

ALEKSANDRAS STULGINSKIS UNIVERSITY
BUSINESS AND RURAL DEVELOPMENT MANAGEMENT INSTITUTE

**INNOVATIVE DEVELOPMENT OF THE ECONOMY:
GLOBAL TRENDS AND NATIONAL FEATURES**

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PROSPECTS FOR MANAGEMENT AND DEVELOPMENT OF PROPERTY RELATIONS IN BUSINESS PARTNERSHIPS

Summary

The article deals with topical issues concerning the development of property relations in economic partnerships and substantiates the possibilities for improving the legislative regulation of relations, effective management, quality of used labour and land. It was investigated that the legislation of Ukraine did not pay enough attention to the requirements for the officials with limited liability companies and the solution of the hired labour problems, industrial relations between the employee and the employer, violation of employee rights regarding his social protection. The authors focus on improving the legislative framework for raising the level of members' responsibility for a limited liability company, which will improve its financial, economic, and economies' activities. It is substantiated that the avoidance of the rights violations of an employee concerning his social protection lies in the elimination of the "employee – employer" relations, which are the result of the producer's subtraction from the means of production, and the combination of the employee with the property, with the appropriate means and conditions of work, management, which will give the opportunity to the employee to manifest himself as the personality, the subject of labour could be both the subject of this work's management and to be an influential factor in its productivity and quality.

Introduction

The country's economic development is under the influence of the unity laws of economics and politics: what the economy is, so the politics is, and vice versa. The person and the state must carry out their activities in accordance with the acting laws. But the laws express only the connection between phenomena, and therefore for their use it is necessary to create an economic mechanism – a system of levers, principles, and methods of the economic management, which are fixed by legal norms.

Society develops with the constant development of productive forces (science and technology) and the improvement of industrial relations. The contradiction between the levels of productive forces development and industrial relations creates a destabilizing impulse (the destruction potential), which leads to social

shocks. With the draughting of the industrial relations development's level to the level of the productive forces development, there a positive potential of the evolutionary process appears. Any production processes are based on relationships, expressed through the relationships, connections, arrangements, and contracts.

The production relations are formed in the processes of production, distribution, exchange, and consumption. The content of production relations is based primarily on methods of production factors distribution (ownership on the means of production), and the form of relations – in the mechanisms of the product movement in the sphere of consumption. The basis of the industrial relations is in the social division of labour, norms of behaviour and rules. With the development of society, the industrial relations are complicated and require the development of certain mechanisms of interaction between people that arise before the process of exchange, in the process itself, and after its completion.

Part 1. Regulation of property relations in economic partnerships

Limited liability companies represent one of the most widespread organizational and legal formations in the countryside. However, the process of creating and operating such enterprises, along with the positive aspects of their activities, has some disadvantages in the democratization of governance and social justice.

One of the major problems is that hired employees who have recently worked and are full members of the PCB nowadays almost do not participate in managing the company and in making important decisions (their vote does not solve much). Therefore, an important question is raised regarding the improvement of the management sphere in the activity of the limited liability companies.

At present, Ukraine has not yet created a legislative basis for the activities direct regulation of this organizational-legal form as a corporate-type structure and has not developed a mechanism for legal liability for the bargaining of contracts by the director without the assembly of the members of the company's meeting [1]. If the director has the empowerment, the abuse of rights may appear, and in the court, the members of the partnership (co-owners) can hardly prove the director's fault. It is, therefore, rationally to clearly identify who is the founder, and who are the members of a limited liability company in the village.

According to the law, the founders are the persons who have been working on the establishment of a partnership until the moment of its registration. Participants are the employees who are in the company from the moment of registration to the termination of its activity. Thus, after the registration of the partnership, the founders automatically become participants.

In accordance to the Law of Ukraine “On Economic Associations” [2], Art. 41 and 59, the meeting of the participants solves only the following issues: the amendments to the company's statute; determination of the main directions of the company's activity; establishment of the size, order, and form of making additional contributions by the participants; resolving the issue of acquiring a partnership interest by the company; election and recalling of members of the executive body and the audit committee; approval of annual activity reports, approval of reports

and conclusions of the Audit Commission, procedures for distributing the profits, determination of the procedure for covering losses; establishment and liquidation of the subsidiary enterprises, the affiliates and the representative offices; approval of the contracts concluded for an amount exceeding the amount specified in the company's statute, etc.

