

Peculiarities of corporate governance in Ukraine

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The uncertainty of the operating conditions, the need to ensure sustainable development, and the establishment of a socially responsible business led to the fact that the need to solve corporate governance problems began to come to the fore.

In Ukraine, a significant part of the enterprises work by choosing a joint-stock organizational and legal form. Therefore, the introduction of better standards of corporate governance in them is of great importance for the country's investment attractiveness.

Corporate governance is one of the important elements and a prerequisite for the successful operation of a joint-stock company.

The goal of effective corporate governance is to achieve an optimal balance of interests of all parties: shareholders, management, customers, suppliers, creditors, the state and society. Corporate management covers almost all areas of activity of a joint-stock company - planning, internal control, evaluation of production efficiency, disclosure of information and much more.

The development of corporate governance in Ukraine is carried out in accordance with the Law of Ukraine «On Joint-Stock Companies», as well as other regulatory, methodological recommendations and documents in this area.

The Law of Ukraine «On Joint Stock Companies» № 2465-IX dated July 27, 2022, which came into effect on January 1, 2023, defines the procedure for the creation, operation, termination and separation of joint stock companies, their legal status, rights and obligations of shareholders [1].

It should be noted that joint-stock companies in Ukraine are divided by type into public and private. However, according to the new Law, a public joint-stock company can be created exclusively by changing the type of joint-stock company from private to public or by converting from another business company.

It should be noted that as of the beginning of December 2021, 13660 joint-stock companies were operating on the territory of Ukraine. At the same time, 1210 of them are public joint-stock companies, 5318 are private joint-stock companies.

Military aggression led to the closure or reduction of activities of many enterprises, including joint-stock companies. As a result, during January-November 2022, the National Securities and Stock Market Commission registered only 16 share issues worth UAH 2,97 billion. Compared to the same period in 2021, the volume of registered share issues decreased by UAH 37,75 billion [2].

As for the peculiarities of management, according to the Law of Ukraine «On Joint-Stock Companies», the management structure of a joint-stock company can be:

- one-level (the governing bodies of the joint-stock company are the general meeting and the board of directors);

- two-level (the governing bodies of a joint-stock company are the general assembly, the body responsible for supervision (supervisory board), and the executive body (collegial or individual)).

The innovation of this law is the reduction of the minimum amount of the authorized capital of a joint-stock company from 1250 to 200 of the minimum wage, based on the amount of the minimum wage effective on the day of creation (registration) of the joint-stock company [1].

In many countries, the corporate agreement plays an important role in the relations between the participants or shareholders of the company. In Ukraine, this concept was introduced recently and provided for in the Law of Ukraine «On Limited and Additional Liability Companies». The new Law of Ukraine «On joint-stock companies» now also introduces the concept of a corporate agreement, according to which the company's shareholders undertake to exercise their rights and powers in a certain way or refrain from exercising them. The corporate contract must be concluded in writing, it can be paid or free. It may provide for the conditions or the procedure for determining the conditions under which a shareholder has the right or obligation to buy or sell shares of the company, and also determine the cases when such a right or obligation arises.

It is important to note that a corporate agreement, to which the state, territorial community, state or communal enterprise or legal entity, in the authorized capital of which 25% or more of the shares directly or indirectly belong to the state or territorial community, is a party, is made public within 10 days from the date of conclusion of the agreement through placement on the official website of the relevant state authority, local self-government body, as well as on the website of the joint-stock company [1].

At the request of time, the changes also affected the procedure for holding general meetings of shareholders, which can be held by:

- 1) in-person voting (in-person general meeting);
- 2) electronic voting (electronic general meeting);
- 3) survey (remote general meeting).

Electronic general meetings do not involve the joint presence of shareholders (their representatives) and are held exclusively by electronic absentee voting of shareholders using an authorized electronic system.

Remote general meetings do not involve the joint presence of shareholders (their representatives) and are conducted by remote filling in of ballots by shareholders and sending them to the company through the depository system of Ukraine [1].

Due to the introduction of the electronic and remote format, a major role in holding meetings is entrusted to the authorized electronic system - the software and technical complex of the Central Securities Depository authorized by the National Securities and Stock Market Commission. The system generates a list of shareholders (their representatives) registered to participate in the general meeting, through this system the identification of the shareholder or his representative, the calculation of voting results on issues on the agenda of the electronic general meeting, as a result of which a protocol on the voting results is formed. Innovations related to the holding of electronic general meetings and the functioning of the authorized electronic system will come into effect on January 1, 2024.

