

Problems of the Management of Legal Entities of Private Law in Georgia

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Abstract—Importance of management of legal entities under private law of which especially corporate management, as well as looking for ways of its improvement and perfection has become especially relevant in the twenty-first century, which was greatly contributed to by the global economic crisis. Some states have adopted Corporate Governance Codes; the European Union has set to work on a series of directives the main purpose of which is an improvement of corporate governance, provision of greater transparency and implementation of an effective control mechanism. This process is not yet completed, and various problematic issues associated with management of legal persons are still being debated among practitioner experts and scholars. Georgia is not an exception in this regard. The article discusses the legislative gaps, and in some cases, discrepancies having arisen in legal relationships under private law and having caused many practical problems. This especially applies to the management of capital companies.

Keywords—Business entities, corporate management, public capital management, collective norms, existing problems, legal discrepancies.

I. INTRODUCTION

GEORGIAN legislation confuses functions of governing bodies, contains conflicting norms, which in practice leads to a conflict of interest between the governing bodies and does not fully secure objectivity and transparency of actions.

In the article, some shortcomings of the current Georgian legislation are discussed based on the comparative legal analysis; factual problems are set, and their possible solutions are proposed in the form of recommendations.

Management of private law legal persons, especially the significance of corporate management and the ways of its development had become the issue of paramount importance at the beginning of the 21 century when the economic crisis of the USA had an impact on Europe as well. The reason was the bankruptcy of the main market players like Enron, Worldcom, Lehman Brothers', etc. The second wave of the crisis hit almost the whole world in 2006-2008 and since then the USA, as well as the European Union and its non-member states have been trying to eradicate the consequences.

On the basis of the experience gained through the above-mentioned crisis, aimed at eradicating the consequences, the

representatives of private and public sectors have intensified their work. Several countries have worked out the code for corporate management. The European Union has also started to work on some directives, the main reason of which is a refinement of corporate management, expansion of transparency and implementation of effective control means. The process has not been finished yet, and the debates are still carried on by practitioner specialists and researchers about the different problematic issues concerning the management of legal persons in private law sector.

II. PROCEDURE FOR PAPER SUBMISSION THE CURRENT PROBLEMS OF MANAGEMENT ENTERPRISE IN GEORGIA

Corporate Law and Corporate Governance is an important issue of Private Law, as far as regulating major part of business (commercial) relations- the companies/business shareholder relationships with a wide range of subjects.

The importance of corporate governance and the necessity of urgent is very actual between professionals of law, but after that ineffective management of corporate scandals, and as a result, that led the collapse of large companies, the necessity effective mechanisms of corporate governance is evident not only for investors/shareholders but also for managers as well.

On this basis, the largest companies of the world spent solid human, intellectual and financial resources for effective and efficient corporate governance system and functioning. On the other hand, international organizations and governments are aware of their responsibility which, in their advisory or binding documents (laws, regulations, directives, reports, etc.) is constantly emphasizing the importance of corporate governance at local and international levels. Therefore, corporate governance is not only theoretical and scientific research subject but also a very important practical issue.

The main reasons of the above-mentioned collapse of the largest companies are in the lack of transparency and accountability, ineffective management of companies; managers use their position for personal purposes and unjustified business risks of the company. On the other hand, the above-mentioned factors prevention and early detection of systems deficiencies attributed the inability of corporate management. Decomposition of companies unnoticed other market participants that are why corporation's bankruptcy was the surprise hit for each of them. As a result, the EU on the base of experience has developed an approach according to which "its importance that European businesses must be responsible not only for its employees and shareholders but also for the whole society. Corporate Governance and Corporate Social Responsibility are the raising issues of public

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trust."

It must be pointed out that corporate governance has been reviewed along with other issues of industrial law during last decade we witness the tendency of its formation as an independent branch. Although its tight link with the corporate law is doubtless, there is overlap in a number of issues [1].

It must be noted that in the formation of corporate governance the influence of general law is of great importance namely in the USA in the 90s of last century were established the basic principles of corporate governance. Accordingly, the American model gradually became definite in forming the main tendencies, which wrote now keep their global significance [2].

In general, the obvious concept that the goal of corporate governance is to prove the balance of interests of shareholders and company managers, but this definition seems a bit primitive, as daily functioning of a company does not include relations only with managers and shareholders; company employees, investors and even a State are also involved in it, and its character is defined by legal, institutional and ethical circumstances. Consequently, corporate governance covers a wide spectrum of relations, and its significance must be accordingly valued.

