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CORPORATE FORM OF GOVERNANCE AS AN ELEMENT OF THE GLOBALIZATION PROCESS

Summary. Considers institutional and legal sources of the emergence of corporations, corporate values, nature and characteristics of corporate relations, the evolution of the organizational-legal forms of entrepreneurial activity, the essence of the incorporation, investigated the role of corporations in the globalization process. The aim of the study was to identify the main features, sources and causes of corporate governance to justify a direct correlation of the corporate governance principles with the purposes and principles of the globalization process.

Keywords: globalization, corporation, corporate governance, corporate relations.

ŁAD KORPORACYJNY JAKO SKŁADOWA PROCESU GLOBALIZACJI

Streszczenie. W artykule przeanalizowano instytucjonalne i prawne źródła powstawania korporacji, wartości korporacyjne, naturę i charakterystykę relacji korporacyjnych, ewolucję form organizacyjno-prawnych działalności biznesowej oraz istotę osobowości prawnej korporacji. Zbadano też rolę ładu korporacyjnego w procesie globalizacji. Celem badań było zidentyfikowanie głównych cech, źródeł i powodów wdrożenia ładu korporacyjnego, uzasadniających bezpośrednią korelację jego reguł z celami i regułami procesu globalizacji.

Słowa kluczowe: globalizacja, korporacja, ład korporacyjny, relacje korporacyjne.

1. Introduction

The emergence of global companies is part of the world globalization process, so global companies can be seen as a socio-economic perspective, either as a tool of world globalization. Therefore, to identify the signs of a global company should be summarized the essence of globalization.

Globalization – process of global economic, political, cultural and religious integration and unification. Unification (from lat. unus – one facio – do; association of) – reduction to a uniform system or form.

The analysis of globalization shows that the declared integration of cultures, political systems, economies, values, actually is a trivial imposition on other countries of a certain system of values, rules of life by the author of the globalization process – the United States.

An integral element of globalization is the globalization of the economy, which is understood as the process of formation of a single global economy that is associated with the leveling of the traditional international economic relations. Castells defines economic globalization as the process of «association of critical sectors of national economies in a holistic system, functioning in its entirety in real time»¹.

With globalization, increased world trade and other processes of international exchange, in comparison with the national economy in an increasingly open, integrated, borderless world economy. And we are talking about goods, services, movement of information, capital, technological transfer, labour mobility. To review the global organization as a result of the development of the traditional companies of national States is incorrect, because the global company is part of a completely different system of governance in which no nationalities, differences, boundaries, uniqueness.

The aim of the study was to identify the main features, sources and causes of corporate governance to justify a direct correlation of the corporate governance principles with the purposes and principles of the globalization process. The global economy needs new forms of organization, which, on the one hand, is most consistent with the new realities, and, on the other hand, are the basis of its functioning. These «bricks» are global corporations, whose history begins in the XVII century.

2. Corporation – definition

The first companies established on the principles of global companies, were as follows: Dutch East India Company (1600), British East India Company (1602), Hudson's Bay

¹ Kish E.: The Philosophy of globalization. The Age of globalization, No. 2(6), 2010.

Company (1670). Despite the fact that about globalization in the seventeenth century was premature to think that these companies are a model for the emerging global corporations, the only difference is in the scale of activity, but not in the mode of operation.

In the literature there are various definitions of the Corporation. However, most of them boils down to the fact that the Corporation (lat. corporatio – association, community) is a legal person conducting business activity, with a developed organizational structure, a wide range of activities, a significant share of the market, extensive business connections and hired managers.

However, a key feature of a Corporation that distinguish it from other forms of doing business – corpus. Corpus (lat. corpus – the body) is the principal sum (the sum of the property transferred in trust management, in contrast to interest income, resulting from the investment of such property)². In other words, only a key characteristic of the Corporation is a transfer of property in trust, or the separation of functions of ownership and management.

