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ORIGINAL PAPER

RIGHTS OF SHAREHOLDERS IN THE REPUBLIC OF BULGARIA

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Abstract. The purpose of this paper is to provide a brief overview of issues related to the property, administrative and control rights of shareholders in the Republic of Bulgaria. First of all, the right to dividends is considered, since it is one of the most important property rights of the shareholder. The right to a liquidation share is ranked second among the property rights of the shareholder. Thirdly, the paper discusses such a property right as the right to receive interest on contributions made by the shareholder, and the cases in which such interest is payable. Further, the issue of a shareholder's right to subscribe to a part of new shares proportional to his/her share in the capital prior to its increase is discussed. In the second place, the administrative rights of the shareholder are considered, among which in the first place is the personal and irrevocable right to receive information, which does not depend on the number of shares owned by the shareholder. The next among the administrative rights is the right to participate in the general meeting of the joint stock company. The paper examines a case concerning specific regulations for the representation of shareholders at the general meeting of public companies. Third, it considers the control rights of the shareholder in relation to his/her right to protect membership, as well as the right to file a claim to cancel the decisions of the general meeting. Some special rights with a protective function which cannot be attributed to the general qualification of shareholders' rights are also indicated.
Keywords: share, dividend, property right, control right, liquidation share, interest rate, administrative right.

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ОРИГИНАЛЬНАЯ СТАТЬЯ

ПРАВА ВЛАДЕЛЬЦЕВ АКЦИЙ В РЕСПУБЛИКЕ БОЛГАРИЯ

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Аннотация. Цель данной статьи – дать краткий обзор вопросов, касающихся имущественных, управленческих и контрольных прав акционеров в Республике Болгария. Прежде всего, рассматривается право на дивиденды, поскольку оно является одним из важнейших имущественных прав акционера. На втором месте среди прав собственности выделяется право на ликвидационную долю. В-третьих, среди имущественных прав в статье рассматривается право на получение процентов по взносам, сделанным акционером, и случаи, в которых такие проценты подлежат уплате. Далее обсуждается вопрос о праве акционера подписаться на часть новых акций, пропорциональную его доле в капитале до его увеличения. Во вторую очередь рассматриваются права акционера на управление, среди которых на первом месте находится личное и безотзывное право на получение информации, которое не зависит от количества принадлежащих акционеру акций. Следующим среди прав на управление является право участвовать в общем собрании акционерного общества. В статье рассматривается случай, касающийся особых правил представительства акционеров на общем собрании публичных компаний. В-третьих, рассматриваются контрольные права акционера в отношении его права на защиту членства, а также право подать иск об отмене решений общего собрания. Также указаны некоторые особые права с защитной функцией, которые не могут быть отнесены к общей квалификации прав акционера.
Ключевые слова: акция, дивиденд, имущественное право, контрольное право, ликвидационная доля, процентная ставка, управленческое право.

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The legal and regulatory framework of the research presented in the paper have been the following: the Commercial Law (Tŭrgovski zakon) dated July 01, 1991 (hereinafter referred to as the CL) [1]; the Obligations and Contracts Law (Zakon za zadŭlzheniyata i dogovorite) dated

July 05, 1999 (hereinafter referred to as the OCL) [2]; the Property Law (Zakon za sobstvenostta) dated July 05,1999 [3]; the Law on Public Offering of Securities (Zakon za publichnoto predlagane na tsenni knizha) (hereinafter referred to as the LPOS) dated January 30, 2000 [4].

Depending on their content, the rights received by shareholders in the Republic of Bulgaria can be divided into property, administrative and control ones. Property rights are considered as a benefit object and assessed in monetary terms. Administrative and control rights have no monetary value and provide the shareholder with participation in the administration and control of the company.

Property rights.

1.1. *The right to dividends* is the most important property right of the shareholder (Article 181, Paragraph 1 of the CL). Dividend is a proportional part of the balance sheet profit. It is determined by dividing the balance sheet profit after taxation on the nominal value of a share. Dividends are equal on all shares, since shares have the same nominal value. The exception is preferred shares that provide a guaranteed or additional dividend. Basically, the right to dividends is a bond right, a claim with the aim of obtaining a sum of money. Dividends can be paid in shares. In this case, the distribution of dividends is determined by the specific regulation of Article 197 of the CL.

