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Uvakina Tatiana Vladimirovna

**SAFEGUARDING AND PROTECTION OF THE RIGHTS TO UNCERTIFICATED
SHARES IN THE RUSSIAN FEDERATION**

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**Research supervisor:
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Professor S.D. Mogilevsky**

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Relevance of the dissertation research topic. An appropriate safeguarding and protection of the whole set of rights to uncertificated shares is impossible without a thorough analysis of the legal nature of the latter. Structuring the existing methods of safeguarding and protection of the rights to uncertified shares, applying the most effective of them, developing suggestions on creating new methods of safeguarding and protection applicable in current legal reality require an analysis of the legal grounds for the transfer of uncertificated shares to new owners under the current legislation as well as the transfer of individual rights granted by uncertificated shares.

It is known that the reform of civil legislation on securities introduced in 2013 was aimed, among other things, at clarifying the legal nature of uncertificated shares, however, this has generated a number of debatable issues including ambiguity of the legal category «uncertificated share».

The current legislation lacks a clear legal position on the legal nature of uncertificated shares. Thus, Article 128 of the Civil Code of the Russian Federation unequivocally attributes uncertificated shares to the category of «**property**», while under Article 142 of the Civil Code of the Russian Federation securities were recognized as **obligation and other rights** vested in the decision on issue. Thus, the uncertificated share is simultaneously attributed by the legislator to categories of «property» and «rights». This duality in the legislative definition of the legal nature of uncertificated shares leads to difficulties in law enforcement when it comes to safeguarding and protection of rights to them since complete exercise of rights is impossible without the sufficient level of their safety as well as effective remedies available in case of rights violation.

Taking into account the indicated peculiarities, the law enforcement official is currently faced with a set of practical problems in safeguarding and protection of rights to uncertificated shares. The search for practical solutions requires an in-depth study of the legal framework and jurisprudence, forcing to turn to the study of theory.

At the present there is a need for an updated approach to the issue of safeguarding and protection of rights to uncertificated shares considering the

following factors: emphasizing the branch of corporate law; structuring the corporate rights granted by uncertificated shares to a person authorized to exercise the rights granted by them, taking into account a «managerial» aspect of the legal nature of the latter, ensuring security and providing effective mechanisms of protection of managerial rights granted by uncertificated shares to the holder. Moreover, it is necessary to take into account the current level and the prospects of information technology and digital economy development.

An important characteristic of modern legal reality is the world tendency to introduce new technologies in the sphere of law enforcement in relation to the uncertificated share. First of all, it is a tendency for transition to electronic document exchange, which has considerably facilitated the process of securing and exercising the rights granted by uncertificated shares, as well as a tendency for shareholders to fulfill the duties imposed on them by the fact of owning uncertificated shares (for example, electronic voting via the Internet at general shareholder meetings). In this context it is worth mentioning about the Russian Federation Central Bank campaign on analyzing possibilities of using distributed ledger technology to create and store accounts, applicable for shareholder registers as well¹. Currently, the Central Bank of the Russian Federation in cooperation with financial market participants is extensively discussing and making preparations to test the distributed ledger technology in the indicated area.

On the one hand, the outlined tendencies for expanding the new technology application contribute to acceleration and facilitation of transfer of uncertificated shares, the rights vested by them and execution of such rights; on the other hand, they increase cybercrime risks, with uncertificated shares to be the

¹ Ref.: https://www.cbr.ru/press/IR/1116-22072017_170910112017-07-2211_06_17.html (reference date 10.08.2018).

targets of illegal act. Taking into account the uncertificated form of shares and the absence of the identifier for each paper (the current legislature stipulates only issue number assigning), as well as the tendency in the securities market for transition to remote client identification, the risk of illegal disposal of uncertificated shares from the ownership of the authorized person increases. The indicated risks require the development of adequate mechanisms for their minimization at the legislative level.

