

УПРАВЛІННЯ ПІДПРИЄМСТВОМ

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CORPORATE GOVERNANCE AND THE UKRAINIAN CORPORATE ENTERPRISES DEVELOPMENT

КОРПОРАТИВНЕ УПРАВЛІННЯ В РАМКАХ РОЗВИТКУ КОРПОРАТИВНИХ ПІДПРИЄМСТВ УКРАЇНИ

Urgency of the research. The importance of studying the essence and features of the Ukrainian corporate enterprises development is determined by the global challenges in the company development.

Target setting. A strong corporate sector is a key element in the development strategy of a dynamic and competitive national economy. An effective system of formation and development of corporate enterprises contributes to the attraction of domestic and foreign long-term investments to the domestic market.

Actual scientific researches and issues analysis. The founders of the study of the formation and development of corporate enterprises (corporations) are A. Berle, M. Blair, G. Broni, I. Velentza, R. Vishny, G. Means, O. Hart, A. Shleifer. The development of the Ukrainian corporations was investigated by G. V. Astapova, T. V. Momot, G. V. Nazarova, A. I. Popov etc.

Uninvestigated parts of general matters defining. The study of the essential characteristics of corporate enterprises is necessary due to the lack of a unified approach to the interpretation of this category, moreover, the introduction of the category of "Corporation" in legislation, does not give rise to the emergence of corporate rights, as well as the lack of research consensus about corporate governance that reflect the mechanism of functioning of corporate enterprises.

The research objective is to clarify the nature of corporate enterprises and corporate governance, to study their characteristics and to define the peculiarities of legal - regulatory activity.

The statement of basic materials. The article deals with different approaches to interpretation of the essence of corporate enterprise and corporate governance. The normatively-legal providing of its activity is defined. Characteristic features of forming and development of corporate enterprise are described.

Conclusions. Corporate enterprise is treated as a model of institutional norms, system related institutions that have the features of structural units of the environment in which it operates, and, therefore, affects actions or behaviour of the persons, who ensure its functioning.

Keywords: corporate governance; corporation; corporate enterprise; the interests of stakeholders; features of corporate enterprise; corporate governance.

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Актуальність теми дослідження. Важливість вивчення сутності та особливостей розвитку українського корпоративних підприємств визначаються глобальними проблемами в розвитку компаній.

Постановка проблеми. Сильний корпоративний сектор ключовий елемент в стратегії розвитку конкурентоспроможної національної економіки. Ефективна система формування і розвитку корпорацій сприяє залученню вітчизняних та іноземних інвестицій на внутрішній ринок.

Аналіз останніх досліджень і публікацій. Засновниками дослідження формування та розвитку корпоративних підприємств є роботи А. Белла, М. Блеїра, Дж. Броні, І. Велентжеза, Р. Вішни, Дж. Мінза, О. Харта, А. Шлейфе та ін. Розвиток вітчизняних корпорацій досліджували Г. В. Астапова, Т. В. Момот, Г. В. Назарова, А. Є. Попова та ін.

Виділення недосліджених частин загальної проблеми. Дослідження корпоративних підприємств зумовлено відсутністю єдиного підходу до тлумачення такої категорії, введенням законодавством категорії «корпорація», створення якої не породжує виникнення корпоративних прав, а також відсутністю серед досліджень єдиної думки щодо корпоративного управління, яке відображають механізм функціонування корпоративних підприємств.

Постановка завдання. уточнення сутності корпоративних підприємств та корпоративного управління, дослідження їх характеристик та визначення особливостей нормативно-правового регулювання діяльності.

Виклад основного матеріалу. У статті обґрунтовано підходи до трактування сутності корпоративних підприємств та корпоративного управління. Визначено нормативно-правове забезпечення їх діяльності. Охарактеризовано властивості формування та розвитку корпоративних підприємств.

Висновки. Корпоративне підприємство трактуємо як модель інституційних норм, систему пов'язаних інститутів, що має властивості структурних одиниць того середовища, в якому функціонує, і в силу цього впливає на дії або поведінку осіб, які забезпечують її функціонування.

Ключові слова: корпоративне управління; корпорація; корпоративне підприємство; корпоративні права; інтереси зацікавлених сторін; властивості корпоративних підприємств.

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Actual scientific researches and issues analysis. The founders of the study of the formation and development of corporate enterprises (corporations) are A. Berle [1], M. Blair [2], G. Broni [3], I. Velentzas [3], R. Vishny [4], G. Means [1], O. Hart [5], A. Shleifer [4]. The development of the Ukrainian corporations was investigated by G. V. Astapova [6], T. V. Momot [7], G. V. Nazarova [8], A. I. Popov [9], etc.