Considering that the right to receive dividends is established by law with mandatory regulations, it cannot be canceled by the statutes or by a decision of the general meeting (Article 197, Paragraph 3 of the CL).

Receiving profits is the main goal of a joint stock company. The right to dividends may be limited by a decision of the general meeting, but it is not necessary that the possibility of limiting the distribution of profits among shareholders be spelled out in the statutes. It is enough for the general meeting to make such a decision. If the statutes contain regulations regarding the distribution of profits, and the general meeting amends them, the statutes must also be amended, and a decision of the general meeting cannot regulate that dividends should not depend on the nominal value of the share. An exception to this dependence is permissible when issuing preferred shares. Shares of the same class provide the same dividends.

As elements, in addition to the ownership of a share, the actual content of the right to dividends includes at least two other decisions of the general meeting: on the approval of the annual accounting report and on the distribution of profits (Article 251, Paragraphs 1 and 2 of the CL).

It is necessary that the reporting year ends, and a profit is made. Prior to the occurrence of these legal circumstances, the right to dividends is not an independent right, but exists in a latent form as an element of the shareholder's membership right. The emergence of the right to dividends does not imply the fulfillment of the obligation to contribute. When all the elements of the right to receive dividends are realized, they can be transferred separately from the share. The right to dividends comes in accordance with the general regulations (and not automatically with the decision on the distribution of profits). It is repaid with a total five-year limitation period (Article 110 of the OCL).

The right to dividends does not depend solely on profits for the previous fiscal year. Dividends can also be received from retained profits of previous years and reserves. A decrease in capital could also lead to the distribution of amounts between shareholders (which, as a matter of law, are not dividends), if creditors receive payment or security (Article 202 of the CL).

Distribution of dividends is not allowed if in the previous year the value of the property fell below the amount of the authorized capital. Dividends cannot be distributed when there is a violation of the requirements for replenishment of the reserve fund. Distribution of dividends is not allowed before the end of the fiscal year [5]. The statutes may provide for other conditions for receiving dividends, for example, after the allocation to other funds.

Dividends can be capitalized (Article 197 of the CL), which means that each shareholder has the right to receive a part of new shares proportional to his/her participation in the capital prior to the distribution of dividends. Since the right to receive dividends is irrevocable, the distribution of new shares in any other way is unacceptable (Article 197, Paragraph 1 of the CL). A decision of the general meeting that contradicts this regulation is invalid.

Regulation of Article 197, Paragraph 1, Sentence 2 of the CL establishes a minimum majority, which cannot be rejected by the statutes or by a decision of the general meeting. The decision must be made within three months after the approval of the annual accounting report for the past year. This term is preclusive.

The right to receive dividends for each year is realized in the form of a separate security called a coupon. Unless otherwise provided by the statutes, shares are issued with dividend coupons for a period of 20 years. Article 184, Paragraph 3 of the CL specifies the requirements of the coupon: the designation “coupon”, the trade name of the joint-stock company, the coupon number, the share and the denomination, as well as the year for which dividends should be paid on it. The coupon is not an independent security – it cannot be transferred separately from the share. After the payment of dividends for the corresponding year, the coupon is to be destroyed.

1.2. *The right to the liquidation share* proportional to the nominal value of the share (Article 181, Paragraph 1 of the CL). The right to the liquidation share is an irrevocable right of the shareholder. The

liquidation share cannot be limited. Article 182, Paragraph 1 of the CL allows agreement on the amount of the liquidation share, which is different from the nominal value of the share.

In fact, the right to the liquidation share is accounts receivable, the object of which is a monetary amount. The liquidation share can also be in kind, if the interests of creditors and other shareholders are not infringed and there is an agreement between the shareholder and the company [1].

The right to the liquidation share arises after the termination of the company's activities, the satisfaction (or security) of creditors' claims and six months after the invitation to creditors is published. Prior to the objectification of these legal facts, the right to the liquidation share exists in a latent form as an element of the membership right. Only shareholders have this right at the time of termination of the company's activities. It is not a function of fulfilling a contribution obligation. The right to the liquidation share comes in accordance with the general regulations. Like the right to dividends, it is paid within five years.

