Mehin Abdulla,
Student, Baku State University
Address: 33, Academician Zahid Khalilov Street, Baku, AZ 1148, Azerbaijan
Email: abdullsmehin@gmail.com;

UOT 347.72
DOI: https://doi.org/10.30546/2218-9130.008.382.2026.1116

CHARTER CAPITAL AND THE LIMITS OF CREDITOR PROTECTION IN AZERBAIJANI CORPORATE LAW

Açar sözlər: *nizamnamə kapitalı, kreditorların müdafiəsi, məhdud məsuliyyətli cəmiyyət, səhmdar cəmiyyəti, xalis aktivlər, qeyri-pul mayası, korporativ hüquq*

Ключевые слова: *уставный капитал, защита кредиторов, общество с ограниченной ответственностью, акционерное общество, чистые активы, неденежные вклады, корпоративное право*

Keywords: *charter capital, creditor protection, limited liability company, joint-stock company, net assets, non-cash contributions, corporate law*

1. Main Thesis and Its Significance for Azerbaijan

Charter capital performs two distinct legal functions. Within the company, it measures the members' contributions, participation interests and economic interests; in relation to third parties, it represents the minimum amount of property that secures the interests of creditors. Article 90.1 of the Civil Code uses precisely this language for a limited liability company (LLC), while Article 103.2 does so for a joint-stock company (JSC) [2]. Nevertheless, the amount stated in the charter does not necessarily correspond to the cash in the company's bank account, its current assets or its solvency. Assets may decrease through use, disposal or loss, while nominal capital may remain unchanged.

The issue has practical significance for Azerbaijan. According to the State Tax Service's data as at 1 November 2025, 91.9 percent of registered commercial legal entities were LLCs, while only 1.1 percent were JSCs. The share of electronic registration among domestically invested LLCs had reached 96.3 percent [4]. Accordingly, a properly designed electronic monitoring mechanism for LLCs could affect the broader business environment, rather than only individual large companies.

2. The Protection System Established by the Civil Code

The charter capital of an LLC consists of the value of its members' contributions. If the charter does not provide for deferred payment of the charter capital, the founders must pay it in full before state registration. Where a deferral is provided, the payment period may not exceed three months. A member may not be released from the obligation to make a contribution. Only when the capital is increased may a monetary claim against the company be converted into a participati-

on interest, by unanimous decision of the members and subject to the statutory conditions [2].

Capital protection does not end with registration. If, at the end of the second or any subsequent financial year, the value of net assets falls below the charter capital, the LLC must declare a reduction of its capital and register that reduction. Capital may be increased only after it has been paid in full and may be increased from the company's property, additional contributions, contributions from new members and the conversion into participation interests of claims permitted by law. When capital is reduced, written notice must be sent to all creditors. Within one month of receiving the notice, they may demand early performance or termination of the obligation, as well as compensation for losses [2].

Profit distributions are also subject to capital-maintenance rules. An LLC may not adopt a distribution decision if it displays signs of insolvency or bankruptcy, or if the distribution would create such signs. The same prohibition applies where the value of net assets is below the charter capital or would fall below it following the payment [1; 2]. Thus, the Code seeks to protect creditors not only through the initial contribution but also through net-asset and payment restrictions throughout the company's operation.

In a JSC, capital consists of the nominal value of the shares acquired by shareholders. A contribution may take the form of cash, fully paid securities, other property, a property right or another right having monetary value. The founders must pay the capital in full before registration; the value of a non-cash contribution is determined by the constituent meeting and, for subsequent contributions, by the general meeting. Where net assets fall below capital, the reduction must be registered. After a decision to reduce capital, creditors must be given written notice within 15 calendar days. Within 30 calendar days of receiving that notice, they may demand early performance or termination of the obligation, as well as compensation for losses [2].

3. The Limits of Protection Afforded by Formal Capital

The weakness of this system lies not in the absence of rules, but in the gap between the nominal figure and the company's actual assets. The State Tax Service expressly states that no statutory minimum capital amount is prescribed for LLCs and that no period is specified during which the capital must remain on deposit. There is no requirement to keep the amount in a separate deposit account; however, once the paid funds become the company's property, they may be used only for the company's activities and lawful payments. The State Tax Service also treats nonpayment of capital at incorporation as a violation of law and states that the registration authority may bring a court action for the liquidation of the legal entity [2; 5]. Taken together, these propositions reveal the nature of charter capital: it is not an untouchable cash reserve, but a legal indicator that must be properly formed and subsequently supported by capital-maintenance rules.

