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The Role Of Corporate Control In Protection Of The Rights And Interests Of Shareholders

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ABSTRACT

Due to the large-scale reforms implemented in recent years in our country, the command-and-control system of management in the economy has been completely abandoned, and clear and purposeful work is being done to widely introduce the mechanisms of a free market economy. On February 7, 2017, the Decree "On the Actions Strategy for the further development of the Republic of Uzbekistan" was approved as a basic program to ensure the implementation of these reforms . The decree identifies activities in the field of "Priorities for further development and liberalization of the economy" as one of the five main areas. It was noted that one of the main tasks in this direction is the introduction of modern standards and methods of corporate governance, strengthening the role of shareholders in the strategic management of enterprises.

KEYWORDS

Corporate Control, Governance, OECD, Rights And Interests.

INTRODUCTION

In this Strategy, it is defined that the functions of the owner (shareholder, participant, founder) on behalf of the state are performed only using the methods of corporate governance. It is planned to introduce modern methods of corporate governance such as the

election (appointment) of members of the governing bodies on a competitive basis, increasing their responsibility and accountability through evaluation of their activities, the transition to market mechanisms, the involvement of professional

independent members in the supervisory board, the establishment of committees under it, the introduction of fiduciary obligations to the members of the supervisory board, as well as improving the functioning of regulatory bodies and strategic human resource management. This, in turn, highlights the urgency of introducing modern corporate governance and oversight mechanisms in our national legal system today.

Also, the Decree of the President of the Republic of Uzbekistan dated April 13, 2021 No. 6207 "On measures to further develop the capital market" is a major step in the development of the capital market on the basis of modern standards, in particular, improving corporate governance. The decree sets the task of improving corporate governance in joint-stock companies in accordance with international standards

As a result of measures taken to improve the legal framework, the country increased its ranking by 51 points compared to 2016 in the World Bank's Doing Business ranking for 2020 in the category "Protection of the rights of minority shareholders", which reflects the conditions for doing business.²

The system of corporate control is becoming an issue in our country that requires active development and improvement within corporations. As a result of socio-economic changes and reforms in recent years, in addition to small and medium-sized businesses, a number of large corporations have been formed in our country. By itself, such changes require the task of improving effective corporate governance and supervision in corporations.

¹ O'zbekiston Respublikasi Prezidentining "Kapital bozorini yanada rivojlantirish chora-tadbirlari to'g'risida"gi Farmoni // O'zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz.

Effective corporate governance and oversight systems help companies and countries attract foreign investment, strengthen the foundations for long-term economic development, and ensure competitiveness in a variety of areas.

Depending on the nature of the functions performed, the bodies of the legal entity are divided into governing bodies (supervisory and executive) and controlling bodies. Therefore, in order to more clearly show the essence of the topic and to fully define the legal nature of "Corporate Control", as well as the specifics of its processes, it is necessary to determine the relationship of this concept with the concept of "Corporate Governance".

First of all, it should be noted that the terms "management" and "control" do not mean the same thing. Issues related to the relationship between control and management of corporations are also reflected in the work of legal theorists.

The etymology of the term "corporate governance" goes back to ancient Greek and Latin. The term "corporate" is derived from the Latin word "corpus", which means "body", and corporate governance means a body consisting of people authorized to form a single organization. "Governance" is derived from the Latin-Greek word "gubernatio", which means "governance" and "leadership". According to D.Kotua, management refers to the actions taken to guide the production process, taking into account the coordination of the company's activities and decision-making. Supervision (including financial control) is the ability to determine the results

² <http://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

of management activities related to the development of corporate policy.³

In the opinion of national theorists, however, the concepts are mainly defined within the economic category. According to them, the question of the difference between the concepts of "corporate governance" and "corporate control" is interesting. Corporate control is considered as an opportunity for the subjects of joint-stock relations to constantly influence the strategic decisions made. In a broad sense, corporate control is a set of opportunities that are closely related to the concept of "corporate interest"⁴ and can generate revenue from corporate activities. Corporate governance, on the other hand, is characterized by a corporate control relationship that involves ensuring a consistent and consistent corporate interest. In other words, corporate governance means the formation and introduction of corporate control mechanisms in order to best meet the interests of corporate owners. Hence, corporate control is a tool in the corporate governance system.