We agree with O. Winnick's proposal, and we suggest somewhat to expand and supplement the legislative framework for the activities and management in the limited liability companies. The first proposal is to introduce measures to protect the rights of those company's members, who together have up to 10% of the votes. Their rights may be protected with the statement "About the protection of the minorities' rights (minority owners)": the participants who hold together no more than 10% of the votes have the right to demand the convocation of an extraordinary meeting of the participants at any time and for any reason that contradicts the company's activities [3].

Currently, the typical three-step management structure of the limited liability companies is common in Ukraine: the general meeting is the supervisory committee – an executive body that manages all the current activities of the enterprise (Figure 1).

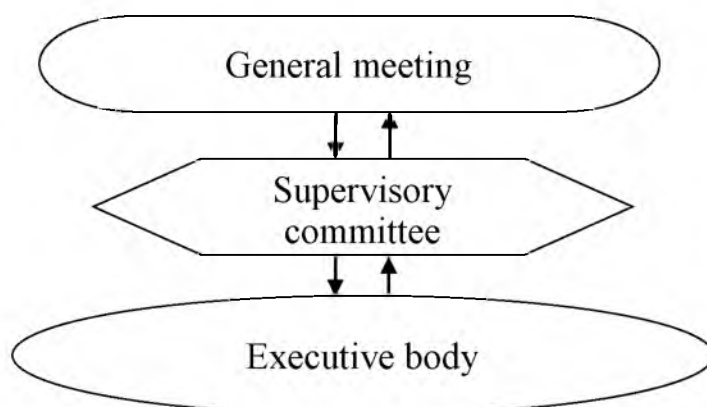


Fig. 1. The current management structure of LLC

The national legislation provides three controlling bodies of the company's activities – the supervisory council – the general meeting – the audit commission (Figure 2). In the system of governance, the management is subordinated to the supervisory council and accountable to the general meeting.

The next direction of improving the company's activity is the development of the instructions and regulations about the directorate, where its powers, procedure, decision-making should be clearly indicated etc. The established instruction about the activities of the directorate must be approved by the meeting of participants.

The currently formed directorate is headed by the general director. Such a post must be taken by a person who has the full confidence of the founders and the members of the company. After all, there are moments when the director, having the preminent empowers, acts not in the interests of the company and its

participants. This is due, for example, to the fact that the company's statutes may have a negligently expanded competence of the director, or general meetings may, for a certain period, extend his powers. In such cases, the audit committee should work effectively, which should monitor the actions of the director and inform the members of the company about the threatening situations appearance in time.

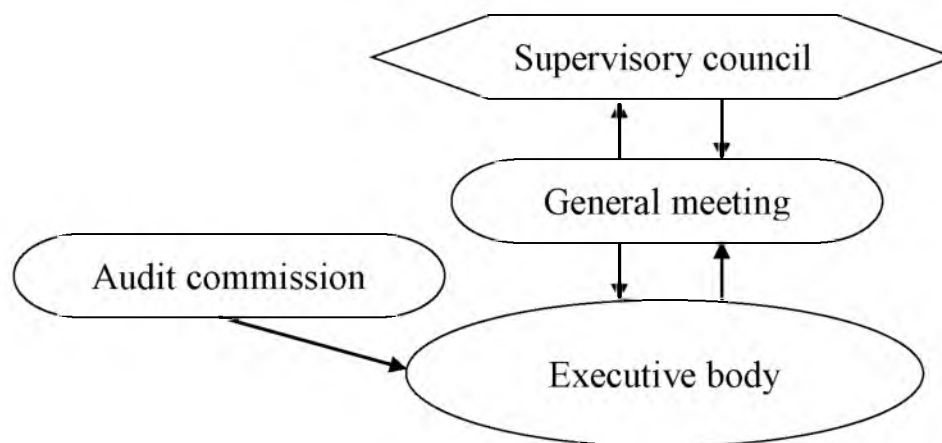


Fig. 2. The structure of the limited liability companies' management as provided by the law

The legislation of Ukraine did not pay enough attention to the requirements for the limited liability companies' officials. As it has been noted, the right to order the property does not give absolute power over it, especially in the sphere of the distribution (appropriation). The right to order the property to a greater extent is a form of cooperation between the management and the enterprise's production and technology personnel.

