

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Acquisition of Corporate Rights in Ukrainian Companies

I. Introduction

Under Ukrainian law, limited liability companies do not issue shares of stock (securities) to their founders or shareholders (participants). Instead, shareholders' ownership interests in limited liability companies are represented by the percentage they contribute to the authorized capital. Thus, when speaking about the acquisition or sale of "shares" in limited liability companies, we are actually speaking about the acquisition or sale of a shareholder's "corporate rights" in such companies.

To further clarify matters, since limited liability companies do not issue shares of stock, Ukrainian legislation refers to the persons or entities with ownership interests in such companies as "participants" rather than "shareholders". Finally, it should be noted that corporate rights do exist in other forms of companies, such as joint stock companies.

According to the Commercial Code of Ukraine, the concept of corporate rights refers to the rights of persons or entities with a determined share in the authorized capital (property) of a commercial organization. Such rights provide a person or entity the authority to participate in the management of a commercial organization and to receive a specific portion of the profit (dividends) of a commercial organization and assets in case of liquidation. Other types of corporate rights may be defined by law or the statutory documents of a commercial organization.

The Law of Ukraine No. 334/94 "On Taxation of Profit of Enterprises", dated December 28, 1994 (as amended), further defines corporate rights as the right of ownership to the authorized capital of a legal entity or a portion thereof, including the rights to manage and receive a corresponding share of the profit of such legal entity as well as assets in case of its liquidation regardless of whether such legal entity was created in the form of a business entity or enterprise established on the ownership of one legal entity or natural person or in other organizational legal forms.

For background purposes, transactions involving the acquisition and sale of corporate rights are generally regulated by the following legislative acts of Ukraine:

- the Civil Code of Ukraine No. 435-IV, dated January 16, 2003 (as amended) (hereinafter the "Civil Code");

- the Commercial Code of Ukraine No. 436-IV, dated January 16, 2003 (as amended) (hereinafter the “Commercial Code”);
- the Law of Ukraine No. 710/97-VR “On the National Depository System and Peculiarities of Electronic Circulation of Securities,” dated December 10, 1997 (as lastly amended on April 27, 2007) (hereinafter the “NDS Law”);
- the Law of Ukraine No. 1576-XII “On Economic Associations,” dated September 19, 1991 (as amended) (hereinafter the “EA Law”);
- the Law of Ukraine No. 755-IV “On the State Registration of Legal Entities and Entrepreneurs,” dated May 15, 2003 (as amended) (hereinafter the “SR Law”);
- the Regulations On the Procedure of Maintaining Registers of Holders of Registered Securities, approved by Decision No. 60 of the State Commission for Securities and the Stock Market of May 26, 1998 (as amended) (hereinafter “Regulations No. 60”);
- the Regulations On Depository Activity, approved by Decision No. 61 of the State Commission for Securities and the Stock Market of May 26, 1998 (as amended) (hereinafter “Regulations No. 61”).

To assist in understanding the matters described further in this article, we would firstly like to describe a typical situation that, sooner or later, almost any business entity organized and existing under the laws of Ukraine may face during its existence.

Specifically, there often comes a time when a participant (or shareholder) of a business entity (company) has decided to dispose of its shares or participation interest in the capital of a company to a third party (by way of sale, transfer free of charge, etc.). Prior to the conclusion of an agreement for disposal of a participation interest in a company, a savvy participant or its legal counsel would take the following steps:

- 1) review the charter (statute) of the company in order to confirm that the charter does not contain a prohibition with respect to the disposal of a participation interest in the company’s authorized capital to third parties; and
- 2) obtain express consent from all other participants of the company for the disposal of a participation interest in the company’s authorized capital to a third party. The effective Ukrainian legislation does not require a specific form of such consent by other participants. Therefore, such consent may be set forth in a single document

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