There is no single definition of "corporate governance". According to the World Bank, corporate governance is a combination of legislation, standards and good practices of the private sector that enable the company to attract financial and human resources, operate effectively and, as a result, shareholders, other stakeholders and the public. ensures its survival by increasing its long-term economic value to its shareholders while pursuing its interests.⁵

³ Котуа Д. Банковский контроль над крупными корпорациями в США. – М., - С.33.

⁴ Corporate interest is a common interest for a corporation, a company, an organization. This benefit can be in the form of entering the markets of goods or services together, finding a niche in it, strengthening its position, winning in a competitive struggle, increasing profits or the volume of

However, there are definitions of "corporate governance" that indicate that corporate control is a management tool. The Organization for Economic Co-operation and Development (OECD) defines corporate governance as "a set of relationships between corporate bodies, owners and other stakeholders"⁶. At the same time, in other foreign literatures, corporate governance is described as a system that manages and controls business corporations. It is therefore closer to the truth that corporate control is an aspect of corporate governance.

Corporate control is the process of controlling a corporation, as well as controlling the internal activities of the corporation. These corporate control mechanisms are designed to ensure that the planned goals are achieved. It also reduces and corrects any deviations and inefficiencies caused by agency problems in different countries. The problem of agency is a common phenomenon, especially in companies separated from property management, and corporate control mechanisms are needed. In such companies, the management agent and the shareholders in principle pursue different goals, and there is an information asymmetry between the principal and the agent. The company can use corporate control mechanisms to reduce the agency problem and strengthen control within the company.

When it comes to corporate control mechanisms, we can divide them into internal and external control systems. Internal control systems include activities such as recounting and monitoring by shareholders and the board

production of products, dramatically improving the quality of products. .

⁵ The World Bank Report (2005), Corporate Governance Report on the Observance of Standards and Codes.

⁶ <https://www.oecd.org/corporate/ca/Corporate-Governance-Principles-ENG.pdf>.

of directors. Internal control mechanisms combine control and company activities with its objectives.

External monitoring helps reduce information asymmetries in markets such as the managed labor market and the corporate control market. Such measures will improve the performance of these markets and consequently help reduce the agency problem⁷.

Joint-stock companies of economically developed foreign countries have their own management philosophy, which reflects the agreed rules to be followed by all shareholders, managers, employees. A number of mechanisms for effective corporate control have been developed. Established product markets emerge as the first of such control mechanisms. At the same time, in the face of the constant threat of bankruptcy, corrupt managers of corporations begin to work effectively in the interests of the entire group of corporations. The second mechanism of control is the financial market. This allows property owners who have lost interest in the company to sell their shares and thus receive their share of the company's capital. The threat of mass exodus of property owners who have previously invested in the company affects the behavior of managers who have to look for another source of capital and risk losing their jobs⁸.

By economic category, corporate control is a mechanism by which shareholders, financial institutions, and management pursue their own interests, primarily to maintain existing governance and neutralize competitors. This is done using corporate governance tools, so it is not appropriate to view control as the same.

In our opinion, the concepts of corporate governance and control do not mean the same thing, but one is inextricably linked with the other. In our view, corporate control is part of the corporate governance system. Oversight of a corporation is the process of selecting long-term goals in different countries, defining its strategy and policy (financial, production, etc.), forming proposals on the composition of the board of directors (in the Anglo-Saxon legal system) and governing bodies. It was first proposed in the 1930s to define the nature of oversight as an opportunity to select or reject candidates for the company's board of directors.