A non-cash contribution creates an additional risk. The official list of documents required for registration calls for an independent auditor's opinion where charter capital is contributed in the form of property [6]. This is an important initial safeguard against overvaluation. No initial opinion, however, can eliminate a subsequent decline in the property's value. Financial information on net assets, the duty of management bodies to act in good faith and prudently, and enforcement of the rules on capital reductions and profit distributions therefore become more decisive [2].

Creditors do not have equal opportunities to influence risk. Banks and large suppliers may demand financial statements, reduce risk through security, guarantees and contractual cove-

nants, or price it through a higher interest rate. Employees, small suppliers, consumers and persons harmed by unlawful conduct often have no such choice. Where a static capital figure does not reflect the scale of the activity and the potential harm, these creditors are particularly exposed. Mandatory disclosure, controls on asset extraction and the liability of management may therefore provide more effective protection than a minimum-capital threshold [7, pp. 109–144].

4. Lessons from Foreign Experience

European practice does not offer a single solution. In Germany, the minimum capital of a GmbH is EUR 25,000, and payments to members are prohibited where they would affect the assets required to maintain the capital. At the same time, an entrepreneurial company, or UG, may be formed with capital below that threshold. An application to register a UG may be filed only after the capital has been paid in full; non-cash contributions are not permitted, and one quarter of the annual profit remaining after deduction of the previous year's loss carry-forward must be allocated to a statutory reserve [13]. Alongside a high threshold, this model provides a more accessible but disciplined start-up form.

In France, the amount of a SARL's capital is determined by its articles of association, and there is therefore no general minimum threshold. The charter capital of an SA must, however, be at least EUR 37,000 [8]. In the United Kingdom, no fixed general minimum-capital threshold applies to a private company. The Companies Act 2006 limits distributions to distributable profits, calculated as accumulated realised profits less accumulated realised losses, and applies an additional net-assets test to public companies [9; 10]. These differences show that a minimum amount is not, by itself, a universal solution. The legal literature likewise considers the effectiveness of capital rules together with valuation, disclosure, payment restrictions and solvency mechanisms [12, p. 178; 15, p. 413].

The decision of the United States Court of Appeals for the Fourth Circuit in Kinney Shoe Corp v Polan illustrates this point through stark facts. The company had no paid-in capital or bank account, possessed no substantial asset other than a sublease, and failed to observe corporate formalities. The decision was rendered under West Virginia law. Considering gross undercapitalisation, disregard of corporate formalities and an inequitable result together, the court held the sole shareholder personally liable for the debt [14, pp. 210–213]. The decision is not binding on Azerbaijani courts and cannot be applied automatically. Its comparative value is narrower: where a legal entity becomes no more than an 'empty shell', the principle of limited liability may not shield the shareholder from personal liability in every circumstance.

5. Targeted Reforms for Azerbaijan

The first practical proposal is to establish electronic monitoring of contributions whose payment has been deferred. Before the three-month period expires, the system should notify the company and its legal representative, and a document confirming payment should be submitted to the electronic register. If no confirmation is provided, a visible notation should be placed in the register and the materials should be transmitted to the registration authority for commencement of the court procedure prescribed by law. This mechanism is consistent with the high level of electronic registration [2; 4].

The second priority is the valuation of non-cash contributions. The existing requirement for an independent auditor's opinion should be retained, but the functions of an audit and a professional valuation should be distinguished. A standard electronic form should be adopted for the valuation date, the methods used, the principal assumptions and the ownership documents. For

significant or complex property, an independent valuer meeting the requirements of the Law 'On Valuation Activity' should be engaged, and liability for deliberate or grossly negligent overvaluation should be clearly defined [3].

Net assets and profit distributions require equal attention. Large LLCs, public-interest entities and all JSCs should disclose the net-asset figure separately in their annual reports. Where the figure falls below the charter capital, an electronic alert should, in the circumstances prescribed by law, trigger a capital reduction, restoration or liquidation procedure. Drawing on the United Kingdom's 2021 reform proposal, consideration could be given to requiring a signed statement, accompanying a profit-distribution decision, confirming that management has checked for signs of insolvency and compliance with the net-assets threshold [11, paras 2.2.20–2.2.22]. Article 49.3 of the Civil Code provides a potential legal basis for the liability of a manager for loss caused to the legal entity. The claim contemplated by that provision, however, is brought by one or more members holding at least five percent of the participation interests, and the provision does not create a separate direct cause of action for a creditor [2].

