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COMPARATIVE ANALYSIS OF JOINT STOCK COMPANIES OF KAZAKHSTAN AND FOREIGN COUNTRIES

The market transformation of Kazakhstan's economy has caused a revival of Kazakhstan's shareholding law. Among the most important players in the market economy of any country that has already reached the required level of capital-building are economic partnerships and societies.

In today's market transformation, the company as an organizational form of business takes on special importance. The classic function of the company is to attract and long-term accumulation of capital. The availability of capital is vital for businesses. The shareholder form is optimal for anonymously combining a large number of participants, allows to attract additional investments by issuing shares, "removes" the differences between different forms of capital and thus facilitates their overflow ingesting out industry in the industry. Economic growth needs investment. One of the most effective ways to concentrate free resources and turn them into investments are joint-stock companies.

Method of research. The methodological basis of scientific research is a set of methods of scientific knowledge, among which the leading place is occupied by the dialectical method. This scientific article uses General scientific methods of cognition, which, first of all, should include formal logical methods (analysis, synthesis, induction, deduction, analogy), as well as special legal methods (formal legal, the method of comparative law and system analysis).

The theoretical basis of the study was the theoretical and scientific-practical work of Russian scientists on the legal regulation of share capital, changes in the structure of shareholders in the reorganization of joint-stock companies, including the change of ownership of a joint-stock company, as well as fundamental work in the theory of civil and corporate legislation.

Key words: joint-stock company, legal entity, entrepreneur, authorized capital, legal status, procedure of creation, activity, rights and obligations of shareholders, procedure of formation and functioning of bodies of joint-stock company.

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Қазақстан Республикасының және шет елдердің акционерлік қоғамдарының салыстырмалы талдауы

Қазақстандық және шет елдердің экономиканың нарықтық өзгеруі қазақстандық акционерлік қоғамның құқықтық жағдайының қайта жаңғыруына себеп болды. Капиталды жинақтаудың қажетті деңгейіне жеткен кез келген елдің нарықтық шаруашылығының неғұрлым маңызды субъектілерінің қатарына шаруашылық серіктестіктер мен қоғамдар жатады.

Нарықтық өзгерістердің қазіргі жағдайында акционерлік қоғам кәсіпкерлік қызметтің ұйымдық нысаны ретінде ерекше маңызға ие болады. Акционерлік қоғамның классикалық функциясы капиталды тарту және ұзақ мерзімді шоғырландырудан тұрады. Капиталдың болуы кәсіпорындар үшін маңызды. Акционерлік нысан қатысушылардың үлкен шеңберін жасырын біріктіру үшін оңтайлы болып табылады, акцияларды шығару жолымен қосымша инвестициялар тартуға мүмкіндік береді, капиталдың әртүрлі нысандары арасындағы айырмашылықтарды «алып тастайды» және сол арқылы олардың саладан салаға құйылуын жеңілдетеді.

Экономикалық өсім инвестицияны қажет етеді. Еркін ресурстарды шоғырландырудың және оларды инвестицияларға айналдырудың ең тиімді тәсілдерінің бірі Акционерлік қоғамдар болып табылады.

Зерттеу әдістері. Ғылыми зерттеудің әдіснамалық негізін ғылыми таным әдістерінің жиынтығы құрайды, оның ішінде жетекші орынды диалектикалық әдіс алады. Осы ғылыми мақалада танымның жалпы ғылыми әдістері пайдаланылды, оларға ең алдымен формальды-логикалық әдістерді (талдау, синтез, индукция, дедукция, аналогия), сондай-ақ арнайы заңдық әдістерді (формальды-заңдық, салыстырмалы құқықтану және жүйелік талдау әдісі) жатқызуға болады.

Зерттеудің теориялық негізін акционерлік капиталды құқықтық реттеу мәселелері бойынша ресейлік және қазақстандық ғалымдардың теориялық және ғылыми-практикалық жұмыстары, акционерлік қоғамдарды қайта ұйымдастыру кезінде, оның ішінде акционерлік қоғамның меншік иесі өзгергенде акционерлер құрылымының өзгеруі, сондай-ақ азаматтық және корпоративтік заңнама теориясы саласындағы негізгі жұмыстар құрайды.

Түйін сөздер: акционерлік қоғам, заңды тұлға, кәсіпкер, жарғылық капитал, кәсіпорындар, құқықтық жағдай, құру тәртібі, акционерлердің құқықтары мен міндеттері, акционерлік қоғам органдарының құрылу және жұмыс істеу тәртібі.

