


ЕҢБЕК, АЗАМАТТЫҚ ЖӘНЕ АЗАМАТТЫҚ ІС ЖҮРГІЗУ ҚҰҚЫҒЫНЫҢ ӨЗЕКТІ МӘСЕЛЕЛЕРІ АКТУАЛЬНЫЕ ПРОБЛЕМЫ ТРУДОВОГО, ГРАЖДАНСКОГО И ГРАЖДАНСКОГО ПРОЦЕССУАЛЬНОГО ПРАВА CURRENT ISSUES IN LABOUR, CIVIL AND CIVIL PROCEDURAL LAW

<https://doi.org/10.31489/2026L2/77-88>

UDC 347.44

Received: 03.02.2026 | Accepted: 19.03.2026 | Published online: 30.06.2026

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Judicial Protection of the Rights of Participants of Business Partnerships and the Allocation of Liability When Challenging a Contract for the Purchase and Sale of a Share in the Authorized Capital

The article analyzes judicial mechanisms for protecting corporate participants in share alienation disputes and identifies systemic gaps in Kazakhstani legislation. The article notes that the primary focus of parties and registration authorities remains on formal requirements, while liability is often distributed without proper legal assessment. The study aims to identify regulatory deficiencies and the lack of consistent judicial practice, which the protection of bona fide purchasers and create uncertainty in the allocation of liability. The research includes an analysis of legislative norms and court disputes regarding share non-payment, enforcement proceedings, and the concealment of a partnership's financial condition. It is established that the formalistic judicial approach fails to account for the seller's actual situation and their liability to creditors. Particular attention is paid to the problem of liability for obligations arising prior to share alienation. Within a comparative legal analysis, the experiences of Uzbekistan and Belarus are examined. The key finding substantiates the necessity to introduce a mechanism for delimiting liability based on the period of participation to enhance legal certainty. The practical significance lies in developing proposals to enhance legal regulation.

Keywords: business partnerships, participatory interest, share sale and purchase, challenging transactions, bona fide purchaser, risk allocation, balance of creditors' interests.

Introduction

The institution of buying and selling shares within the equity structure of commercial entities performs a significant function in the civil turnover of the Republic of Kazakhstan. It ensures the transferability of corporate rights and allows participants in business partnerships to exercise their authority to independently alienate their ownership interests. Concurrently, the rapid expansion of transactional activity within the commercial sphere in recent years has revealed a number of significant problems related to the normative framework governing these operations as well as the protection of the rights of bona fide purchasers.

One of the significant problems in law enforcement practice is the alienation of shares in business partnerships, in which sellers reduce the performance of their obligations to the formal conclusion of a sale and purchase agreement with a notary, while the external compliance with the procedure established by law

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often conceals the existence of significant financial and legal encumbrances on the alienated share, creating adverse consequences for the acquirer.

An analysis of court practice shows that after the transfer of a share to a new participant, numerous enforcement proceedings, tax debts, and other restrictions are often revealed, which were deliberately not disclosed by the seller at the stage of concluding the contract. At the same time, the existence of a significant number of ongoing enforcement proceedings in relation to the partnership does not in itself prevent state registration of the change of participant, which subsequently becomes the cause of protracted corporate and legal disputes.

The above circumstances indicate that challenging share purchase agreements goes beyond a private dispute between the seller of the share and its buyer. The mass nature of such transactions, the lack of effective mechanisms for verifying the legal and financial status of business partnerships, and the ambiguity of the legal consequences of their conclusion make this a systemic problem. The subjective (based on internal conviction) assessment by courts of the significance of information contained in the databases of executive bodies is often limited to a formal analysis of compliance with the transaction procedure, which negatively affects the stability of civil turnover.

In this regard, it is particularly important for courts to take into account information from state registers and information from tax authorities and enforcement agencies when resolving disputes related to the transfer of rights to a share in a business partnership.

Methods and materials

In preparing this article, a comprehensive approach was used, including general scientific and special research methods appropriate to the aims and objectives of the work. The main method was the formal legal method, which made it possible to study the norms of civil and corporate legislation of the Republic of Kazakhstan regulating the procedure for alienation of shares in the authorized capital of economic partnerships, as well as the grounds for recognizing transactions as invalid.

The analytical method was used to summarize and evaluate the provisions of legal doctrine and judicial practice originating from interdistrict commercial adjudicatory courts of the Republic of Kazakhstan. Particular attention was paid to issues of proving unfair conduct of the participants involved in the transaction and facts of concealing information about the financial condition of the partnership during the transfer of rights to a share.