Modern large corporations have a whole system of control over the financial and economic activities of the company, the purpose of which is to ensure the rights of shareholders (participants) and potential investors of the company. In addition to the traditional control mechanisms in the form of audit commissions and external audits, this system may include the activities of the audit committee under the board of directors and the establishment of an audit service as a separate unit of society.⁹

In our national legal system, corporate control is basically the control over the financial and economic activities of a society. We don't consider it necessary to comment on such assumptions. This is because control over the financial and economic activities of a society is one of the types of corporate control. As a whole system of corporate control, mechanisms should be created to control the internal and external activities of the company, including shareholders and corporate bodies, as well as its structural units.

⁷ Douma, S. and Schreuder, H. (2013): *Economic Approaches to Organisations*, London, p.364.

⁸ H.R.Rahmonqulov, S.S.Gulyamov. *Korporativ huquq.* –T.: TDYI nashriyoti, 2008. 255-bet.

⁹ Claessens S. *Corporate Governance and Development* // World Bank Research Observer. – 2006. – № 1. – p. 91-122.

The concept of corporate control was first developed in the early 1930s by American economists and introduced by Berle and G. Means¹⁰. They believed that corporate control should be understood as the ability of a company to select or reject candidates for the board of directors. If oversight was based solely on the activities of boards of directors, we could accept this definition. However, practice has shown that in addition to the control exercised by the board of directors, there are other entities that have the ability to exercise control over the company. As a result, the doctrine has been the subject of much controversy in recent years.

For example, the American economist D. Kotz gave a slightly different definition of control. According to him, the ability of corporate governance to formulate general policy is considered corporate control.

Of course, all the definitions directly depend on which theory of corporate control the joint-stock company applies to its authors. So far, three such theories have been referred to in the legal literature.

- 1) The theory of shareholder control;
- 2) Theory of supervision of financial institutions;
- 3) Management theory.

In short, according to the theory of joint-stock control, control in a joint-stock company is carried out by shareholders who have an appropriate number of shares. The basis for such control is the right to "own shares", in particular the right to elect a board of directors.

Implementation of corporate control, first of all, joint-stock control allows to simplify the

investment process as much as possible without the involvement of credit institutions, but the development of direct forms of investment complicates individual investment selection, forces potential investor to search for qualified consultants and additional information¹¹. Therefore, the history of the corporation is constantly associated with, on the one hand, the maximum democratization of investment forms, on the other hand, the increase in the number of financial intermediaries provided by financial institutions. In turn, shareholder control provides management and financial control. Management control is the ability of individuals and legal entities to manage the business activities of the enterprise, to ensure the continuity of management decisions and structure. This is a form of stock control. Financial control is the ability to influence the decisions of a joint stock company using financial instruments and special tools. So, the primary task of credit and financial institutions is to provide funds to society. Financial control is formed on the basis of credit relations¹². Therefore, financial control seems to be opposed to joint-stock control, as it is formed in the process of choosing its own and external sources of financing for the company. The dependence of a joint-stock company on external sources of financing, as well as the expansion of such sources, increases the importance of financial control.

The development of credit and financial institutions and organizations, as well as the expansion of their role in financing businesses, will lead to the development of control relations.

Secondly, the formation of majority and minority shareholder control based on shareholder control.

¹⁰ Berle A.A, Means G.C. The modern Corporation and Private Property. New York: Macmillan, 1932.

¹¹ Л.Н. Тепман. Корпоративное управление. - М.: ЮНИТИНИ-ДАНА, 2015. - 182 с.

¹² Ибрагимова А. Р. Систематизация законодательства внешней торговли-залог успешного осуществления бизнес-деятельности // Молодой ученый. – 2019. – №. 20. – С. 312-315.

Majority control is the control of a company by shareholders who own more than half of the shares. That is, the level of control provided by the majority stake.