The manager must always take care of the company's interests. However, the practice often indicates quite different, which causes a problem between the participants (owners) and the managers (managers) of companies, the corporate and private enterprises. The director's (manager's) welfare depends on the economic situation of the enterprise, but in the economic companies, there are the agency (managerial) costs. The agent's material costs in material terms (office space, expensive cars, etc.) reduce the cost of the enterprise and cause a conflict between the participants and the manager (director), which is the result of the ownership and control rights division [4, p. 14-16].

In order to avoid such abuses, a number of national scholars propose to add the representatives from hired workers to the meetings of the limited liability company members with the right of an advisory vote. But, in our opinion, if the company is located in the countryside, it would be advisable to have all the hired workers, the peasants who live there, who worked and are working at the moment, and those who work more than three years, also be given the powers of the participant. Moreover, each of them is the owner of the land plot and the property share. Such introductions in the village contribute to the improvement of the psychological climate in the

groups, the protection of the rights of small shareholders and the implementation of the postulate: all who were born on the Earth should be its masters.

All the members of the society are interested in increasing their income and the only requirement that obliges the societies to have their property, and the size of the authorized fund and the prohibition of participants to carry out the irresponsible activities are determined with the law and institutive documents. Therefore, it can be averred that in its essence the responsibility of a company is complete – it corresponds to all its property (the minimum liability is set at an amount equal to 100 minimum salaries).

But, according to L. Netska, it is necessary to take into account that the company is the owner of the property transferred to him, as a result – the participants are the owners of the company. Consequently, the limited liability of the company is laid only in the property aspect (for the debts of the company they do not correspond to their own property, but only to the contributions to the statutory fund) [5]. Such liability is carried only by the obligations of the company. In other cases, they are responsible for own obligations to the company, which is much more serious and complicated, or the criminal responsibility for violation of the law.

The national legislative base is so elusive that it allows participants to avoid responsibility for offenses against the company, and no rules are mentioned at all about the obligatory responsibility of the company's members.

The German legislation provides the criminal and social responsibility in the case of false information and evidence about the company's activities, in the Ukrainian ones – for such violations the responsibility is not foreseen.

Unlike the Ukrainian legislation, administrative, solidarity, and criminal responsibility are foreseen for violation of the rules in governing the management, the incorrect assessment of deposits and the other in the German legislation. During the creation (re-registering) of LLC in Ukraine, the officials and the participants' responsibility is also not provided for the false information about the debt of the company, but the obligation to refund is suppressed.

Based on the foregoing, the key to solving the problem is the urgent need to improve the legislative framework for raising the level of the limited liability company members' responsibility, which will improve its financial, economic, and economies' activities.

Part 2. Prospects for the development of corporate relations in the management of economic companies

Equally important and difficult is the solution of the hired labour problems, the industrial relations between the employee and the employer, the impossibility of violating the employee's rights to his social protection (the right to annual paid vacation, patient's chart, etc.), as well as the formal rules of the game in society (small stockholders' rights and their property on the part of manufactured products, appropriation of production activities financial results, etc.).

The hired labour is the result of the producer's subtraction from the means of production, which can only be eliminated if the employee is combined with the property and the appropriate means and conditions of work.

Thus, there is a need to eliminate the relationship of "hired employee – the employer", which will provide a combination of subjects and objects of labour and management, where each employee can show himself as a creative person, and the subject the labour will be simultaneously the management subject of this work, which is an influential factor in the growth of its productivity and quality.

A spectacular example of the contradiction's elimination between the hired employee and the manager, the purchase of manpower and the transition from the private to collective ownership and the property instruction is the universal co-operational model – the Mondragon Cooperative Movement in Spain. The peculiarity of such a management system is that the new members of the cooperative do not buy its shares for cash, but are accepted into the cooperative "on the basis of labour", with which the annual payment of the entrance fee is advanced, which represents a loan of labour as the capital for the enterprise. Such cooperatives are not joint-stock companies since they are financed only by contributions and introductory contributions of their members. In addition, each member of the cooperative has an individual account, which increases in accordance with its contribution to the profit, characterized by the level of qualifications and the payment for work. The difference in the payments is set in a democratic way and varies from 1 to 6.

Profit in Mondragon cooperatives is formed as the difference between income and expenses, including the labour costs (labour is a capital advanced by members of the team). After the payment of all expenses, the net profit is distributed on the individual accounts or by the decision of the team remains indivisible. Such a property is an object for the common activity and cannot be in an individual or private form, accumulated and sold.