The empirical basis of the study was formed by the normative legal acts of the Republic of Kazakhstan, materials of judicial practice on corporate disputes, including judicial acts of the first and appellate instances, as well as information contained in state registers and information systems of judicial and tax authorities.

The conceptual and methodological foundation of this research draws upon academic writings and scholarly contributions produced by both national and international authors in the field of civil and corporate law, in particular M.K. Suleimenov, Yu.G. Basin, S.B. Skryabin, A.K. Kaldybayev, Zh.B. Zhumagaliyeva, L. Novoselova, A.O. Takhtenkova.

The use of doctrinal sources in combination with an analysis of judicial practice ensured the comprehensive nature of the study, the validity of the conclusions, and made it possible to formulate practical proposals directed toward enhancing legal instruments for safeguarding the interests of participants in economic partnerships.

The selection of the Republic of Uzbekistan and the Republic of Belarus for comparative analysis is justified by their shared membership in the Roman-Germanic legal family and a common civil law heritage within the CIS. These states represent polar regulatory models: from absolute succession of liability (Uzbekistan) to temporal differentiation (Belarus), which allows for an assessment of the most effective model for the Republic of Kazakhstan. The empirical basis of the study is focused on specialized commercial court rulings from 2020–2025 to ensure the relevance of the analyzed judicial trends.

Results

Before analyzing existing gaps in legislation, it is important to first clarify the object of the study. Judicial protection of a participant's rights in disputes related to the alienation of shares can be understood as a set of legal safeguards designed to restore the balance of corporate interests through the differentiation of liability depending on the time when the relevant obligations arose. Within this framework, corporate succession should be considered a particular type of legal transfer: although the rights to participate in corporate governance pass to the purchaser, the "burden" of undisclosed liabilities caused by the seller's bad

faith should not automatically transfer together with the share, since such an approach contradicts the principle of fairness in civil circulation.

Before analyzing the issues related to challenging share purchase agreements and protecting the rights of the purchaser, it is necessary to determine the legal nature of such an agreement in the civil circulation. This is because the choice of protection and the distribution of risks between the parties depend on the classification of the agreement.

The study of the legal nature of a contract for the sale of a share in the authorized capital of commercial partnerships requires reference to the norms of civil and corporate law in their systemic connection. The main normative instrument regulating the relevant sphere of legal relations is the Law of the Republic of Kazakhstan “On Limited and Additional Liability Partnerships” dated April 22, 1998, No. 220-1 (*hereinafter referred to as the Law on Partnerships*) [1].

According to Article 28 of the Law on Partnerships, a share in the authorized capital does not constitute ownership of specific property of the partnership. It expresses a person’s participation in the activities of a legal entity and includes a set of property and non-property rights. Such rights include, in particular, the entitlement to participate in the distribution of earnings, the right to a share of the property upon liquidation of the partnership, as well as the right to participate in the management of the legal entity and to receive information about its activities.

Taking into account the provisions enshrined in the Law, it seems reasonable to conclude that a share purchase agreement has a complex legal nature. In terms of its content, it is aimed not at the transfer of property, but at the transfer of a set of corporate rights from one participant to another. Although the transaction is formally executed in the form of a sale and purchase contract, the disposal of an interest in the charter capital, from a substantive legal perspective, represents the conveyance of a complex bundle of corporate entitlements, certain components of which are functionally similar to the transfer of a claim, which determines the specific nature of the seller’s obligations and liability to the purchaser.

The complexity of this transition is also noted in modern international legal scholarship, which stresses that legal rules should rely on a balanced evaluation of the interests of all involved parties, rather than being derived only from abstract reasoning. As Yao points out, “*the evaluation of whether shareholders should have the “right of retraction” should not be judged simply on the basis of the attributes of the preemption right, so the substantial protection of interests may be overlooked*” [2].

The procedure for concluding a contract for the sale and purchase of a share in the authorized capital of a business partnership is regulated by law and includes several consecutive stages. At the initial stage, it is crucial to comply with the pre-emptive entitlement established in Article 31 of the Law on Partnerships and Clause 3 of Article 80 of the Civil Code of the Republic of Kazakhstan (*hereinafter referred to as the Civil Code*) [3]. These provisions grant the participants in the partnership a preemptive right to purchase the alienated share in relation to third parties. In this connection, the seller is obliged to notify the executive body of the economic partnership and the other participants in writing of the planned disposition of their participatory interests, with specification of the purchase price and all essential contractual conditions. Only if the participants refuse to exercise their preemptive right or fail to respond within the established period, which is generally one month, may the share be sold to a third party.