Minority control is the control over the company's activities by shareholders who own less than half of the shares of a given company.¹³

In our view, a minority shareholder, unlike most shareholders, owns a small number of shares and does not have a decisive influence on the company's operations. Major shareholders, on the other hand, have a relatively greater influence. Development of majoritarian and minority systems of corporate control in joint-stock companies will increase the efficiency of the company's activities.

Based on the above, the charter requires the holders of ordinary shares of the joint-stock company not less than 1% to convene a meeting of the Supervisory Board and the agenda, distribution of profits, the possibility of replacing their candidacy for membership in the governing body (before the general meeting).¹⁴ It is also necessary to strengthen the right of minority shareholders to act on the basis of a committee or mutual agreement. This will strengthen the monitoring of shareholders' activities by shareholders.

Thirdly, the issue of improving internal and external control in joint stock companies. The purpose of internal control is to provide corporate governance with the information needed to make decisions. Its scope is the economic and financial operations of the company, which are examined in order to determine the legitimacy, reliability and expediency, the security of material and financial resources, an objective assessment of

the company's internal resources to improve efficiency.

Internal control includes audit control performed by internal audit services and audit committees of supervisory boards. The presence of a specialized internal control service within the company is determined by the scope of activities, the specifics of doing business and the composition of the company's charter capital.

At present, an important resource of enterprises, such as internal audit, is underestimated, although its proper use increases the efficiency of enterprises. World practice shows that if the external audit institute leads to serious shortcomings, it can lead to the bankruptcy of even large enterprises, which occupy strong positions. High-level corporate governance is a positive sign for prospective investors and lenders, which serves to increase the investment attractiveness of the enterprise. An integral part of such corporate governance is internal audit.

A number of comprehensive programs are being implemented to reduce state participation in the economy, develop public-private partnerships, intensify investment policy, expand export potential and foreign economic relations, and remove bureaucratic barriers to the development of free enterprise.

At the same time, the number of enterprises operating in the country has grown significantly. In particular, the number of enterprises and organizations registered in Uzbekistan in 2001 (excluding farmers) was 151,765, and as of January 1, 2021, this figure reached 503,538¹⁵. Of these, 475,197 are active, 28,341 are inactive, 95,311 are newly

¹³ <http://www.corp-gov.ru>

¹⁴ Aksiyadorlik jamiyatlari faoliyati samaradorligini oshirish va korporativ boshqaruv tizimini takomillashtirish bo'yicha komissiya Majlisining

2015-yil 31-dekabrda 9-son bayonnomasi bilan tasdiqlangan Korporativ boshqaruv kodeksi.

¹⁵ Prepared on the basis of data from the state statistics office. www.stat.uz

established and 11,547 are closed. In particular, the number of joint-stock companies has reached more than 600 in the country (240 with a state share). This has created the task of improving the effective system of corporate control in our country. But nowadays some forms of corporations are not developed yet¹⁶.

In order to improve the system of corporate control in Uzbekistan, we offer the following, studying the scope of work in this area in our country, as well as the situation of the institute in developed countries, their experience in this field:

The first is to impose fiduciary obligations on the members of the supervisory board in joint stock companies. It is necessary to include relevant articles of the Law "On Joint Stock Companies and Protection of Shareholders' Rights". In turn, the fiduciary obligations of the members of the supervisory board oblige the members of the supervisory board to make decisions independently, to act conscientiously and diligently in the interests of the enterprise, as well as to be cautious in making decisions. Also, when improving the current legislation, it is impossible to bypass these historical, fundamental principles of bankruptcy and ignore them.¹⁷

For example, in the German experience, directors (CEOs) are obliged to protect the company from financial penalties and losses under the German Joint Stock Company Act (Aktiengesetz)¹⁸. As trustees of the company's assets, the company's directors assume fiduciary obligations. Under the term "Treuepflicht", directors perform their fiduciary duties, do not intend to enrich

themselves at the expense of the company by using their positions, and perform their duties conscientiously.