Considering the tendencies highlighted above, there is an obvious need for conducting a comprehensive research which, on the one hand, would become an element of scientific investigation of the indicated topic, and, on the other hand, would identify the existing gaps and the ambiguous wording of the current legislation, and suggest ways of correcting the revealed shortcomings. It is necessary to develop regulatory measures protecting both the «property» and «non-property» rights of uncertificated shareholders emphasizing the «managerial» aspect. It seems that the key to the effective functioning of the legal standards governing the outlined issues should be an unambiguous interpretation of the standards and the consistency in application of the legal patterns involved in developing these standards, in various regulatory legal acts.

The aim and tasks of the study. The aim of the dissertation research is a comprehensive analysis of current law standards, jurisdiction and scientific advances in safeguarding and protection of rights to uncertificated shares under the Russian legislation. The indicated analysis has made it expedient to systematize separate theoretic-legal provisions and current law standards on the issues under study.

Considering the aim set the following tasks have been formulated:

- to investigate the legal nature of uncertificated shares;
- to outline the characteristics and the concept of the uncertificated share;
- to justify the need to employ the term "uncertificated" in relation to a share as the specified term underlines only the peculiarities of their legal nature but it is not aimed at opposing to other possible forms of shares;

- to suggest a possibility of other (apart from certificated and uncertificated) forms of shares;
- to specify the list of persons entitled to exercise the rights granted by uncertificated shares, to indicate the persons who fall under the category "the persons authorized to exercise the rights granted by uncertificated shares";
- to validate that only the "property" approach to the definition of the legal nature of uncertificated shares allows to properly safeguard and, if necessary, protect the whole set of rights of their holder;
- to point out legal specifics of encumbering uncertificated shares as property, and restrictions on the transfer of certain rights granted by them;
- to indicate and investigate the peculiarities of various ways of the transfer of uncertificated shares and the rights granted by them;
- to outline the specifics of safeguarding and protecting the non-property rights of the holder and the person authorized to exercise the rights to uncertificated shares;
- to suggest groups of authorized entities to safeguard and protect the rights to uncertificated shares and to structure the legal instruments they use;
- to put forward suggestions on introducing amendments to the current legislation on the basis of the conducted research.

The object and subject of research. The object of the research is the public relations established in the course of owning uncertificated shares, when transferring uncertificated shares, certain rights and obligations conferred by them.

The subject of the dissertation research is the standards of the current Russian legislation regulating the issues indicated as an object of the dissertation research; practice in the application of such standards; scientific advances in the indicated area.

The validity and reliability of the research results are supported by the following facts:

- employing by the author of the dissertation research the methods of scientific knowledge relevant to the subject of the research and accepted as legal science methodology;
- studying the regulations of various levels, including interpretations of the highest legal authorities regulating the problematic aspects examined in the dissertation research;
- reviewing by the author a sufficient amount of scientific literature;
- the fact of positive assessment of the author's ideas by the scientific community in the subject area under study, which is confirmed by numerous invitations of the author to participate in international scientific and practical conferences on the issues of business and corporate law, as well as a significant amount of the author's publications in the State Commission for Academic Degrees and Titles peer-reviewed print media and scientific and practical journals on legal issues.

The scientific novelty of the research is that within the comprehensive analysis of the legal nature of uncertificated shares and specifics in transfer of uncertificated shares to new owners, on the one hand, and transfer of certain rights conferred by them to the persons entitled to exercise the rights conferred by uncertificated shares, on the other hand, safeguarding and protection of the rights to uncertificated shares have been examined using corporate law tools.

Following the "property" approach to the legal nature of uncertificated shares, features of uncertificated shares have been marked out; the author's definition of the concept under study has been formulated and the prematurity in rejection of the term "uncertificated" as applied to the legal category "shares" has been justified; the list of the persons falling under the category "the persons entitled to exercise the rights granted by uncertificated shares" has been suggested. Moreover, the list of authorized subjects to execute safeguarding and protection of the rights to uncertificated shares has been developed, and measures to be taken by these persons to safeguard and protect the rights have been outlined. The place and possible ways to provide safeguarding and protection of the rights exercised by the owners of

uncertificated shares as well as other persons entitled to exercise the rights for uncertificated shares have been determined. The main findings to be defended, which offer new scientific and practical approaches to solving the issues of the dissertation research according to the set out aim, have been formulated. Scientific novelty is also attached to the suggestions for improving the current legislation made in the dissertation.