Uninvestigated parts of general matters defining. The study of the corporate governance and essential characteristics of corporate enterprises in Ukraine is necessary due to the lack of a unified approach to the interpretation of this category, moreover, the introduction of the category of "Corporation" in legislation, does not give rise to the emergence of corporate rights, as well as the lack of research consensus about features that reflect the mechanism of functioning of corporate enterprises.

The research objective is to clarify the nature of corporate enterprises, to study their characteristics and to define the peculiarities of legal regulatory activity.

The statement of basic materials. The corporate governance will appear, when it is the conflict of the interests of owners who seek long-term development of the organization, managers who seek personal enrichment and other stakeholders seeking to maximize prices for resources or to minimize their corporate enterprise products. In addition, due to imperfect regulation of shareholders rights there are sometimes disagreements between owners who have a controlling stake (majority shareholders) and receive additional benefits compared to other shareholders. Therefore, to ensure stability in the long-term corporate enterprise development the main objective is to build a governance system, which resolves conflicts and ensure institutional balancing of stakeholders interests.

As defined by the World Bank, corporate governance - a "system by which companies are directed and controlled. It is about having companies, owners and regulators become more accountable, efficient and transparent, which in turn builds trust and confidence. Well-governed companies carry lower financial and non-financial risks and generate higher shareholder returns. They also have better access to external finance and reduce systemic risks due to corporate crises and financial scandals." [10].

Authors define corporate governance as rules which regulate and maximize long-term economic interests of shareholders and stakeholders. Furthermore, the system of corporate governance distributes the power between the owners of the company, its directors' board, employees, suppliers, customers and society. The scientist G. Broni defines corporate governance as the organizational model, through which the company represents and protects the interests of the investors [3].

The approaches to corporate governance we divide into two groups. The first group defines it as actual behavior of corporations, their activities, performance, growth, financial structure and relations with shareholders and stakeholders. The second group defines it as legal corporate rules by which the company operates. In such case, each definition covers some aspect of corporate governance.

We combine all the definition and define it as a concept that includes the organizational structure of company management and corporate law which regulate the rights and responsibilities of shareholders, board of directors and managers. It will ensure the balance between economical and social, personal and social goals of the stakeholders and increase the market value of corporation.

Let us characterize the development of the Ukrainian corporate enterprises. The essence of the corporate enterprise is defined in the economic code of Ukraine. It reads that the corporate enterprise is formed, as a rule, by two or more founders by their mutual decision (agreement), it operates on the

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basis of the joint property and /or entrepreneurial or labor activity of founders (participants), their mutual management, on the basis of corporate rights, including via bodies that are created by them, participation of the founders (participants) in the distribution of income and risks of the enterprise [11]. Corporate enterprise cannot be established by one person, so it exists on the basis of their joint property and the activities of its founders. The basis of general participation in the management of corporate enterprise is corporate rights. They are implemented through the submission of the owner's interests in the management bodies of the corporate enterprise and the distribution of income and risks of the enterprise.

The corporate enterprises, according to the legislative definition, are cooperative enterprises, economic societies; other enterprises based on private ownership of two or more individuals.

National normative-legal acts, Commercial code of Ukraine, in particular, define the difference between the Corporation and corporate enterprise. Our legislation interprets a corporation as an amalgamation, founders of which can be only legal entities; the purpose of activity is displaced from the receipt of profitability to delegating of separate plenary powers to the centralized organ of management. In addition, a corporation, as an amalgamation, has no right to produce shares, while such a right is given to corporate enterprises and joint-stock companies of the closed and opened types [11].

The definition of the domestic researchers is based on normatively legal acts; in particular The Explanatory Dictionary of the Live Ukrainian Languages interprets a corporation as: "Contractual associations created on the basis of combination of productive, scientific and commercial interests, with delegation of separate plenary powers to the centralized adjusting of activity of each of participants"[12]. The scientist O Popov interprets a corporation as voluntarily economic association created on the basis of general economic interests of workers and shareholders to achieve maximal profit from productive activity and inlaid investments" [9].

Some home researchers equate the category of corporation and corporate enterprise.

Investopedia - Forbes economical encyclopedia International website treats corporate enterprise (corporation) as a legal entity that is separate and distinct from its owners. Corporations enjoy most of the rights and responsibilities that an individual possesses; that is, a corporation has the right to enter into contracts, loan and borrow money, sue and be sued, hire employees, own assets and pay taxes [13].