The debt of the shareholder to the company is not a part of his/her liquidation share. Thus, if the request for payment of dividends arises prior to the dissolution of the company, the shareholder becomes its creditor, which competes with other creditors.

1.3. *Interest on the contribution made*. According to Article 190, Paragraph 1 of the CL, a share can provide a shareholder with interest for the contribution made by him/her, if this is provided for by the statutes. If shareholders have made partial contributions in different proportions, interest may be paid on the excess difference, if this is provided for by the statutes (Article 190, Paragraph 2 of the CL).

Unlike a dividend, which is a part of the profit, interest is the price of using the contribution amount, accounts receivable for a predetermined amount. It is paid prior to profit distribution (Article 190, Paragraph 2 of the CL).

The reading of Article 190 of the CL reasonably leads to the conclusion that interest can be owed in three cases.

The first of them covers the time before the company was founded. According to Paragraph 3 of Article 190 of the CL, the results of the contributions made prior to the company's inception will be in its favor, unless the statutes provide otherwise. Since interest is a “civil fruit”, it can relate to signed shares only up to the moment of the company's creation.

The second hypothesis, according to which the interest can be agreed in favor of the shareholder, is regulated by Paragraph 2 of Article 190 of the CL. According to this text, for different contributions in different proportions, interest is charged with a positive difference. In this case, the right to interest is temporary and exists only as long as there is a difference between partial contributions, and interest is paid only if there is a profit. Interest requests are satisfied prior to the payment of dividends.

In other cases, interest is due to the shareholder only for a limited time. The approval of interest is justified only until the moment when the company begins to carry out the activities for which it was created. To organize the activities of a joint-stock company, especially if it is created by subscription, it takes time during which future shareholders will be deprived of the opportunity to use the amounts of their contributions. The purpose of interest is to attract future shareholders by compensating for lost benefits. Interest is an exception for a joint-stock company. Unlike creditors, shareholders bear the risk of the company's business. For this reason, they are entitled to a portion of the profit, which is an unreliable and variable amount. A guaranteed dividend is a reliable income-generating opportunity that the statutes can provide. The law contains specific rules for the protection of holders of preferred shares (Article 182, Paragraph 4 and Paragraph 5 of the CL), which can be bypassed by an agreement on interest. On the other hand, the contribution is the only obligation of shareholders from which they should not benefit. Allowing the payment of interest for the entire period of the company's existence jeopardizes the interests of its creditors, who will compete with shareholders.

Negotiations on the amount of interest for the period after the start of the company's activity should be considered invalid.

The CL does not allow for a subsequent reduction in the amount of interest by the statutes, as well as the period for their reduction, as well as the period for their receipt, except with the consent of the shareholders who are entitled to receive interest. Shareholders with the right to receive interest must be convened at a separate meeting (Article 182, Paragraph 5 of the CL). The requirements for the quorum and majority for making decisions should be set out in the statutes.

1.4. Each shareholder has *the right to subscribe to a part of new shares* in proportion to his/her stock in the capital prior to the increase (Article 194, Paragraph 1 of the CL). This is a property right: it aims at a good valued in monetary terms, which can be sold on the stock and OTC markets separately from shares. It can be speculated. Changes in the prices of shares that can be acquired by exercising this right also affect the price of this right.

The right belongs to each shareholder, regardless of the number of shares owned by him/her before the capital increase.

The right to subscribe to a part of shares arises after the entry into force of a decision of the general meeting on the capital increase. Until then, it cannot be transferred separately from the share and is payable in accordance with the general regulations.

The exercise of this right is limited by the preclusive period which is determined by the general

meeting, but it cannot be less than one month after the publication of the decision for increase of the capital in the commercial register (Article 194, Paragraph 1, Sentence 1 of the CL).