Special attention should be paid to compliance with the form of such a transaction established by law. In accordance with paragraph 2 of Article 154 of the Civil Code of the Republic of Kazakhstan and paragraph 2 of Article 39 of the any transaction involving the transfer of a participatory interest requires compulsory notarization. Non-observance of the required notarization leads to the recognition of the transaction as invalid under Article 157-1 of the Civil Code of the Republic of Kazakhstan, as it is considered to have been concluded in violation of the requirements of the law.

As A.K. Kaldybayev and Zh. B. Zhumagaliyeva note, “*the use of the notarial form in transactions for the alienation of shares is an essential element of legal protection, ensuring the legality of corporate changes and preventing the falsification of documents that could lead to the loss of control over a business*” [4].

When certifying a contract, the notary, guided by the provisions of Article 54 of the Law of the Republic of Kazakhstan “On Notaries” dated July 14, 1997, No. 155-I (*hereinafter referred to as the Law on Notaries*) and paragraphs 44, 45, 46, 60, and 66 of Order No. 41 of the Minister of Justice of the Republic of Kazakhstan dated January 31, 2012, “On Approval of the Rules for the Performance of Notarial Actions by Notaries” [5] (*hereinafter referred to as the Rules*) verifies the legal capacity of the parties, the availability of appropriate title documents, as well as compliance with the rights of other participants in the partnership to the preemptive purchase of a share.

L. Novoselova notes that “*the complexity of contractual relations in limited liability partnerships is due to the special legal nature of the share, which is an independent object of civil rights and requires an assessment not only of the actual expression of the parties’ will, but also of the legal status of the partnership itself, including the peculiarities of its corporate history*” [6].

The final stage in formalizing the transfer of rights is the state re-registration of the partnership. According to subparagraph 1) of paragraph 1 of Article 14 of the Law of the Republic of Kazakhstan “On State Registration of Legal Entities and Accounting Registration of Branches and Representative Offices” dated April 17, 1995, No. 2198 [7] (*hereinafter referred to as the Law on State Registration*), changes in the composition of participants in economic partnerships, except for cases where a register of participants is maintained, are subject to mandatory state re-registration. An application for the relevant changes must be submitted to the registering authority within one month from the date of conclusion of the agreement or adoption of the the corresponding corporate resolution.

It should be specifically emphasized that the rights and obligations of a participant are finally transferred to the acquirer from the moment of state re-registration. As stipulated in clause 2 of Article 22 of the Law on Partnerships, the buyer of a share acquires the status of a participant in the partnership after changes are made to the registration data. Until that moment, he cannot fully exercise his corporate entitlements vis-à-vis external counterparties, given that, in accordance with Article 42 of the Civil Code of the Republic of Kazakhstan, such persons are entitled to rely on the information contained in the state register of legal entities.

However, despite detailed regulation of the procedure for alienating shares in the charter capital of corporate organizations, case law continues to demonstrate inconsistent methods in the adjudication of corporate-law disputes. An analysis of court disputes indicates the existence of systemic problems affecting both the stability of civil transactions and the effectiveness of protecting the rights of bona fide purchasers and sellers of shares.

A summary of court practice allows us to identify a number of key problematic aspects that arise in the conclusion and execution of share purchase agreements. In the law enforcement practice of courts, disputes often arise in connection with the alienation of shares in the authorized capital, and it is therefore advisable to analyze the most common grounds for such disputes and the established judicial approaches to their resolution.

1. Challenging transactions due to failure to fulfill obligations to pay for a share.

One common situation is the purchaser’s failure to fulfill their obligation to pay the purchase price of the share. In such cases, interested parties often choose to defend themselves by requesting that the contract be declared invalid, believing that the lack of payment calls into question the proper performance of the terms of the transaction. Meanwhile, judicial practice proceeds from the assumption that failure to fulfill a monetary obligation does not affect the validity of the contract as such and cannot in itself serve as a basis for declaring the transaction invalid. In such cases, the seller has the right to demand payment of the amount stipulated in the contract, but not the right to return the alienated share.

