

Joint Stock Company in Corporate Governance

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Abstract

The article examines the issue of a joint-stock company in corporate governance. Taking into account the current policy of the Republic of Uzbekistan, the author proposes to improve the legislation of the Republic of Uzbekistan in terms of the structure of the management bodies of JSCs and their competence. According to the author, the low state of activity of joint-stock companies in the economy largely depends on the discrepancy between the dualistic model and business needs.

Keywords: Joint-stock company, structure of management bodies, corporate governance, executive body, competence.

Introduction

In the context of the modernization and reform of the economy of the Republic of Uzbekistan, as well as in the context of a competitive business environment, the importance of ensuring effective management of the activities of large corporate enterprises forming a network and further increasing their management efficiency is increasing. The management of these enterprises requires research on a wide range of issues related to the formation and development of a relatively new corporate governance mechanism in Uzbekistan. In almost all sectors of our country's economy, the development of enterprises in the context of economic liberalization and ensuring their competitiveness in the economic space depends on the effectiveness of the application of the theory and practice of corporate governance. Therefore, the corporate governance mechanism, which is one of the modern and effective methods of managing economic sectors, is the basis for the development of the business environment of our country.

Corporate governance is a set of laws and regulations that are based on and regulate the management of the activities of companies. It includes internal and external factors that affect the interests of the company's shareholders, as well as customers, suppliers, and management. In doing so, the corporation controls itself, establishes its own values, policies, and laws for employees from the highest to the lowest levels. Good corporate governance seeks to ensure that all shareholders have the right to vote at general meetings. In this case, all shareholders should have the same vision of the company's future [2]. Corporate governance is very important for ensuring that the needs and interests of the company's many stakeholders, such as investors, shareholders, employees, customers, partners, and society, are met. The most important feature of successful corporate governance is a clear business strategy. It is important for a business to determine the

niche and sales areas for its products or services. Additionally, businesses need to establish their target audience and the problems they are trying to solve. The business needs to define a strategic plan that will enable it to achieve the goals of its target audience through its products or services. Optimization of the structure of management bodies is an integral part of the comprehensive work to improve the efficiency of the enterprise. In modern conditions, many enterprises pay great attention to the issue of rationalization of the organizational structure of management in order to improve the results of their activities. Undoubtedly, legislation plays a fundamental role in this process. Analysis of foreign legislation on joint-stock companies allows us to conclude that there are two models for constructing the structure of joint-stock company bodies: monistic and dualistic models of corporate management [5]. The monistic model of management, or in other words, the model of unified corporate management is characterized by a two-tier management system. This model assumes the absence of a supervisory board as a separate body. The monistic model of management operates in the UK and consists of two links - the general meeting of shareholders and the board of directors, which is entrusted with full management of the company's affairs. The dualistic model, in turn, is a three-tier system and is characterized by the presence of an intermediate link between the general meeting of shareholders and the executive body (management board). The intermediate link is the supervisory board, the task of which is to control the activities of the executive body. The dualistic model of corporate governance is used in Germany. Under this model of governance, the system of JSC management bodies includes: a general meeting of shareholders, a supervisory board representing the interests of shareholders between meetings, and a management board, which is the executive body [3].

The monistic model of governance, in which the board of directors combines the functions of control and management, is generally more suitable for companies with a higher concentration of shareholder ownership, including JSCs with a small number of shareholders. In turn, the German model, based on the separation of management and control, is most adequate for companies with a significant number of shareholders, that is, public companies. In public companies, it is the multiplicity of shareholders and their unfamiliarity with each other that requires a separate body to exercise control functions.

Speaking about the legislation of the Republic of Uzbekistan, it should be said that the Law of the Republic of Uzbekistan "On Joint-Stock Companies and Protection of Shareholders' Rights" [1] (hereinafter referred to as the Law on JSC) establishes a single structure of management bodies consisting of three links based on the German model (general meeting of shareholders, supervisory board and executive body). The structure established by law does not provide for an alternative between the monistic and dualistic management models. Although, the Law on JSC contains a provision that states that in a JSC with a number of shareholders - owners of voting shares less than thirty, the charter of the company may assign the functions of the supervisory board of the company to the general meeting of shareholders.

However, this is not considered a separate model, since the functions of the supervisory board are retained and must be performed by the general meeting of shareholders to the same extent. As a result, such a structure may lead to a weakening of control over the executive body. In this regard, as an alternative to the existing dualistic model, it is proposed to adapt the monistic management model - without a supervisory board. Within the framework of the new model, it is proposed to make the executive body exclusively collegial and make it responsible for control and

management functions. It is recommended to form the collegial executive body from executive and non-executive directors. Executive directors, due to the presence of professional qualifications in enterprise management, will be engaged in management. Two executive directors will be authorized to represent the JSC before third parties, performing legally binding actions for the JSC. In other words, management of day-to-day activities will be entrusted not to the sole executive body, represented by one director, but to two executive directors. This will require joint coordination of actions by the directors, which will ultimately ensure the rationality and reasonableness of their actions. As a result, the conclusion of contracts or signing of other documents will require two signatures. Non-executive directors, having an independent status, will have to control the activities of executive directors from the point of view of ensuring the protection of the rights and interests of the JSC and shareholders. Thus, under this simplified model, the collegial executive body will act as a kind of center that develops and implements the JSC development strategy. This management model will make it possible to reduce production costs, stop the formal attitude to the activities of the supervisory board, improve the quality of the activities of the collegial management body and the efficiency of activities. Today, it is becoming obvious that the success of a business largely depends on its efficiency. The majority of JSCs in Uzbekistan are companies with concentrated shareholding, that is, companies with a sole shareholder represented by the state or a small number of shareholders. Less often, you can find JSCs in Uzbekistan with a large number of shareholders trading in JSC shares on the stock markets. All state-owned JSCs have a traditional structure based on the German model of corporate governance. The process of making commercial decisions in these JSCs is protracted and, as a result, the activities of JSCs are inferior in their efficiency to other organizational and legal forms of commercial organizations.

