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The Importance of the Classification of Securities for Determining their Legal Status under the Legislation of the Republic of Kazakhstan

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Abstract

Legal regulation of the international financial system in General and the securities market in particular is a problem that has a certain degree of importance and timeliness due to its determining influence on the world economy. Therefore, the analysis of existing approaches to the classification of securities, which is the subject of this article, is an important component of the Institute of legal security of securities. In this article, the author attempted to analyze the number of financial instruments that are recognized as securities in accordance with the current civil legislation of the Republic of Kazakhstan. Given their considerable number, the question of their classification arises.

To achieve the goals of the study, the author widely used comparative legal analysis, which allowed us to identify the main differences and characteristics inherent in certain securities, according to the legislation of Kazakhstan.

The analysis carried out in this article is aimed at identifying the main classification features of securities, on the basis of which their legal status is determined under the national legislation of the Republic of Kazakhstan.

The main conclusions are concentrated on the table, the data of which are confirmed by both doctrinal sources and normative-legal ones.

A comprehensive study of the classification of securities will make it possible to better understand the main directions for determining the legal status of a particular security, which will solve many contradictions of modern legal regulation, which is characterized by incompleteness and the presence of extensive "gray" zones. Also, the conclusion on the classification of securities from the point of view

of the national legislation of the Republic of Kazakhstan will allow for comprehensive legal regulation of the needs of participants in civil turnover.

The novelty is determined by the fact that the data obtained as a result of the study can give an impetus to the further development of market relations in the country by restoring a number of forgotten legal instruments used in the securities market.

Keywords: securities, classification, differences, legal status.

Introduction

Any classification is based on the principle of logical integrity (striving to comprehensively cover all studied phenomena) and severity (inadmissibility of classifying the same phenomenon as different types). Classifications are usually created to describe and primary analysis of the subject being studied. In this aspect, they are based on the features of the analyzed phenomena. Also, based on the classification criteria logically formulated during the analysis, they serve as the basis for the creation of explanatory theories (Kanatov, 2013).

However, explaining reality is only one positive aspect of the existence of classifications. Classification can also have regulatory implications. To keep it simple, the attributes of an object, for example, a security, to a certain class (type) of securities should imply nothing more than the extension of a certain legal regime for them. With this approach, the object (security) becomes a backbone factor for the registration of certain legal communities.

This can be illustrated by the example of realizing the interests of subjects concerning the purchase of securities. If a person acquires a share of a Kazakh issuer, then this entails several legal consequences at once.

First, it acquires an object of civil rights that has the legal regime of a security.

Secondly, within the framework of the general legal regime of a security, a subject will acquire a document that has a specific legal regime that characterizes such a

paper (share) as an internal, issued, registered, non-documentary security, securing a set of corporate and liability rights. The person becomes a participant in corporate relations, within the framework of which the rights of corporate content are exercised; acquires the status of an investor and, accordingly, the opportunities that legislation provides in terms of satisfying its interests and protecting them.

Proceeding from this, when constructing (describing) classifications of securities, it is important not only to get carried away with the description, considering certain characteristic features, but to highlight the legal classifications that can be used for both regulatory and protective purposes. This is seen as consistency in the construction of legal regulation of the securities market. This would significantly reduce the scope of legal regulation, as well as make it more systemic. In this sense, it is advisable to develop the appropriate classification criteria and fix them at the level of general provisions of the Civil Code.

Literature Review

The problem under study is considered mostly from investments and economics, many works in the analyzed area are devoted to the analysis of individual problems (book-entry securities, equity securities, issues of protecting the rights of the owners of these securities, problems of the legal regime of shares, bonds, checks and especially bills of exchange) ... Meanwhile, the study of only a part of the problem, as well as the formulation, based on such studies, of proposals for improving individual institutions without addressing the main issues (legal regime of a security) is not a systematic approach.

In this regard, we can emphasize that there are very few works devoted to the civil regulation of relations concerning securities in the legislation of the Republic of Kazakhstan.

The works of scientists of the Republic of Kazakhstan and foreign countries are devoted to individual issues of the topic under study (Basin, 2003; Belov, 2018; Gabov, 2010; Kanatov, 2013; Karagusov, 2013; Suleimenov, 2006).