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Сравнительный анализ акционерных обществ РК и зарубежных стран

Рыночное изменение экономики Казахстана и зарубежных стран способствовало возрождению правового положения казахстанского акционерного общества. К числу наиболее важных субъектов рыночного хозяйства любой страны, достигших необходимого уровня накопления капитала, относятся хозяйственные товарищества и общества. К числу наиболее важных субъектов рыночного хозяйства любой страны, уже достигшей необходимого уровня обобществления капитала, относятся хозяйственные товарищества и общества.

В современных условиях рыночных преобразований акционерное общество как организационная форма предпринимательской деятельности приобретает особое значение. Классическая функция акционерного общества состоит в привлечении и долгосрочном аккумулировании капитала. Наличие капитала имеет жизненно важное значение для предприятий. Акционерная форма является оптимальной для анонимного объединения большого круга участников, позволяет привлечь дополнительные инвестиции путем выпуска акций, «снимает» различия между разнообразными формами капитала и облегчает тем самым их перелив из отрасли в отрасль.

Экономический рост нуждается в инвестициях. Одним из наиболее эффективных способов концентрации свободных ресурсов и превращения их в инвестиции выступают акционерные общества.

Методы исследования. Методологическую основу научного исследования составляет совокупность методов научного познания, среди которых ведущее место занимает диалектический метод. В настоящей научной статье использованы общенаучные методы познания, к которым, прежде всего, следует отнести формально-логические методы (анализ, синтез, индукция, дедукция, аналогия), а также специальные юридические методы (формально-юридический, метод сравнительного правоведения и системного анализа).

Теоретическую основу исследования составили теоретические и научно-практические работы российских ученых по вопросам правового регулирования акционерного капитала, изменения структуры акционеров при реорганизации акционерных обществ, в том числе при перемене собственника акционерного общества, а также основополагающие работы в области теории гражданского и корпоративного законодательства.

Ключевые слова: акционерное общество, юридическое лицо, предприниматель, уставный капитал, enterprises, предприятия, правовое положение, порядок создания, деятельности, права и обязанности акционеров, порядок образования и функционирования органов акционерного общества.

Introduction

The Civil Code of the Republic of Kazakhstan is the first joint-stock company is recognized as a form of legal entity. Thus, the personal law of the companies approved by the personality itself, according to the Article 34 of the Civil Code, the company that is compatible with the law of the legal definition of property and personal non-property rights on its own behalf, and to perform tasks related to the im-

plementation of the court the ability to act as a plaintiff and approved. Such legal subject to the effective implementation of the activities of the joint-stock company will be deemed to belong to the ownership of the property is the foundation of society.

The company's third feature of the Civil Code and "Law" that the provisions of limited liability for the debts of the company and its shareholders and their property on the basis of isolation responsibility of the property restrictions. In addition, Article 44 of

the Civil Code, the Law on Joint Stock Companies «and» in accordance with Article 85, the participants of the joint-stock company own the property separate from the property, which it owns all its obligations; is responsible for the property and shall not be liable for the obligations of its founders and shareholders, and in turn, the overall position of the joint-stock company cannot be responsible for the obligations of its shareholders and the extent of the value of their shares by the company bears the risk of losses associated with the activities.

The fourth and fifth of the above-mentioned symptoms, joint stock companies not a legal definition, but they are not the property of a person, created as a result of the merger are important to any commercial organization. The company created by the shareholders for the purpose of determining the legal and regulatory; the latter in the law to limit the status of (the company) in the provision of legal and moral autonomy. However, the company created by the shareholders and the existence of significant shareholders, as well as being interested in the success of its business, and the proper management of the property and its fruit is not difficult to understand that is also interested in the position.

Main part

According to the article 6 of the law on joint-stock society or its organization in accordance with the existing legal entity (or an existing legal entity) may be formed by means of the reorganization. In other words, that the decision on the establishment of a joint-stock company law and the law is defined as the founders of the joint stock and (or) legal entities can be formed. In particular, the law and the decision on the establishment of joint-stock company is defined as the founders of the joint stock and (or) legal entities that form.

The first constituent meeting of the decision on the establishment of a joint stock company, the founders: the company signed a contract to agree to the establishment of the foundation, the selection of the company's registrar, receives its charter, announced the decision on state registration of the shares, the company's joint venture in accordance with the law and establishing a procedure for the establishment of the founders the introduction of the payment of the share capital of the company to identify persons carrying out the assessment of the property, as well as its state registration on behalf of the company to choose the persons authorized to sign the documents to be adopted at the meeting.