A case in point is the dispute between Two K LLP and M.K. Karabatayev over the recovery of debt under a share purchase agreement in the amount of over 47 million tenge. Despite the existence of a legally binding court decision on debt collection in case No. 5265-25-00-2/771, the actual absence of property from the debtor that could be subject to enforcement made it impossible to actually execute the court order [8]. As a result, the seller lost his corporate rights but did not receive consideration in the form of payment of the purchase price. This situation is due not only to the difficulties of subsequent enforcement of the court order but also to the terms of the agreement concluded between the parties. In accordance with the general provisions on sales contracts, the buyer’s obligation to pay is reciprocal and, unless otherwise provided by the contract, must be performed simultaneously with the transfer of the object of sale. Consequently, when alienating a share in the authorized capital, the risk of non-payment largely depends on the payment model chosen by the parties, and the conclusion of a contract with a deferred payment without the use of security mechanisms represents a contractual risk for the seller, which cannot be fully imposed on the judicial protection system.

2. The existence of unfulfilled court orders and encumbrances in relation to the seller of the share.

Significant difficulties also arise in cases where the alienation of a share is carried out when the seller has significant debt obligations to third parties or state authorities. An analysis of court cases shows that such transactions are often carried out in conditions that are not reflected in the database of enforcement

proceedings at the time of the transaction, which may indicate an attempt to withdraw assets and evade the enforcement of court decisions.

A case in point is case No. 1912-20-00-2/2125 brought by KDN Group LLP against A.V. Melentyeva, in which the plaintiff claimed that the share purchase agreement was invalid. In support of its claims, the plaintiff pointed out that at the time of the transaction, more than seventeen enforcement proceedings had been initiated against the seller, and the transaction itself, in its opinion, was aimed at evading obligations to creditors and the state [9]. The plaintiff pointed out that the contract was formal in nature and was concluded with the aim of concealing property from enforcement, which, in the plaintiff's opinion, contradicted the requirements of Article 158 of the Civil Code of the Republic of Kazakhstan.

Having considered this dispute and examined the circumstances of the case, the court decided to dismiss the claim. The judicial authority proceeded from the fact that at the time of notarization, a check was carried out and it was established that there were no seizures or other encumbrances directly on the alienated share. The court held that the seller's debts and open enforcement proceedings did not in themselves restrict his right to dispose of the share in the absence of a statutory prohibition. The court thus focused on compliance with the formal requirements for the transaction.

The Plaintiff, disagreeing with this approach, filed an appeal, emphasizing the need to assess the good faith of the parties to the transaction. In the Plaintiff's opinion, the alienation of a share as one of the key assets in the presence of debts indicated an intention to cause harm to creditors. The applicant's arguments are supported by legal doctrine. Thus, A.O. Takhtenkova notes that "*judicial practice is moving towards a more active application of the rules on the inadmissibility of abuse of rights in conjunction with the rules on the invalidity of transactions*" [10]. This allows the seller's actions aimed at removing property from enforcement to be classified not simply as a formal exercise of the owner's rights, but as unlawful conduct that violates the limits of the exercise of civil rights. Nevertheless, the reviewing judicial panel at the appeal stage left the decision of the court of first instance unchanged, confirming the predominance of a purely formal finding that no encumbrances existed over any substantive evaluation of the seller's actual financial situation.

This example clearly demonstrates that the formal nature of legal regulation and the limited scope of verification mechanisms for the alienation of shares do not allow for the timely identification of transactions that are detrimental to the interests of creditors and other participants in civil transactions. As a result, a situation arises in which the formally lawful actions of one party create legal uncertainty and risks for bona fide purchasers, who, after the transaction is completed, may face claims from third parties and protracted litigation. The lack of effective preliminary verification tools and uniform approaches to assessing the good faith of the parties effectively shifts the negative consequences of such transactions to participants acting reasonably and in good faith.

In addition to disputes with creditors, in practice, the opposite situation often arises, when the buyer attempts to challenge the contract due to undisclosed circumstances revealed after re-registration.

3. Challenging a transaction to transfer a share in the presence of tax arrears.

An analysis of court practice clearly confirms the relevance of the legal problem addressed. In this regard, a ruling issued by the specialized interdistrict commercial court operating within the Karaganda region in case No. 3514-20-00-2/3549, the claim of the state revenue authority to invalidate the contract of sale of a share in a limited liability partnership was upheld [11]. The court found that at the time of the transaction, the partnership had tax arrears in excess of 148 million tenge, and the change of participant was formal in nature and was aimed at evading tax obligations. The court classified the parties' actions as an abuse of rights, noting that the purchaser of the share had no real intention of carrying out entrepreneurial activity. This example shows that in the absence of clear legislative mechanisms for preliminary control, courts are forced to eliminate the negative consequences of such transactions after they have been completed, which negatively affects the stability of civil legal relations.