The subject matter of the right is a subscription to a certain number of shares corresponding to the shareholder's stock in the capital before the increase. There is no regulation in the law concerning the hypothesis of an increase in capital in the case of the issue of more than one class of shares. Since all classes of shares, including the class of shares without voting rights, are included in the capital and provide dividends, with an increase in capital, each share, regardless of its class, will provide a proportional part of new shares with an increase in capital [6], while it is possible to provide otherwise in the statutes or by a decision of the general meeting. According to Article 192, Paragraph 3 of CL for shares of different classes, the decision is made by the shareholders of each class, and in the respective case this may affect the interests of the holders of preferred shares, therefore they should agree to an increase in capital or refuse the possibility of acquiring new shares.

Although not provided for by law, this right may provide shareholders with an advantage over third parties in terms of price – shareholders can purchase shares at a price below the market price (arguments from the title of the provision of Article 194 of the CL). The price should be the same for all classes of shares – the opposite decision contradicts the principle of equality of shareholders.

The right to subscribe to a part of new shares may be restricted or revoked only by a decision of the general meeting taken by a majority of 2/3 of the votes of the shares represented at the meeting (Article 194, Paragraph 4 of the CL). At the same time, the board of directors submits a report regarding the reasons for revoking or restricting the advantages and substantiates the issue value of new shares. The decision of the general meeting is entered in the commercial register for announcement. This regulation is established in the public interest, so the statutes or a decision of the general meeting cannot provide for a smaller majority, as well as take away the right by a general clause. The decision should be fair for all shareholders, not just for some of them. The exception of the right is allowed only ad hoc [7]. The conditions under which the regulation under Article 194, Paragraph 1 of the CL can be taken away must be set out in the statutes. The right to subscribe to a part of new shares is temporary. It lapse within a period determined by the general meeting, which cannot be shorter than one month after the announcement in the commercial register of an invitation for subscribing to shares. The invitation to subscribe to new shares is announced together with the decision to increase the capital in the commercial register (Article 194, Paragraph 3 of the CL).

Administrative rights.

2.1 According to Article 224 of the CL, each shareholder *has the right to information*. The right to information is administrative. This is a personal and irrevocable right that cannot be limited or canceled by the statutes or by a decision of the general meeting. It does not depend on the number of shares owned by the shareholder. By analogy with Article 226 of the CL, it can be assumed that the right to information can be realized through a proxy.

The addressee of the counter obligation is the board of directors or the administrative board that convene the general meeting.

The essence of the right to information is to get acquainted with all written materials related to the agenda of the general meeting and to receive them at the request of the shareholder free of charge. The shareholder may exercise this right no later than the date of announcement or sending the notices for convening the general meeting.

It is assumed that Article 224 of the CL should be interpreted broadly, and that each shareholder has the right to information, the limit of which is the interests of the company as a whole and the shareholder himself/herself [7]. According to A. Kalaydzhiev, this point of view cannot be shared, since the participation of the shareholder in the company's activities is only a participation in the capital, and he/she cannot have the right to full information [6]. The shareholder has no other obligations other than the obligation to make contributions, and he/she is not obliged not to conduct competitive activities. The need to balance the obligations and rights of the shareholder and ensure the protection of company's interests requires a strict interpretation of Article 224 of the CL and does not allow the shareholder to receive information about the company's activities, except for those related to the general meeting [8]. The author of the present paper agrees that this opinion should be supported.

2.2. Shareholders *have the right to participate in the general meeting*, which, like the right to information, is of an administrative, personal and irrevocable nature. It does not require any prerequisites other than owning a share, and does not depend on the number of shares. Shareholders without the right to vote also have the right to participate in the general meeting (Article 212, Paragraph 2, Article 220, Paragraph 2 of the CL). The right to participate in the general meeting includes the following authority: *to attend the meeting, to ask questions, to express an opinion, to make proposals*. This right should also include a passive electoral authority (*the opportunity to be elected to the board of directors, respectively, to the administrative and supervisory boards*).

The most important authority, which is an element of the right to participate in the general meeting, is *the right to vote* (Article 181, Paragraph 1 of the CL). Exercising this right, the shareholder participates in making decisions of the general meeting,

through which the will of the company is formed. An element of the right to vote is *an active electoral right* (the right to elect and dismiss board members, degreed accountants and liquidators) (Article 221, Paragraph 4, Paragraph 5, Paragraph 7 of the CL).