Non-corporate forms of ownership restrict the share of hired labour, provide the equal voting rights of the cooperative's members, but not their stocks and property, giving them the voting rights. In individual accounts, unequal relationships in the area of managerial authority, the pressure on individuals for selling their stocks and the uneven distribution of the property cannot exist since they are separated from the voting rights, are not transferred or accumulated. Labour productivity and production profitability are much higher in such cooperatives than in other enterprises, which give them an advantage.

All important issues regarded to the production, the distribution of income, and the stuff of the directors' administration should be discussed at the primary level and during the adoption of collective decisions, which are approved by the general meeting, which is an example of democracy.

The current condition of the agrarian sphere of the Ukrainian economy is based on a large number of small owners and those who have only individual abilities to work and powerful owners of production and administration means. The relationship between the employer and the employee in the labour market,

O.O. Voronin says, have similarities with the relationship of property lease, when the last for a coordinated payment is rented for a certain time, for example, in the operational leasing. The lessee (employer) is more interested in not the full value of this property (labour power) but the amount of rent for its use (work payment) during the term of the lease since the lessor (employee) remains to be the owner of his workforce [6]. In this case, employers do not observe the labour laws, as a rule, do not conclude the labour contracts and the employment contracts, so hired workers are not insured from the dismissal with any abusive desire of the employer. Accordingly, employees are separated not only from the means of production but also from the results of their work.

Elimination of the hired labour relations, a division of society into workers and employers, which will give an opportunity to avoid social injustice, should be a strategic goal of Ukrainian politics and economy. So, the hired relations (regardless of the ownership's form) should be changed by the relations in whom the subject of labour is the subject of management at the same time.

An example for this is the formation of a self-management mechanism in labour collectives, whose members must receive the salaries as a share of the enterprise's income, proportionally invested in the social case of individual labour on the principle of the income personalization [7]. The formation of an effective corporate governance system is an important part of the structural reform of the agrarian sector.

The corporate governance links the legislation with the practice of the enterprise's organization and management (joint-stock company, economic company).

The corporate governance basis is in:

- the rules of corporate legislation, which are regulating the establishment and liquidation of the corporations, the rights and responsibilities of stockholders and managers;

- the business practice determined by entrepreneurial activity and economic conditions;

- the corporate culture (a set of customs and rules based on the general cultural level of society, ethical norms and morality).

Thus, effective corporate management will be management that allows the corporations to attract the investments, rationally use the received funds, and provide the increase of the capital value for stockholders.

As a result of the privatization and property reform in Ukraine, almost 40,000 joint-stock companies appeared due to the corporatization of the national economy. As a result, three-quarters of the industrial potential has the stock ownership forms, and two-thirds of the total number of industrial and production personnel are employed in these enterprises. The legal base of the corporate sector enterprises of the economy is supported only by the Laws of Ukraine: "On Business Associations" (1991) [2], "On Privatization of Property of State Enterprises" (1992), Decrees of the President of Ukraine "On Enterprise Corporatization" (1993) [8], "On Measures for the Development of Corporate Governance in Joint-Stock Companies" (2008), etc. The analysis of these legal acts testifies that

Ukrainian legislation is uncertain, contradictory, accompanied by the numerous specifications and changes, which complicates the transparency of the corporate structures' activities. It is expedient and even necessary to introduce social legislation, which will restrain the process of the power managers and property abusing (the development of corporate management), as well as the adoption of a number of laws on business and joint-stock companies, the state property management, adjustment of the owner and society interests' balance.

It should be noted that, by their nature, economy companies are of a corporate type, therefore, it is obviously worth considering the features and the problems of corporate management in Ukraine. The main factors influencing the corporate management are the formation of stock capital, state regulation of relations in these organizational and legislation structures and corporate culture.

The formation specificity of the open-type joint-stock companies is in the publishing the valuable papers (stocks) for attracting the capital in the production or distribution of the state-owned enterprises' property between the employees with the preservation of the state property share. During the distribution of the state property in Ukraine, enterprises did not receive real investments (there was a certificate, free-of-charge privatization), and their activities contradicted the principles of joint-stock companies (non-payment of dividends from the received enterprises profits, irresponsibility of managers for the payment of funds for the use of enterprise potential, artificial decrease in stocks' prices, and respectively, the cost of enterprises, etc.). This situation also appeared from the unwillingness of management to perceive stockholders as owners and to direct the efforts to increase the level of capitalization of enterprises and their market value, as well as the inability of small stockholders to influence the behaviour of management, which they did not choose.