Discussion

The reviewed judicial practice shows that the evaluation of corporate transactions is often overly dependent on the external "form" of a transaction rather than on the real interests of the parties involved. As Ye.L. Babadzhanyan observes, *the coincidence of internal intent and its external expression is a fundamental condition for the validity of a transaction. Nevertheless, enforcement practice should gradually shift from a model focused on "protecting the appearance of a transaction" toward one aimed at "protecting interests"*. This issue becomes especially significant in disputes over the alienation of shares, where undisclosed

financial encumbrances may create a “defect of will”, causing the formally expressed consent to diverge from the parties’ genuine legal and economic intentions [12].

The court cases analyzed indicate that, as applied in real legal proceedings, the primary mechanism for safeguarding the interests of a share acquirer commonly consists in seeking recognition of the invalidity of the sale and purchase contract due to circumstances that the transaction was made under the influence of error or fraud, as provided for in Articles 158 and 159 of the Civil Code of the Republic of Kazakhstan. Within this category of private-law disputes, the purchaser bears the burden of proving that the seller deliberately failed to disclose information about encumbrances, debts, or other material circumstances that were relevant to the formation of the party’s intent when concluding the transaction.

The “judicial formalism” evident in current practice largely stems from the priority courts give to formal registration information and entries in state registers rather than to the partnership’s real financial condition. In many cases, judicial review is confined to verifying that no active arrests were recorded in the database at the time the transaction was concluded, while the potential “latency” of tax or enforcement obligations is disregarded. As a result, a situation arises in which an action that appears legally valid in form (for example, a notarized sale) can in fact conceal a substantive violation of trust.

At the same time, the implementation of this method of protection in practice is fraught with significant difficulties related to the assessment of the evidence presented. The evidence presented by the purchaser mainly indicates that he was not and could not have been aware of the partnership’s hidden financial obligations, which are largely assessed by the adjudicating authority relying on the court’s discretionary assessment of the evidence. In accordance with Article 16 of the Civil Procedure Code of the Republic of Kazakhstan (*hereinafter referred to as the CPC RK*), the court evaluates the evidence based on its internal conviction, which is based on a comprehensive, complete, and objective examination of the evidence as a whole [13]. In the absence of legally established presumptions of good faith on the part of the purchaser or uniform standards for verifying the legal and financial status of a share, this approach often leads to contradictory judicial practice, in which different judicial acts are adopted in similar factual circumstances.

A review of court practice leads to the conclusion that a formal procedural review of transactions involving the alienation of shares in the authorized capital does not provide adequate protection for the rights of participants in civil transactions. In some cases, this approach leads to a situation where a bona fide purchaser of a share is vulnerable to previously existing but non-obvious obligations. In order to develop more specific criteria for the allocation of liability, it is advisable to refer to a comparison of foreign regulatory models. In this regard, it seems necessary to consider the issue of succession of rights and obligations when transferring a share based on a comparative legal analysis of the legislation of the states belonging to the Commonwealth of Independent States (*hereinafter referred to as the CIS*).

Current legislation in the Republic of Kazakhstan does not fully address the issue of the purchaser’s liability for the obligations of the previous participant that arose prior to the alienation. The Law on Partnerships is limited to indicating the moment when the status of a participant arises. Thus, paragraph 2 of Article 22 of the Law on Partnerships establishes that the acquirer has the right to exercise their corporate rights and bear obligations only after the relevant changes have been made to the registration data. At the same time, the Partnership Law does not provide a direct answer to the fundamental question of the fate of the seller’s unfulfilled obligations arising during his participation in the partnership.

The lack of clear regulatory provisions forces courts to limit themselves to checking compliance with the form and procedure of the transaction, without touching upon the substantive legal aspect of the distribution of liability. As a result, the acquirer of the share is effectively deprived of effective mechanisms of protection in the event of the discovery of hidden corporate encumbrances, which negatively affects the stability of civil relations.

The opposite approach is implemented by the legislation of the Republic of Uzbekistan. Article 20 of the Law of the Republic of Uzbekistan “On Limited and Additional Liability Enterprises” establishes a mandatory model of succession, according to which all rights and obligations of a company participant that arose prior to the alienation of the share are transferred to the acquirer of the share, with the exception of those that are inextricably linked to the personality of the participant [14]. Thus, the legislation of the Republic of Uzbekistan establishes a presumption of full transfer of liability, including property obligations.

This structure protects the interests of the legal entity and its creditors to the fullest achievable degree, while simultaneously creating heightened exposure for the purchaser, effectively imposing on them the obligation to conduct an in-depth legal and financial review before concluding a transaction to acquire a share within the charter capital of the company.