There is no unified unanimously recognized definition of corporate governance. The term "Corporate Governance" was firstly used in 1984 by professor Robert Ian (Bob) Trikes as a title for his research work and he fairly considered as the founder of the field. He separated from each other Corporate Governance and Business Management when he stated that "Whilst management processes have been widely explored, relatively little attention has been paid to the processes by which companies are governed. If management is about running businesses, governance is about seeing that it is run properly. All companies need governing as well as managing" [3].

By the definition of the World Bank President James Wolfenson, "Corporate Governance deals with honesty, transparency and responsibility". Effective corporate governance is such an important issue of economic development as effective public governance." As it was defined in the "Financial Times" in 1997, "Corporate Governance in its narrow meaning can be expressed as a company relation with its shareholders, but in the wide sense – as its relationship with public."

As for Georgia, Georgian legislation determines the general regulation of efficient management system for private law enterprise legal persons. (most of the countries such as Germany, United Kingdom have adopted the corporate governance code) [4].

According to the existing reality in Georgia, together with the development of industry relations, it is better to share already probated international package that would support as improvement of the legislative base as well solving the practical problems effectively.

Despite industry subjects and the existing tendency of unification commercial relations on the basis of uniting the capital there are certain differences among existing company's

characteristics according to these companies' law and order. Accordingly, it's interesting to compare legislative and practical issues characterized for different legislative families, analyze Georgian legislation in this view and form respective conclusions [5].

Today all the researchers and lawyers suggest that corporate management involves a full complex of interrelations of the company and is in connection with such important issues, as is a good business reputation of the company in the market (so-called "Goodwill"), effective functioning and improving conditions of the company. Accordingly, we may explain corporate management as the unity of rules, regulations and the processes that define the direction of the company activity and its success, deals and regulates as company's interrelations as well the rights and obligations of interested sites [6].

When the corporate management and its relevant regulations are discussed, it's important to note the role of so-called "Soft Law." In this context, the example of "Soft Law" are the management codes. The main goal and advantage of corporate codes are the simplicity of implementing and not obligatory. The company will not be threatened by sanctions if the requires are not foreseen as it would have been in the case of obligatory acts [7].

The members of the United Countries (Great Britain, Germany, Netherlands) share the idea of complying or explaining. The main idea of this concept is the general spread of corporate management actions upon the so called, open companies. And if the companies are not able to spread the action of codes, they are obliged to explain the reason [8].

Corporate management is known as one and two staged management system. The first main characteristic of one staged - system is the existence of supervising organ. The authority of management is mainly distributed among stockholders and directors. The one-staged management system is typical for the countries of common Law (USA, Great Britain, Ireland and Israel). Concerning the major Continental Countries, they recognize Two-staged management system. This way, besides the stockholders and directors the company has the supervising organ, and its function is to control directors (Germany, Netherlands, Austria, Finland, Denmark and etc.). In general, the function of the supervising organ is to appoint and control the activities of directors and more often, they are obliged to perform the function of company's supervising board court's representative. As a rule, his duty includes to confirm the annual account of a company and interfere the directors activities if he exposes to danger [9].

Management organ(directors) in their turn, act as free-running, they are not limited to making decisions by supervising board, as the directorate are responsible not only for company's everyday activities but for planning the long-term goals and objects and for defining the methods in order to gain their objects [10].

The company's two-staged system in legal literature is the prevention of conflict of interests, Which is gained only by severe definition of management and control. In the condition of the two-staged management system to practice the conflict

of interests is very difficult. The members of the supervising board are elected by stockholders, and the directors are elected by the supervising board. The supervising board supervises and controls the directors activities, retiring and maintaining their members' positions which are directly connected with the company's functions [11].

III. CONCLUSION

According to Georgian Legislation and the result of practice we can conclude:

- Corporate management does not represent the company's only interior interrelations as it has been for a long time. At the last ten year, the world's economic crisis clearly showed that for the effective activities of a company not only interior regulations are important but stability and long-term relations with third persons as well. Accordingly, corporative management is possible to be explained as a totality of rules, regulations, and processes, that defines company occupation's direction and regulates company not only internal relations but also rights and duties of relating individuals.
- For raising and improving the corporative management quality, the advantage on this stage should be granted to the exhaustive legislative regulation. On the initial stage it's worth creating the documents of recommendation character, it would be profitable to work it out, considering the fact that, on the further stage in case of its practical usage it would be possible to work it out, considering the fact that, on the further stage in case of its practical usage it would be possible to improve the legislative base and the fulfillment of manufacturing spheres existing relations for maximal exhaustive regulation. The usage of recommendation documents character on initial stage mentioned according to the fact that, in terms of Georgia analogy capital markets, where is a risk of monopolization by one large-scale company, in our point of view the advantage should be given to mildly exhaustive legislative regulation. Finally, should be strengthened so-called "sugar and whip" principle towards the subject of company management and their property responsibility should be provided realistically.
- Considering the fact that Supervisory Council with classical understanding basically monitors and controls the occupation of directors, should exclude the possibility of electing the director as a member of Supervisory Council. Besides the law should define Imperatively that the director's functions particularly in society guidance sphere, is not allowed to be granted to the Supervisory Council.
- Precisely, after the conducting of mentioned changes, it will have a sense and will be justified "concerning the manufacturers" of Georgian Law 55.7 code "V" sub-article and by which the right of appointing joint stock company directors is eligible only the Supervisory Council. Otherwise, there is a risk that the Supervisory Council should be more or less subjective to its appointed and elected directors.
- The law should allow the possibility that the members of Supervisory Council, in addition to the right of appointing as a director according to the regulation should be additionally defined the list of those additional appointing positions that could be prohibited for the Supervisory Council members, according to the nature of company occupation. The abovementioned list should be combined according to the partners' decisions. Also, we assume, that the members of Supervisory and representative Council can't be the supervisor of rival society at the same time. The mentioned regulation is provided by German joint stock law, according to which the member of Supervisory Council, cannot be an individual – who has personal or business relations with other society or with its board of directors; Is the member of board of directors, general manager; fulfills the management or has the same position in the rival company, is the former member of the board of directors, in case when in Supervisory Council as members are two or more such former directors. We are far assured with such regulation by the side of Georgian legislation one of the main problem – conflict of interest will be avoided.
- In practice the problem is in the item of Supervisory Council's quorum, namely, "concerning the manufacturers", according to Georgian law of 54-article, the Supervisory Council's session is eligible for making decisions if it's presented by more than half of members. Taking into consideration the fact that, Article 55 of the Georgian law on entrepreneurship determines the minimum and a maximum number of (3-21) monitoring council members, it is ambiguous what is meant under the halving of the council members if this number equals to 3, 5, 7, etc. We believe that the legislation should not regulate the maximum quantity of the monitoring council members and maximum quantity of directors as well. The decision should be delegated to the shareholders' meeting. In addition, we find it mandatory the number of monitoring council members be odd and defined by the law, in order to avoid the possibility of the vote division and complication of decision making.
- We consider it obligatory to define the minimal age of directors, which in its turn, will cause annulment of Article N65 from the Georgian Civil Code and thus eradicate existing legislative collision. "Emancipation of the under-aged" contradicts with the entrepreneurial law which defines that, directors should deal with their tasks honestly like any other right-thinking person and act with the faith that their activities are beneficial for the society.
- The law should regulate the terms of contracts between directors and companies, for instance, determine so-called job contracts.

This is the minor representation of the existing problems in the Georgian private law sector, and their solution would be a step forward for the integration of Georgia's legislation into the world legal system.

REFERENCES

- [1] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions Towards a Single Market Act – for a highly competitive social market economy – COM (2010) 608final/2, pg. 27;
- [2] Georgia Supreme Court “about Entrepreneurs” of law as a result of recommendations of workshop and materials, Tbilisi, 2009, page.9;
- [3] CACG Guidelines – Principles of Corporate Governance in the Commonwealth towards global competitiveness and economic accountability; November 1999; pg.1;
- [4] The Law of Georgia "On Entrepreneurs".
- [5] L. Chanturia, Corporate management and directors' liabilities in corporate law, Tbilisi 2006.
- [6] K.Kokrashvili. Corporate Law. 2010.
- [7] K.Kokrashvili. Article - The Problems of separation of management authority of joint stock company according to Georgian legislation, the International Conference on “Current Problems of Law”, Tbilisi, 2010.
- [8] Fourth Company Law Directive on annual accounts (Council Directive 78/660/EEC as amended by Directive 2006.
- [9] German Stock Corporation Act.
- [10] Norton Rose group, German corporate laws on joint stock companies, pg.14.<http://www.nortonrose.com/knowledge/publications/pdf/file25765.pdf?lang=en-gb>.
- [11] Richard h. Lester, a road less traveled: investigating the outside directors of America's corporate boards, p.20 <http://repository.tamu.edu/bitstream/handle/1969/493/etd-tamu-2003B-2003051514-Lest-1.pdf;sequence=1>.

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K.Kokrashvili. Corporate Law. Georgia, Tbilisi, 2010. K.Kokrashvili. Article - The Problems of separation of management authority of joint stock company according to Georgian legislation, the International Conference on “Current Problems of Law”, Georgia, Tbilisi, 2010.

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