Therefore, a fertile ground for the birth and formation of corporations occurs only in the case when actualized the problem of managing the property of others. The accumulation of property is in the process of incorporation. The incorporation of (new lat., from in, and corpus - body) – 1) accession to the state of the country, former self³; 2) providing in accordance with the law the group of persons of the status of the Corporation, the legal entity⁴; 3) the systematization of the laws of the state, their arrangement in a certain order (chronological, alphabetical, by fields of law) without changing the content of laws⁵. All the values of incorporation are important for understanding the conditions of the birth of the Corporation and its role in modern society.

Accession to the state of the country, which had previously been independent, and, accordingly, loses its sovereignty after accession – the process now called globalization (the first condition for the birth of the Corporation). In other words, the Corporation is on the one hand, the instrument of incorporation (globalization) and, on the other hand, a structural unit of a global state.

Providing state of the status of the Corporation on the basis of the law, as the second condition of her birth, requires a historical digression. It is important to note that if the main objective of the Corporation – a global society, to corporations can be attributed not only commercial, but social and non-profit bodies operating in the same direction (for example, educational or medical organization). «In the heady atmosphere of early – mid nineteenth century, the issuance of permits for the establishment of corporations in America reached unprecedented scale. Schools and colleges, medical, agricultural, and charitable societies, churches, large and small towns besieged state governments requests for the issuance of

² English-Russian economic dictionary; http://economy_en_ru.academic.ru/15338/corpus.

³ Chudinov A.N.: Dictionary of foreign words, which entered the Russian language. Gubinsky, Saint-Peterburg 1910.

⁴ Krysin L.P.: Explanatory dictionary of foreign words. Russian language, Moscow 1998.

⁵ Explanatory dictionary of Russian language ; <http://www.vedu.ru/expdic/60857>.

charters. The number of corporations increased rapidly. By 1817 it had reached almost two thousand... At the time not seen significant differences between purely commercial and multi-public organizations. Each in their own way worked to the benefit of the young Republic»⁶. «The Corporation of open type include: municipal corporations, district corporations, «corporations established for public purposes»⁷.

The first step was incorporating colonization, because it is in the colonies should be more comfortable conditions for the birth of the corporations. «Incorporation found fertile ground in the American colonies»⁸, there arose the first Corporation, and that the American Corporation to date represent the majority of global corporations.

«During the XVI–XVII centuries British entrepreneurs sought a Royal Charter certificates for a variety of commercial enterprises, including trading offices in the Baltics, Russia and Ireland, as well as «plantations,» as was called the new settlements in America. The first companies that received the Charter, were joint-stock companies whose capital consisted of contributions of several shareholders, and the first Corporation with a permanent equity Fund is considered established in 1600, the English East India company»⁹. Thus, the Corporation in the form in which they exist today, originally emerged to manage the colonies and, at the same time, to strengthen the Royal power (distribution of privileges through Charter granting to the favourites of the exclusive rights and privileges).

The Law itself is the third key condition for the emergence of the Corporation. The role of the law is obvious only in the field of creation of institutional conditions for the functioning of corporations, but, more importantly in this case, the law as a Foundation for building a system of values and ideological dispensations, which, in turn, are the basis of building a global state and its institutions, which include the Corporation. The analysis of the nature and source of laws draws us into the realm of religion, which is beyond the scope of this scientific research, we will mention only one of the first manifestations of this law in society in the form of «institutionalism». In general the concept of «institutionalism» includes two aspects. First, it's customs, traditions, norms of behaviour accepted in society. Secondly, the consolidation of norms and practices in the form of laws, organizations, i.e. «institutions». Institutionalism – one of directions political science of the XX century, considering the political organization of society as a complex of different associations of citizens – «institute» (e.g. family, party, company, state etc.). However, the root of the word «institution» (lat. institutio – teaching) appeared much earlier: the so-called elementary textbooks of private law Roman lawyers. The most known are the institutions of Gaius, the Roman lawyer, who lived in the second century. Gaius was an ideologue of the slave owners. All his efforts were focused on ensuring interests of the ruling class and, above all, to support unlimited ownership rights of slaveholders for

⁶ The birth of the Corporation; <http://www.corpo.su/node/583>.