A somewhat different situation is observed when a CJSC is established, where the lease relations with the ransom of property appear. The stockholders (employees) depend more on the management, because the employment, the payment for their labour, the social protection depend on the management of the enterprise. During the distributing stocks in such enterprises, social justice was violated. The management has used the possibility of forming a statutory fund a little on favourable terms for themselves. Such a principle caused a dispute between the stockholders-owners and the management, but in the end, it led to the subordination of stockholders to enterprise management.

The mechanism of managing the state shares remains undeveloped in the statutory funds of the joint-stock companies. In the management of the state-owned stocks, the state often implements its interests contrary to other members of the company, thereby violating the general principles of the corporate governance [9, p. 465-468].

The state can be an efficient stockholder, such as the Japanese model, or not to take part in the corporation (Anglo-American and German models). In the Ukrainian model of corporate management, the state remains a stockholder, while it does not make any effective influence on the corporate decisions and does not

fulfil the duties of a stockholder as an investor. In addition, the funds withdrawn through the tax system are not fully directed to the financing of public goods and transfer payments but are spent on the repayment of the external account payables. Regarding the state's influence on the corporate structures, it has a large fiscal character, based on the imperfect tax system and, accordingly, reduces the enterprises' profitability.

In 1998, a special body for the management of state corporate rights (SCR) was created in Ukraine – the National Agency of Ukraine for the Management of State Corporate Rights (NAMSCR) (Regulations), which quickly compromised itself due to the inability to carry out its functions effectively on its own. The NAMSCR's main mission was to conclude agreements about the managing corporate rights of the state with other interested bodies. Of course, the effective management of state-owned objects by the NAMSCR itself was not to be hoped, as the authorized persons in each case had their own interests and their own perceptions about the results of such management. As a result, the mentioned body lasted for about two years, after which it was liquidated, and the NAMSCR's property was transferred to the State Committee for Entrepreneurship [10].

One of the reasons for the ineffective state corporate rights management is the lack of a clear legal regulation, while the legal framework for the management of objects of state property law should be determined by the law about the governance, the draft of which was developed and sent for consideration to the Verkhovna Rada of Ukraine back in 2004 [11].

According to this bill, the management of the state property right's objects is carried out by the Cabinet of Ministers of Ukraine and its authorized executive bodies, by other subjects determined by the law of empower to the realization of the state rights as the owner of these objects, connected with their effective use and the satisfaction of state and social needs.

Thus, the state property management, which is used for the entrepreneurial activity should be carried out with the aim of receiving the stable income to the budget in the form of taxes, dividends accrued for corporate rights owned by the state, other mandatory payments (fees), as well as the growth of the enterprises capitalization whose property is in the management. And the Law of Ukraine "On Management of Objects of State Property Rights" should consist of the Law of Ukraine "On Management of Objects of State Property Rights" and other laws of the state, which may be established the management features of the certain objects of the state property law or their types, laws and regulations of the Cabinet of Ministers of Ukraine and the executive authorities issued on the execution of laws.

A significant problem of the management in the corporations in Ukraine is the formation of corporate culture. The main features of the corporate culture are due to the imposition of the old ideology of the internal economic management on the artificial mechanisms of the interaction between the management and the stockholders, as well as features of relations between the corporate subjects.

With the start of mass stocking of the enterprises, the outsiders (public and institutional investors) appeared, and who have registered their property with the

help of the privatization property certificates. It was expected that they would limit the managerial capabilities of using, ordering, and owning the property. However, this did not happen, as the certification privatization did not create the stable stockholders who would be able to control the activities of the management. Thus, in the absence of the corporate culture, the management, using the administrative levers, retained its own style of internal management, formalizing the corporate relations only legally. The employee's dependence on the manager leads to the passivity, non-autonomy in decision-making (especially regarding the use of stockholders' rights and actions with own stocks). The significant influence on the motivation of the employee behaviour is the late payment of salaries, which prompts them to relate to their responsibilities and to the enterprise appropriately.

Quite the opposite effect of workers is in the European corporate structures. Thus, the British corporate system is open and characterized, relatively the Ukrainian, with the following features:

- the transparency of accounting and the annual reporting of corporations;

- the support of the directors' council, which in the management structure represents the interests of all stockholders, is responsible for the structure of the executive management of the company, the development of the payment system and the stimulation for the labour, the definition of the contracts terms with the top managers, the distribution of options, the company's stocks;

- few formal requirements are imposed on the company's management and its responsibilities, but the powerful stimulations are enabled for the qualitative execution of all management functions.