Note that a rather serious approach to the study of the classification of securities can be traced in A.V. Gabov's dissertation research, in which the author proposes to change the existing approach of the legislator based on the classification of securities to determine the legal regime of a specific right to both a security, depending on from its belonging to one type or another.

The author rightly notes that it is through the legal classification of securities that it is possible to determine the legal regime of a particular type of security, to determine the totality of those actions that can be carried out with securities, as well as a possible range of methods (means) to protect the owner (Gabov, 2010).

However, if we talk exclusively about the national legislation of Kazakhstan, and, accordingly, about the national doctrine, there is currently no comprehensive and monographic study devoted to the classification of securities and the analysis of its role in determining the legal status of securities in Kazakhstan.

Methods

Any scientific research presupposes an accurate definition of not only its goals and objectives, but also techniques and methods for solving the scientific problem posed. The methodological basis of the research was formed by the systemic, comparative legal and other methods of scientific knowledge.

The use of the comparative-legal method will allow us to determine the problematic issues of creating the foundations for the classification of securities, which will allow us to determine the scope of their legal status. Accordingly, as a result of applying this method, the working group will open up practical opportunities to avoid mistakes made by the owners of securities.

In turn, the systemic method will logically structure the available data and existing legal classifications of securities, in order to form a more extended and logically structured approach to the classification of securities according to the legislation of the Republic of Kazakhstan.

Findings and Discussion

The current Civil Code gives only one example of this kind of construction: the classification of securities into registered, order, and bearer. The Code contains general rules about them, the imposition of which on the descriptions of specific documents, allows you to establish a certain legal regime of paper.

According to existing doctrinal sources, the division of all securities can be attributed to the number of legal classifications that can be used for regulatory and protective purposes: a) into registered order and bearer; b) for equity and securities that are not equity (non-equity); c) for documentary and non-documentary; d) depending on the type of rights granted; e) depending on the type of obliged person; f) for external and internal (foreign securities and Kazakhstani securities); g) derivatives and base; h) depending on the validity period; i) for liquid and illiquid (Belov, 2018).

However, it should be noted right away that in the presented approach to classification there is no indication of the classification criterion for distinguishing each of these species. The fact is that for most of the named classifications, the criteria are still the subject of serious controversy, so we will talk about them in relation to the consideration of each of the named classifications. We only note that the selection of the named classifications was carried out not only on the basis of the use of the relevant categories by law, but also due to the specifics of the legal regime, the various elements of which create the need for the selection of the corresponding groups of papers.

Some of these classifications have long been known, and there are a large number of sources of various kinds devoted to their analysis (nominal, order, and bearer; for example). Others, on the contrary, do not have a long history and have been singled out by legislation not so long ago (external and internal, as well as liquid and illiquid). In this sense, it should be noted that some of the named classifications are not fully established; some time must pass before it can be said that their presence has a significant regulatory value that allows them to be finally

institutionalized. The establishment of this list does not mean at all that other classifications cannot be distinguished, however, from our point of view, most of such classifications will be either very highly specialized, or all of the same descriptive character, but, in the end, will be "covered" by the framework of some from the already named classifications (Lapach, 2002).

When considering the issue of classification of securities, it is important to emphasize the existence of a legally significant classification of securities. According to the doctrine, scholars share the following classification criteria:

- registered order and bearer securities;
- issue-grade and non-issue-grade securities;
- documentary and non-documentary securities (Angelov, 2019);
- classification of securities depending on the type of rights granted;
- classification of securities depending on the type of obliged person;
- external and internal securities (foreign securities and national securities);
- derivatives and underlying securities;
- classification of securities depending on the period of existence;
- "Liquid" and "illiquid" securities (Kanatov, 2013).

The classification of securities is carried out according to certain criteria and is aimed at dividing securities into types (Handbook on securities statistics, 2015). The type of securities is understood as a set for which all essential features are common, the same. Classification of types of securities is the division of types of securities into subspecies, which, in turn, can be subdivided into smaller subspecies (Kanatov, 2013).

Thus, if we take as a basis such a classification feature as "main characteristics", then the securities provided for by the national legislation of the Republic of Kazakhstan can be classified as follows and shown in the table 1.

