

DEADLOCK DILEMMAS: LEGAL STRATEGIES FOR RESOLUTION

BOHDAN HAMLIUK, student

IRYNA SHPUHANYCH, Associate Professor, PhD in Law, Scientific Adviser

LILIA KUZNETSOVA, Associate Professor, PhD in Philology, Language Adviser
Ivan Franko National University of Lviv, Law Faculty

Problem statement. Nowadays, in the course of practical application of corporate law provisions, a problem may arise that has already been called a “deadlock”. And the discussions around this issue have already developed certain ways to solve this problem, and here I will try to clearly outline the quintessence of this discussion and touch upon the most logical “recipes” for overcoming the so-called “deadlocks”.

Objectives. The objectives of the research are to emphasize on the legal prospective of deadlock as an inability to reach the consensus by the supreme management body of a company.

Methods. In researching this topic, I used the following methods: analysis of Ukrainian legislation on this issue and analysis of the case law of Ukrainian courts on this issue.

So, what is “deadlock”? Well, reputable law company called CMS call a situation, when there are «differences in the views of shareholders» as a pure «deadlock». But I think, that «differences» is a normal, regular thing in business, and the real problem is, when these differences are preventing the company's workflow and the resolution of important issues for the company. Expanding on this vision, we can formulate the following definition: it is the inability of the shareholders to reach a consensus decision on key issues on the agenda of the general meeting of the company after a certain number of attempts. Since this should be expressed as “inability”, it is worth emphasizing that it is the inability of the company's supreme management body to reach a consensus. Also, a key feature of “deadlock” is that a certain decision cannot be made after a certain number of attempts. Thus, it can be concluded that a one-time inability to reach a consensus on key issues on the agenda of the general meeting is not actually a “deadlock”.

For example, we can imagine a situation where there is an equal distribution of shares (50/50) or a need for unanimous decision-making or a qualified majority of votes (2/3 or 3/4 of the votes). In the first case, no decision can be made without the participation of two members of the company in the general meeting. There may be a variety of reasons for this, but it is not significant, since the main problem is the same “inability” mentioned above. As part of this discussion, it is also worth referring to the position of the Ukrainian courts on this issue. Turning to the court practice, there is an unambiguous position regarding the situation when the plaintiff tries to influence the activities of the general meeting as the supreme management body of the company through the court. The unambiguousness of the case law of the Ukrainian courts is confirmed by the decision of the Supreme Court as part of the panel of judges of the Commercial Court of Cassation dated

02.02.2023 in case №910/10164/21, which states that “the commercial court cannot replace the supreme management body of the company and interfere with the company's business activities”. In other words, the court is not endowed with any means of influencing the decisions of the company's supreme management body. Namely, the court can neither oblige the general meeting to make any decision nor oblige a company shareholder to participate in the general meeting.

Thus, this situation can only be resolved through proper management within the company, namely through prior agreements among the shareholders. One such method is the «Casting vote». It is suitable for cases where the company's shareholders cast the same number of votes for opposing decisions. In this case, a previously designated third party has the same casting vote. In other words, the principle of “shore-based agreements” between the shareholders should be applied here. However, despite the simplicity of this method, it is generally not suitable for resolving issues of particular importance. It can be implemented both on the condition that the parties must support the decision in favor of which the third party voted, and by amending the charter accordingly. As for the practical implementation of this method, this rule can be implemented by enshrining it in the corporate agreement and/or by issuing an irrevocable proxy card for corporate rights (Article 7 and 8 of the Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” accordingly).

Conclusion. Corporate deadlock is a serious obstacle to effective decision-making within a company, requiring internal mechanisms rather than judicial intervention. The key to resolving such situations lies in proactive shareholder agreements, such as the casting vote mechanism, which, while effective, may not be suitable for all critical business decisions.

References:

- [illegible]