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Corporate Conflicts, Their Types, Essence and Issues of Improving the Court Review Procedure

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Abstract

The article describes corporate disputes, their types, the main theoretical and practical problems of litigation as well as the need to amend the substantive and procedural legislation is considered in the article. Focusing on the most common corporate disputes in court practice, analyzes the causes of disputes, their nature, the requirements of substantive and procedural law, which should be considered when applying to the courts to resolve them, and the aspects that should be considered by the parties. Practical suggestions for improving the procedure for resolving corporate disputes will be presented.

Keywords: *Corporate Dispute; Corporation; Corporate Relations; Economic Courts; Limited Liability Company; Joint Stock Company; Charter Fund; General Meeting; Share; Dividend*

Introduction

Corporate legal relations are, first of all, relations related to the establishment, management or participation in a legal entity, which can be called organizational-managerial legal relations of a legal entity.

According to E.V. Afanaseva, "Corporate relations are complex legal relations that combine elements of property and non-property - organizational and managerial relations. n particular, the presence of organizational and managerial aspects that are not specific to civil law relations is a characteristic feature of corporate relations, which allows them to be joint-stock companies as a separate group [1].

According to V.S.Em, "Because of corporate rights, participants in a corporation (business company, company, corporation, etc.) can participate in the management of the corporation and its property... Through the exercise of their corporate rights, such as the exercise (non-increase) of a transaction, the payment of dividends, etc., participants form the will of the supreme body of the corporation.

This is not typical of civil law regulation, because in civil proceedings, as a general rule, the subjects are independent and not subordinate to each other, and therefore can not directly participate in the formation of the will of the counterparty [2].

Corporate legal relations are complex legal relations that combine elements of property and non-property-organizational-managerial relations related to the establishment, management or participation in a legal entity.

Main Part

Corporate relations are divided into internal and external types according to their content and essence.

Internal corporate relations are those within a corporation, i.e., a shareholder with a shareholder, a shareholder with a company, a company with employees, and so on. if there is a relationship, the external relationship is the corporation's relationship with other organizations, creditors, depositories, and so on.

Conflicts in this area, ie in the field of regulation of the interests and participants of the corporation in the implementation of this goal, ie the implementation of the general corporate law and individual rights and interests, are corporate conflicts.

Corporate disputes are mainly disputes related to the establishment, management or participation in a legal entity. Corporate disputes are disputes related to entrepreneurial and other economic activities arising from the participation of participants in the corporation, its participants (bodies), bodies (members of bodies), in the management and conduct of corporate affairs or in its capital.

In addition to the fact that corporate disputes belong to the economic sphere, which is specific to all other disputes that apply to economic courts, there are also specific features.

Depending on the nature of these disputes, the following specific features can be aggregated:

1) the dispute must be related to participation in the corporation;
2) the dispute arises from internal corporate relations;
3) the dispute is related to the implementation of the rights and obligations of the corporation and its participants.

A corporate dispute is a business or other (economic) activity involving the participation or non-participation of corporate participants, corporations and its participants, bodies (members of bodies) and corporations in the management and conduct of corporate affairs or in its capital but is a dispute between other persons who have the right to sue the corporation through their share rights [3].

The concept of corporate disputes, by its very nature, has the following criteria:

a) the number of participants in the dispute must be at least two, including the corporation, the participant of the corporation, the participants, the custodian of the securities register, the depositary, etc.;
b) the legal conflict between the parties to the dispute, arising from the goals and interests of the parties to the corporate relationship;
c) whether the object of the dispute is a corporate or other relationship related to the activities of the corporation or claims arising from the interests of the corporation;
d) the basis of the dispute is an action aimed at gaining the ability to control or control the will of the other party or to change its status and legal status.

Thus, corporate disputes are mainly disputes related to the establishment, management or participation in a legal entity i.e. disputes between the participants of the corporation, the corporation and

its participants, bodies (members of bodies), business and other economic activities arising from participation in the process of managing and conducting the affairs of the corporation or its capital.

According to Article 30 of the Code of Economic Procedure of the Republic of Uzbekistan, there are the following types of corporate disputes resolved by economic courts:

1) disputes related to the establishment, reorganization and liquidation of a legal entity;

2) disputes related to the ownership of shares, stakes, shares of members of cooperatives in the charter capital (charter capital) of business companies and companies, the imposition of encumbrances on them and the exercise of rights arising from them, except for disputes arising in connection with the division of inherited property or joint property of the couple, including shares, stakes, shares of members of cooperatives in the charter capital (charter capital) of economic societies and companies;

3) disputes over claims of participants (founders, members) of a legal entity to invalidate transactions concluded by a legal entity and (or) to apply the consequences of invalidity of such transactions;

4) disputes related to the issuance of securities, including disputes over the decisions of the issuer's management, transactions in the process of placement of securities, reports (notifications) on the results of the issue (additional issue) of securities;

4) disputes arising from the activities of nominal holders of securities in connection with the registration of rights to shares and other securities, other rights and obligations provided by law in connection with the placement of securities and (or) their treatment by nominal holders of securities;

5) disputes on convening a general meeting of participants of a legal entity;

6) disputes over appeals against decisions of governing bodies of a legal entity [4].