⁷ Gritans J.: Corporate relations: Legal regulation of organizational forms; <http://www.class.ru/library/node/1935>.

⁸ The birth of the Corporation; <http://www.corpo.su/node/583>.

⁹ The birth of the Corporation; <http://www.corpo.su/node/583>.

slaves¹⁰. Thus, the existing legislative system ensures the interests of the limited circle of people. As for corporations, it is a historical fact that «most of the problems associated with corporations, were decided by judges, not politicians»¹¹.

So, frame of reference institutional trends in the formation of a Corporation is capital. Corporation – the instrument of monopoly capital. Capital is the totality of material, intellectual, financial, and human resources used for profit.

3. The evolution of the organizational-legal forms of entrepreneurial activity

The evolution of the organizational-legal forms of entrepreneurial activity reflects the different stages of the legal formation of corporations. The original and the simplest form of business association were a partnership. Members of the partnership had a common goal, both separate and common property, carried total risk. This form of partnership was characterized by strong personal influence of individual participants, therefore, such association cannot be regarded as something separate from its participants, and it did not become an independent subject.

In the following form – in a general partnership – business association separate from the identity of its participants, but still not enough to recognize the partnership the right to an independent subject. A general partnership is not possessed as signs of actual associations inside (between the participants) and the legal association externally (to third parties).

In a limited partnership, two groups of participants: the first group similar to the participants of the general partnership, the second group of participants separate from the business activities of the partnership. A limited partnership can be considered as the next step in the further separation of business associations from the persons who create them, as well as the initial shape in the transition from the comrades association to association property.

At a certain stage of business development has arisen the need for the establishment of business associations not in the form of a group of persons, and in the form of a new independent legal entity in which the association would be distinct from the participants and their will. The emerging need was solved by the introduction of the legal structure of the «legal entity». Although the construction elements of the «legal entity» already existed in the middle ages, for example «corpusmisticum» Italian, and even Ancient Rome (Roman «universitas»), but clear criteria for the notion of «legal entity» was formed in the nineteenth century.

¹⁰ Bratus S., Kazantsev N. et al.: The Soviet dictionary of law. State publishing house of legal literature, Moscow 1953.

¹¹ The birth of the Corporation; <http://www.corpo.su/node/583>.

The limited liability company is a legal entity, which retained certain elements of the partnership. As a legal entity, the limited liability company has the property separated from property of its members, has an independent organization and its members are not liable for its obligations. The highest form of business associations, based on Association property, where bright focused entrepreneurial spirit, is a joint stock company.

So, the main driving forces of the evolution of organizational and legal forms of the following: 1) the desire to minimize the responsibility of the founders to the creditors that provided the basis for the emergence of a large entrepreneurial organizations – global corporations; 2) the separation of functions of ownership and management that allows owners of joint stock companies, without taking any part in the management, to receive dividends; 3) an increase in the possibility of using free other money for profit.

4. Institutional and legal trend

To identify the nature of corporations and corporate governance we reviewed two parallel trends that can be established as the institutional and legal. The first is related to values and ideological attitudes, exposed the sources of the idea of the corporate form, the second reflects the process of legitimization and of practical implementation of these values.

Most clearly corporate values and their legal basis is manifested in corporate relations. Corporate relations today are an integral part of modern society. Especially widely and dynamically in real time corporate relations are developing in political and economic spheres of society. The concept of «corporate relations» are not reflected in the modern Russian civil legislation and is a conventional economic and legal interpretation.

In this research corporate relations is understood regulated by norms of the right public relations connected with realization and protection of corporate rights. The generic term «corporate attitude» applies to joint-stock legal relationships and legal relationships associated with the formation, operation and termination of the activities of the societies with the limited (additional) responsibility¹².