The provisions to be defended are as follows:

1. The need for allocating and introducing into civil circulation a new type of shares – an electronic share which is not supposed to represent just a record in the register but a full-fledged electronic document containing the issue number as well as an identifier, individualizing each electronic share, in the form of an electronic share number – has been validated.

2. The practicality of introducing the distributed ledger technology to register uncertificated shares and transferring the rights granted by them has been justified since this technology is based on decentralized information storage and simultaneous confirmation of information reliability by all the participants of the system. The introduction of this technology will lead to an increase in the safety of uncertificated shares as property since the distributed ledger technology provides resistance to unauthorized changes of information on the owners of uncertificated shares and the reasons for acquiring and transferring the rights to this property.

3. There has been formulated a conclusion that the shareholder's failure to apply any measures of operational impact as a measure for protecting ownership rights to the uncertificated share has to be considered as waiver of the right but not as violation on the part of the shareholder.

4. The need has been validated to exclude enforcing the rules of civil legislation on the pledge of goods to the pledge of uncertificated shares while preserving in the current legislation of the Russian Federation the rule on transfer of rights granted by pledged uncertificated shares to pledgee on condition of incorporating the rule in the agreement.

5. It has been established that safeguarding the rights to uncertificated shares is carried out through taking static and dynamic measures. Static measures of safeguarding include: setting the term of dividend payment; mandatory redemption and preemption right; receiving by the shareholder reliable information about joint-stock company; licensing securities market registration institutions; establishing their accountability to the securities market regulator and SRO participants of the financial market; legislative consolidation of the mandatory development and approval of the basic standards of SRO by the Bank of Russia. Dynamic measures of safeguarding include: appropriate fulfillment of duties by owners of uncertificated shares with regard to maintenance of ownership; shareholder's exercise of the right to receive an extract from the register of shareholders; confirmation of the shareholders record at the general meeting and the decisions made by the person performing the functions of the counting commission; the Bank of Russia's performance of controlling and supervision functions in relation to the issuers of uncertificated shares, financial organizations and their SRO.

6. It has also been established that unlike safeguarding the rights to uncertificated shares, protecting is possible to be carried out through taking dynamic measures only. These measures include:

a) taking measures of operational impact (application of interim measures; exercise of the right to demand calling of general shareholder meeting and exercise of the right of redemption; shareholders' appeal for judicial protection of the violated rights with demand (to expel from membership the shareholder who has done essential harm to the joint-stock company with their action / inaction; to appeal against the decisions of governing bodies concerning transactions which have caused damage to the joint-stock company); inspections by SROs and the Bank of Russia;

b) taking restorative measures (enforcing shareholders' claims to expel from membership the shareholder whose action / inaction has done essential harm to the joint-stock company; to appeal against the decisions of governing bodies concerning the transactions which have caused damage to the joint-stock company; the return

of uncertificated shares by the person whose account uncertificated shares have illegally been transferred to ; restoration of registry data by applying the procedure stipulated by legislation);

c) applying liability measures (recovery of damages, penalties, compensation for moral harm, fines, delicensing and decertification of a specialist in the financial market, compulsory community service, corrective labor, arrest, restriction of liberty or imprisonment).

7. It has been substantiated that the financial market SRO occupies a special place in the system of self-regulation, and cannot be regarded as a subject of private law. The functions performed by SRO (supervision, regulation) are aimed primarily at pursuing the state interest and involve financial market SROs in public administration.

8. It has been supported that protection of rights for uncertificated shares through measures of operational impact and restorative character, is provided in two stages: "the initiation stage" and "the implementation stage", and certain groups of entities are authorized to act at each of the indicated stages.