The voting right originates upon fulfillment of the obligation to make contributions (Article 228, Paragraph 1 of the CL). The regulation under Article 228, Paragraph 1 of the CL is dispositive – it is applied, unless otherwise provided in the statutes.

A share entitles its holder to a single vote, unless the statutes provide otherwise (Article 181, Paragraph 1 of the CL).

The voting right belongs to the shareholder. If more than one person is the owner, they exercise the right to vote jointly by designating a proxy (Article 177 of the CL). A special regulation of Article 177 of the CL allows deviating from the general regulation of Article 39 of the PL, so it cannot be assumed that each co-owner can exercise the right to vote independently [3]. P. Goleva holds a different view on the issue of using the right to vote, considering that the ownership of a share gives the right to one vote, which can be exercised by a representative appointed by the co-owners, otherwise each of them can use it [7]. The author of the present paper considers this understanding unacceptable.

The right to vote is exercised personally. It can also be carried out through a representative. The authorization requires a written form of confirmation (Article 226 of the CL). The authorization must be explicit. The authorized person may not be a shareholder. The statutes may specify requirements for proxies or restrictions on the number of persons who can be proxies [6]. P. Goleva believes that the CL does not provide for the possibility of limiting or excluding the right to vote, and that the statutes cannot introduce it. The shareholder cannot be deprived of the opportunity to exercise his/her voting right through a representative [7]. The author of the present paper believes that this point of view should be supported.

In case of non-compliance with the authorization form, it is considered invalid (Article 26, Paragraph 2 of the OCL). The actions of the authorized person without representative authority or outside the limits of representative authority are considered invalid (Article 42 of the OCL). Voting by proxy outside the scope of the instructions of the grantor is an action of the falsus procurator. If a decision of the general meeting is made with the participation of fictitious proxies, since the requirements of the quorum and majority are violated, it can be withdrawn with a claim under Article 74 of the CL. A fictitious proxy is entitled to compensate the bona fide company and shareholders (Article 42, Paragraph 1 of the OCL).

The voting right can be exercised through a proxy, as well as transferred separately from the share and can be exercised on one's own behalf by a person who is not a shareholder. The pledge of the share may also transfer the voting right to the pledgee.

Voting can only be open. The shareholder may vote shares in different ways, unless the statutes provide otherwise. Shareholders may conclude an agreement regulating the voting procedure. This contract should not contradict the norms of law. Its contradiction to the statutes does not lead to its invalidity, but could entail the liability of the shareholder, unless the shareholders agreed to amend the statutes. The contract is valid only for its parties, but not for the company.

The right to vote is established by law, and its restriction is permissible only in cases provided for by law. As a rule, the right to vote can be excluded only when issuing preferred shares. The right to a one-time "ad hoc" voting is limited in case of a conflict of interests. The CL regulates two hypotheses of a conflict of interests: when the general meeting decides to file a claim against the shareholder or take actions to implement the shareholder's liability to the company (Article 229 of the CL). The term "liability" can be interpreted broadly. It should cover not only the civil liability of the shareholder, but also other adverse consequences for him, for example, his expulsion from the company (Article 137, Paragraph 3, Sentence 2 of the CL). The right to vote cannot be exercised in all other cases of a conflict of interests. The right to vote cannot be exercised when the company acquires its own shares. The provision of the statutes on limiting the number of voting shares is invalid, unless the shares are preferred.

The LPOS provides for *special regulations for the representation of shareholders at the general meeting of public companies*. According to Article 116 of the LPOS, a written proxy to represent the interests of a shareholder at a general meeting of shareholders of a public company must relate to a specific general meeting, be clear and contain at least: information about the shareholder and the authorized person; the number of shares covered by the proxy; the agenda with issues proposed for discussion; proposals for solutions on each of the issues on the agenda; the voting procedure for each of the issues, if applicable; date and signature.

In cases where the proxy does not specify the method of voting on individual agenda items, it should indicate that the authorized person has the right to decide whether and how to vote.

