PROBLEMS OF PROTECTING THE RIGHTS OF PARTICIPANTS (SHAREHOLDERS) OF JOINT-STOCK COMPANIES IN THE REPUBLIC OF UZBEKISTAN

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Introduction

Despite the fact that the rights of shareholders are enshrined at the legislative level in the documents of joint stock companies (JSCs) themselves, in practice it is often possible to encounter violations of these rights by the joint stock company, other shareholders or other persons. In this regard, the issue of realisation and protection of shareholders' rights is currently one of the most pressing ones.

A joint stock company ensures that the short-term loans of shareholders, who can sell their shares in case of need, are converted into long-term equity of the joint stock company. The latter acts as its own share capital, which cannot be claimed. In general, this organisational and legal form of a legal entity is a means of organising property relations and a legal form of collective entrepreneurial activity. Moreover, today it is also actively used as a basis for the creation of many integrations business structures. Meanwhile, these advantages of a joint stock company are at the same time its main problem: the large number and disunity of participants predetermines an increased probability of violation of their rights.

Protection of shareholders' rights pursues the goals of protecting not only private, but also economic interests of the state as a whole. This is confirmed by the fact that in Uzbekistan today the overwhelming number of large commercial organisations, occupying a leading position in various sectors of the economy, carry out their business activities in the legal form of a joint-stock company. Hence, there is a justified interest in the legal position of the shareholder in the company, and, accordingly, in issues related to the protection of his rights and interests. Thus, studies conducted by foreign scientists in 371 large joint-stock companies from 27 countries with developed economies have convincingly proved that the investment climate of the state depends entirely on the quality of protection of shareholders' rights in it[1].

Main part

In recent years, the joint-stock form of property association has been in the centre of attention on the part of the state, which, in turn, has affected the intensification of law-making activities in this direction.

However, on the other hand, there is no effective and, most importantly, adequate and proportionate legal mechanism to prevent the recently widespread practice of corporate blackmail and hostile takeovers. These phenomena, among other things, have an extremely negative impact on the legal position of the shareholder and the level of protection of his rights and interests. Moreover, against this background there is a devaluation of the status of a small shareholder, the loss of his ability to defend his rights and interests, which, ultimately, can lead to a violation of the balance of interests

[1] Rafael La Porta, Florencio Lopez-de-Silanes, Andrey Shleifer, and Robert Vishney Investor protection and Corporate Valuation//Harvard University Cambridge, 1999 p 1-4

within the joint-stock form of entrepreneurship. This clearly predetermines a whole set of problems related to the protection of the rights and interests of shareholders.

As a consequence, it seems necessary to conduct a systematic study of the issues of protection of the rights and interests of shareholders, theoretical analysis of the peculiarities of such protection in relation to the position of a shareholder in a company due to the number of shares owned by him, as well as identification and solution of practical issues arising in the process of realisation of subjective rights granted to a shareholder of a company.

To date, the topic of protection of shareholders' rights, despite its relevance, has been insufficiently developed. Researches of scientists have covered the problems of exercising and protecting shareholder rights in sufficient detail. In addition, there is every reason to say that scientific studies have laid the theoretical basis for the topic under consideration. However, these works do not correspond to the current state of the joint-stock company. In modern conditions of market economy development, the study of joint-stock companies has received a new impetus. Meanwhile, the works available today investigate certain aspects of the topic under consideration and, as a rule, only along with others.

At the same time, the joint-stock form of organisation of entrepreneurship carries significant dangers for its participants - shareholders. Being designed for a very wide range of participants, it complicates their real control over the activities of executive bodies of JSC (directors, managers), providing the latter with the widest, and sometimes, in fact, uncontrolled opportunities to dispose of huge alien capital. The fact is that ordinary shareholders are usually interested only in receiving dividends and often do not even seek to participate in the management of a JSC, including in the work of its general meetings, not being familiar with entrepreneurial activity. Attraction of their funds to the formation of JSC's capital is often achieved with the help of various kinds of advertising, promises of exceptionally high dividends, etc. Thus, the joint-stock form provides ample opportunities for financial abuse on the part of founders and other persons who are managers or major shareholders, both at the stage of creation of a JSC and in the process of its activity.