The next step is to make creditor notifications verifiable. Creditors of an LLC may submit a claim within one month of receiving notice, while creditors of a JSC have 30 calendar days [2]. In both cases, the period begins on the date the creditor receives individual written notice. A decision to reduce capital should also be published in the state register with a time stamp, and the notice sent and proof of delivery should be retained in the electronic file. Publication in the register should not replace individual notice, but should provide additional transparency.

Article 90-1.3 of the Civil Code prohibits profit distributions in specified circumstances, but the article itself does not establish a separate special claim for the recovery of an amount unlawfully paid [2]. Consideration could therefore be given to adopting a specific rule allowing the company to recover the amount from a member who knowingly received the payment and from the manager responsible for the loss. The purpose is not to punish an unsuccessful business decision, but to prevent an increase in creditor risk caused by extracting capital through payments to members.

Finally, enforcement must be transparent and proportionate. Annual aggregate statistics that do not disclose confidential information should be published on non-payment of capital, mandatory capital reductions, creditor notices, unlawful profit distributions and liquidation claims filed in court. A simple electronic declaration may be sufficient for a small LLC, while independent verification should be linked to thresholds based on the value of the property, the size of the company and creditor risk. Without creating burdensome new formal requirements, this approach could show where the existing rules work and where change is required.

Conclusion

The scientific conclusion of this study is that the effectiveness of creditor protection under Azerbaijani law does not depend on the nominal amount of charter capital alone; rather, it depends on coordinated oversight of capital payments, net assets and distributions. The article's scientific novelty lies in proposing a phased model that combines these elements through electronic monitoring, risk-based valuation and verifiable notification mechanisms. The practical significance of the model lies in the earlier identification of creditor risk and the stronger enforceability of existing rules.

List of used literature:

1. Constitutional Court of the Republic of Azerbaijan (Plenum). Decision on the complaint of M. Muradov et al., 12 June 2017. URL: https://constcourt.gov.az/az/decision/370 (accessed: 04.08.2026).

2. Republic of Azerbaijan. Civil Code, approved by Law No. 779-IQ of 28 December 1999. URL: https://e-qanun.az/framework/46944 (accessed: 04.08.2026).

3. Republic of Azerbaijan. Law 'On Valuation Activity', 8 December 2023, No. 1052-VIQ. URL: https://president.az/az/articles/view/62958 (accessed: 04.08.2026).

4. State Tax Service of the Republic of Azerbaijan. "Commercial Entities Increase by 7.7 Percent", 7 November 2025. URL: https://www.taxes.gov.az/az/post/4428 (accessed: 04.08.2026).

5. State Tax Service of the Republic of Azerbaijan. "Regulatory Framework for Starting a Business: Readiness Analysis". URL: https://www.taxes.gov.az/az/page/biznese-bashlama (accessed: 04.08.2026).

6. State Tax Service of the Republic of Azerbaijan. "State Registration of Commercial Entities: Required Documents". URL: https://www.taxes.gov.az/az/page/kommersiya-qurumlarinin-dovlet-qeydiyyatina-alinmasi-ucun-sened-siyahisi (accessed: 04.08.2026).

7. Armour J., Hertig G., Kanda H. Transactions with Creditors // Kraakman R. et al. The Anatomy of Corporate Law: A Comparative and Functional Approach. 3rd ed. Oxford: Oxford University Press, 2017. P. 109–144. DOI: https://doi.org/10.1093/acprof:oso/9780198739630.003.0005 (accessed: 04.08.2026).

8. Code de commerce. Articles L223-2 and L224-2. URL: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006222861; https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000020148425 (accessed: 04.08.2026).

9. Companies Act 2006. Sections 830–831. URL: https://www.legislation.gov.uk/ukpga/2006/46/part/23 (accessed: 04.08.2026).

10. Companies House. Incorporation and Names. 2026. Paras 1.3, 1.7. URL: https://www.gov.uk/government/publications/incorporation-and-names/incorporation-and-names (accessed: 04.08.2026).

11. Department for Business, Energy and Industrial Strategy. Restoring Trust in Audit and Corporate Governance. London, 2021. Paras 2.2.20–2.2.22. URL: https://www.gov.uk/government/publications/restoring-trust-in-audit-and-corporate-governance/restoring-trust-in-audit-and-corporate-governance (accessed: 04.08.2026).

