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## **INTELLECTUAL PROPERTY RIGHTS AS A CONTRIBUTION TO THE SHARE CAPITAL OF A COMPANY**

A huge number of legal entities is created in Ukraine today. According to the Unified State Register of Enterprises and Organizations of Ukraine they include, f.i. 30 696 - joint stock companies, 430,731 - limited liability companies etc.

In order to create these economic companies, its shareholders must possess significant financial or material resources. But they quite often happen to lack the necessary amount of funds to form the appropriate share capital. Fortunately, there is a possibility of forming the share capital by contributing intangible assets (with no additional funds). In their turn, intangible assets include, among others, intellectual property rights [2].

Thus, article 424 of the Civil Code (CC) of Ukraine provides that intellectual property rights can be a contribution to the share capital of a legal entity. Moreover, according to Article 41 of the Constitution of Ukraine everyone shall have the right to own, use, or dispose of the results of his intellectual or creative activities.

The list of intellectual property objects, the rights to which may be a contribution to the share capital, is rather large. The most common among them are industrial property objects, such as inventions, utility models, industrial designs and trademarks. They also might be the objects of copyright and related rights etc.

However, not all intellectual property rights may be a contribution to the share capital. This applies, in particular, to the right to scientific invention (as it is personal) and the right to the trade name, which according to Art. 490 of the CC is transferred to another person only with the integral property complex.

Besides, intellectual property rights can be a contribution to the share capital only in case they have a monetary valuation and may be alienated [3].

According to Article 424 of the CC intellectual property rights are the following:

1. The right to use the object of intellectual property;
2. The exclusive right to authorize the use of the object of intellectual property;

3. The exclusive right to prevent unauthorized use of the object of intellectual property, including the right to prohibit such use;

4. Other intellectual property rights established by law.

The transfer of intellectual property rights to the share capital is, first of all, the action of the right holder, who wants to alienate his rights and receive in return some corporate rights in the company. But the mere will of the right holder is not enough since other members (shareholders) must also agree on forming the share capital by intellectual property rights.

The procedure of transfer of intellectual property rights to the share capital of the company has certain characteristics provided by law. First of all, the alienation of such rights is approved by the intellectual property transfer agreement which may be entered into only in writing [1].

Another important issue concerns the evaluation of intellectual property rights as a contribution to the share capital.

According to Article 115 of the CC, monetary valuation of the contribution is made by the agreement of its members, and in cases established by law, it is subject to independent expert review.

In fact, the members (shareholders) of the company determine the value of the contribution at their own discretion. The law does not provide any specific procedure or criteria that would be binding on the members when assessing contributions. In this case, the members may intentionally assess contributions at a price that is clearly too high and does not correspond to the economic value of the contribution. This can be done in order to artificially inflate the share capital in order to improve business reputation and create the image of a powerful company. And intellectual property rights are more suitable for such unfair behavior than any other kind of contribution.

In order to assess the contribution properly, the members are recommended to follow the Law of Ukraine «On the Assessment of Property, Property Rights and Professional Estimative Activity in Ukraine». It stipulates that the document containing the conclusions of property assessment is the act of assessment.

Thus, in order to transfer intellectual property rights to the company share capital, we need the will of the right holder, will of other members, intellectual property transfer agreement and assessment of the contribution agreed between all members of the company.

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## **JUDICIAL REFORM IN UKRAINE**

On 2 June 2016, the Verkhovna Rada of Ukraine adopted amendments to the Constitution of Ukraine and a new Law «On the Court System and the Status of