The institutions of the German companies' corporate governance are more closed. The legislation promotes owners in the development of personal relationships with the investors, using long-term relationships. In addition, the legislation supports the running of the system of joint corporate business by the insiders and the outsiders, and to the individual groups of the labour collective, the right to vote may be given. The corporate norms of Germany have shaped a certain peculiarity of labour relations and rewards, the organizational decision-making process, the prospects for career advancement of managers and scholars, which has limited the migration of highly skilled workers. Thus, the worker's ownership right for the workplace and also the stimulation for the effective work appeared.

In Ukraine, the privatization has acted as a major factor in the formation of corporate management. Today, the privatization measures are aimed at the sale of the most important enterprises, which have the strategic importance to the economy and the state security, to the efficient owners. It is they, who must force into the application the corporate management standards that, as a result of their own effective activity, will be peculiar to all the other participants in the corporate relations.

The changes in the privatization process occurred thanks to the Decree of the President of Ukraine about the accelerating monetary privatization, which was reflected in the State Privatization Program for 2000–2002. One of the features of the program was to take into account the individual features of the privatization of each enterprise, depending on the financial and economic situation, market value,

interests of the national security. This program was directed to balancing the interests of citizens, the privatized enterprises, and the state within the framework of the corporate governance, as well as the deepening of market transformations.

It should be noted that the imperfection of the Ukrainian legislation constrains the foreign investors who agree to work only on condition that no amendments will be brought into the existing laws, no exceptions will be made for the individuals and legal entities that are destroying the legislative field.

The lack of stable legislation not only does contribute to improving the investment climate in Ukraine but rather discourages the serious investors, which results in the investment flows are received by our neighbours. Thus, Poland has received several tens of billions of US dollars of the foreign investment, and Ukraine for the whole period of independence – about 10 billion US dollars.

Only the privatization's transparency and the capitals' open rivalry – both national and foreign – will be able to provide the appearance of the strategic investors with an effective style of the corporate governance in the Ukrainian privatization market. A significant influence on the improvement of corporate governance can also be done by the state as a stockholder. Today, about 2550 LLCs have the state stocks in the statutory funds, which make up to 5% – in 650 companies; 5-25% – 470; 25-50% – in 1010; 50-75% – 190; 75-100% – in 230 companies.

In the management bodies of these corporations, the state interests represent: in 1600 companies – the privatization bodies; in 440 – local executive bodies; in 330 – holding and state-owned joint-stock companies.

In order to increase the efficiency of state corporate rights management and the role of society, it is necessary:

- to substantiate the strategy of the state corporate rights management;
- to improve the quality of tasks to the state representatives (development of PJSC business plans) and determining the role of the state in its implementation;
- to create the conditions for paying the rewards to the state representatives for the proper execution of their duties;
- to strengthen the control over contracts terms implementation, concluded by the state bodies with the heads of the joint-stock companies' management;
- to provide the state partnership in additional stocks' emissions since the current blocking the emissions by the state restrains the companies' development.

Thus, an important step towards Ukraine's economic growth is the democratization, support and development of the autonomy and self-management of labour collectives and the activation of the workers' initiative.

Conclusions

Consequently, the imperfection of the legislative framework for the regulating the LLC's activities, the discrepancy of the legal managers responsibility mechanism for exceeding powers, bargaining without the agreement of the company's members meetings, creates the conditions for all kinds of abuses, which, moreover, is difficult to prove even in the court. Due to the development of

the instruction and the management's statements is necessary, where its powers, work order, making the decisions are clearly indicated.

In order to eliminate the gaps in the legislation on the LLC's management, it is necessary to supplement the regulatory framework with the protecting the rights measures of those members of the company that have a total up to 10% of the votes. To do this, it is necessary to develop and approve the statement "On Protection of Minority Owners of Rights", in which it should be noted that the participants, who together have not more than 10% of the votes, have the right to control the activities of the company. It is also necessary to empower the company's participant of the hired workers who are working for it for more than three years, as well as the peasants – the owners of land and property shares, living in this territory.

The impossibility of the employee rights' violating concerning the social protection lies through the elimination of relations of "employee – employer", which is the alienation result of the producer from the means of production, and the combination of the employee with the property, with the appropriate means and conditions of work, the management, which will give the opportunity to the employee to express himself as a person, the subject of labour simultaneously to be a subject of this work management, and is an influential factor in its productivity and quality.

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