In accordance with the law, other disputes may be included in the list of cases on corporate disputes.

At the same time, some legal literature also cites a dispute over deficiencies in the constituent documents as a type of corporate dispute. [5, p.337].

Many disputes related to serious deficiencies, gaps and other defects in the constituent documents of joint-stock companies are due to the fact that the provisions of these documents do not comply with the requirements of the Civil Code, the Law on Joint Stock Companies and other legislation.

In most cases, the charters of a company do not clearly state the rules related to the organization of the company's activities, elections to its governing bodies and their powers, general meetings, issuance of shares, distribution of dividends, shareholders' rights and obligations. Sometimes the charter provides for various illegal restrictions on the purchase and sale of shares. The rights of shareholders to participate in the general meeting and voting, to be notified of the issuance of shares and other rights are limited.

The founding agreements on the establishment of a joint-stock company do not reflect a number of mandatory rules, such as the amount and procedure for payment for shares, the rights and obligations of the founders of the company. As a result, a dispute may arise between the various founders of an enterprise, which usually results in the underpayment of the charter capital.

Violation of the legislation on registration of the issuance of securities, cancellation of transactions concluded on the basis of these securities and violation of the rights of shareholders, and become a target community to appeal to the court to resolve the dispute in court.

In general, shareholders have the right to get acquainted with the constituent documents of the company, the status of the charter capital, the issue of securities and the company's charter and other information provided by law.

Another such corporate dispute is the dispute over the maintenance of the register of shareholders. Violation of the requirements of the law on the maintenance of the register of shareholders by a special registrar in cases established by the company or the law does not cause less disputes. Deficiencies in the procedure for maintaining the register of shareholders lead to disputes such as the shareholder's participation in the general meeting, the right of ownership over the shares, the right to receive dividends [6]. Such conflicts may also be related to the fact that the record of the transfer of ownership of the enterprise's securities does not exist in the register, the relevant set of documents does not exist or they are not properly stored. Any shortcomings in the maintenance of the register can lead to a sharp conflict of interest, as well as the efforts of shareholders to protect their rights, including by filing complaints with the appropriate authorities or by filing a lawsuit. Such cases lead to conflicts between different groups of shareholders and between shareholders and corporate governance.

Corporate disputes related to the holding of a general meeting of shareholders are also common corporate disputes. In particular, the majority of corporate disputes are related to shortcomings in the preparation for the general meeting of shareholders, its conduct, the voting process and the formalization of decisions made by the general meeting.

Such disputes are based on the following: violation of the rules of holding a general meeting of shareholders by individual managers (managers, directors), holding it in violation of the terms and rules established by law, making changes to the agenda of a previously approved meeting, adding new issues to the meeting, failing to ensure the required quorum; not to allow one or another shareholders to participate in the general meeting by notifying the shareholders of the meeting and (or) not including them in the list of shareholders; violation of the right of shareholders to vote on issues included in the agenda; Violation of the principle of "one share - one vote"; formation of enterprise management bodies in violation of the relevant norms of the law; Use of deception in the conduct of proceedings in order to obtain "necessary" decisions; distribution of powers of the members elected to the supervisory board, executive body (general director, etc.) in violation of the law and the charter of the enterprise; illegal holding of a new (extraordinary) general meeting of shareholders; use of the general meeting to make decisions that are beneficial to the CEO, one of the groups of shareholders, the CEO, or the board of directors, in particular to the detriment of the minority shareholders [7, p.339].

Violations of the law and the rules of the enterprise's charter in the organization and conduct of general meetings, as well as in its decision-making processes, usually lead to complaints against them. For example, the law contains an issue on the agenda of the shareholder and a strict list of rejections of the candidate nominated by him to the voting list in the election of public bodies. Unreasonable refusals may be appealed in court.