All the decisions of the Constituent Assembly are formalized by protocol. The content of the foundation agreement difference of commercial secrets of the constituent parties of the minutes of the meetings of the same nature of the public or to a certain extent (the foundation agreement difference again) provisioning and other authorized bodies, counter parties to conclude an agreement on the terms (for example, the registrar, valuers and the judicial authorities, the Financial Market and Financial Institutions Supervisory Agency) to confirm the decisions made by the founders of the society is or can be.

According to the Kazakhstan laws we are going to say about the two cases relating to the status of a joint-stock company.

As it has been said the joint-stock company is dedicated for the large business groups and the conflicts in the former (between the authorities and the shareholders of the company, shareholders and other risks) will be guessed the governing by the regulations according to the aims. The law does not prohibit the using this form in the large and small business sphere, but capitalization, accounting, corporate management and demands sufficient by the problems which bring the difficulties to the joint-stock society and, usually it does not allow the development of small and medium-sized business.

The minimum amount of the authorized capital refers to the differences of the legal requirements of the joint-stock company and a limited liability company (the most popular form of small and medium-sized businesses) as in outstanding example. So, the «Act» in accordance with Article 10, the authorized capital's minimum volume of the company for the financial year (from the 1st of January to the 31st of December) is the monthly value of 50,000 times which was marked by the law. In turn, the amount of the charter capital of a limited liability company of such monthly rates of (On joint stock companies the law of the Republic of Kazakhstan 2003: Article 2) LLC must not be less than 100 the amount that is equivalent to the amount corresponding to the value of the share capital of less than the minimum requirement of 500 times. Moreover, for a number of types of business activities, the law only requires the use of the legal form of a joint stock society, but also a high minimum capital requirements, for example, banks (for the period of validity of the claims, and the location of the branches of the banks), which is in the amount of one billion to ten billion. High performances were established for pension funds and for some other types of services.

Thus, the requirements of commercial organizations authorized to the capital that organizational

and legal form to be separated by volumes show the intention that legislator wants to use the joint stock form large businesses (The Civil Code of the Republic of Kazakhstan, 1994: Article 85). As the second it's connected with Kazakhstan legislation that is still granting for the not commercial formation of in the joint-stock form. (Article 34 of the Civil Code). It cannot be ruled out that there was the organization called Kazakhstan Stock Exchange in the practice of Kazakhstan. However, economic and legal point of view, the effectiveness of any such forms of co-existence and validity were not observed.

As well as, there will be some important problems connected with the disposal of its shares in the management of non-profit organizations. (first of all, in terms of limiting the competence of the shareholders).

Moreover, Kazakhstan legislation suggests a wide selection for the purpose of the establishment of non-profit organizations and their subject, depending on the composition of the founders (Sharipova, 2003: 29).

However, no one of these forms does not take in to the property interests of a non-profit organization of the founders, and at that time the economic value of the shares (through its ownership of key competence) is that the subject will buy the account the dividends on the shares of the entity. Therefore, non-profit organizations in the form of joint stock company first of all theoretically, unjustified and, secondly, for the economic system of any significant economic or social benefits.

It is effective to denial of the possibility of the establishment of joint-stock company in the form of non-profit organizations. As though as it is shown in the literature that there were opinions about corporations are non-profit organizations, the development of corporate legal is unreasonable. Therefore, we should acknowledge that legal entities that were establish had in the form of joint-stock companies, corporate companies and corporations must be considered as the commercial organizations (Karagusov, 2016:12).

An important symbol of joint stock company is the issue of shares and its formation the arrangement of them between the shareholders (The Republic of Kazakhstan "On the Securities Market Law", 2003). As it's shown in the law on joint-stock company the issue of shares and the extent of their respective allocation will be given the key to the settlement of the legal status of the company: the founding act of the agreement is terminated by the state registration of the shares, after the company's shares, and the others will be created.

In today's world of scientific literature, there are more than a hundred different interpretation of the concept of «corporation». According to Business Law Dictionary, the corporation is understood to be a legal structure approved at the state level, which allows the company to organize a separate legal entity among its owners – as a legal entity. In this capacity, the Corporation may enter into contracts, acts as a plaintiff and/or defendant, issue shares to raise capital, and perform other activities related to the conduct of business. The personal responsibility of the owners of the Corporation (i.e. shareholders) at the legal level is legally separated from the corporation's liability and debts (the latter are limited by its assets). A business corporation is usually created as a profit-making enterprise (Basin, 2003:155).