A distinctive feature of corporate relations from other forms of relations between business entities is purely legal in nature, and therefore to identify their nature can only be based on legal approach

Since the Corporation is the association exclusively possessions rather than companions, amid the individualistic civilization that was fertile ground for the emergence of these relations, all the traditional forms of relationships (friendship, family, kinship etc.) in the framework of the corporate system are offset. In Russia until the XVIII century the form

¹² Lomakin D.V.: Corporate relations: a General theory and its implementation in business entities. Statut, Moscow 2008.

property of the association has not received such wide circulation, despite the efforts of Peter the Great, the decrees of which were obliged to trade through the creation of joint companies according to Western European standards, because Russian life were characteristic of interpersonal association, not property.

The question about the nature of corporate legal relationships in a civil law science is debatable. We can distinguish two reasons for this state in the sphere of corporate relations: the first is cultural, which consists in the fundamental difference values inkorporerer cultures that leads to different kinds of problems when you try to introduce some «innovative» ideas from the Anglo-American system of values in the traditional national cultures of Europe, Asia etc. in transition; the second reason is to attribute the property of the legal system, manifested in the use of «double standards» that prevent the drafting of one approach to understanding the nature of corporate relations.

5. The structure of corporate relations

The structure of corporate relations consists of the following elements: the subjects of corporate relations; the object of corporate relations; the content of corporate relations.

The subjects of corporate relations – individuals (groups of individuals), legal entities (group of legal entities) physical persons and legal entities (group of individuals and legal entities) who have entered among themselves in corporate affairs, having provided corporate law and is entitled under these regulations responsibilities.

Typically, there are three main groups of participants of corporate relations: the Corporation, shareholders, stakeholders. Above the interests of the various participants in corporate relations do not coincide and are often just the opposite. The degree of stakeholder participation in corporate governance depends on national laws and practices in different countries and may vary from country to country. As an example we can mention the representation of employees on the Supervisory Board and the adoption of certain key decisions taking into account opinions of stakeholders.

Understanding of the object of corporate relations is also ambiguous: the activity of subjects, aimed at obtaining material goods¹³, ownership and/or common interests or the will¹⁴, internal activities of the organization¹⁵ etc.

The object, as a category, is a phenomenon, an object, someone's work, someone's attention¹⁶. Accordingly, the object of corporate relations is something that is directed

¹³ Lomakin D.V.: Corporate relations: a General theory and its implementation in business entities. Statut, Moscow 2008.

¹⁴ Gritans J.: Corporate relations. Legal regulation of organizational forms; <http://www.class.ru/library/node/1935>.

¹⁵ Stepanov P.V.: Corporate relations in commercial organizations as part of civil law. Moscow 1992.

¹⁶ Explanatory dictionary Ozhegova; <http://www.ozhegov.com/words/19864.shtml>.

attention and activity of subjects of corporate relations. As indicated above, each of the entities has its own goals, which may be diametrically opposed, because as the object you want to identify something, which is the basis for the emergence of corporate relations, which, in turn, is manifested in the analysis of conditions of occurrence of the first corporations.

In the US the corporations Charter and privileges were initially granted by the government. Of course, the state granted the Charter, have rights and privileges only if the Corporation has implemented the goals and objectives of the state. Charter (charter, lat. carta - «written document»), legal certificate issued by the ruler or government and provides certain rights or establishing constitutional norms. In other words, for the purpose of obtaining the Charter (incorporation) was the legal reason the use of state property. «A distinctive feature of Russian companies in the beginning of the eighteenth century was the purpose of most companies is designed to get at the mercy of state factories, state-owned fisheries, lands, sometimes taxes, so these companies enjoyed considerable perks and privileges. In this regard, the state government acquired the right of control over the activities of companies»¹⁷. So, the object of corporate relations is the property of the state.

Content of corporate relations are the rights and obligations of subjects of corporate relations, including the Corporation as a legal entity, the participants (shareholders) and the persons performing the functions of the Executive bodies of business companies (sole and collective Executive bodies, members of the Board of Directors, audit Committee), stakeholders¹⁸. The rights and obligations arising from the subjects of corporate legal relations regulated by the norms of the corporate law of the Russian Federation. Such rights can speak right to participate in management, the right to receive information about the activities of the Corporation, the right to receive part of the property upon liquidation of the Corporation, the right to receive part of the profit from the activities of the Corporation etc. Failure to perform duty may result in the compulsion to its implementation, the liability within corporate relations can be expressed in various ways.

