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MINORITY SHAREHOLDERS RIGHTS PROTECTION IN LIMITED LIABILITY COMPANY (SLOVAKIA) [1]

1. General legal regulation of "minority".

As mentioned above, the minority shareholder is a shareholder whose share is smaller than the share of the other(s) shareholder(s). Under the legal regulation (specifically in the Commercial Code) there is no general level of shareholders investment contribution amount (share) to be considered a "minor". Particular rights are given by law to the (minor) shareholder depending on a concrete situation. In general, minority shareholders can be divided into two groups – those who have shares in amount less than 10 % and those who have shares in amount at least 10 % and not as much as 50 %.

2. "Minor" as more than 10 % and less than 50%.

2. 1. Convening of a general meeting.

According to Commercial Code section 129 par. 2: *"Each shareholder whose investment contribution amounts to at least 10% of the registered capital may request the convening of a general meeting. If the executive officers do not convene a general meeting to be held within one month of the delivery of such request, the shareholders are entitled to convene the general meeting themselves."*

According to the cited it can be drawn that the law distinguishes even between minor shareholders because only those of them who have at least 10 % are entitled to request the convening of a general meeting. It could also be drawn that the subject matter right is given to at least "10 % shareholder" as an individual – under the literal interpretation, but this would be incorrect. Following Commercial Code section 130 *("The shareholders may also adopt decisions outside the general meeting. An executive officer or shareholder, or shareholders, whose investment contributions amount to 10% of the registered capital, or supervisory board, if established, shall submit the proposed*

decision to the shareholders for expressing their opinion, stating the period within which shareholders should send their written opinion to the address of the company's registered office. The agreement of association may determine that a shareholder whose investment contribution amounts to less than 10% of the registered capital shall also have such right. If a shareholder fails to provide a statement within the period, it applies that they do not consent. The executive officers shall then announce the results of voting to individual shareholders. A majority shall be counted from the total number of votes belonging to all shareholders.") as well as section 129 par. 2 sentence no. 2 (plurality of shareholders entitled to convene the general meeting when the executive officers do not) it is more suitable to prefer the interpretation in favour of grand total "from 10 % to 49,9 % minor shares" right than in favour of belongings this right to only one individual with at least 10 % share [2].

2. 2. Submitting the proposed decision.

According to Commercial Code section 130 (cited above), shareholder(s) with amount of shares at least 10 % (regardless of number of shareholders – one or more) are entitled to submit a proposed decision outside the general meeting.

2. 3. Protest against (settlement) agreements between the company and its executive officer that exclude or limit the executive officer's liability.

According to Commercial Code section 135a par. 4 *("Agreements between the company and its executive officer that exclude or limit the executive officer's liability are prohibited; neither the agreement of association nor articles of association may limit or exclude an executive officer's liability. A company may waive claims for damages it has against its executive officers, or may conclude a settlement agreement with them only after three years since such claims arose, provided that the general meeting consents to such waiver and that no shareholder or shareholders whose investment contributions amount to 10% of the registered capital register their protest against such decision at the general meeting in the minutes.")* the "at least 10 % shareholder(s)" (regardless of number of shareholders – one or more) are entitled to register their protest against waiving claims for damages against executive officers of the company at the general meeting.

3. "Minor" as minor (without any restrictions).

3. 1. Claiming the invalidity of the decision of the general meeting.

According to Commercial Code section 131 par. 1 *("Each shareholder, executive officer, liquidator, bankruptcy trustee, settlement administrator or member of the supervisory board may file a petition with the court to pronounce the decision of the general meeting invalid, if it is contrary to the*

law, agreement of association or articles of association. A former shareholder or executive officer shall also have such right if the decision of the general meeting relates to them. However, such right shall expire if the entitled person fails to exercise the right within three months from the adoption of the general meeting's decision, or if the general meeting was not duly convened, then from the date when such person could have learned of the decision.") each shareholder (including minor one without any restrictions or specific minimum amount of shares) is entitled to file a petition with the court to pronounce the decision of the general meeting [3] invalid. This right, although not specifically aimed to protect any particular shareholder - especially the minor one, is considered to be significant with proper relevance and possible impact on the company as a whole.

3. 2. Cancel the participation.