Failure to compile a list of persons entitled to participate in the general meeting in a timely manner; failure to notify shareholders of the convening of the meeting and its agenda in a timely manner or without specifying the date and place of the meeting; not to send ballots or not to send them on time; violation of the procedure for registration of meeting participants; deprivation of the shareholder's successor (or representative) of the right to participate in the general meeting; violations in the counting of votes; violation of the requirements of the law on the preparation of minutes of the general meeting and the results of voting, their content and formalization.

Failure to consider issues that should be considered by the General Meeting on a mandatory basis and (or) failure to make appropriate decisions on them may be the subject of a complaint. Shareholders

may also complain about the fact that they were not provided with the information required by law in connection with the general meeting. In this case it should be considered that to find the meeting as illegal, and that its decision as invalid for these or another reason can only be made by a court.

Many corporate disputes stem from shortcomings in dividend policy, particularly its lack of transparency and imbalance. A transparent, step-by-step, well-balanced and well-thought-out dividend policy based on the requirements of the law and the charter is an important factor in the prevention of many corporate disputes because the participants of the corporate activity are naturally interested in receiving the maximum amount of profit from this activity, especially dividends from the shares purchased by them. However, in this case, the "rapid pursuit of dividends" can cause great damage to both the corporate organization and the shareholder himself, as well as the destruction of the financial base of the company, and even its technical and economic bankruptcy [8].

It should also be borne in mind that many corporate disputes arise not only from the dissatisfaction of shareholders with the amount of dividends, but also from the violation of the principle of regularity of their payment. According to the charter of the joint-stock company, the regular payment of dividends on the basis of its general meeting and the decision of the governing bodies enhances the reputation of the corporation, expand its scope of the securities attraction, increase the opportunities for their additional issuance and lead to an increase in market values, facilitate the receipt of commercial loans and capital investments from various foreign investors, including foreign investors. Regular payment of dividends, the amount of which depends on the income of the company, is in the interests of ensuring the economic stability of the company and the long-term interests of shareholders. In addition, its legislation must set a certain minimum amount of dividends that are usually paid within clearly defined periods. The order and amount of dividends on preferred shares should also be clearly defined. Otherwise, it will be difficult to avoid possible conflicts with the holders of preferred shares, who may demand payment of dividends in court.

The decision to pay dividends should be made at the general meeting on the basis of a qualified majority vote of shareholders holding both ordinary and preferred shares. Violation of this rule can lead to sharp corporate disputes.

But in all cases, the shareholders' claims for dividends will not be justified, because corporate activity is directly related to risk, various difficulties in the production and sale of products, as well as various external conditions (significant changes in market conditions, tax, customs and other policies).

In some cases (for example, if there are signs of bankruptcy in the company, until the authorized capital is paid in full, etc.), the law prohibits the payment of dividends. On these issues, too, in practice, individual shareholders, especially holders of preferred shares, may be required to pay dividends, but these requirements are undoubtedly deprived of appropriate grounds and do not meet the requirements established by law.

Transparency of information on the order and amount of dividends, financial and economic condition of the joint-stock company, its income, companies, issues of securities and other cases is an important condition for the prevention of disputes on dividends.

The presence of a general meeting, enterprise management bodies, audit commission and audit control over these indicators is also important. Shareholders should also be able to review their documents on these issues. In many cases, minority shareholders, in particular, complain that they have not been informed of these issues, or even refused to provide them with such information.

Even in the case of payment of dividends in cash, ie with any property (product or new share of the enterprise), the payment of such a form can lead to disputes, unless otherwise provided by the charter of the enterprise or the decision of the general meeting. If a shareholder agrees to use such a form of payment and subsequently objects to it, his complaint shall be deemed unfounded. Judicial protection may be exercised only on the basis of well-reasoned complaints in a society with a sufficient degree of violation of the rights

of shareholders in the payment of dividends.

Reorganization of a joint-stock company as a factor in corporate disputes is a change in the organizational and legal form of a joint-stock company, which is generally associated with the succession of legal entities and joint-stock companies to another. This is a large practical tactical society, a long and complex event, which is carried out on the basis of current legislation, which in certain cases requires consideration of the interests of the complex society and, of course, shareholders.

Therefore, shareholders must first be aware of the reorganization of this joint-stock company, its causes, tasks and consequences, which affect their rights and interests. Otherwise, in the event of merger, amalgamation or division of a joint-stock company in a manner inconsistent with the law, first of all, the Civil Code and the legislation on joint-stock companies, mass corporate disputes may arise. Such measures are taken on the basis of a general meeting of shareholders or a court decision.

In such cases, the shareholders may require the company to purchase the shares they own at the market price or exchange them for other securities, taking into account their legal status as well as to object to the placement of shares among other persons who are not shareholders of the reorganized joint-stock company. Otherwise, this can lead to a number of conflicts and the cessation of community activities.

