Udio u Privrednom Društvu kao Zajednička Bračna Imovina Supružnika

Company Share as a Joint Property of Marital Spouses

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Jedno od veoma čestih pitanja naših klijenata prilikom razvoda braka svodi se na to šta to tačno pripada bračnom supružniku u pogledu privrednog društva koje je nesporno osnovano zajedničkom imovinom bračnih supružnika tokom trajanja braka uprkos tome što bračni supružnik kojeg se ovo pitanje tiče, formalno-pravo nema status osnivača, odn. nije upisan kao vlasnik udjela u tom privrednom društvu? Drugim riječima, osnivački ulog iznosio je 1 euro, privredno društvo danas vrijedi milione, na šta tu ko ima pravo?

U nastavku upućujemo na relevantne zakonske odredbe, nakon čega ćemo kroz primjere iz sudske prakse i pokušati da razjasnimo ovu dilemu kao i da li se bračnom supružniku može priznati status osnivača preko uloga unijetog u društvo iz zajedničke imovine?

One of the most frequently asked questions by our clients during divorce proceedings concerns what exactly belongs to a spouse in relation to a company that was undoubtedly founded using the joint property of the spouses during the marriage, despite the fact that the spouse in question formally and legally does not hold the status of a founder or is not registered as the owner of a share in that company. In other words, the founding contribution amounted to 1 euro, and the company is now worth millions—what rights does each spouse have?

Below, we refer to the relevant legal provisions, followed by examples from court practice to clarify this dilemma, including whether a spouse can be recognized as a co-founder based on a contribution made to the company from joint marital property.

Naime, shodno Porodičnom zakonu Crne Gore, bračni supružnici mogu imati posebnu i zajedničku imovinu. Posebna imovina jeste imovina koju je bračni supružnik stekao prije sklapanja braka i imovina koju je bračni supružnik stekao tokom trajanja braka naslijeđem, poklonom ili drugim oblicima besteretnog sticanja.

S druge strane, zajednička imovina supružnika podrazumijeva imovinu koju su supružnici stekli radom i po osnovu rada u toku trajanja bračne zajednice, kao i prihodi iz te imovine.

Porodični zakon dodatno predviđa da u zajedničku bračnu imovine ulaze i prihodi od posebne imovine koji su ostvareni radom bračnih supružnika, imovine stečene korišćenjem prava intelektualne svojine, imovine stečena po osnovu osiguranja, kao i igrom na sreću u toku trajanja bračne zajednice.

Namely, according to the Family Law of Montenegro, spouses may have separate and joint property. Separate property is the property acquired by a spouse before marriage, as well as property acquired during the marriage through inheritance, gift, or other forms of non-onerous acquisition.

On the other hand, joint marital property refers to property acquired through work and based on work during the course of the marriage, including income derived from such property.

The Family Law further provides that income from separate property obtained through the spouses' labor, property acquired through the use of intellectual property rights, insurance benefits, and even lottery winnings acquired during the marriage are considered part of the joint marital property.

Nadalje, bračni supružnici mogu zajedničku imovinu sporazumno podijeliti na način što će odrediti djelove u čitavoj imovini ili jednom dijelu imovine ili na pojedinoj stvari, kao i da svakom bračnom supružniku pripradnu pojedine stvari ili prava iz te imovine ili da jedan bračni supružnik isplati drugom novčanu vrijednost njegovog dijela.

U odsustvu sporazuma o diobi zajedničke imovine bračnih supružnika, zajednička imovine dijeli se na jednake djelove. U slučaju sudske diobe zajedničke imovine bračnih supružnika, sud će zajedničku imovinu bračnih supružnika podijeliti prema doprinosu svakog od njih.

Dakle, Porodični zakon izričito ne reguliše udio u privrednom društvu kao zajedničku imovinu bračnih supružnika, niti način podjele udjela, odn. prava na udjelu u privrednom društvu u slučaju diobe bračne imovine.

Furthermore, spouses may divide their joint property by mutual agreement, determining shares in the entirety of the property, in a specific part, or in individual items. They may also agree that each spouse receives specific items or rights from the joint property, or that one spouse pays the other the monetary value of their share.

In the absence of an agreement, joint property is divided equally. In case of a judicial division, the court will divide the joint property based on the contribution of each spouse, provided that one spouse proves their contribution was clearly and significantly greater than the other's.

Thus, the Family Law does not explicitly regulate shares in a company as joint marital property, nor the method of dividing such shares in the event of divorce.

Zakon o privrednim društvima u članu 52 propisuje da imovinu društva čine pravo svojine i druga imovinska prava koja predstavljaju uloge njegovih članova i imovina koju je društvo steklo poslovanjem.

Član 279 Zakona o privrednim društvima propisuje da se udio u privrednom društvu stiče uplatom uloga, pri čemu je veličina udjela srazmjerna vrijednosti uloga, izuzev ukoliko je osnivačkim aktom prilikom osnivanja društva ili jednoglasnom odlukom skupštine, u slučaju naknadnih uloga, utvrđeno drugačije.