Legal aspects of corporate relations are subject to corporate law. Corporate law is a set of legal rules governing the legal status, procedure of creation and activity of corporate organizations, on the other hand is a system of rules established by the owners or administration of the organization and control of various internal relations¹⁹. The principle of corporate rights - the principle of optionality: many issues are regulated by the participants of corporate relations (to the extent not contrary to the law). Attribute the inconsistency of the

¹⁷ Gritans J.: Corporate relations: Legal regulation of organizational forms. <http://www.classs.ru/library/node/1935>.

¹⁸ Current issues of corporate governance in Russia. The programme of the Roundtable the OECD-RUSSIA corporate governance 2015. <http://www.oecd.moex.com/s624>

¹⁹ Sonkin N.B.: Corporations: theoretical and applied problems. MVAS, Moscow 1999.

legal system of Princip optionality leads to a wide variety of disputes and conflicts of participants of corporate relations²⁰.

The main distinguishing feature of American corporate law in comparison with Russian is its high detail thanks to numerous judicial precedents and, most importantly, as a consequence of the ideological unity of essence of the legal system and cultural norms of Western society.

Because currently, corporate law as an independent branch of law did not exist, corporate relations usually attributed to civil law. Civil rights are obligations, property and personal non-property relations. In order to include the corporate attitude towards the subject of civil law, must establish that they possess all the characteristics of civil law relations and are controlled by civil law method, the fundamental feature of which is the equality of participants in civil relations.

Proceeding from the peculiarities of the modern Russian legislation: impermanence, high inertness, low professionalism of legislators, requires further clarification of issues relating to the nature, definitions and concepts of terms «Corporation» and «corporate relations». Moreover, the concept of «Corporation» in civil law does not, and the term «corporate relationship» has not received legal fastening in the legislation, preference is given to such concepts as «internal relations», «organizational relationships». The specifics of corporate relations is also reflected in the inconsistency of terminology in the economic and legal literature, the current legal basis in the Russian Federation.

6. The main features of corporate relations

In connection with the above, highlight the main features of corporate relations:

1. Exclusively proprietary in nature. When creating corporations is the association of possessions; when you exit the Corporation is the alienation of the property; receipt by the members of the Corporation of profits from the activities of the Corporation or of the property upon liquidation of the Corporation, is proprietary in nature; the object is the property of the state, etc.

The problem arises when considering the relationships associated with participation in the management of the Corporation and obtaining information on its activities that are not associated with the property directly and therefore they could be classified as personal. However, the doctrine and the civil law (article 150 of the civil code) under personal non-property rights understand the rights, inseparably linked with the personality of the citizen,

²⁰ Garmaev A.G.: Review of corporate disputes. Joint-stock company: issues of corporate governance, No. 1(128), 2015; Osipenko O.V.: Corporate conflicts: new developments. Joint-stock company: issues of corporate governance, No. 6(133), 2015.

they have no proprietary content, are inalienable and absolute. All sorts of other relationships is inevitable, one way or another, relate to the property.

The rights of subjects of corporate relations are alienated, which is a consequence of one of the signs of a Corporation – the free sale of shares (or sell any shares in the share capital); relative, not absolute, as corporate relations formalize the relationship of each member of the Corporation with all the Corporation as a whole; the exercise of corporate rights directly or indirectly has as its objective the satisfaction of property interests of their carriers due to the very nature and character of corporate relationships, that is the basis of all corporate relations are economic relations of property.

Corporate law from the very beginning corporations have become the subject of civil circulation of property between separate entities. A similar approach in resolving the issue is also typical for St. Petersburg school of jurists²¹, a similar explanation of this issue was given O. S. Ioffe²².

