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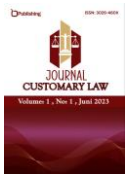
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Legal Aspects of Liability of Participants (Shareholders) of Joint Stock Companies in the Republic of Uzbekistan for Breach of Corporate Obligations

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Abstract: *This article considers legal aspects of liability of participants (shareholders) of joint stock companies in the Republic of Uzbekistan for breach of corporate obligations. The article analyses both national normative legal acts and international standards and practices of regulation of shareholders' liability. The author has considered issues related to mechanisms for protecting the rights of shareholders and creditors, as well as imposing sanctions on shareholders for breach of corporate obligations. In addition, recommendations were made to improve legislation in this area.*

Keywords: *Republic of Uzbekistan, legal entities, joint stock companies, shareholders, shareholders' liability, corporate law, corporate obligations, minority shareholders.*

Introduction

A joint-stock company is one of the organisational and legal forms of enterprises formed by means of centralisation of funds of different persons, carried out through the sale of shares in order to implement economic activities and, as a result, to make profit. From the organisational and legal point of view of the market economy, a joint-stock company is the most acceptable type of business association, because it directly provides the most complete function of capital concentration and its subsequent use.

Legal entities and individuals may act as participants in the pooling of capital through the formation of a joint-stock company. The legislation does not limit the number of participants (shareholders) of a joint stock company (Article 4, Law of the Republic of Uzbekistan, n.d.)

The purpose of this article is to provide a general overview of the state and problems of legal regulation of various types of liability of participants (shareholders) of joint stock

companies in the Republic of Uzbekistan and to identify the main directions of its further improvement.

Methodology

The methodological basis of the research was formed by general scientific methods (analysis and synthesis, induction and deduction, method of system analysis) and methods of legal science (including methods of comparative jurisprudence, methods of literal, systematic, teleological and historical interpretation of legal norms).

Main part

1. Legal basis of shareholder liability in the Republic of Uzbekistan

The legal system of the Republic of Uzbekistan provides for a clear distinction between the corporate liability of a joint stock company and the personal liability of its shareholders. The main regulatory acts governing these issues are:

The Law of the Republic of Uzbekistan "On Joint Stock Companies and Protection of Shareholders' Rights" establishes the general principles of the functioning of joint stock companies, the rights and obligations of shareholders, and mechanisms for the protection of their rights.

The Civil Code (Part 1) contains provisions on the civil liability of legal entities and individuals, including shareholders.

According to corporate law, shareholders are not liable for the company's obligations, except as provided by law (Article 4, Law of the Republic of Uzbekistan, n.d.). This means that, in general, the risk of loss is limited to the amount of capital contributed by the shareholder.

However, the legislation provides for exceptions in which shareholders may be held liable. For example, the Civil Code of the Republic of Uzbekistan provides for the liability of participants for causing damages due to abuse of rights or actions that cause harm to the company or its shareholders (Article 48, Civil Code of the Republic of Uzbekistan, n.d.).

2. Mechanisms of liability of shareholders for violation of corporate obligations

2.1 Civil liability

Shareholders' civil liability arises when their actions or inactions result in losses to the company or third parties. The main grounds for such liability include:

Abuse of shareholder rights: Shareholders who use their rights for personal gain to the detriment of the interests of the company or other shareholders may be required to compensate for the damage caused. An example is when a shareholder forces decisions that are beneficial only to him, violating the principles of good faith and fairness.

Failure to perform duties in good faith: If a shareholder, especially a majority shareholder, acts in bad faith, resulting in financial losses to the company, he may be held liable for those losses. This may include falsifying financial statements, concealing information, or making decisions that lead to the bankruptcy of the company.

2.2 Administrative liability

Administrative liability of participants (shareholders) of joint stock companies may arise in certain cases of violation of corporate obligations. This may include the imposition of fines, temporary suspension from the management of the company, or other measures provided for by law. For example, if a shareholder violates corporate law requirements related to disclosure of information or compliance with decision-making procedures, he may be subject to administrative liability (Article 174, Code of the Republic of Uzbekistan, n.d.).

2.3 Criminal liability

In cases provided for by the norms of the Criminal Code of the Republic of Uzbekistan, such as: embezzlement, forgery of documents, fraud, etc. also provides for the possibility of bringing to criminal liability of participants (shareholders) of joint stock companies. However, the criminal norms of the Republic of Uzbekistan do not provide for certain types of norms (dispositions) on liability of participants (shareholders) of joint stock companies for failure to fulfil corporate obligations, regardless of how large the damage caused was.