According to Commercial Code section 148 par. 1 (*"A shareholder may not withdraw from the company; Unless it concerns a company with a single shareholder, the shareholder may however, they may propose that the court cancel their participation in the company if it may not be justly required of them to remain in the company. The provisions of Section 113 Subsection 5 and 6 shall apply accordingly.")* each shareholder (regardless his share) is entitled to propose the court to cancel his participation in the company. General phrase "justly required" can be concretized depending on individual situation. As derived from the judicial practice: a) health reasons [4], b) discrimination by the other partners [5], c) removing of the assets of company without a proper countervalue that has an impact to proper functioning of the company [6], d) mistrust between partners [7] are considered to be the most common reasons that give justly reasons for cancelling participation in the company. On the other hand, the only reason for cancel the participation of the minority shareholder cannot be the minority itself [8]/

3.3. General basis.

According to the general rule of protection of shareholders in the company - Commercial Code section 56a *("(1) Misuse of a shareholder's/member's rights, in particular misuse of a majority or a minority of votes in a company is prohibited. (2) Any conduct which is intended to place some of the company's shareholders/members at a disadvantage by means of malpractice is prohibited.")* it is prohibited to misuse [9] any shareholder's rights, regardless their minority or majority. As can be observed, the protection of shareholders is not given in general only for the minority ones, but it is given by law to all of them.

On one hand we could notice some social function of commercial law in the area of minority shareholder's protection, on the other hand, the protection is not provided only for them.

In conclusion, it is not possible to adopt a clear attitude whether the interest of minority shareholder shall be prevailing over the interest of the majority one and who is protected for real. Sometimes (especially in case of economic decisions) it is not possible to see the real intended aim of will.

Despite the fact that the law nowadays focuses on its social role [10], commercial law represents a special branch which does not prefer social way of legal regulation. If any shareholder (usually the minority one) is not satisfied with the company's decision, practically there is no other way for him than to bring his claim in front of the court, the time issue of this procedure has to be taken into account as well and possible prompt satisfaction could become impossible – this can put the shareholder off his effort. Basically the minority shareholder is not entitled to "usurp" any powers without additional procedure.

The law distinguishes even between minority shareholders - with share in amount less than 10 % and those who have shares in amount at least 10 % and not as much as 50 %. It is obvious, that the limit has to be set up, questionable is whether this limit is appropriate or not and if this can or cannot be perceived as a discrimination.

1. *Príspevok bol vypracovaný v rámci grantového projektu APVV č. 14-0061 „Rozširovanie sociálnej funkcie slovenského súkromného práva pri uplatňovaní zásad európskeho práva".*
2. *This interpretation is also supported by legal theory e. g. in Komentár k Obchodnému zákonníku. K § 129. In ASPI [právny informačný systém]. Praha: Wolters Kluwer [online 29.10.2015].*
3. *According to the Slovak law (interpretation given by judicial practice e. g. the Supreme Court of the Slovak Republic 5Obo/109/2007: "According to the stable judicial practice, the decision of the general meeting is not a legal act ..."), the decision of the general meeting is not considered to be a legal act.*
4. *The Supreme Court of the Czech Republic 29Cdo/2084/2000.*
5. *The Supreme Court of the Slovak Republic 6Obo/128/1996.*
6. *The Supreme Court of the Slovak Republic 3Obo/355/1995.*
7. *The Supreme Court of the Slovak Republic 4Obo/110/2000.*
8. *The Supreme Court of the Slovak Republic 2Obo/249/2001, the Supreme Court of the Czech Republic 29Odo/194/2004.*

9. See also Jambrichová, K. Ochrana menšinových spoločníkov v spoločnosti s ručením obmedzeným. Cofola 2010. 1. edition. Brno: Masaryk University, 2010. s. 8.

10. Stated in the lecture of Nevolná, Z. (Department of Civil and Commercial Law, Trnava university in Trnava), international scientific conference: Bratislavské právnické fórum 2015. 09.10.2015. The topic of the lecture: Niekoľko úvah o ochrane práv menšinového spoločníka s ručením obmedzeným. [the paper has not been published by finishing this article].

Mészáros P. Minority shareholders rights protection in limited liability company (Slovakia)

The limited liability company is the most popular form of a business company in Slovakia. Its legal regime is governed mainly by provisions of sections 105 through 153 of the Act no. 513/1991 Coll., the Commercial Code as amended (hereinafter as "Commercial Code"). Its registered capital consists of predetermined contributions pledged by its members.

The legitimacy of thinking about the minority shareholder at all is given in case when the company has at least two shareholders / partners and their investment contributions / shares are not the same.

The author deals with chosen issues (especially given rights) to shareholder who is considered to be a minor one. The aim of the article is not to point out and enumerate all related rights, but to select only some of them and give a short general conclusion on their purpose and practical application.

Keywords: limited liability company, minority partner/shareholder, Commercial Code, protection