforementioned rights and benefits [3]. The basis for acquiring the shareholder status is a record of rights transfer made by an official authorized to register the rights to shares. In order to manage such rights as well as creation of conditions of normal functioning of the organization, the hereditary fund as the new form of the unitary legal entity aiming to fulfill the testament by the testator who will manage hereditary property indefinitely or within a certain period in accordance with the terms of management of the hereditary fund was introduced in September 1, 2018.

According to Paragraph 8 of Article 21 of the LLC Law the charter of the Company can provide a possibility of obtaining consent to membership from the company members. The consent shall be deemed to have been received if all the participants of the company within thirty days or any other period defined by the charter from the date of receipt of appropriate appeal by the company are submitted written statements of consent to transfer the equity to the heir (heirs), or if the written statements on refusal to give such consent are not submitted within the same period of time.

When the surviving spouse claims to obtain a share, the notary shall identify the moment of occurrence of this right of the deceased person (whether the share was acquired during the marriage period – Articles 256, 1150 of the RF CC) and the absence of a marriage contract changing the legal regime of the mutually acquired property.

Inheritance of shares (equities) by the third parties, i.e. all other persons except spouses, who claim to acquire corporate rights in legal persons reflects a more definite regime.

These persons are subject to the general provisions of Paragraph 8 of Article 21 of the LLC Law on compulsory character of obtaining the consent of other participants of the company to enter in order of succession of new participants. The absence of such consent and the occurrence of a dispute the persons have the right to file a lawsuit.

Third parties can also be attributed to the State in the absence of heirs under the law and by will or getting a refusal to inherit from them. However, some legal practitioners assume that participation of the State in commercial organizations is cumbersome, the shares, therefore, should be transferred to the balance of the joint stock company with the subsequent selling at the price not lower than their market value [4]; or to secure the preferential right of the joint stock company and its shareholders to repurchase these shares at a reasonable price in the subsequent realization of shares by the State [5]. Within the framework of current legislation it is necessary to accept the opinion of G.S. Limanskiy who proposes that the joint-stock company should possess the preferential right of escheat shares redemption at reasonable price while transferring them to the State [6].

It seems necessary to emphasize a problem of shares inheritance that had not been fully paid by the testator by the day of his or her death that made him or her a debtor. On the one hand, they become the property of a joint stock company [7], on the other hand, the debts of the deceased person are part of the inheritance and if the debt is covered (by the price of shares) they should become the part of the inheritance. The Federal Law "On joint-stock companies" (Paragraph 1 of Article 34) tells that if shares are paid incompletely within one year from the moment of State registration of the joint-stock company and if an agreement on the establishment of the company does not specify a shorter term, the right of shares ownership (corresponding to the unpaid amount) shall be transferred to this joint-stock company. Thus, if at the time of the opening of the inheritance this period has expired, the heirs have the right to inherit only fully paid shares, if the period has not expired, the heirs still have an opportunity to repay the testator's debt on the payment of shares and then purchase all the shares belonging to the testator. This opinion is supported by a number of civil law scholars [3, 8, 9, 10]. Unfortunately, the current legislation doesn't provide any interpretation on this issue, so the dispute will be resolved during a lawsuit.

Besides the above mentioned problems of taking shares and equities in the process of inheritance in business companies, the authors highlight the deficiencies and difficulties for an economic company in connection with the uncertainty of the property right realization by heirs. T.V. Letuta, taking into consideration the analysis of judicial practice, identified cases of unfair behavior of heirs which prevent to protect interests of corporate legal entities:

a) "Obtaining a Certificate of Inheritance is a right, not a duty of an heir";

- b) "issuing a Certificate of Ownership of Inheritance is not a right-making fact";
- c) "The rules of the Civil Code do not contain restrictions on the rights of heirs to deal with property owned after accepting the inheritance";
- d) Acceptance of the inheritance can consist of actual actions of the heir in respect to any property which composes the inheritance in addition to shares and (or) equities of the company (Articles 1152, 1153 of the RF CC);
- e) "The heir is entitled to challenge the decisions made by the participants of the company... since the date of the opening of the inheritance".

The heir may not make any legal or factual action in relation to the shares and (or) equities of the company (in cases when they are not the only object in property inherited) during an indefinite period of time [11].

Thus, if the heir wishes to exercise the rights of a "participant of the company" his or her interests will dominate the interests of the economic society. Corporate decisions of a company may be challenged at any time during the limitation period by an heir who the company was unaware.