The law defines the powers of the corporate secretary, who is an official who is responsible for the effective ongoing interaction of the company with shareholders, other investors, coordination of the actions of the company to protect the rights and interests of shareholders, maintaining the effective work of the board of directors or the supervisory board, and also performs other functions.

The position of corporate secretary of a joint-stock company shall be introduced in a mandatory manner in:

1) joint-stock companies whose securities are admitted to trading on the organized capital market or whose securities have been publicly offered;

2) banks, insurers, non-state pension funds, other joint-stock companies that are enterprises of public interest in accordance with the Law of Ukraine «On Accounting and Financial Reporting in Ukraine»;

3) private joint-stock companies with a number of shareholders - owners of ordinary shares of the company of 100 or more people.

In other joint-stock companies, the position of corporate secretary may be introduced, or the functions of the corporate secretary may be performed by an individual under a civil law contract.

The leading role in the organization of the corporate governance system in Ukraine is played by the National Securities and Stock Market Commission.

According to the Law of Ukraine «On State Regulation of Capital Markets and Organized Commodity Markets», the important tasks of the National Securities and Stock Market Commission are:

- methodological support for the introduction and development of principles of corporate governance in accordance with legislation;

- establishment of requirements and development and approval of corporate governance standards in professional participants of capital markets and organized commodity markets, as well as control over their compliance;

- generalization of the practice of applying legislation on corporate governance;

- development of methodological recommendations on the organization of the corporate management system of professional participants of capital markets and organized commodity markets [3].

When organizing corporate governance, professional participants are recommended to adhere to the Code of Corporate Governance, approved by the decision of the National Securities and Stock Market Commission dated March 12, 2020 №118 [4]. This document interprets corporate governance as a system of rules, practices and processes, with the help of which the Company's goals are established, the methods of their achievement are determined, and the results of economic activity are monitored. Good governance requires accountability for achieving the Company's ultimate goal of creating long-term shareholder value.

For the effective, understandable implementation and functioning of the corporate governance system in professional participants, the National Securities and Stock Market Commission has developed five standards.

The first standard establishes the basic concepts and terminology used in the process of corporate governance in professional participants. The effect of each of the following four applies to those professional participants whose circle is defined in the

title of the standard itself. In particular, they regulate issues depending on the type of participant and the specifics of his activity. We will remind you that earlier it was a single document that was distributed to all types of professional participants.

The standards define that corporate governance in a professional participant is a system of relations between the bodies of a professional participant, its shareholders (participants) and other stakeholders, which defines the rules and procedures for making decisions regarding the activities of a professional participant and exercising control over it, establishes the distribution of rights and obligations relations between its bodies and participants regarding the management of a professional participant in order to prevent the realization of risks of professional activity, namely:

- 1) ensuring the prevention of harm to the clients of such a professional participant or the creation of a threat to investments;
- 2) prevention of non-compliance by a professional participant with the requirements of legislation on capital markets and organized commodity markets;
- 3) prevention of acceptance by a professional participant of risks, the implementation of which poses a threat to the integrity of capital markets and organized commodity markets and the stability of their functioning.

The principles of organizing the internal structure of corporate governance in professional participants include:

- 1) effective management of the professional participant, including through appropriate division of duties;
- 2) supervising the operational activities of a professional participant;
- 3) prevention and settlement of conflicts of interest;
- 4) responsibility for improper organization of corporate governance [5].

Joint-stock companies in Ukraine can form a system of corporate governance in accordance with the generally accepted principles of corporate governance of the Organization for Economic Development and Cooperation, which can be applied in a wide range of legal, economic and political conditions. In 2014, the National Commission for Securities and the Stock Market approved the Principles of Corporate Governance in order to regulate the norms of national legislation on corporate governance issues. This document contains clearly defined rights of shareholders, the functions of the supervisory board and the executive body, the procedure for disclosing information, and the mechanism for controlling the company's financial and economic activities. These principles are of a recommendatory nature and are not mandatory, with the exception of those provisions approved in the legislative acts of Ukraine. The novelty of their use by any company is economic expediency and objectively existing market requirements for attracting investments [6].

Corporate governance is a system of relations between company bodies, shareholders and a number of interested parties. Its quality is one of the key elements of the company's development, increasing the confidence of investors. Corporate governance outlines the boundaries within which the company's tasks are determined, the means of fulfilling these tasks, and the monitoring of the company's activities.

Thus, the presence of an effective corporate management system increases the cost of capital, contributes to the improvement of activity efficiency and is the basis for further economic development of the enterprise.

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