The company is obliged to provide a sample of a written proxy on paper or in electronic form, if applicable, together with the materials for the general meeting or upon request after its convocation. The delegation transfer and the proxy issued in violation of the above regulations are invalid.

The proposal on the representation of a shareholder or shareholders holding more than 5% of the votes at the general meeting of a public company must be published in the central daily newspaper or

sent to each shareholder to whom it relates, and must contain at least the following information: the agenda on issues proposed for discussion at the general meeting, and proposals for their solutions; an invitation to shareholders to give instructions on the voting procedure on the issues on the agenda; a statement on the voting procedure for each of the issues on the agenda, if the shareholder who accepted the proposal does not give instructions regarding voting.

The proponent is obliged to vote at the general meeting of the company in accordance with the instructions of the shareholders contained in the written proxy, and if none are given – in accordance with the statement made. He/she may deviate from the instructions of the shareholders, respectively, from his/her statement on the voting procedure, if: circumstances not known at the time of making the proposal or signing the proxy by the shareholders have arisen; the proponent could not request new instructions and/or make a new statement in advance or have not received new instructions from the shareholders in time; the rejection is necessary to protect the interests of the shareholders.

If more than one proxies issued by the same shareholder are submitted, the last one issued is considered valid.

If by the beginning of the general meeting the shareholder has not notified the company in writing about the revocation of the proxy, the proxy is considered valid.

If the shareholder personally attends the general meeting, the proxy issued by him/her for this general meeting is valid, unless the shareholder specifies otherwise. On the issues on the agenda, on which the shareholder votes personally, the corresponding right of the authorized person ceases to be valid.

The company is obliged to notify the Financial Supervision Commission of the voting through representatives within seven days after the general meeting.

Control rights.

3.1. *The right to protection of membership* under Article 71 of the CL.

3.2. *The right of claim to cancel the decisions of the general meeting* under Article 74 of the CL.

According to V. Tadzher, control rights are a subtype of administrative rights – non-property administrative rights. Exercising control means participating in the administration of a joint-stock company [9]. A. Kalaydzhiev disputes this idea because of the special function of such rights, which, unlike administrative ones, are procedural in nature [6].

The law also regulates some special rights with a protective function, which cannot be attributed to the general qualification of shareholders' rights – *the right to obtain shares and the right to request the exchange of registered shares for bearer shares and vice versa*.

Since the shareholder's right of membership is materialized in a security, the shareholder has the right to obtain it. The deadline for obtaining shares is not set in law. Thus, the actual composition of this right includes the decision to issue shares by the competent body of the company, according to the statutes.

The right to request the exchange of registered shares for bearer shares and vice versa is regulated by Article 180 of the CL. The difference between the qualities of registered shares (security in terms of acquiring a share by an unauthorized third party) and bearer shares (speed and ease of transfer) is measured in money. Therefore, the right is of a property nature. The right is inseparable from the share and is exercised at the discretion of the shareholder after full payment of the cost of the registered share, unless otherwise provided in the statutes.

Another division of rights per share is related to the number of shares required for the right to arise. If the rights are related to each share, they are individual. If the right requires the possession of a certain minimum number of shares, it is collective. Among the latter, there is the right to request the convocation of the general meeting. In fact, this right refers to administrative ones. It belongs to shareholders who have held shares, representing at least 5 percent of the capital, for more than three months (Article 223, Paragraph 1 of the CL). The regulations governing the law relate to public policy, and therefore neither the statutes nor the decision of the general meeting can increase the amount of represented capital necessary for the exercise of this right. The nominal value of the shares, and not the number of votes, is important for the emergence of this right (although, if shareholders do not have the right to vote, they will not participate in the general meeting and, therefore, as a rule, should not be able to request a general meeting). The right is exercised in the following order. Shareholders submit a request to the board of directors, the administrative board or the supervisory board. If the meeting is not convened within one month or the general meeting is not held within three months from the date of the request, the district court convenes the general meeting or authorizes the shareholders who requested the convocation or their representative to convene the meeting (Article 223, Paragraph 2 of the CL). The fact of holding shares for more than three months is established in court by a notarized statement.

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