2. The fundamental role of law in causing, as the Corporation itself, and corporate relations. In connection with which there is no authority above the law and before the law all are equal. On the basis of paragraph 1 of article 2 of the Civil code of the Russian Federation, signs civil law method is the equality of participants of civil legal relations, autonomy of will and property independence.

However, civil legal equality of subjects of means equality of their civil status. All the subjects of corporate relations are equal from the point of view of civil status.

Corporate relations the subject is not able to subdue the other side the implementation responsibilities, and needs for its compulsory implementation in case of failure to contact other participants in corporate relations or jurisdictional authorities. Members of a Corporation have only the right to give binding instructions, without power to enforce his instructions in case of default, which ensures the principle of autonomy of will.

In addition, the participants of corporate relations have the characteristic property of isolation. It is property isolation, based on the institution of private property, guarantees the equality of subjects of civil legal relations.

We can also note a few additional characteristics of corporate relations that are analyzed in the scientific literature:

- ✓ corporate relations do not possess symptom specificity (e.g., members of a Corporation do not know about the concrete amount of dividend up to the date of its Declaration, the actions of the Corporation that are associated with the implementation of participant rights to manage and to receive information as it is impossible to specify);
- ✓ corporate relationships can be not only a regulatory but also of a protective nature (for example, violation of the rights of a participant of the top-management may be stopped by

²¹ Tolstoy Y.K.: Towards the development of the theory of the legal entity at the present stage. Problems of modern civil law. Gorodets, Moscow 2001.

²² Selected works on civil law. Statut, Moscow 2000.

decision of the General meeting of shareholders, the meeting which may be convened on the initiative of members themselves, whose rights are violated);

- ✓ corporate relations are among the secondary relations, based on the principle of private property;
- ✓ corporate relationships are built on the model of obligations: creditor - debtor, since the emergence of the Corporation based on the credit issued by the state. The problem for the state may occur when the scope of the activities of the Corporation becomes comparable with state activity, in this case, it is necessary to intensify the activities of the Antimonopoly service to combat monopolies.

Within the world of globalization Russia plays the role of a raw resource. In this regard, corporate ideology is most pronounced in the companies of mineral resource complex. It is in this industry in Russia the largest number of global players, so understanding the specifics of corporate relations, the corporate system of values is most relevant for the domestic management companies of mineral resource complex.

7. Conclusions

What practical consequences can be predicted in the political and economic spheres, based on the analysis of the nature of corporate governance? The incorporation leads to the destruction of national cultures, the uniqueness and identity of peoples, which gives rise to a protest movement (an extreme form – terror), the concentration of capital and finance the authors of the globalization of the pyramid leads to the impoverishment of the majority of the population, the decline in the quality of education, neglect of employees, dissemination of the strategy of "scorched earth", the loss of motivation to work among employees and replacing them with robots and machines, the growth of the ideology of individualism, the deterioration of the mental state of society, the deterioration of the quality of goods and services, rising prices, the cult of ideology of parasitism, etc.

The sources of the emergence of corporations as a tool incorporeally, peculiarities of corporate relations allow us to conclude that the corporate form of management best suits the aim of globalization, because it is based on the same principles and the same system of values as the globalization process.

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Omówienie

W artykule poddano analizie istotę korporacji oraz ładu korporacyjnego, zidentyfikowano też ich główne wyznaczniki. Odkryto dwa równoległe trendy w tworzeniu form ładu korporacyjnego oraz form organizacyjno-prawnych. Pierwszy trend wiąże się z wartościami i poglądami filozoficznymi, dotyczącymi idei ładu korporacyjnego. Drugi trend odzwierciedla proces uznawania i wdrażania tych wartości. Przeanalizowano główne cechy osobowości prawnej korporacji, wyznaczone przez dominującą rolę systemu prawnego w przedsiębiorstwie, przedstawiono też rys historyczny tworzenia instytucji korporacji. Na podstawie zaprezentowanego materiału została dowiedziona bezpośrednia korelacja między ideologią i regułami ładu korporacyjnego a celami i regułami globalizacji.