Dodatno, član društva može imati samo jedan udio u društvu, koji čini njegov procenat u osnovnom kapitalu društva.

According to Company Law, Article 52 stipulates that the assets of a company consist of ownership rights and other property rights representing the contributions of its members, and assets acquired through business operations.

Article 279 of the Company Law provides that a share in a company is acquired by paying a contribution, and the size of the share corresponds to the value of the contribution, unless otherwise stipulated by the founding act or a unanimous decision of the assembly in the case of subsequent contributions.

Additionally, a company member may only hold one share, representing their percentage of the company's capital.

U presudi Osnovnog suda u Podgorici P. br. 162/11 od 27.02.2012. godine (koja je potvrđena presudom Vrhovnog suda Crne Gore Rev. br. 914/12 od 01.12.2012. godine), sud je razmatrao zahtjev tužilje da se utvrdi njeno suvlasničko pravo u obimu od ½ na udjelu u jednočlanom društvu sa ograničenom odgovornošću po osnovu sticanja u toku trajanja bračne zajednice.

U navedenoj presudi sud je zauzeo stav da je tužbeni zahtjev neosnovan, budući da bračni supružnik može ostvariti prema drugom bračnom supružniku samo obligacionopravni zahtjev srazmjeran svom doprinosu u sticanju zajedničke imovine koja je unijeta kao osnivački ulog drugog supružnika u novonastalo privredno društvo.

In the judgment of the Basic Court in Podgorica P. no. 162/11 dated 27th February 2012 (confirmed by the Supreme Court of Montenegro judgment Rev. no. 914/12 dated 01st December 2012), the court considered the plaintiff's claim for co-ownership of ½ of a share in a single-member limited liability company, on the grounds that it was acquired during the marriage.

The court concluded that the claim was unfounded, stating that a spouse may only assert a contractual (obligatory) claim proportionate to their contribution toward acquiring joint property that was used as the founding capital of the new company.

Sud je kao relevantne činjenice istakao da nije postojao dogovor između bračnih supružnika prilikom osnivanja i registracije društva, niti je tužilja ućesnica niti potpisinica odluke o osnivanju i ista nije unijela zakonom propisani ulog u društvo.

Iz navedenog, sud dolazi do zaključka da tužilja ne može steći vlasnička i upravljačka prava na društvu, jer ista pripadaju samo osnivaču društva, pri čemu tužilja ne može steći status osnivača preko uloga koji je unijet u društvo iz zajedničke imovine.

The court emphasized that there was no agreement between the spouses at the time of the company's formation, nor was the plaintiff involved or a signatory in the founding decision, and she did not contribute the legally required capital to the company.

Based on these facts, the court concluded that the plaintiff could not acquire ownership or management rights in the company, as these belong solely to the registered founder. Therefore, a spouse cannot acquire founder status through capital invested in the company from joint marital property.

Upisom društva u Centralni registar privrednih subjekata, u cjelosti su realizovana sva pravna dejstva osnivačkog akta po kome je izvršen unos zajedničke imovine bračnih supružnika u društvo koja se prevashodno manifestuju u činjenici da novonastalo društvo stiče pravni subjektivitet, a zatim i tome da društvo stiče vlasnička prava na unijetom osnivačkom ulogu.

Dakle, osnivanjem društva, po sili zakona izvršeno je konstituisanje njegovih vlasničkih prava na unijetom osnivačkom ulogu od strane tuženog, što znači da zajednička imovina bračnih supružnika postaje svojina društva od trenutka unošenja u društvo, čime se na ovoj imovini isključuju vlasnička prava kako ulagača, tako i njegovog bračnog druga.

By registering the company in the Central Register of Business Entities, all legal effects of the founding act are fully realized, primarily in the sense that the newly formed company acquires legal personality and subsequently gains ownership rights over the contributed capital.

Thus, by operation of law, the contribution from joint marital property becomes the property of the company, excluding ownership rights of both the contributing spouse and their marital partner.

Iako se sud nije izričito pozvao na zakonske odredbe, zaključujemo da je ovakvo tumačenje suda u skladu sa članom 52, stav 1 Zakona o privrednim društvima koji propisuje da imovinu društva čine pravo svojine i druga imovinska prava koja predstavljaju uloge njegovih članova i imovina koju je društvo steklo poslovanjem.

Dakle, slijedeći dosadašnju sudsku praksu dolazi se do zaključka da tužbeni zahtjev treba biti formulisan kao obligacionopravni, a ne stvarnopravni zahtjev, **što znači da bračni supružnik koji nije osnivač, odn. vlasnik udjela u društvu ima isključivo pravo da zahtijeva novčanu protivvrijednost imovine koja je unijeta u društvo kao osnivački ulog.**

Although the court did not explicitly cite legal provisions, this interpretation aligns with Article 52, paragraph 1 of Company Law, which provides that the assets of a company include ownership and other property rights representing the members' contributions and assets acquired through business operations.