Table 1. Classification of securities

Classifying feature	Type of security
	Urgent - having a certain period of existence
	Perpetual - existing forever

By the period of existence	
By origin	Primary - Asset-based
	Secondary - issued on the basis of primary securities
By the form of existence	Paper / documentary
	Paperless
By belonging to national legal system	National
	Foreign
By type of use	Investment / capital - which are the object of capital investment
	Non-investment - they serve money settlements in the markets.
By degree of ownership	Bearer - do not fix the owner's name;
	Nominal - containing the name of the owner and registered in the registry
	Order - registered securities transferred to another person by endorsement
By release form	Securities issued in large series
	Non-equity securities, the issue of which is limited
By ownership	Government securities
	Non-government / commercial securities
By the nature of the appeal	Freely tradable - market
	Restricted circulation - non-market
By risk level	Risk-free securities
	Low-risk securities
	Risky securities
By profitability	Profitable securities
	Non-profitable securities
By the form of investment	Debt (bonds, bills) securities
	Ownership equity securities
Essentially economic	Stocks, bonds, bills, etc.
By the degree of primacy	Underlying securities
	Derivative securities
By the type of fixation as an object of civil rights	Regulated
	Unregulated

Source: compiled by the author based on Belov (2018), Gabov (2010), Kanatov (2013).

Moreover, each of the presented group of securities includes their subtypes. This stratification is based on the existing features of the stock market, and the norms of current legislation.

So, if we pay attention to the legal category of securities, then such legal categories as: possession of a security; certification of property and liability rights; management right; certificate of transfer/receipt of property.

If we take economic categories of securities as a basis, then we will see such properties and characteristics as liquidity; profitability; course; reliability; the presence of an independent turnover; the potential for growth in market value.

Article 129 of the Civil Code of the Republic of Kazakhstan lists the main types of securities, depending on the content of the property right certified by them: bond, bill of lading, share and other documents that are classified as securities by legislative acts or in the manner established by them.

Most often, securities confirm the relationship of investing money in an enterprise. For the owner of a security, the purpose of its acquisition is to periodically receive income in the form of dividends on shares or other remuneration - on bonds and other types of debt securities that are the subject of mass issues. For the issuers of the above-mentioned financial instruments, the main thing is to attract, through the issue and placement of securities, those resources that are necessary for doing business. These types of securities are called equity. From the point of view of legislative regulation, their special emphasis is justified by the need to regulate the specific decision-making process on their issuance into circulation, the procedure for state registration of the issue, the procedure for distributing income for these types of securities, etc. (Karagusov, 2013).

Particularly distinguished are those types of securities that are circulated exclusively as proof of short-term credit relations, and in business turnover play the role of a means of payment. These are checks and commercial bills. The process of issuing and circulating these documents also has its own characteristics. For example, state registration of their issue is not required, and the issue itself takes place, as a rule,

only by agreement of the parties to a specific legal relationship when concluding a particular civil law transaction (Law "On circulation of bills in the Republic of Kazakhstan"). A bill and a check are not traded on organized securities markets, they cannot be items of nominal holding.

By the law of July 11, 1997, Articles 137 and 138, which defined the concepts of a bill and a check, were excluded from the Civil Code. It is believed that from now on, a bill and a check represent a means of payment and are not securities since Article 129 of the Civil Code determines that documents can be classified as securities only by legislative acts or in the manner established by them. This approach seems to be erroneous, since in this case no distinction is made between the function, for example, of a bill of exchange as a means of payment or a short-term loan, on the one hand, and its form, which is used as a security, on the other. It should be noted that both a bill and a check, as varieties of monetary obligations, are so closely related to their form that when they lose the form of security, they also lose their function, since they cease to be circulating. It is not for nothing that the US Uniform Commercial Code calls them negotiable instruments. The shape of a security is specifically inherent in the function of a bill of exchange and a check. It is impossible to replace the form of security with any other form here (Karagusov, 2013).

The Civil Code in the number of securities calls a bill of lading, which by its nature is a commodity administrative document, i.e. the owner of the bill of lading has the right, presented by the document, to receive the goods indicated in its content. Law "On mortgages of real estate").