An alternative regulatory framework is proposed in the legislation of the Republic of Belarus. Article 101 of the Law of the Republic of Belarus “On Business Associations” relies on the principle of temporary differentiation of liability, establishing that the rights and obligations of a participant are transferred to the acquirer of the share, except for those related to the period prior to its alienation, unless otherwise expressly provided by law or the company’s charter [15]. Thus, the Belarusian model allows for the normative division of obligations depending on the period of share ownership.

This approach differs fundamentally from the models implemented in the Republic of Kazakhstan and the Republic of Uzbekistan. It allows a bona fide purchaser to reasonably object to claims based on the actions or inactions of the former participant that took place before the transfer of corporate rights. Such regulation reduces the likelihood of hidden debt and other obligations being transferred and contributes to a more equitable balance of interests between the company and its participants.

The comparison highlights a core divergence in how risks are distributed. Under the Uzbek framework of “absolute succession”, the emphasis is on creditor protection, with the entire risk burden effectively shifting to the acquirer. By contrast, the Belarusian model of “temporal differentiation” reflects a fairness-based approach: obligations arising before the transfer remain the responsibility of the seller. For Kazakhstan, the Belarusian model appears more suitable, as it reduces incentives for the transferor to withhold material information. As Y.L. Babadzhanian observes, contemporary legal doctrine increasingly favors safeguarding substantive rights over reliance on formal registration records, thereby addressing the problem of “judicial formalism” evident in current Kazakhstani practice [12]. A comparative analysis of these legal models reveals a significant gap in the legislation of the Republic of Kazakhstan related to the absence of clear rules for the distribution of liability between former and new participants for obligations arising in the previous period. In order to strengthen the stability of civil turnover and increase the level of protection of participants in corporate legal relations in the Republic of Kazakhstan, it seems appropriate to implement elements of Belarusian regulation. Adapting the rules providing for a temporary division of liability would allow courts to more effectively resolve disputes related to the alienation of shares and ensure a balance of interests for all participants in corporate legal relations.

The legal position of Resolution No. 20 of the Plenum of the Supreme Economic Court of the Republic of Belarus on October 31, 2011, “On Certain Issues of Considering Cases Involving Commercial Organizations and Their Founders (Participants)” (*hereinafter referred to as the Plenum Resolution*) deserves special attention [16]. Paragraph 22 of the Plenum Resolution explains that claims for the invalidation of transactions, including share purchase agreements, are subject to consideration in accordance with the procedure established by paragraph 2 of Chapter 9 of the Civil Code of the Republic of Belarus.

This position allows for a consistent distinction between special means of protecting civil rights, in particular the transfer of rights and obligations in the event of a violation of the preemptive right of purchase and claims for the invalidation of a transaction as a whole, which are applied in the event of defects of consent. The Plenum guides the courts to the fact that in cases where a transaction is concluded in violation of the requirements of the law or under the influence of circumstances distorting the actual expression of will of a party, for example, due to the concealment of information about the actual state of assets, such a transaction shall be declared invalid with the application of the consequences provided for by law. Thus, Belarusian judicial practice proceeds from the assumption that the protection of the rights of a purchaser who has been misled as to the legal or actual condition of a share must be carried out through the institution of invalidity of transactions, which ensures the complete elimination of the legal consequences of a contract concluded on unfair terms.

The above foreign experience allows for a more objective assessment of the state of regulatory control in the Republic of Kazakhstan. Domestic law has developed a certain system of explanations issued by the highest judicial authority of Kazakhstan, designed to promote consistency in the adjudication of corporate-law cases the Normative Resolution of the Supreme Court of the Republic of Kazakhstan “On Certain Issues of the Application of Legislation on Limited and Additional Liability Partnerships” adopted on July 10, 2008 under reference number 2 [17] and the Normative Resolution of the Supreme Court of the Republic of Kazakhstan “On Certain Issues of the Invalidity of Transactions and the Application by Courts of the Consequences of Their Invalidity” dated July 7, 2016, No. 6 [18].

These acts, which play a significant role in law enforcement, are mainly general in nature and guide courts to use universal civil law institutions, such as the presumption of good faith and general grounds for invalidating transactions in the event of defects of consent. At the same time, they do not disclose the

specifics of the purchaser's liability for hidden obligations that arose during the period of participation of the previous owner.

Despite the existence of regulatory clarifications from the Supreme Court of the Republic of Kazakhstan, issues of liability distribution for such obligations remain outside the scope of special regulation.