One of the functions of law is to reduce economic costs by forming the most balanced model for regulating relations. In this regard, it seems appropriate to provide joint-stock companies with the right to choose between monistic and dualistic management models in the legislation of the Republic of Uzbekistan in order to increase the economic profitability of JSCs. The possibility of choosing between monistic and dualistic models of corporate governance is observed in the legislation of the European Union countries (France, Italy, Finland) [3]. The legislation of these countries determines that the choice of a dualistic model requires the distribution of control and management competencies between the supervisory board and the collegial body performing management functions. With a monistic model, legislation allows for the creation of one single body responsible for both control and management - the board of directors. In turn, the objectivity of control is ensured by attracting independent directors.

Improving the level of competence of management bodies: The legislation provides the management bodies of JSC with a certain package of competencies for the control and management of JSC. An analysis of the provisions of the JSC Law allows us to draw the appropriate conclusions. First of all, it should be noted that the legislation does not establish the complete exclusivity of the rights of the general meeting of shareholders, as the main management body, in relation to all issues referred by law to its competence. This follows from the content of Article 59 of the JSC Law, which establishes that a certain part of the issues referred to the competence of the general meeting may be transferred to the supervisory board for decision. This provision of the JSC Law indicates duplication of competencies and it is not clear why the

legislator shares the competence of the general meeting of shareholders with the supervisory board on a certain part of the issues [4].

In this regard, we believe that the issues that are within the exclusive competence of the general meeting of shareholders and, accordingly, cannot be transferred to the supervisory board should be listed at the level of the JSC Law. Otherwise, the absence of exclusivity may have a negative impact on the principle of organizational unity of a legal entity and disrupt the hierarchical distribution of powers between its bodies. At the same time, we believe that the general meeting of shareholders, being the highest governing body of the company, should be authorized to make decisions on any issue related to the competence of both the supervisory board and the executive body. The competencies of the supervisory board and the executive body are derived from the competencies of the general meeting of shareholders. Consequently, Article 59 of the Law on JSCs should be amended to the effect that the general meeting has the right, if necessary, to accept for its consideration any issue within the competence of the supervisory board and the executive body in accordance with the charter.

In addition, the JSC Law determines that the competence of the company's supervisory board, in addition to the issues specified, may include the resolution of other issues in accordance with the JSC Law and the company's charter. This provision of the law actually allows shareholders to expand the competence of the supervisory board and practically reduce the role of the executive body to a minimum. In other words, in such a situation, the supervisory board will de facto exercise the powers of the executive body, and not control the process of implementing decisions. Thus, the involvement of the supervisory board and the executive body in managing activities to a certain extent disrupts the balance of their competencies and allows the supervisory board to assume certain functions of the executive body instead of the executive body.

We believe that this provision, enshrined in Article 75 of the JSC Law, should be repealed due to the possible negative impact on the principle of organizational unity of a legal entity and violation of the hierarchical distribution of competence between its bodies. A separate issue is the issue of managing the activities of a JSC. The JSC Law in Article 74 determines that the supervisory board exercises general management of the company's activities, while Article 79 establishes that the executive body exercises management of the company's current activities. Management, or in other words, the management process requires consistency and direct participation of individuals in decision-making and their subsequent implementation. However, general management is abstract in nature and does not allow us to talk about the consistency of the process with the direct participation of officials. In this regard, dividing management into two types has a negative impact on the quality of management, creating uncertainty in the matter of the final responsible person [3]. An analysis of the competencies of the supervisory board and the executive body raises the question of the advisability of preserving two types of management of JSC activities in legislation. From a legal point of view, it seems incorrect to make such a division in legislation, since it has no legal consequences. After all, it is impossible to unambiguously determine in the actions of management bodies the fact of going beyond the limits of authority within the framework of general management of activities or management of current activities. At the same time, the legislation does not provide for any criteria allowing for distinguishing general management from current management. In connection with the above, it is advisable to unify the concept of "management" and not divide it into two parts. The management process should be of a permanent

nature and should be carried out by one single management body - the executive body. The main mission of the supervisory board should be reduced to developing a development strategy for the JSC for at least three years, as well as maintaining a balance of interests between shareholders and the executive body, exercising control over the activities of the executive body. However, it should be noted that the current situation in terms of the competence of the management bodies of the JSC, namely the broad competence of the supervisory board does not allow stimulating the initiative of the executive body and achieving the intended goals.

References

1. Collection of Legislation of the Republic of Uzbekistan, 2014, No. 19, Art. 210; 2015, No. 33, Art. 439, No. 52, Art. 645; 2016, No. 17, Art. 173, No. 39, Art. 457, National Legislation Database, 05.01.2018, No. 03/18/456/0512, 10.01.2018, No. 03/18/459/0536
2. Law of the Republic of Uzbekistan "On Joint-Stock Companies and Protection of Shareholders' Rights No. 370 dated 06.05.2014".
3. Khamidulin M.B. Financial mechanisms of corporate governance. Monograph. - T.: Moliya, 2023.
4. Kabulov T., & Choriev N.S. (2023). The concept and essence of corporate governance in joint-stock companies. Bulletin of the International Institute of Economics. No. 3, 183-188.
5. Kamalov M. M. (2021). Legal basis of corporate governance in joint-stock companies of the republic of Uzbekistan. Law and Management, (1), 38-42. doi: 10.24412/2224-9125-2021-1-38-42 №. 7. – C. 44-47.