The intelligent legal dictionary of Baskakova M.A. gives us the following definition: A corporation is a set of persons united to achieve any goal and form an independent subject of law – a legal entity. The Corporation is a widely used form of business organization in developed countries, providing for the share ownership of participants and the management functions of professional managers «employees» (Civil Code of the Republic of Kazakhstan (General part), 2012). Based on the above definitions, it can be concluded that according to the Business Law Dictionary, a Corporation can be organized only as a joint-stock company, allows the possibility of issuing shares. The second definition specified in the Explanatory legal dictionary, on the contrary, does not clearly specify the characteristics of a legal entity, its organizational and legal form, which allows to identify the special status and specific features of «corporations» among other legal entities.

Having understood the definition of the corporation, we would like to dwell on the types and features of some corporations in the Republic of Kazakhstan and an abroad.

Based on the analysis of information on the types of corporations in the Republic of Kazakhstan well as legislation enshrining the legal status of individual corporations, we propose the following classification of corporations, characteristic of our country:

- 1) Ordinary corporations;
- 2) Multinationals;
- 3) Social – entrepreneurial corporations.

To define an ordinary Corporation in this context, we propose to use the above definition with the addition that an ordinary Corporation is a commercial legal entity organized in the form of a joint-stock company or a limited liability partnership es-

established to conduct large business in the territory of the Republic of Kazakhstan. Cross-border corporations (TNCs) are defined under international law as a legal entity (a set of legal entities):

- owning, managing or operating property in the territories of two or more states;
- formed by legal entities of two or more states;
- Registered as a corporation under the Convention on Cross-Border Corporation (the «Convention») (The concept of development of corporate legislation of the Republic of Kazakhstan, 2011).

The member states are 12 CIS countries, namely: Kazakhstan, Russia, Armenia, Belarus, Ukraine, Moldova, Tajikistan, Georgia, Kyrgyzstan, Turkmenistan, Azerbaijan and Uzbekistan. According to the Convention the concept of «transnational Corporation» includes various transnational structures, including financial and industrial groups, companies, concerns, holdings, joint ventures, joint-stock companies with foreign participation, etc. an example of TNCs in Kazakhstan may be the joint-stock company. Transnational company «Kazchrome». The TNCs legal regime involves business activities in various countries through the establishment of branches and subsidiaries. These companies have a relatively independent service, production and marketing of finished products, research and development, customer service etc. In general, they constitute a single large production complex with ownership over the share capital of only representatives of the and founding country. At the same time, branches and subsidiaries may be mixed enterprises with predominantly national participation of the home country. The Social and Entrepreneurial Corporation (SPC) refers to a legal entity in the form of a public company, created by the Government of the Republic of Kazakhstan (Convention On transnational corporations of 06 March 1998). This type of corporation in Kazakhstan appeared relatively recently, although for the first time they were mentioned in the message of the ex-president of the Republic of Kazakhstan Nazarbayev N.A. «Strategy of Kazakhstan's entry into the 50 most competitive countries in the world» in 2006.

The creation of the (SPC) in Kazakhstan used the experience of the United States «Regional Economic Development Corporations (EDS – Regional Economic Development Corporations) », Western Europe, in particular, Great Britain and Denmark – «social enterprises». For example, in the United States there is the «Public works and Economic Development Act of 1965 in England», the Economic Development Agency Act of 1998.

The American Economic Development Corporation (KER) model is an organization that mediates assistance to private businesses in dealing with the state. The main task of the care is to reduce the bureaucratic process, to assist in obtaining subsidies grants, tax benefits and other privileges. Grants given to private businesses by the state and other organizations are initially transferred to the Economic Development Corporation, which distributes them in accordance with the requirements of the recipients of these funds and benefits.

Social entrepreneurship in European countries is a business whose main task is to help solve the problems of social development, whose income is primarily for the retaliation of these tasks, rather than on maxi mining profits. These organizations provide, assistance to the poor, create jobs for the disabled or unemployed, promote small business, and provide various trainings. However, such organizations in these countries are created on the initiative of groups of business leaders, and with a small share of the state' participation and in Kazakhstan's SPC the share of the state is significant.

The main function of Kazakhstan's SPC, entrusted to it by the Government, is to participate in social, innovative projects, as well as in the productive activities of the region in which it was created. With each SPC, a Regional Social Fund is established that reviews and participates in the development and implementation of social development projects in the region; promotes financial and technical assistance from individuals and businesses for the economic and social development of the region, funds the social project (Kazakov, 2000:71).