Secondly, to optimise the composition of the supervisory boards of joint stock companies. In particular, based on the best practices of foreign countries, it is necessary to include in the composition of the supervisory board an acceptable numbers of independent members.

According to internationally accepted norms, the company's board of directors gives independent directors the power to oversee the company's activities and make decisions on key issues. They have no material interest in the board, exercise control on behalf of many minority shareholders who do not participate in the board, and are their representatives.

In our opinion, the number of members of the Supervisory Board from 5 to 9 is acceptable to our national joint-stock companies. We also consider it permissible to include up to 3 (30%) independent members on the supervisory board. According to the current law "On joint-stock companies and protection of shareholders' rights", the company's supervisory board must include at least one independent member, whose shares are included in the stock exchange quotation list of the stock exchange possible. In societies where the share of the state and (or) business association is predominant, nomination and voting for an independent member of the supervisory board shall be carried out by representatives of the state and (or) business association.¹⁹

¹⁶ Jumagulov, A. E. "STAGES OF DEVELOPMENT OF THE LEGISLATION ON INVESTMENT FUNDS IN UZBEKISTAN." Herald pedagogiki. Nauka i Praktyka 1.5 (2021).

¹⁷ Худайбергенов, Бехзод Бахтиёрович. "ПРАВОВЫЕ АСПЕКТЫ ВЫЯВЛЕНИЯ ПРИЗНАКОВ НЕПЛАТЕЖЕСПОСОБНОСТИ: CASH FLOW И BALANCE SHEET." Review of law sciences 4 (2020).

¹⁸ Aktiengesetz von Sept. 6, 1965 (Bundesgesetzblatt).

¹⁹ O'zbekiston Respublikasining "Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to'g'risida"gi Qonuni (yangi tahriri) // O'zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz.

It is proposed to change the above norm in the following interpretation: “In joint-stock companies, the company's supervisory board must include up to three independent members (members), who can be re-elected for up to three years. Nomination and voting for independent members (members) are carried out by the company's shareholders or their representatives.”

In our opinion, the independent members (members) of the Supervisory Board are not considered independent after three years of service. After three years, they can become members of the supervisory board, but not as independent members.

Thirdly, the abolition of the audit commission in joint stock companies. According to the above law, an audit commission (auditor) is elected by the general meeting of shareholders for a term of one year in accordance with the company's charter to oversee the financial and economic activities of the company²⁰. In addition, the audit organization in accordance with the contract with the company in the manner prescribed by law, audits the financial and economic activities of the company and provides it with an audit opinion. The company's internal audit firm also monitors financial statements and business operations.²¹

From the above three norms, we can understand that internal and external audit controls the financial activities of the company. In this regard, we believe that there is no need for an audit committee in joint stock companies. In particular, in the practice of foreign countries, joint-stock companies do not have an audit commission (except for some CIS countries), whose functions are performed by the audit committee on the basis

of the board of directors and internal audit departments. Therefore, we propose to remove Article 107 from the Law "On Joint Stock Companies and Protection of Shareholders' Rights".

Fourth, the establishment of an audit committee within the supervisory boards. The Audit Committee is primarily responsible for coordinating internal and external audits. Ensuring the independence of internal and external audits is important in corporate control. They should be overseen by a committee. In foreign legal systems, an independent member of the board of directors chairs the audit committee. We believe that this practice should be introduced in our country as well.

It is important to ensure that internal and external audits are independent of each other. But there must be an exchange of information. These actions are provided by the Audit Committee.

The audit committee should also engage qualified auditors on a contractual basis for annual mandatory audits to increase the effectiveness of corporate oversight.

Fifth, improving the legal status of corporate consultants in joint stock companies. In our opinion, the Government should approve the Regulation on Corporate Advisors in Joint Stock Companies in order to expand the legal framework for corporate consultants in joint stock companies. It is advisable to have a draft model charter on the activities of corporate consultants in joint-stock companies. Under this charter, it is effective for the supervisory boards to approve their charters on the activities of the corporate advisor.