The problem of the new participant's liability for the partnership's "hidden" debt obligations is largely due to the legal nature of the share transfer transaction itself. The theoretical basis for the problem under consideration is formed by the works of leading civil law scholars, which emphasize the special legal nature of a share in the authorized capital. Of fundamental importance is the statement by Yu.G. Basin and M.K. Suleimenov, according to which *"the acquisition of a share in economic partnerships means that a person enters into corporate relations, within which the new participant assumes not only the rights but also the obligations related to the activities of the partnership that exist at the time of the transaction"* [19; 540]. In view of this, the seller's concealment of material information about the partnership's financial obligations should be considered not as a formal breach of the terms of the contract, but as a material violation of the rights of the purchaser, who, upon completion of the ownership transition, effectively assumes the company's previously incurred obligations. As S.V. Skriabin rightly notes, *"the transfer of shares in the authorized capital of a partnership implies not only a change in the owner of the property, but also succession in relation to corporate rights and obligations, which requires particular clarity in determining the moment and limits of the transfer of responsibility"* [20].

Based on the study, there is a clear need to improve legislation on limited liability partnerships in terms of clarifying the limits of liability of participants and strengthening the protection of the rights of bona fide purchasers of shares.

Given the problems identified, it seems necessary to propose measures that will reduce the risk for bona fide purchasers and ensure predictability of liability.

First, it is advisable to include in the relevant law a provision that explicitly obliges the seller to disclose to the purchaser complete and accurate information about the legal status of the share being sold, as well as the absence of any undisclosed obligations of the partnership that arose during the period of its ownership. It should be legislatively established that obligations and losses arising from the actions or inaction committed by the previous rights holder at an earlier stage of ownership of the share and deliberately not disclosed to the purchaser cannot be imposed on a bona fide purchaser and are subject to compensation at the expense of the seller's property. This will give assurances about circumstances the character of mandatory legal guarantees, rather than just contractual terms.

Secondly, the mechanism for holding participants liable on a subsidiary basis needs to be clarified. It seems reasonable to have a rule whereby the purchaser of a share assumes the risks and responsibilities associated with it, except in cases where the previous owner deliberately misled the purchaser or concealed information about the partnership's obligations in order to evade their performance.

In such situations, if the seller's abuse of rights or deception is proven, liability for obligations arising prior to the alienation of the share shall not be transferred to the bona fide purchaser and shall remain with the former participant. The implementation of these proposals will replace the courts' assessment practice with a clear legal mechanism that ensures the predictability of civil transactions and the effective protection of investors' rights.

Proposed amendment to the Law of the Republic of Kazakhstan dated April 22, 1998, No. 220-I "On Limited Liability and Additional Liability Partnerships":

"Article 29-1. Obligation of the alienating participant to disclose information when alienating a share".

1. A participant in a partnership who disposes of a share (or part thereof) shall, prior to concluding the agreement, disclose to the acquirer complete and accurate information about the legal status of the share being alienated without any intention to deliberately conceal information, including information about the partnership's obligations arising during the period of ownership of the shares, as well as circumstances that may affect the scope of the acquirer's rights and obligations.

2. Failure to fulfill the obligation provided for in paragraph 1 of this article shall entail the liability of the alienating participant in accordance with the legislation of the Republic of Kazakhstan.

A key issue remains the need to maintain a balance between protecting the acquirer and safeguarding the interests of creditors. In our view, the proposed Article 29-1 does not restrict creditors' rights. On the contrary, by recognizing the former participant as the actual debtor with respect to obligations that arose during the period of their participation, the rule prevents the use of purely formal share transfers as a

mechanism for avoiding responsibility. In this way, the temporal allocation of liability allows creditors to direct their claims toward the person whose conduct led to the debt, rather than toward a bona fide purchaser who merely acquired a financially troubled asset.

Conclusions

The study performed allows for the formulation of several fundamental conclusions of great legal significance. First, the analysis established that current judicial practice in the Republic of Kazakhstan regarding the contestation of share sale agreements is characterized by excessive formalism, focused on procedural aspects, which hinders the full protection of bona fide purchasers when undisclosed partnership debts are discovered.

Second, the identified lack of clear legislative rules for the temporal delimitation of liability creates legal uncertainty, where the risks of a seller's bad faith are effectively shifted to a purchaser acting reasonably and in good faith. Furthermore, to address this, the study substantiates the need to implement the principle of mandatory disclosure by the seller and a model of temporal liability differentiation (based on the experience of the Republic of Belarus), where the former participant remains liable for obligations incurred during their actual period of participation.