Considering the issues studied the following suggestions to improve the current legislation have been put forward:

1. It is offered to introduce the following redraft into Art. 2 of the Federal law «About Securities Market»: «The transfer of uncertificated shares fixes the receipt by a new owner of uncertificated shares of a practical possibility to exercise the rights granted by uncertificated shares to their owners». It is proposed to use this wording widely in regulatory enactments to determine the time when the owner of uncertificated shares receives a non-declared but practical opportunity to exercise the rights granted by uncertificated shares held by him.

2. Since this study has established the fact that issuance of uncertificated shares does not involve their alienation to the first owners, it is suggested to redraft para. 19 of Art. 2 of the Federal law «About Securities Market» excluding the term «alienation» and introducing the term "Placement of Uncertificated Shares» with the following definition: «Placement of uncertificated shares is their issuance in

circulation by writing off from the treasury account of the issuer in the shareholders register and transferring to the owner's personal account».

3. With regard to the detection of almost complete legal vulnerability of the management competence in the event of disposal of uncertificated shares from the shareholder ownership against his will, in situations when this disposal is accompanied with a change in a percentage ratio of the rights granted by one share, it is proposed to redraft Para.3 of Article 65.2 of the Civil Code of the Russian Federation, adding the following phrase: «Unless otherwise stipulated by this Code, a participant of a commercial corporation who, against his will, as a result of illegal actions by other participants or third parties, has lost the right to participate in it, is entitled to demand the return of his share of participation transferred to other persons, as well as fair compensation determined by court and damages at the expense of persons liable for the loss of shares. Herewith, the rate of participation share is determined at the time of its return, basing on its size in the event of the rights to it are not violated. The court may refuse to return the participation share if this makes other persons unfairly deprived of their rights to participate or results in extremely negative social and other publicly significant consequences. In this case, a person who, against his will, has lost the right to participate in the corporation shall be paid fair compensation determined by the court by the persons liable for the loss of his participation share».

4. While analyzing the issue of practical implementation of subscription for uncertificated shares, when a bilateral agreement is not known to be concluded, an application for redemption and securities payment documents are not provided to the seller (Para.3.1 of Article 41 of the Federal Law on JSC stipulates that an application for the acquisition of securities **shall be deemed to be filed** with the company on the day of its receipt by the registrar of the company); the registrar remains the only participant in the legal relationship under consideration who is able to exercise the authority to monitor the proper performance of the duties by the parties of the transaction. In this respect, detailed consideration of the issue on

providing the registrar with the documents confirming payment seems reasonable. Currently, in Para. 3 of Article 41 of the Federal Law on JSC, it is only mentioned that a person enjoying the pre-emptive right is entitled to fully or partially exercise it by submitting an application for its exercise and making payment. In this regard, it seems appropriate to redraft Para. 3 of Art. 41 about JSC, adding the obligation of the acquiring shareholder to provide the registrar with the original document confirming the payment along with the application for exercising the right to acquire shares.

Theoretical and practical significance of the dissertation research is determined by theoretical and practical developments and conclusions made in the dissertation.

These conclusions and developments can be taken into account in the rule-making process, law enforcement, research and teaching activities - in teaching of corporate, entrepreneurial and civil law disciplines.

Testing the research results. Certain issues addressed in the dissertation were solved while reporting at three international scientific and practical conferences held in Moscow «Current problems of business and corporate law in Russia and abroad» - II (22.04.2015), III (25.04.2016g .) IV (25.04.2017). The scientific reports of the author of the dissertation were published in the proceedings of the conferences mentioned above. Some provisions examined by the author in the dissertation formed the basis for methodological materials for teaching the corporate law discipline as well as a special course «Legal Regulation of the Securities Market» at the Russian Academy of National Economy and Public Administration under the President of the Russian Federation.