Commodity administrative papers are somewhat different from documents circulating on the securities market. They confirm the right of ownership of things - the right of ownership (bill of lading, warehouse receipt), as well as the right of pledge (pledge certificates). The sphere of their circulation is commodity markets. The legal regime of securities can be fully extended to commercial paper only if the legislative establishment of the absence of a relationship between the commercial paper and the concluded agreement on the basis of which the relevant document

was drawn up. In the event that the regime of trade administrative documents will differ from the regime of securities proper.

The second most important classification is provided by Article 129 of the Civil Code on the distribution of securities into types of activities based on the possibilities of legitimizing the entitled person. That is, it is confirmed by the owner of the security.

As already noted, security is inextricably linked with the right expressed in it. This is evidence of legitimation (confirmation of the right of attraction). There are three different ways of transferring rights to securities, and therefore, three types of securities themselves. In addition, there is a risk that this price will be confirmed.

A bearer security is such if it follows from its content that it (and the property right certified by it) belongs to a person who possesses the original document and is capable of presenting this original to exercise or transfer his authority. Thus, the name of a specific person is not indicated in the text of a bearer security, but only it is noted that this document is a bearer security (for example, a bond). At the same time, it seems that it is permissible to circulate securities, the text of which does not indicate their type and names of their holders. In such a situation, these documents should be recognized as bearer securities, unless otherwise specifically prescribed by law (Yakovlev, 2003; Efimova, 1998).

A specific risk that falls on the shoulders of the owner of the bearer security is that if the document is removed from the authority of this entity, the latter will not receive any performance on this security. It is about the physical destruction of paper. If it was lost, the call-out procedure gives little chance of restoring ownership of the paper. And if this right has been restored, then no one is guaranteed that the person who found the lost paper will not present it for execution earlier than the entitled subject presents the restored document. In such a situation, the debtor is only obliged to execute on paper, and at the same time he has no right to object to anything that is not reflected in the text of the document. The situation is similar when the bearer security is stolen. Even if the thief is found, the actual subject of

the law will be placed in very difficult conditions of proving the illegality of the disposal of the security from under his authority.

Order security is a document according to which the obliged subject must provide execution to the person specified in the text of the document or to the one whom this person, in compliance with the established rules, will also indicate in the text of the document.

An order paper is issued in the name of a certain person, who is the entitled subject. At the same time, in order to increase the turnover of property rights for the circulation of order securities, a special mechanism for their transfer has been established. The debtor is obliged to fulfill the obligation properly to the person to whom the previous owner transfers the document under the transfer notation (endorsement), which is an order to the debtor to provide everything owed on paper to a certain person.

Endorsement is carried out on the document itself (as a rule, on its reverse side) and is of two types:

- nominal, i.e. containing the name of the assignee.
- blank, i.e. indicating only the fact that the paper was transferred, but not naming the new owner of the document.
- The owner of an order security with a blank endorsement has the right to perform the following actions to transfer the document:
- transfer the paper in a manner similar to the transfer of bearer securities - by simple delivery.
- transfer the paper to another person under a registered endorsement.
- enter name or the name of another person on the endorsement.

Until the moment someone's name is entered into a blank endorsement or a document is handed over under a registered endorsement, the order paper is circulated in the same way as bearer securities.

Transfer by endorsements, and in such a way that a number of these inscriptions are not interrupted, is a method of transferring property rights that is specifically

inherent in order securities. That is when the owner of the document presents its original for execution, the obliged person has the right to refuse to provide performance because several endorsements were interrupted somewhere. The continuity of this series is determined by purely formal criteria - the name of the person transmitting the document under this endorsement in the previous transfer inscription should be indicated as the name of the person receiving the rights on the paper (Pavlova, 2008).

The risk of losing the order security is borne by its holder (Article 96 of the Law "On circulation of bills in the Republic of Kazakhstan"). The owner of the order paper with the last registered endorsement, knowing who holds the document, has the right to file a vindication claim demanding the return of the document. If the last endorsement is blank, the opportunity to prove ownership of the lost document becomes almost unrealistic. The loss of such paper leaves virtually no hope of getting execution on it. The physical destruction of the order paper generally excludes the possibility of issuing a duplicate of the document, and, therefore, obtaining execution on it becomes impossible.

In the form of order documents, practically nothing is said about issuing documents – bills of exchange, checks, and commodity administrative documents (bill of lading, mortgage certificate).