We support the opinion of T.V. Letuta on the obligation to consolidate the responsibility of heirs to notify the public of the receipt of a Certificate of Inheritance, otherwise they should only have the right to pay the actual price of the share as the person who did not secure the acquired property potentially determining the ability of the person to continue normal economic activity.

We believe that the decision to establish a hereditary fund after the testator's death may become a partial solution of the problem of potential unfair behavior of the heirs of shares and equities. The term of acceptance of the inheritance is shortened in this situation and, consequently, the uncertainty in the shareholders of the joint stock company in the period between the date of inheritance and the date of issuing of the Certificate of Inheritance that is resulted in transfer of rights to the non-documentary securities in order of inheritance is carried out (Article 149.2 of the RF CC, Article 29 of the Federal Law "On the securities market"). Thus, according to O. Makarov after the creation of the hereditary fund (which is considered to be created since the state registration in the USRL) the fund is called to succession according to the will, and when accepting the inheritance the notary is obliged to issue the Fund Certificate of the right to inheritance, and there is no need to conclude a contract of trust management of hereditary property [12].

V. CONCLUSION

Thus, the conducted analysis has showed dynamic pattern of hereditary relations on acquisition of securities and rights in corporate legal entities in Russia [13,14].

The provisions on the succession of corporate rights will be considerably updated [15] by introduction of Article 1140.1 of the RF CC "The Hereditary Contract" since June 1, 2019 which determines the range of heirs and the procedure for the transfer of the rights to the property of the testator after his or her death to the surviving heirs of the contract or to surviving

third parties who may be summoned to inherit. The positive aspect here will occur in the heirs' awareness of their rights and guarantees of the rights of companies if the contract relates inheritance of shares and equities.

REFERENCES

1. Afanasyeva E.G., Vaipan V.A., Gabov V.A., etc. Corporate Law: study-book in 2 volumes, vol. 1, ed. Shytkina I.S. Moscow: Statut, 2017.
2. Andreyev, V.K., Laptev, V.A. Corporate Law in modern Russia: monography. (2nd ed.). Moscow: Prospect, 2017.
3. Kirillova, E.A. Issues of legal regulation of shares inheritance in notary practices. Russian Justice, 2015, vol. 4, pp: 5-7.
4. Eidinova, E.B. Inheritance by law and by will: extracts from the book. Notary Practices Bulletin, 2010, 6.
5. Gorina, A., Taglina, V. The right of the State on escheated shares. Joint Stock Gazette, 2010, 1-2 (71).
6. Limansky, G.S., Inheritance legal relations: methodological and pragmatic problems. Russian Academy of Law. Moscow: Yurist, 2006.
7. Smirnova, Yu.V. Civil Law guarantees of the right of inheritance. Notary, 2012, vol. 4, pp. 28-32.
8. Soldatenko, S.A. Inheritance of property in commercial circulation (Candidate's Dissertation). St. Petersburg, 2009.
9. Ivanova, A.Yu. On some problems of shares inheritance in notary practices. *Property considerations in the Russian Federation*, 2013, vol. 3, pp. 83-86.
10. Rudenko, E.Yu., Saenko, D.G. Relevant problems of shares inheritance. *Power of Law*, 2016, vol. 3, pp. 102-108.
11. Letuta, T.V. Entering inheritance as the ground for arising of participants' rights in economic company. *Lex russica*, 2016, vol. 9, pp. 146-154.
12. Makarova, O.A. Inheritance of "business under way": how the inheritance fund handles shares. *Russian laws: experience, analysis, practices*, 2018, vol. 4, pp. 37-42.
13. Sitdikova L., Starodumova S., Volkova M. *Corporate legal entities in the civil law of the Russian Federation*, Economic and Social Development Book of Proceedings, 2018, pp: 715-721.
14. Sitdikova, L.B., Starodumova, S.J., Volkova, M.A. Aspects of transactions by business entities in civil legislation. *European Research Studies Journal*, 2018, vol. XXI, iss. 4, pp. 557-566.
15. Sitdikova, L.B., Starodumova, S.Yu., Shilovskaya, A.L. *The reforming of Russian civil legislation (from the general part of the civil code to the particular implementation of the norms)*. Economic and Social Development Book of Proceedings. Varazdin Development and Entrepreneurship Agency; Russian State Social University, 2017, pp: 894-901.