Following the established court practice, it is concluded that a legal claim should be formulated as a contractual (obligatory) rather than a proprietary (real) claim. **This means that a spouse who is not a founder or registered owner of a company share has only the right to claim the monetary equivalent of their contribution to the capital invested in the company, provided they prove their contribution to joint property.**

Prednje opisani stav potvrdio je Vrhovni sud Crne Gore u presudi Rev. br. 392/16 od 28.04.2016. godine u kojoj je sud dodatno istakao da ni konsultantska uloga bračnog supružnika u sticanju udjela nije osnov za sticanje suvlasničkih i upravljačkih prava u društvu.

Razlog zbog kog ukazujemo na stavove koje je sud iznio u presudama Osnovnog suda u Podgorici P. br. 162/11 od 27.02.2012. godine i Vrhovnog suda Crne Gore Rev. br. 392/16 od 28.04.2016. godine, jeste što je sud na početku zauzeo stav da bračni supružnik u pogledu prava na udjelu u društvu drugog supružnika ima isključivo pravo da ističe obligacionopravni zahtjev i ovakvu praksu su potvrdili i sudovi u presudama novijeg datuma – Presuda Višeg suda u Podgorici Gž. br. 2893/22 od 17.12.2024. godine i Presuda Višeg suda u Podgorici Gž. br. 4773/22 od 22.09.2023. godine.

This legal position was reaffirmed by the Supreme Court of Montenegro in judgment Rev. no. 392/16 dated 28th April 2016 where the court also stated that a spouse's consulting role in acquiring company shares does not provide grounds for acquiring ownership or management rights in the company.

The reason we emphasize the court's views in the judgments of the Basic Court in Podgorica P. no. 162/11 dated 27th February 2012 and the Supreme Court of Montenegro Rev. no. 392/16 28th April 2016 is that the courts have consistently maintained that the spouse of the company founder may assert only a contractual claim. This view has been confirmed in more recent decisions as well—Judgment of the High Court in Podgorica Gž. no. 2893/22 dated 17th December 2024 and Judgment Gž. no. 4773/22 dated 22nd September 2023.

Ovakav pristup sudova prema kome se bračnom supružniku koji nije osnivač, odn. ne posjeduje udio u društvu ne priznaje stvarnopravni, već isključivo obligacionopravni zahtjev prema drugom supružniku, dovodi i do toga da se privremene mjere odbijaju, iako se istima traži zabrana raspolaganja na ½ udjela, a što sve predlagaču - bračnom supružniku neminovno može nanijeti štetu.

Iz prethodno navedenog proizilazi da, na osnovu važećih zakona i sudske prakse u Crnoj Gori, bračni supružnik koji nije formalno upisan kao osnivač ili vlasnik udjela u privrednom društvu ne može ostvariti stvarnopravni zahtjev na tom udjelu, čak i ako je ulog unijet iz zajedničke imovine. Supružnik u tom slučaju može potraživati isključivo novčanu protivvrijednost svog doprinosa kroz obligacionopravni zahtjev prema drugom supružniku, pod uslovom da dokaže doprinos u sticanju zajedničke imovine.

This judicial approach—whereby a spouse who is not the founder or shareholder is denied a proprietary claim and granted only a contractual claim—also results in the dismissal of motions for interim measures, even when such motions seek to prohibit the disposal of ½ of the company share. This inevitably causes potential harm to the claiming spouse.

From the above, it follows that, based on current laws and judicial practice in Montenegro, a spouse who is not formally registered as a founder or shareholder in a company cannot assert a proprietary claim to that share, even if the capital invested was from joint marital property. That spouse may only seek the monetary equivalent of their contribution through a contractual claim against the other spouse, provided they can prove their contribution to the acquisition of joint property.

Međutim, suština je da čak i kada govorimo o zajedničkoj imovini bračnih supružnika, ista u momentu kada se unese kao ulog u društvo postaje imovina društva i vlasniku udjela u društvu daje upravljačka i imovinska prava koja su srazmjerna veličini udjela. U skladu sa navedenim, zaključujemo da se prilikom diobe zajedničke bračne imovine treba cijeniti vrijednost udjela u trenutku kada se vrši dioba zajedničke imovine, a ne vrijednost osnivačkog uloga unijetog u društvo.

U konačnom, naše klijente na vrijeme upozorimo o aktuelnoj sudskoj praksi iako se sa istom ne slažemo u cjelosti te se usuđujemo da zaključimo da bi iz zajedničkog osnivačkog uloga, shodno svemu naprijed iznijetom, morao proisteći i zajednički udio u privrednom društvu, te da diobu zajedničke imovine bračnih supružnika u ovom kontekstu nije ispravno svesti samo na diobu sredstava koja su unijeta kao osnivački ulog.

However, the essence remains that even when dealing with joint marital property, once such property is contributed to a company, it becomes company property. The shareholder gains ownership and management rights proportionate to the share size. Considering this, we conclude that, when dividing joint marital property, the value of the share at the time of division should be assessed—not just the original founding contribution.

Ultimately, we make sure to advise our clients in a timely manner about the current judicial practice, even if we do not fully agree with it. We dare to conclude that a shared founding contribution should result in a joint share in the company, and that the division of joint marital property in this context should not be limited solely to the division of funds contributed as founding capital.

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