Certain provisions of the dissertation were published by the author in 13 articles in scientific periodicals, including 6 articles in peer-reviewed scientific periodicals included in the list of the Higher Attestation Commission under the

Ministry of Education and Science of the Russian Federation ("Lawyer" and "Law and Economics" journals).

THE STRUCTURE OF THE DISSERTATION

The **introduction** describes the importance and the extent of previous investigation of the scientific problem addressed in the dissertation, the object and subject of the research, its aim and tasks are formulated. The methodical, theoretical and empirical foundations of the study are indicated, the provisions to be defended are formulated and the changes to the current legislation of the Russian Federation are proposed. In addition, the introduction substantiates the theoretical and practical significance of the dissertation, its structure is outlined. Also, the research evaluation results are given.

In the first chapter - **«The legal nature of uncertificated shares and the legal grounds for the transfer of rights granted by them in the Russian Federation»**, the legal nature of uncertificated shares and the legal grounds for the transfer of uncertificated shares and the rights conferred by them are examined.

The first paragraph of the chapter - «Uncertificated shares in the Russian legislation and their legal nature» - is devoted to the study of the evolution of the Russian researchers views on the legal category «uncertificated share»; provides the interpretation of the legal category under study contained in the current legislation which refers the uncertificated share to the category of «property»; specifies the types of rights granted by uncertificated shares; suggests a classification of characteristics of uncertificated shares and the author's definition of the legal category of the «uncertificated share».

The second paragraph of the chapter - *«Legal grounds for the transfer of uncertificated shares and rights granted by them»* - proposes an analysis of the grounds leading to a logical conclusion that the moment of the uncertificated share right emergence does not always coincide with the moment of emergence of the rights granted by the ownership of the uncertificated share. The paragraph also

reports on the persons falling under the legal category «persons authorized to exercise rights granted by the uncertificated share ».

The third paragraph of the chapter - «*Encumbrance of uncertificated shares and restrictions on the transfer of uncertificated shares and rights granted by them*» - addresses a pledge as a way of encumbering uncertificated shares, and, also, presents an analysis of restrictions on the transfer of uncertificated shares and the rights conferred by them. The indicated restrictions, including antimonopoly restrictions, are discussed to solve the problem of the need for safeguarding and protecting the rights of bona fide parties of a civil transaction.

In the second chapter - «**Protection of rights for uncertificated shares in the Russian Federation**», the specifics of protecting the rights of persons authorized to exercise the rights granted by uncertificated shares are discussed.

The first paragraph - «*Safeguarding of rights to uncertificated shares: the concept and characteristics*» - suggests the author's definition of the concept under study, as well as the reasons for distinguishing between the concepts «safeguarding» and «protection» in relation to the rights to uncertificated shares.

The second paragraph - «*Subjects authorized to safeguard the rights vested in the decision to issue uncertificated shares*» - presents a list of the entities developed within the analysis of the current legislation provisions, and highlights the characteristics of each entity safeguarding the indicated category of rights.

The third paragraph - «*Methods of safeguarding the rights to uncertificated shares* » is devoted to the analysis of the specifics of performing the functions for safeguarding the indicated category of rights by each entity authorized to perform safeguarding.

The third chapter - «**The protection of rights to uncertificated shares in the Russian Federation**» - reports on the study of the specifics of the protection of the rights of persons authorized to exercise the rights granted by uncertificated shares.

The first paragraph of the chapter - «*Protection of rights to uncertificated shares and methods of protection under the Russian law*» - suggests the definition of the legal category under study and a classification of remedies for uncertificated shares rights violation provided by the current legislation of the Russian Federation.

The second paragraph of the chapter - «*Subjects of legal relations under the ownership of uncertificated shares and methods of protection of the rights to this property applied by them*» –outlines the classification proposed in the previous paragraph through analysis of the specifics of the implementation of certain remedies to protect the rights to uncertificated shares by each subject of legal relations under the ownership of them.

The conclusion of the dissertation includes findings, recommendations and suggestions made on the basis of the research.

Prof. / Yegorova N.B. /

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