3. Protection of rights and legitimate interests of minority shareholders

3.1 Mechanisms for protecting the rights of minority shareholders

Protection of minority shareholders' rights is an important aspect of corporate law aimed at preventing abuses by majority shareholders. The legislation of the Republic of Uzbekistan provides for the following protection mechanisms:

Right to information: minority shareholders have the right to receive reliable and complete information about the company's activities, including access to financial statements, minutes of meetings and other important documents.

Right to participate in management: although minority shareholders do not have a controlling stake, they have the right to participate in meetings, put forward their proposals and vote on key issues.

Right to judicial protection: In the event of a violation of their rights, minority shareholders can apply to the court with a claim to protect their interests. This includes claims for recognition of meeting decisions as invalid, a claim for damages and other legal measures (Article 113, Law of the Republic of Uzbekistan, n.d.).

3.2 Liability of minority shareholders

Although the primary focus is often on the liability of majority shareholders, minority shareholders may also be liable for breach of corporate obligations. For example, if a minority shareholder engages in conduct that is intended to intentionally cause harm to the company or other shareholders, the minority shareholder may be subject to civil, administrative or criminal liability.

4. Comparative analysis of shareholders' liability in international practice

International standards and practices significantly influence the development of corporate legislation in the Republic of Uzbekistan. Let us consider some key aspects of international practice:

4.1 Principles of Corporate Governance Organisation for Economic Co-operation and Development (hereinafter also referred to as the **"OECD"**)

The OECD Principles of Corporate Governance emphasise the importance of balancing the interests of all stakeholders, including shareholders, employees, customers and society at large. These principles recommend mechanisms to prevent abuse, such as transparency, accountability and effective internal controls.

4.2 EU Shareholders' Rights Directive (2007/36/EC)

This directive aims to strengthen the position of shareholders, ensure their rights and increase the transparency of corporate governance. It includes provisions on the right of shareholders to information, participation in key decisions and protection from abuse by management and major shareholders.

5. Liability of participants to the joint-stock company

Corporate liability of participants to commercial corporations themselves in Russian civil law is primarily related to the obligation to indemnify the corporation for losses and is basically reduced to its two varieties: 1) liability of controlling participants for losses caused to the corporation by unreasonable or dishonest actions; 2) liability of any participants of the corporation for culpable violation of other corporate duties to the corporation established by law or constituent documents of the legal entity.

The first type of such corporate liability is essentially based on the increased requirements imposed by law on controlling participants who have special fiduciary duties to the joint-stock company to act in good faith and reasonably in its interests due to the fact of management control. Such liability arises if it is established that the controlling participant acted in bad faith and unreasonably, including if its actions (inaction) did not correspond to the usual conditions of civil turnover or usual business risk.

In addition to liability for breach of fiduciary duties of controlling participants, any participants of a commercial corporation may be civilly liable to it in the form of damages for breach of other corporate duties provided for by law or constituent documents of the legal entity. However, unlike general rules on tort or contractual liability, the obligation to compensate losses for breach of specific corporate duties should be expressly provided for in the norms of the Civil Code of the Republic of Uzbekistan. or special laws on legal entities due to the principle of speciality of corporate liability.

In addition to liability in the form of compensation for losses, participants (shareholders) of joint stock companies for violation of their corporate obligations may be excluded from the joint stock company. The legal nature of exclusion of a participant (shareholder) from a legal entity remains controversial (V, 2017), it can be considered, among other things,

as a way to protect corporate rights of other participants (shareholders) and the joint-stock company itself, and as a measure of liability of the excluded participant (shareholder) both to the joint-stock company and to other participants (shareholders). At the same time, when exclusion is caused by unlawful guilty actions of a participant, it is a measure of responsibility for violation of corporate obligations of the participant (shareholder) to the joint-stock company. This approach is predominantly observed in the legislation, according to which the grounds for exclusion may be actions (inaction) of a participant that have caused substantial damage to the joint-stock company or otherwise significantly impede its activities and achievement of the goals for which it was established, including gross violation of obligations provided for by law or the constituent documents of the joint-stock company (Article 70 of the Law of the Republic of Uzbekistan "On Insolvency", n.d.).

6. Liability of participants (shareholders) to creditors

When it comes to the liability of participants (shareholders) to creditors, the principle of separation applies as a general rule: a participant is not liable for the obligations of a legal entity, except in cases provided for by law. Thus, a participant is liable to creditors only by virtue of a direct instruction of the law. Such cases are not always connected with the unlawful behaviour of a participant and are most often caused by the establishment of a kind of “security” obligation of participants to creditors for the obligations of the joint-stock company (“quasi-corporate liability”). Such “quasi-corporate liability” is established in respect of any participants of a joint stock company (both controlling and minority) and is designed to guarantee the interests of creditors in the event of insufficiency of the property of a commercial corporation at its creation, filling of the authorised capital or in connection with the peculiarities of its organisational and legal form.

