

Some issues regarding the right of a shareholder of a limited liability company to withdraw from the company

In this article we will consider some issues relating to the right of a shareholder of a limited liability company to withdraw from the company.

The Civil Code of the Kyrgyz Republic provides that a shareholder of a limited liability company has the right to withdraw from the company at any time, irrespective of the consent of other shareholders (Article 134). A corresponding article of the Law of the Kyrgyz Republic "On Business Partnerships and Companies" has the same rule (Article 43.1).

The wording of these provisions indicates that these rules are mandatory in nature and establish the absolute right of a shareholder to withdraw from a limited liability company, i.e. that is such a right is not restricted, is not connected with nor in any way depends on the adoption by a general meeting of shareholders of decisions, including a decision on change of shareholders. Therefore, we can conclude that the Kyrgyz Civil Law protects the rights of the participant who wishes to withdraw from the limited liability company to a greater extent, rather than the rights and interests of other entities, which will be discussed below.

If we consider the right to withdraw from a limited liability company from the withdrawing shareholder's position, then, as a rule, such a shareholder has a certain reason to withdraw from the company. For example, a minority shareholder, i.e. having a small share in the authorized capital of the company, cannot affect most of the company's decisions. It is also possible that the shareholder considers that the company does not have a good economic development. In such cases, the shareholder is entitled to withdraw from the company and to receive a compensation for his share in the company's property. Thus, the right to free withdrawal from the company is a legally provided right of the shareholder to defend his/her rights and interests, a specific method of "insurance" of his/her risks.

However, the withdrawal of a shareholder of a limited liability company may have negative consequences for others entities (both inside and outside the company), as well as for the company itself.

First, the remaining shareholders and the company have to decide upon fate of the withdrawing shareholder's share. The Kyrgyz law provides the following: the remaining members may buy the withdrawing shareholder's share in proportion to their contributions to the company's authorized capital. However, they may not have money available at this point of time. In this case, the company will have to sell the withdrawing shareholder's share to any third party, which may also be undesirable for the remaining participants, especially if they are minorities and are not be able to influence the decision-making of the important issues in the future.

Secondly, the withdrawal of a shareholder may have an adverse effect on the company itself. Thus, the risk of an unplanned need to pay the cost share of the participant in connection with his/her withdrawal could disrupt the conclusion of a major transaction, for example, due to the lack of funds, especially if the withdrawing shareholder has a significant share in the company's authorized capital.

It can also have a negative impact on labor relations of the company and its employees, if the payment of the share's value could force the company to reduce its operations and, accordingly, its staff.

In addition, the negative effects may not be confined to the relationship among shareholders as well as between the company and its employees, but also may affect the interests of any third parties, such as creditors of the company, because payment of the share's value could adversely affect the company's ability to meet the demands of its creditors.

With regard to the above, it is worth briefly mentioning that in 2009 the Russian Federation legislation introduced some restrictions to the right of a shareholder of a limited liability company to withdraw from the company. As for the Kyrgyz law, it still provides an unrestricted right of the limited liability company's shareholder to withdraw from the company.

It should be focused on the following issue: having analyzed some few rules of the Kyrgyz law that regulate withdrawal of the limited liability company's shareholder, we can conclude that the legislation does not give the shareholders of a limited liability company the opportunity to exercise fully their right to withdraw from the company, i.e. the withdrawing shareholder after fulfilling all the requirements of the law and the company's constituent documents and being ceased to be a shareholder de-facto, nonetheless, remains a shareholder de-jure.

Such a conclusion can be done by analyzing Article 43 of the Law "On Business Partnerships and Companies", which requires the withdrawing shareholder to send an application for withdrawal, at least, one month before the actual withdrawal from the company. It should be noted that the constituent documents of the limited liability company may provide for another term for the withdrawing shareholder's application. Thus, it appears that the withdrawing shareholder can withdraw the company de facto, (i.e. the shareholder loses his/her rights and obligations, cannot participate in the general meeting of shareholders, etc.), but legally remains a shareholder.

The fact is that a shareholder's withdrawal from the company entails a change in shareholding of a limited liability company, which is a reason for the state re-registration of the company (Article 12 of the Law "On the State Registration of Legal Entities, Branches (Representative offices)"). Therefore, after withdrawal of any shareholder from the company, the remaining shareholders, in addition to addressing issues related to the withdrawing shareholder's share and its compensation, must hold a general meeting to make appropriate changes to the constituent documents, which must be registered with the relevant registration authority. Thus, at this stage, the status of the withdrawing shareholder depends completely on the actions of the remaining shareholders.

Let us imagine a situation, when for some reasons the remaining shareholders do not make appropriate changes to the constituent documents for a long time, nor register them with the registration authority. In this case, the withdrawing shareholder, who has fulfilled all the requirements established by law for the proper withdrawal from the company, will be indicated as a current shareholder of the company in the register of legal entities, although actually he is not the one.

In order to prevent such situations, the Kyrgyz law provides for an administrative liability: according to Article 402 of the Kyrgyz Code for the Administrative Responsibility, a commercial

organization's operation without relevant state re-registration in this case is punishable by an administrative fine imposed on the company's chief executives in the amount of ten calculation indices. Under Article 513 of the Code for the Administrative Responsibility, the Ministry of Justice is authorized to review such an administrative offense.

However, it should be noted that in this case the imposition of an administrative penalty is made upon a company's chief executives, i.e. the legislation does not provide for a direct tool affecting the company's shareholders. Therefore, in our opinion, the withdrawing shareholder is not protected fully from the unfair actions of the remaining shareholders.

In our opinion, perhaps, one option could be making a record by the state registration authority into the Legal Entities Register that the withdrawing shareholder has filed a statement of withdrawal from the company, as the registration authority also receives such statement under Article 12.6 of the Law "On the State Registration of Legal Entities, Branches (Representative Offices)".