12. Ferran E. The Place for Creditor Protection on the Agenda for Modernisation of Company Law in the European Union // European Company and Financial Law Review. 2006. Vol. 3, No. 2. P. 178–221. DOI: https://doi.org/10.1515/ECFR.2006.008 (accessed: 04.08.2026).

13. Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG). §§ 5, 5a, 30. URL: https://www.gesetze-im-internet.de/gmbhg/ (accessed: 04.08.2026).

14. Kinney Shoe Corp v Polan, 939 F.2d 209, 210–213 (4th Cir. 1991). URL: https://law.resource.org/pub/us/case/reporter/F2/939/939.F2d.209.90-2466.html (accessed: 04.08.2026).

15. Miola M. Legal Capital and Limited Liability Companies: The European Perspective // European Company and Financial Law Review. 2005. Vol. 2, No. 4. P. 413–486. DOI: https://doi.org/10.1515/ecfr.2005.2.4.413 (accessed: 04.08.2026).

Mehin Abdulla

AZƏRBAYCAN KORPORATİV HÜQUQUNDA NİZAMNAMƏ KAPİTALI VƏ KREDİTORLARIN MÜDAFİƏSİNİN HƏDLƏRİ

XÜLASƏ

Məqalə Azərbaycan korporativ hüququnda nizamnamə kapitalının kreditorların müdafiəsində rolunu normativ-hüquqi və müqayisəli metodlarla araşdırır. Mülki Məcəllənin məhdud məsuliyyətli cəmiyyətlərə və səhmdar cəmiyyətlərinə dair normaları Almaniya, Fransa və Birləşmiş Krallığın yanaşmaları, habelə Kinney Shoe Corp v Polan işi ilə müqayisə edilir. Tədqiqat göstərir ki, nizamnamədə göstərilən nominal məbləğ özlüyündə kreditor üçün real təminat yaratmır; müdafiənin səmərəliliyi mayaların faktiki ödənilməsindən, qeyri-pul mayalarının düzgün qiymətləndirilməsindən, xalis aktivlərin izlənməsindən, qanunsuz bölgülərin nəticələrindən və qeydiyyatdan sonrakı nəzarətin işləkliyindən asılıdır. Məqalənin elmi yeniliyi minimum kapital həddinin artırılması əvəzinə kapital ödənişlərinin elektron izlənməsini, risk əsaslı qiymətləndirməni, yoxlanıla bilən kreditor bildirişlərini və mənfəət bölgüsünə nəzarəti birləşdirən mərhələli modelin təklif edilməsidir. Təkliflərin praktik əhəmiyyəti qeydiyyatdan sonrakı nəzarətin gücləndirilməsi və kreditor riskinin daha erkən müəyyən edilməsidir.

Мехин Абдулла

УСТАВНЫЙ КАПИТАЛ И ПРЕДЕЛЫ ЗАЩИТЫ КРЕДИТОРОВ В КОРПОРАТИВНОМ ПРАВЕ АЗЕРБАЙДЖАНА

РЕЗЮМЕ

В статье с использованием нормативно-правового и сравнительного методов исследуется роль уставного капитала в защите кредиторов в корпоративном праве Азербайджана. Положения Гражданского кодекса об обществах с ограниченной ответственностью и акционерных обществах сопоставляются с подходами Германии, Франции и Соединенного Королевства, а также с решением по делу Kinney Shoe Corp v Polan. Исследование показывает, что номинальная сумма, указанная в уставе общества, сама по себе не обеспечивает реальную защиту кредиторов; эффективность защиты зависит от фактической оплаты вкладов, правильной оценки неденежных вкладов, контроля чистых активов, последствий незаконного распределения прибыли и действенности последующего надзора. Научная новизна статьи заключается в предложении поэтапной модели, сочетающей электронный контроль оплаты капитала, риск-ориентированную оценку, проверяемое уведомление кредиторов и контроль распределения прибыли вместо простого повышения минимального размера уставного капитала. Практическая значимость предложений состоит в усилении контроля после государственной регистрации и более раннем выявлении рисков для кредиторов.

Redaksiyaya daxilolma tarixi: 16.08.2026
Təkrar işlənməyə göndərilmə tarixi: 20.08. 2026
Çapa qəbul olunma tarixi: 23.08.2026