Financial dictionary uses investopedia definition that corporate enterprise (corporation) a legal entity that has separate property, may enter into agreements to lend, borrow, to be a plaintiff and defendant, hire employees and pay taxes in accordance with legislation, also shareholders are entitled to participate in profits but do not carry personal liability for the debts of the company, which indicates that American school interprets corporate enterprise as a joint stock.

The institutional approach explains the company (legal entity) as the poly structural system of contracts or agreements between stakeholders of its activities. This theory is based on the research of R. Coase and O. Williamson [14].

However, if the company is a formal institution, the Corporation is a conglomeration of formal and informal internal and external institutions such as the interaction between (majority and minority) shareholders and management of the corporation, because of the separation of the Institute of property and Institute of management. It is the interaction between corporate management and stakeholders of the corporation, because of its extensive network of stakeholders. It is the interaction between the corporation and the market, which is exists as an informal institution and influence corporate enterprise through stakeholders.

From the above interpretations of the concept of corporate enterprises, as well as the analysis of a number of other sources we have worked out such approaches to the interpretation of the concept:

- The collective forms of enterprises that can exist in the form of joint stock companies of open and closed types

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- A special kind of entities, characterized by transnational activities, large size, dominant market position

Institutional rules model, system -related institutions that have the features of structural units of the environment in which they operate, and therefore influence the actions or behavior of persons providing its functioning. This approach, in our opinion, is the most complete and comprehensive as takes into account the interaction and influence of stakeholders on the corporate enterprise.

The evaluation of transaction costs and consequently the ability to minimize them is a problem of this approach. Transaction costs arise when company needs to find and assess the information about potential partners, negotiation and contracts, as well as when it needs to protect these contracts.

The number of corporate enterprises, including joint stock companies for 2010 - 2014 years declined by 20 % to end at 22,852 in 2014 (Fig. 1). This is due to the emergence of the national market, which because of environmental factors negatively affect the corporate enterprises operations.

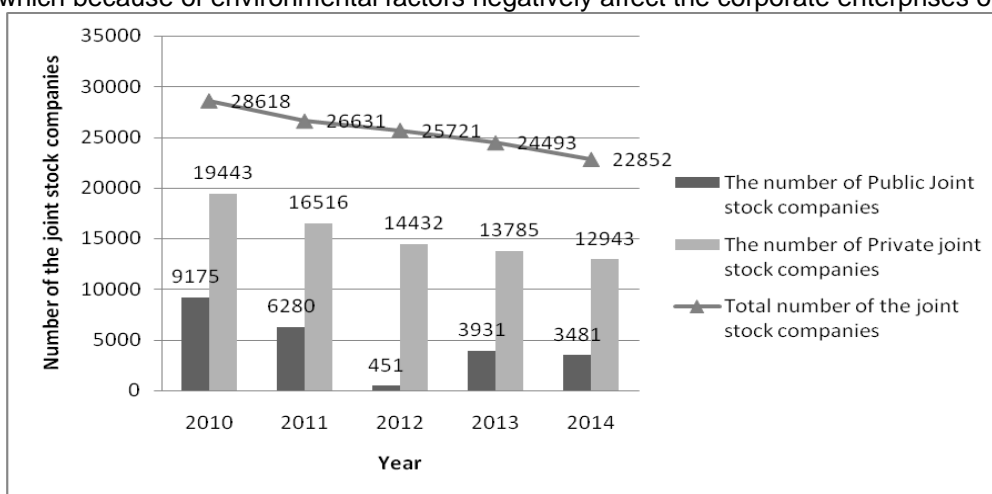


Fig. 1 The number of joint stock companies registered as legal entities in 2010 - 2014 [15]

We have such situation because corporate relations have difficult social nature. On the one hand the participants of corporate relations regulate all legal relationships at corporate level, on the other hand, the state regulates the general procedure for establishing corporate relations at the legislative level and according to the general principles of corporate entities relations with the government. The combination of law and corporate norms give rise to the problem of relations between these two regulatory systems, where the key issue is disclosure of information on corporate governance of joint stock company’s members.

Conclusions. The main task of corporate governance is to ensure balance among institutional interests.

Corporate enterprise is treated as a model of institutional norms, system related institutions that have **the** features of structural units of the environment in which it operates, and, therefore, affects actions or behavior of the persons, who ensure its functioning. Within the corporate enterprise we separate an institute of shareholders (owners); hired senior managers reporting to owners (top-managers); other stakeholders.

However, there is a negative tendency in the work of Ukrainian corporation. The number of domestic corporate enterprises, which exposes state information on corporate management since 2011 diminished up to 32%, that decrease their market value.

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