²⁰ O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi Qonuni (yangi tahriri) // O‘zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz

²¹ O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi Qonuni (yangi tahriri) // O‘zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz

If the supervisory boards of joint-stock companies formed a charter on the basis of this draft charter, the rights and obligations, duties and functions of a corporate consultant would be defined more clearly and on a general basis.

Sixth, the establishment of corporate control by minority shareholders. At the same time, first of all, we believe that the legislation should clearly define what percentage of the company's shareholders are minority shareholders.

It is advisable to establish a minority shareholders' committee in each joint-stock company. We also suggest that minority shareholders enter into a minority shareholder agreement to establish corporate control over the company. The agreement ensures the cooperation of minority shareholders in oversight activities and strengthens their unified position in the voting process.

REFERENCES

1. O'zbekiston Respublikasi Prezidentining "Kapital bozorini yanada rivojlantirish chora-tadbirlari to'g'risida"gi Farmoni // O'zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz.
2. <http://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.
3. Котуа Д. Банковский контроль над крупными корпорациями в США. – М., - С.33.
4. Corporate interest is a common interest for a corporation, a company, an organization. This benefit can be in the form of entering the markets of goods or services together, finding a niche in it, strengthening its position, winning in a competitive struggle, increasing profits or the volume of production of products, dramatically improving the quality of products. .
5. The World Bank Report (2005), Corporate Governance Report on the Observance of Standards and Codes.
6. <https://www.oecd.org/corporate/ca/Corporate-Governance-Principles-ENG.pdf>.
7. Douma, S. and Schreuder, H. (2013): Economic Approaches to Organisations, London, p.364.
8. H.R.Rahmonqulov, S.S.Gulyamov. Korporativ huquq. –T.: TDYI nashriyoti, 2008. 255-bet.
9. Claessens S. Corporate Governance and Development // World Bank Research Observer. – 2006. – № 1. – p. 91-122.
10. Berle A.A, Means G.C. The modern Corporation and Private Property. New York: Macmillan, 1932.
11. Л.Н. Тепман. Корпоративное управление. - М.: ЮНИТИНИ-ДАНА, 2015. - 182 с.
12. Ибрагимова А. Р. Систематизация законодательства внешней торговли- залог успешного осуществления бизнес-деятельности //Молодой ученый. – 2019. – №. 20. – С. 312-315.
13. <http://www.corp-gov.ru>
14. Aksiyadorlik jamiyatlari faoliyati samaradorligini oshirish va korporativ boshqaruv tizimini takomillashtirish bo'yicha komissiya Majlisining 2015-yil 31-dekabrdagi 9-son bayonnomasi bilan tasdiqlangan Korporativ boshqaruv kodeksi.
15. Prepared on the basis of data from the state statistics office. www.stat.uz
16. Jumagulov, A. E. "STAGES OF DEVELOPMENT OF THE LEGISLATION ON INVESTMENT FUNDS IN UZBEKISTAN."

Herald pedagogiki. Nauka i Praktika 1.5 (2021).

17. Худайбергенов, Бехзод Бахтиёрович. "ПРАВОВЫЕ АСПЕКТЫ ВЫЯВЛЕНИЯ ПРИЗНАКОВ НЕПЛАТЕЖЕСПОСОБНОСТИ: CASH FLOW И BALANCE SHEET." Review of law sciences 4 (2020).
18. Aktiengesetz von Sept. 6, 1965 (Bundesgesetzblatt).
19. O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi Qonuni (yangi tahriri) // O‘zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz.
20. O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi Qonuni (yangi tahriri) // O‘zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz
21. O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi Qonuni (yangi tahriri) // O‘zbekiston Respublikasi Qonun hujjatlari milliy bazasining rasmiy veb-sayti – www.lex.uz