The practical outcome of the research is the development of proposed amendments to the Law "On Limited and Additional Liability Partnerships" in the form of a new Article 29-1 "Obligation of the alienating participant to disclose information when alienating a share". Consequently, the introduction of this provision will ensure a predictable mechanism for liability distribution and create a fair balance of interests for all participants in corporate legal relations.

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Жарғылық капиталдағы үлесті сатып алу-сату шартын даулау кезінде шаруашылық серіктестіктерге қатысушылардың құқықтарын сот арқылы қорғау және жауапкершілікті бөлу

Мақалада үлестерді иеліктен шығару туралы даулар контексінде корпоративтік қатынастарға қатысушылардың мүдделерін қорғау жөніндегі сот механизмдерінің тиімділігі талданған, сондай-ақ Қазақстан Республикасының қолданыстағы заңнамасындағы жүйелі олқылықтар айқындалған. Зерттеудің мақсаты — адал сатып алушының құқықтарын қорғауды қиындататын әрі жауапкершілікті бөлуде белгісіздік тудыратын құқықтық реттеу мен сот практикасындағы олқылықтарды анықтау. Зерттеу барысында азаматтық және корпоративтік заңнама нормаларына, сондай-ақ үлестің төленбеуіне, атқарушылық іс жүргізулердің болуына және серіктестіктің қаржылық жағдайы туралы мәліметтерді жасыруға байланысты сот дауларына талдау жүргізілді. Соттардың формальды көзқарасы сатушының нақты жағдайын және оның кредиторлар алдындағы жауапкершілігін ескеруге мүмкіндік бермейтіні анықталды. Үлесті иеліктен шығарғанға дейін туындаған міндеттемелер бойынша жауапкершілік мәселесіне ерекше назар аударылды. Салыстырмалы-құқықтық талдау шеңберінде қатысушының құқықтарының, міндеттерінің және жауапкершілігінің ауысуына қатысты түрлі тәсілдерді көрсететін Өзбекстан Республикасы мен Беларусь Республикасының тәжірибесі қаралды. Зерттеудің негізгі нәтижесі құқықтық сенімділікті арттыруға және азаматтық айналымның адал қатысушыларын қорғауға бағытталған серіктестіктің бұрынғы және жаңа қатысушысының жауапкершілігін уақытша шектеу механизмін енгізу қажеттілігін негіздеу. Жұмыстың практикалық маңыздылығы жарғылық капиталдағы үлестерді иеліктен шығару кезінде құқықтық реттеуді және жауапкершілікті бөлуді жетілдіру бойынша ұсыныстар әзірлеуде жатыр.

Кілт сөздер: шаруашылық серіктестіктер, қатысу үлесі, үлесті сатып алу-сату, мәмілелерді даулау, адал сатып алушы, тәуекелдерді бөлу, кредиторлар мүдделерінің теңгерімі.

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Судебная защита прав участников хозяйственных товариществ и распределение ответственности при оспаривании договора купли-продажи доли в уставном капитале

В статье анализируется эффективность судебных механизмов защиты интересов участников корпоративных отношений в контексте споров по отчуждению долей, а также выявляются системные пробелы в действующем законодательстве Республики Казахстан. При этом основное внимание участников сделок и регистрирующих органов сосредоточено на соблюдении формальных требований, тогда как вопросы распределения ответственности сторон нередко остаются без должной правовой оценки. Целью исследования является выявление недостаточности правового регулирования и отсутствия четкой судебной практики, которые затрудняют защиту прав добросовестных приобретателей и создают неопределенность в распределении ответственности. В ходе исследования проведен анализ норм законодательства, а также судебных споров, связанных с неполатой доли,

наличием исполнительных производств и сокрытием сведений о финансовом состоянии товарищества. Установлено, что формальный подход судов не позволяет учитывать реальное положение продавца и его ответственность перед кредиторами. Особое внимание уделено проблеме ответственности по обязательствам, возникшим до отчуждения доли. В рамках сравнительно-правового анализа рассмотрен опыт Республики Узбекистан и Республики Беларусь. Ключевым результатом исследования является обоснование необходимости внедрения механизма разграничения ответственности по периоду участия прежнего и нового участника товарищества, направленного на повышение правовой определенности. Практическая значимость работы заключается в разработке предложений по совершенствованию правового регулирования.

Ключевые слова: хозяйственные товарищества, доля участия, купля-продажа доли, оспаривание сделок, добросовестный приобретатель, распределение рисков, баланс интересов кредиторов.

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