In accordance with the government's resolution «On the approval of the list on national management holdings, national holdings, national companies» there are currently 16 SPC in 14 regions of the Republic of Kazakhstan (The law of the Republic of Kazakhstan “on social and entrepreneurial corporations”, Astana, January 2008).

There are many other types of corporations in the world. Under-Anglo-Saxon law, corporations can be private closed (private) and public open (public). By law, U.S. corporations are considered in abroad sense, including various types of legal entities. Distinguish between corporations that have a for profit (business Corporation) and not with the purpose of extraction of profit (non-entrepreneurial Corporation). The main role is played by corporations of the first type. Corporations in the United States can be created only in the form of a limited liability company, where all shareholders legally and for tax purposes are different from the Corporation

itself and are limited in liability for the debts of the Corporation only to the extent of their share in the authorized capital of the enterprise.

In the direction of activity highlight:

1) public corporations (in the UK they are called «public»), **which include, for example, municipalities;**

2) quasi-public (quasi-state), acting as private, but with some state support;

3) entrepreneurial (private) created for profit;

4) non-entrepreneurial corporations (such as government, city, municipals, political associations, as well as charitable, religious, educational and other similar institutions).

By its legal status, the American business Corporation is similar to a joint-stock company of continental law countries (On foreign experience of functioning of social and entrepreneurial corporations.).

Based on the specifics of taxation, all corporations are divided into two types in the United States – C Corporation and S (Small) Corporation. Corporations in the U.S. are registered as C Corporations.

C Corporation is entitled to have an unlimited number of U.S. resident and non-resident shareholders (individuals and entities) unless the corporation provides professional services, is not a charitable organization or doesn't involved in trust activities related to real estate investments. C Corporation may issue shares of various types, and in some states, it is allowed to issue shares on the bearer, dividends distributed to shareholders if C Corporation decides to distribute dividends.

S Corporation is entitled to have no more than 75 shareholders, who can only be individuals-residents on the United States. S Corporation may have shareholders-legal entities, if the corporation is involved in trust activities related to real estate investments. S Corporation can issue only name shares. Profits of S Corporation are not subject to corporate taxation, as the tax status of this corporation stipulates that all profits of the corporation are distributed to shareholders, and only the shareholders of S Corporation are subject to taxation in the U.S. (The concept of development of social and entrepreneurial corporations. Astana, 2012).

For example, in Russia, the possibility of state corporations in the form of non-profit organizations, which are created under federal law (Resolution of the Government of the Republic of Kazakhstan dated April 6, 2011:№ 376).

Multinational corporations, which are understood to be international corporations that bring

together national companies of a number of states on a production and scientific and technical basis, or global corporations, which are large and largest financial, industrial, scientific, technological, trade and service associations (Russian Dictionary of law, 2000:704).

Every year, thousands of foreign entrepreneurs seek to register a company in the United States, one of the most prestigious and promising jurisdictions in the business world. Nearly a third of the business entities operating in America are LLC, a large part of which are equity firms (Butler, 1998:79-86).

According to Thomson Reuters data, U.S. equity markets have significantly improved their performance compared to previous years, particularly in the first nine months of 2018, revenue from stock offerings and offers U.S. stock-related issuers were nearly 9 percent higher than in the same period in 2017, at \$181.9 billion (Platonova, 1998:№1,2). The study also found that in the first nine months of 2018, the initial public offering (IPO) made by U.S. issuers reached its highest level compared to previous years, starting in 2014. As for 2019, the figures continue to grow, thus creating the most favorable environment for those wishing to register a company in America and open a corporate account in the United States.

The most popular sectors to place shares during the period were:

17% are health care;

20% – the field of technology;

14% are in the energy and electricity sectors;

13% – service sector (financial business).

The best results for this period were shown by the issuers' offers in fast-growing markets and with proven management teams (Syrodoyev, 1996:12).

Thus, it can be concluded that in different countries, depending on the legal system, the history of development of both the country and corporate relations, as well as other objective factors, there are different approaches to determining the concepts and types Corporations. And, summing up all of the above, we want to note that in Kazakhstan every day the issue of legislative consolidation of such concepts as “corporation” and “corporate relations” becomes more and more urgent. We believe that the creation of a coherent and internally consistent system of corporate legislation, the improvement of some of its provisions will allow getting positive results in the form of further growth and development of entrepreneurial reducing the number of corporate disputes and attracting more investment to the Republic of Kazakhstan.

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