Protection of their rights by shareholders in any form of reorganization of the joint-stock company, their desire to prevent their interests from being harmed, first and foremost from the loss of their means placed in society are the sources of the conflict. However, it is very difficult to bring the interests of different shareholders, holders of major securities, minorities, holders of ordinary and preferred shares into a "general majority society", especially if they do not know the essence, goals and consequences of the reorganization of minority shareholders, suffer greatly, the large number of shareholders and their remote location further complicate the process. Many disputes and complaints stem from this. [9, p.344].

In addition to the above, there are other types of corporate disputes in practice. Including, existence of agreements with interest concluded by members of the management bodies of the joint-stock company and (or) affiliates which violate of the procedure established by law may force shareholders to file a complaint. Such agreements can severely limit the interests of various shareholders, especially small shareholders who do not participate in the general meeting in the discussion of such issues and as a result do not have the opportunity to object and vote "against". In such cases, they can present their shares to the company for redemption, and in case of violation of their rights, they can go to court.

Some of the disputes arise due to the actions of the registrars who maintain the register of securities owners [10]. Nominees are purposeful to provide shareholders with information about the composition of the shareholders of this joint-stock company, the number of shares owned by them, the persons participating in the general meeting. In some cases, it may not be easy for shareholders to obtain such information, especially when the information is requested by a representative at the request of the shareholder. In this case, the refusal is based on shortcomings in the execution of the relevant power of attorney, or the failure of the shareholder to apply to the company's management to convene an extraordinary general meeting of shareholders. Delays in the issuance of lists of other shareholders to a shareholder also play an important role in the occurrence of corporate disputes between shareholders and registrars. To resolve these disputes, a shareholder may apply to the relevant body controlling the securities market with a claim for compensation for lost profits. Of course, such complaints and claims must have appropriate grounds (including those contained in the document). But, unfortunately, in practice, the fabricated complaints, which receive only the time and attention of the competent authorities, are also quite numerous.

Cases on corporate disputes are considered by the court in accordance with the general rules of litigation established by the Code of Economic Procedure of the Republic of Uzbekistan, taking into account the features set out in Chapter 26 of this Code.

The claim in the corporate dispute must comply with the requirements of Article 149 of the IPC.

The application for a corporate dispute shall be accompanied by the documents specified in Article 151 of the IPC, as well as a document confirming the state registration of the legal entity and information about its location (postal address).

Also, when a participant (shareholder) of a business company or company files a lawsuit, a duly certified copy of the founding agreement of full and limited companies, the memorandum of association of limited liability and additional liability companies (if the number of founders is two or more) and a duly certified copy of the company's charter, a copy of the register of shareholders of joint-stock companies should be added.

Claims on corporate disputes are submitted to the economic courts of the place of location of the legal entity. Location of a legal entity means the place where the legal entity is registered and operates.

In some cases, claims for corporate disputes are filed in the economic court at the place of state registration of the legal entity or, if the place of state registration of the debtor is unknown, at the place of location of his property.

Corporate disputes are settled by courts under the Civil Code of the Republic of Uzbekistan [11], the Code of Economic Procedure [12], the Law on Joint Stock Companies and Protection of Shareholders' Rights [13], the Law on Limited Liability and Additional Liability Companies [14] and the Law on Business Companies [15] and other legislative acts.

The Code of Economic Procedure of the Republic of Uzbekistan stipulates that any interested person has the right to apply to the economic court in the prescribed manner to protect his violated or disputed rights or legally protected interests.

When applying to the court on corporate disputes, the specifics of this category of disputes are taken into account. For example: with the demand to expel from the company a participant who grossly violates the obligations of the company or by his actions (inaction) does not allow the company to operate or seriously complicates it, the total share of the company's charter capital (charter capital) at least ten per cent of the participants in the society are eligible. Therefore, if the total shares of the claim are less than ten percent of the company's charter capital (authorized capital), or if the claim is filed by the company itself, the claim is denied.

The legislation was adopted in violation of the requirements of the charter of the company, to appeal to the court to invalidate the decisions of the general meeting of participants of the company as well as a participant of the company who did not take part in the voting or voted against the disputed decision, the decision of which violates the rights and legitimate interests of the participants of the company. A person who took part in the general meeting and voted in favor of the decision on the disputed issue shall be denied satisfaction of the statement of claim when he applies to the court with a request to declare the decision invalid.

Also, a member of the supervisory board of the company or its participant has the right to apply to the court with a claim for compensation for damage caused to the company by a member of the executive body of the company and the collegial executive body of the company.