It should also be noted that the legislation does not consistently regulate certain issues of exercising the pre-emptive right to acquire additional securities (for example, the question of the consequences of its violation in the form of recognising the entire issue of additional securities as invalid or transferring the rights and obligations of the buyer under the contract), which makes it inevitable that the courts will interpret the relevant legal norms later.

Obviously, the free interpretation of norms by the courts is caused by the absence in the legislation of a direct indication of special consequences of violation of the pre-emptive right to acquire additional securities.

Another problem is the problem of realisation of the right to dividend payment. The legislation does not solve the problem of guaranteed receipt of dividends by shareholders. Unfortunately, not all joint stock companies in the country pay dividends to shareholders even if they have profit. Often profits are 'withdrawn' by means of withdrawal of assets (for example, sale of property at an undervalued price or purchase of property at an overvalued price) and redistribution of cash flows, which leads to a significant reduction in profits and opportunities for guaranteed payment of dividends.

It should also be taken into account that the board of directors (supervisory board) of a company usually includes representatives of owners of large blocks of shares. Therefore, majority shareholders are most likely to make the decision on dividend payment that they consider the most optimal from the point of view of their interests. Therefore, in many companies with a "zero" dividend policy, minority shareholders can only wait for major shareholders to decide on dividend payments and thus be forced to share it with minority shareholders.

Often shareholders, due to their inexperience in corporate law and lack of information, lose control over the activities of managers. This leads to abuses, such as withdrawal of net profit of the company, squeezing out minority shareholders, bankruptcy, infringing not only the rights of shareholders, but also of creditors, which causes a huge public outcry.

One of the main reasons for this is the concealment or distortion of corporate information by managers from shareholders, society and the state. The exercise of shareholders' rights to manage joint stock companies depends on how effective the legal norms regulating the procedure for shareholders to obtain information on the activities of companies are. Without access to information provided for by law, the exercise of other rights by shareholders is very difficult or simply impossible. Moreover, information transparency of the securities market acts as one of the main guarantees of investors' rights.

Conclusion

Thus, it is obvious that despite the large number of norms regulating relations in the sphere of "shareholder - joint-stock company", in practice many problems arise due to insufficient clarity or lack of norms to be applied. Judicial practice develops its approaches to solving problems, but they are not always unambiguous. The best option is to introduce amendments and additions to the current legislation, which will consolidate an unambiguous approach to solving the arising problems.

To fully solve the identified problems it is necessary to: determine the nature of the subjective rights of a shareholder, identifying the rights belonging to the participant of a joint stock company and analysing their features; identify the presence of common interest for all shareholders, as well as specific interests of certain groups of shareholders of the company; analyse the specifics of protection of the rights of small and large shareholders, formulate proposals to improve the mechanisms of such protection; propose a system of protection of shareholders' rights, providing a balanced satisfaction of the rights of shareholders, which will ensure the protection of their rights.

Based on the above, it can be concluded that along with the norms of legislation, the joint-stock company itself should ensure the observance and protection of shareholders' rights, including through the approval of internal documents of the company that allow to settle disputable situations concerning the exercise and protection of shareholders' rights.

List of references:

1. Constitution of the Republic of Uzbekistan;
2. The Civil Code of the Republic of Uzbekistan;
3. Law of the Republic of Uzbekistan "On Joint Stock Companies and Protection of Shareholders' Rights";
4. The Code of Economic Procedure of the Republic of Uzbekistan;
5. Decree of the President of the Republic of Uzbekistan "On the Strategy of Development of New Uzbekistan for 2022-2026";
6. Decree of the President of the Republic of Uzbekistan "On the Strategy "Uzbekistan - 2030"";
7. Decree of the President of the Republic of Uzbekistan "On measures to radically improve the investment climate in the Republic of Uzbekistan";
8. Decree of the President of the Republic of Uzbekistan "On measures to introduce modern methods of corporate governance in joint-stock companies";
9. Decree of the President of the Republic of Uzbekistan "On additional measures to reduce state participation in the economy";

10. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On measures to further improve the system of corporate governance in joint stock companies”;
11. Order of the General Director of the Centre for Coordination and Control over the Functioning of the Securities Market under the State Property Committee of the Republic of Uzbekistan “On Approval of the Rules of Provision and Publication of Information on the Securities Market”;
12. Rafael La Porta, Florencio Lopez-de-Silanes, Andrey Shleifer, and Robert Vishney Investor protection and Corporate Valuation//Harvard University Cambridge, 1999.