In addition to the “quasi-corporate liability” discussed above, a private member (shareholder) of a joint stock company may be liable to creditors for its own wrongful acts within the framework of true corporate liability. In this case, the unlawful actions of a participant, for which corporate liability arises, may be related to: 1) a violation of the corporate duty of a controlling participant to act in good faith and reasonably in the interests of creditors (liability to creditors is permissible only at the stage of bankruptcy of a commercial corporation); 2) a gross violation by any participants (both controlling and non-controlling) of other corporate duties provided for by corporate law, resulting in losses to creditors. In this case, the liability of participants for their unlawful behaviour to creditors may take the form of subsidiary liability for the obligations of the legal entity, or direct liability to creditors who have suffered losses. Norms on the liability of controlling participants to creditors at the stage of bankruptcy of a legal entity are contained in the insolvency legislation.

7. Liability of participants (shareholders) of joint stock companies to other participants (shareholders)

Less developed in the legislation of the Republic of Uzbekistan are provisions on the liability of participants of joint stock companies to other participants, although the need for such norms exists, because not always compensation of losses in favour of a joint stock company is able to protect the rights and legitimate interests of participants. The literature rightly points out that when persons controlling the corporation (including directors, controlling participants, etc.) abuse their corporate power and cause losses to the corporation, an indirect claim by other participants for compensation of these losses in favour of the corporation is not always effective: the funds received in favour of the corporation actually end up back at the disposal of unscrupulous directors or controlling participants, who may subsequently transfer these assets to persons under their control or reorganise the company (T, 2017).

Also, in the literature on shareholder law, one can long meet judgements according to which no legal relations arise between shareholders at all, so one participant cannot be liable to another participant. Among the duties of participants of a corporation there is no duty not to cause harm to other participants, but there is only a duty not to commit actions knowingly aimed at causing harm to the corporation itself. All other duties of the members also apply to the corporation itself, but not to the other members. Violation of these duties, as it was discussed above, entails liability to the corporation itself in the form of compensation for losses, or in the form of exclusion of the participant from the joint-stock company. If other participants suffer damage from the actions of the controlling participant, this damage is derived from the damage that is caused to the corporation itself (so-called “reflected losses”), and thus indirectly to all participants.

Result

Proceeding from the conducted research it becomes clear that the issues of liability of participants (shareholders) of joint-stock companies in the Republic of Uzbekistan are not regulated sufficiently, which could fully ensure the protection of the legitimate interests of all participants of civil legal relations.

Discussion

Certainly, the issue of liability of participants (shareholders) of joint stock companies to other participants (shareholders) should be widely and in detail discussed in order to find a balanced solution.

Conclusion

The legislation lacks general rules on the liability of controlling participants (shareholders) of joint stock companies to other participants or members of management bodies for breach of the obligation to act in good faith and reasonably. Such corporate liability in respect of controlling participants could be established in the form of the possibility to bring a direct action in favour of other participants or members of

management bodies in cases where compensation of losses in favour of the commercial corporation itself would not lead to restoration of violated rights and interests of other participants or members of management bodies, provided that this does not violate the interests of creditors of the legal entity.

Minority participants (shareholders) of joint stock companies should not have a general fiduciary duty to act in good faith and reasonably in the interests of the corporation, other participants or members of management bodies and, accordingly, cannot be held liable for breach of such duty. At the same time, in certain cases minority (as well as controlling) participants may violate the subjective rights and legitimate interests of other persons (the corporation, other participants, creditors, members of management bodies), in connection with which they may be held liable by law in each such case to compensate for the losses caused (the principle of speciality of corporate liability).

Corporate liability of a controlling participant (shareholder) to creditors of joint stock companies for breach of fiduciary duties should take place only at the stage of its bankruptcy. In the conditions of sufficiency of the joint stock company's assets, its participants, as a general rule, should not have a duty to act in good faith and reasonably in the interests of creditors and be liable for breach of this duty.

Suggestions

1. Strengthening the legal protection of minority shareholders. One of the key problems is the insufficient protection of the rights of minority shareholders in joint-stock companies.
2. Tightening the liability of majority shareholders for violating corporate obligations. Majority shareholders often abuse their position, infringing on the rights of minority shareholders or third parties.

Improving information disclosure mechanisms. Insufficient transparency of corporate governance hinders effective control over the actions of shareholders.

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