Adopted by the Supervisory Board, the sole executive body of the company, the collegial executive body of the company in violation of the legislation, the company's charter and has the right to apply to the court to declare invalid the decision that violates the rights and legitimate interests of a participant of the company.

According to Article 150 of the Civil Code of the Republic of Uzbekistan, the general statute of limitations is three years [16].

For certain types of claims, the law may provide for special claim periods that are shorter or longer than the general claim period.

Conclusion

In particular, members of a limited liability company or an additional liability company may apply to the court to declare invalid the decision of the general meeting adopted in violation of the legislation, the company's charter and violating the rights and legitimate interests of the company's participants, who did not participate in the voting or voted against the disputed decision within two months from the date of knowing or should have known about the decision made, if the participant of the company participated in the general meeting of the participants of the company that made the decision that caused the appeal, within two months from the date of such decision.

Based on the above, we make a number of suggestions for improving the procedure for resolving corporate disputes in court.

The first suggestion is that the procedural legislation should include entities that have lost the status of a corporate participant (as a result of the actions or inactions of other persons) among the subjects of corporate disputes, that is, to include disputes involving such persons in the jurisdiction of economic courts on the grounds that the dispute is a corporate dispute because the person is a dispute related to the relationship of participation in the corporation.

Because in practice, when these individuals file a lawsuit in the economic courts, the denial that the dispute does not belong to the economic courts on the grounds that their claim is not a participant in the corporation negatively affects their legal rights and interests guaranteed by justice. This can cause these individuals to be deprived of the opportunity to recover their violated rights.

Even if we assess this issue on the basis of economic procedural legislation, we can be sure that the legalization of the right of these entities to appeal to economic courts is justified. Because in our procedural legislation, this issue is resolved in the second part of Article 25 of the Code of Economic Procedure of the Republic of Uzbekistan on the basis of the norm "Cases involving disputes involving citizens who have lost the status of sole proprietor will also apply to the court, if the relevant requirements arise from their previous entrepreneurial activities." That is, even in cases of disputes involving persons who have lost the status of participation in the corporation, if the relevant requirements arise from the relationship related to their participation in the previous corporation, the norm of economic courts can be included by analogy.

Based on the above, we believe that Article 25 of the Code of Economic Procedure of the Republic of Uzbekistan should be amended and supplemented with the section as follows: "Disputes involving citizens who have lost the status of members of the corporation will also apply to the court, if the relevant claims arise from their legal relationship of participation in the previous corporation."

The second suggestion is to establish a corporation, that is, to include in the corporate disputes disputes arising from the relationship between the parties before the state registration of it as a legal entity, and to determine the jurisdiction of these disputes in the economic courts.

Determining whether the dispute involving them concerns the economic courts, not the civil courts.

This, as mentioned above, would have provided legal protection for the future participants of the corporation, as well as the rights and interests of the corporation. This is because, like the relationships that emerge after a corporation is formed, these relationships are also corporate in nature. That is, these relations are not only purely civil, that is, property and non-property relations, but also include organizational-managerial relations inherent in the nature of corporate relations.

Therefore, in accordance with paragraph 1) of the first part of Article 30 of the Code of Economic Procedure of the Republic of Uzbekistan, disputes related to the establishment, reorganization and liquidation of a legal entity are included in the list of corporate disputes.

Hence the requirement that this series of disputes be corporate disputes and that they relate to the jurisdiction of economic courts.

In practice, however, this norm is hampered by the fact that the participants in the process of establishing a corporation, ie a legal entity, are not included in the subject of economic disputes.

Therefore, in Article 25 of the IPC, among the participants in cases involving economic courts, only in the first paragraph of the first part of this article, marked as “Civil, administrative and other legal relations between legal entities in the field of economy and citizens engaged in entrepreneurial activity without formation of a legal entity and obtaining the status of sole proprietor in accordance with the law, as well as citizens who are parties to corporate disputes (hereinafter referred to as citizens) Conflicts arising from relations " and here a brief description as "as well as citizens who are parties to corporate disputes (hereinafter referred to as citizens)", has led to uncertainties as to whether these individuals were participants in these disputes in terms of relevance.

Therefore, this norm is suggested to be adopted in the following edition by amending accordingly "As well as citizens who are parties to disputes in corporate disputes, including disputes related to the establishment, reorganization and liquidation of a legal entity (hereinafter referred to as citizens)".

Inclusion of the above proposals in the legislation plays an important role in improving the procedures for consideration of corporate disputes by economic courts, as a result of ensuring the competent consideration of these disputes within the relevant judicial jurisdiction and improving the mechanisms of judicial protection of the rights and interests of citizens.

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