A registered security is a property document, the right to refer had only that person, when in this document mentioned persons name.

Clause 3 of Article 130 of the Civil Code provides the possibility of issuing securities. Law "On the Securities Market", which requires the constant presence of holders of registered securities.

The classification of equity securities into government and non-government is also of legal importance. In accordance with the legislation "On the budgetary system" and "On the appearance and management of external debt." Government or bank institution. The issue of government securities is carried out only to finance the deficit of the republican budget. These securities are long-term securities. In the

euro area (Eurobonds), as well as in treasury bonds and treasury bonds circulating on the territory of Kazakhstan. According to articles 14 of the Law "On the Securities Market", the procedure for providing government securities is regulated by law (Basin, 2003; Basin and Suleimenov, 2003).

As for non-government equity securities, they are issued to form the authorized fund of the issuer or to attract borrowed funds, and the procedure for their issue is regulated by the Law on the Securities Market.

The current legislation on securities also operates with the concept of uncertificated securities, the legal nature of which is currently, however, not yet finally determined.

It seems that uncertified securities provided for in Article 135 of the Civil Code are a kind of property rights. In essence, uncertified securities are those property rights that are certified by the content of the security. However, the Civil Code understands uncertificated securities in a narrower sense - as property rights, which are certified only by an entry in computerized or book registers. This is not entirely justified, since the mentioned record is an independent way of confirming the same property rights that can be certified by securities.

When applying (transferring into ownership, pledge, etc.) of property rights that are uncertified securities, it is necessary and sufficient only to make the appropriate entries in the register. Undocumented securities have no other relation to securities proper.

Thus, uncertified securities are no longer a document (not a security), but rather the legal relationship itself. Only those property rights that can be certified by registered securities can exist as uncertificated securities, for it is difficult to imagine uncertified bearer securities.

The Civil Code in Article 135 says that order securities can also be used as uncertified securities. But if the rights of the holders are confirmed only by an entry in the register, then such an entry will in any case be exclusively personal. The word

"order" actually refers to the method of transferring a document by means of endorsements, and the transfer of rights certified by registered securities and entries in the register of securities is possible only through a transfer. In this case, it makes no sense to dematerialize order securities, because all the signs of the institution of securities proper is lost, intended to simplify and simultaneously make the circulation of property rights clearer and more mobile.

The consolidation of the rights of investors in the securities market in the form of uncertified securities (by recording in ordinary or computerized registers) is sufficient for the exercise and transfer of these rights. It is inadmissible to issue securities confirming at the same time the same rights, which are confirmed by the content of the respective registers. However, in the case of the issue of uncertified securities at the request of their owners, it is allowed to issue them certificates or extracts from registers that do not have the force of securities, but in the event of a dispute, the court may recognize it as one of the proofs of the existence of property legal relations. The transfer of a certificate or an extract from the register does not mean the transfer of property rights.

At the same time, the legislation of the republic does not define the concept of payment instruments. For example, the Law "On circulation of bills in the Republic of Kazakhstan" calls a bill of exchange a payment document. If we draw analogies here, then, in essence, payment instruments can be defined as securities traded in money markets. If the denomination or value of any securities is expressed in foreign currency, they are recognized as currency values (Suleimenov, 2006).

Conclusion

Summing up, we concluded that despite the powerful development of an independent branch of legislation on the securities market, which, among other things, is based on the rejection of the classical theory of securities and the creation of a new institution of uncertificated securities, the traditional legal institution of securities as a special kind of legal documents does not become a "legal

monument". The current Kazakhstani legislation specifically regulates the circulation of certain categories of subjective property rights, the most acceptable form of which is precisely a security. The development of market relations in Kazakhstan has revived such forgotten legal instruments as warehouse receipt, grain certificate, mortgage certificate, bill of lading, check, etc.

It is believed that the importance of classification is gaining importance in law enforcement practice. Thus, the same quantity (standard) is valid for all equity securities. Investment fund investment, mortgage participation certificate. For the majority of non-equity securities (other than those mentioned), the situation should be resolved.

Thus, we must conclude that a legislatively secured regulatory framework is required for the classification of securities. Moreover, this classification must be confirmed by the relevant requirements.

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