

WRITE-UP

OWNERSHIP OF A PRIVATE COMPANY VERSUS OWNERSHIP OF THE COMPANY'S PROPERTIES – THE SHAREHOLDERS' LIMITATIONS

By
RICHARD NUNEKPEKU

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INTRODUCTION

Capital given by shareholders provides initial funding for a private company's operational activities. Additionally, shareholders could extend debt or loan to support a company's operational activities. These shareholders' financial investments coupled with other 3rd party credits or debts are used in the value generation (properties/assets and profits) activities of companies.

Shareholders as the residual owners of a company are not entitled to the direct benefits of properties/assets or profits of companies. By incorporation, a private company is bestowed with some unique characteristics – legal personality, limited liability, perpetual existence, centralized management, etc which insulates its operations, management, properties, liabilities among others from the personal benefits or use by its shareholders.

Nevertheless, there are entitlements for shareholders based on their shareholding in a private company – rights of vote, dividend, and return of capital, a subject matter I discussed extensively in one of my earlier articles. Shareholders do not personally own properties or assets of companies and cannot lay any claim of ownership or personal use of same including distribution in wills, gift, or sale.

In this article, I shall draw the distinction between the ownership of a private company and the ownership of its assets whilst offering recommendations for the promotion of compliance with long-standing company law practices and principles on company property ownership reinforced through legislation – the Companies Act, 2019 (Act 992).

OWNERSHIP OF A PRIVATE COMPANY

Up to fifty (50) individuals can incorporate a private company other than a company limited by guarantee by meeting all relevant regulatory ownership benchmarks and completion of the required statutory forms.

Upon incorporation, the individuals will be considered as "owners" of the company. However,

their ownership is limited to the number of "shares" they hold in the company, nothing more – with the shares serving as evidence of ownership or unit of interest in the company.

Shares and their ownership entitle holders of such shares to specific benefits at law. These benefits include the right to attend and vote at annual/extraordinary general meetings, participation in the distribution of declared dividends and to a share in the return of capital by a company in rare circumstances of excess capital position of a company.

It is these benefits or entitlements that are personal and can be put to personal use by a shareholder.

The legal interest in shares is also personal, capable of transfer either by inheritance (distribution in wills or by the operation of law) or sale except not publicly.

Despite all these benefits, the ownership of shares does not entitle holders to personal direct benefits of the revenues, properties, profits, and other economic gains of the company.

PROPERTIES OF A PRIVATE COMPANY

One unique feature of a private company is a "separate legal personality" which enables an incorporated company to engage in business activities. In the process, companies can incur liabilities and acquire assets on its merit distinct from its shareholders (owners).

The legislation-backed principle that a company is distinct and separate from its owners provides the basis for a separate property ownership regime. The rationale for the separate property ownership principle is sound and public-interest based considering the limited liability feature of private companies.

Unless incorporated as an unlimited private company, shareholders generally have legal protection against personal liabilities of companies and are only liable to the tune of amounts unpaid on shares held by them. Therefore, it is proper that shareholders who are not personally liable for the debts of a company should also not be entitled to the direct benefits or use of properties of a company.

The separate legal personality feature gives recognition and capacity to a company as distinct

from its owners with the ability to acquire, own, manage and dispose off properties acquired by it. Therefore, properties acquired by companies are not the personal properties of their owners and cannot be subjected to any personal dealing or use, except of course, where the owner is engaged in the performance of management functions requiring the use of such properties for the benefit of the company.

Properties of a private company are never personal properties of its owners, regardless of whether the owner is a majority or sole shareholder.

Properties of a private company are properties of the company and not the properties of shareholders, simplicita – shareholders do not personally own company properties or assets.

THE MISCONCEPTION, ABUSE AND THE WAY FORWARD

Sadly, many shareholders do not appreciate the legal distinction between ownership of a company (ownership of shares) and ownership of its properties or assets. This has resulted in the practice of equating of ownership of either majority or sole shares to the ownership of the properties or assets of companies subjecting same to personal use and distribution.

Some shareholders have succeeded in the unlawful sale, gift, use, and distribution in testamentary documents of properties of companies they have shares in.

Such practices do not only deprive the companies of their right to such properties for their value generation activities but are also illegal and must be discouraged.

To curb this practice, I recommend some or all of these measures are put in place:

- Company properties/assets should be registered in the names of the company to provide evidence of title or ownership of properties
- Institution of corporate governance structures that limit the interference and control by shareholders over company's properties
- Development of policy guidelines on the use of company properties especially by shareholders who perform management duties requiring their use of company properties
- Continuous education of shareholders on the separate property ownership regime of company

CONCLUSION

A private company is invariably owned by shareholders. However, such ownership is limited to the interest in the shares of the company and its entitlements. A private company as a separate legal entity is capable of acquiring assets and incurring liabilities separate and distinct from that of its shareholders.

Ownership of shares of a private company does not amount to the ownership of its properties or assets. Shareholders must appreciate this distinction to curb the abuse or misuse and illegal disposition and distribution of properties of companies.

Properties of a private company are never the personal properties of its shareholders and should not be treated in such a manner – it is illegal.

About the Author

RICHARD NUNEKPEKU is the Managing Partner of **SUSTINERI ATTORNEYS PRUC,** a client-centric boutique law firm specialized in transactions, corporate legal services, dispute resolutions, and tax. Richard is also a research and teaching assistant for the Commercial Law Course at the Faculty of Law, Ghana Institute of Management and Public Administration (GIMPA). He will welcome views on this via richard@sustineriattorneys.com