

The legal nature of corporate disputes

Authors: Serikkaly Tynybekov, Snezhana Alexeyeva, Markus Moser¹

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Abstract: The article is devoted to the review of the legal nature of corporate disputes. The authors give a definition of "corporate conflict" and "corporate dispute" taking into account the recent changes of procedural law, citing the common characteristics of legal regulation of proceedings in corporate disputes.

Key words: corporate legal relations, corporate conflicts, corporate disputes, protection of rights, legal regulation of proceedings in corporate disputes.

Under the conditions of worldwide globalization a unified economic space is created, where the main economic actors are corporation. In this regard, the corporate governance, particularly the prevention and resolution of corporate disputes require close attention.

When assessing the importance of a corporate dispute for the process of development of joint-stock companies, it should be noted that the given public institution can almost simultaneously fulfill constructive and destructive functions.

In civil law there are many opinions of researchers in relation to the concept of "Corporation". This term in Kazakhstan began to be used comparatively recently, as a "Corporation" as a legal category is better known in the Anglo-Saxon legal system.

Therefore, we consider it appropriate to refer to the history of the subject in order to analyze and comprehend the stages of the emergence of corporate conflicts, and also to understand the essence of the concept of "Corporation".

The first mention of the term under consideration is given in Roman private law. Corporation (from the late Latin corporatio) meaning "an association, a community, a closed group of people United by

¹ Serikkaly Tynybekov, doctor of law, Professor Head of the Department of Civil Law and Civil Procedure, Labour Law, Al-Farabi Kazakh National University; Snezhana Alexeyeva, student of the PhD programme of law, Senior lecturer of Civil Law and Civil Procedure, Labor Law of the Al-Farabi Kazakh National University; Markus Moser, master of law, Vienna University of Economics and Business.

common professional or social interests." In Roman law, this concept was more social than is common in the modern understanding of an economic nature.

The use of the term "corporatio" in Roman legal sources is extremely rare, but the derived notion of "corporati", indicating most of the members of the society and the various societies is mentioned often enough [1].

The term "Corporation" in the modern private international law is regarded as a collective term, which refers to the business capital of enterprises with various organizational-legal forms [2].

Professor Yu. G. Bassin noted that "the Corporation – [is] a concept well known and the theory of law and legal practice" [3].

Professor and doctor of legal Sciences, F. C. Karagusov notes that this concept is based on such concepts, mainly in American and English law as a corporation and incorporation.

In this regard, it is crucial to clarify what should be understood as a Corporation, and for the purpose of ascertaining the validity of at least some degree of independence of corporate law we also need to identify those specific features of corporations, the procedure and conditions for their establishment and activities, which to a significant extent would be allocated to the Corporation among all other types and legal forms of legal entities [4].

Corporate relationships formed in connection with the formation and activities of corporations. While corporate relationships are considered in two aspects: in the narrow sense - as the internal relations in the Corporation, and in a broad sense - as relations arising in connection with the business activities of the Corporation as a legal entity. Subjects of the corporate relations are: Corporation, its founders, members of the management bodies of the Corporation.

Corporate relations consist of using the institutional-legal forms for conducting, as a rule, a large enterprise with investments on the open market. In this framework these relations become very important features of the management of the organization and the relationship between the organization and its shareholders (participants), bodies and officials [4].

Currently, in doctrine, in separate sources of law and judicial acts to determine the disagreements, disputes and opposition between the subjects of corporate relations, including joint relations, a proliferation of the term "corporate dispute".

We can exclude from the concept of "corporate dispute" from such related concepts as "corporate conflict", "conflict of interest", "economic dispute". With this objective, we refer to explanatory dictionaries for definitions of "dispute".

Explanatory dictionary of the living great Russian language by V. Dahl reveals the meaning and origin of the word "dispute" in the following way, the dispute, the verbal contest, verbal or written debate, where each side refuting the view of the enemy, defends its view [5].

Explanatory dictionary of the Russian language D. N. Ushakov similarly defines the meaning of the word "dispute": 1. Mutual altercation, verbal (oral or written) competition in which each party asserts the its opinion and proves his rightness; 2. Competing claims (usually in court) for possession of something [6].

Thus, the dispute is a verbal contest, debate participants, a discussion in which each defends his own opinion, contrary to the opinion of the enemy.

The concept of "corporate conflict" is broader than "corporate dispute" means a collision of parties, positions, and forces. These categories are related as the General and the particular.

Corporate conflicts are among the most difficult disputes, because:

- Firstly, they are often complicated by personal relationships. It affects the very development of the conflict: sometimes the satisfaction of personal ambitions of the participants is no less important than to win the argument.
- Secondly, in their solution often enough sides use irreparable mistakes made in the privatization of state property.
- Thirdly, these disputes are conducted "on all fronts". They may relate to share capital, the struggle for the property of the company, of the struggle for debt (and, consequently, bringing it to its possible bankruptcy), subsoil use, land-use and de-privatization, as well as the persecution of the participants of the conflict.
- Fourthly, the objectives of the parties are determined by the fact that for a client it is not as important not to win a particular trial, as it is to constantly keep a "tactical advantage" in a corporate dispute. This is especially important when it comes to the fight for control of the company. The fact is that apart from the legal dispute, the society that became the subject of such proceedings, participates in economic activities. The economic value of the company is subject to claims of the conflicting parties, and everything has to be done so that this value is not lost during the course of a corporate dispute.

In the corporate conflict the differences and disputes arising between shareholders, shareholders and management of the company, the investor (potential shareholder) and society as a result of their misconduct, should be understood.

The notion of "corporate disputes" in our legislation, was absent prior to the adoption of Law of RK dated July 5, 2008 "About modification and additions in some legislative acts on resolution of

corporate disputes", in which the second part of article 24 code of civil procedure is contained in the new edition.

According to the Civil procedure code, corporate disputes are disputes, which are a party to a commercial organization, Association (Union) of business organizations, Association (Union) of commercial organizations and (or) individual entrepreneurs, non-profit organization having the status of self-regulatory organizations in accordance with the laws of the Republic of Kazakhstan and (or) its shareholders (participants, members), including former (hereinafter - the corporate disputes) related to:

- 1) Establishment, reorganization and liquidation of legal entity;
- 2) ownership of shares of joint stock companies, shares in authorized capital of economic partnerships, shares of members of cooperatives, the establishment of encumbrances and arising from them rights realisation, including the recognition of transactions void, except that disputes arising in connection with division of inherited property or division of marital property, including shares in joint stock companies, participation interests in the Charter capital of economic partnerships, shares of cooperative members;
- 3) requirements about the compensation of damages, caused to the legal entity by the actions (inaction) of officials, founders, shareholders, participants (hereinafter - participants of a legal entity) and other entities;
- 4) the recognition of the invalidation of transactions and (or) application of consequences of invalidity of such transactions;
- 5) the appointment or election, termination, suspension of powers and responsibility of the persons who are or were part of the management bodies of the legal entity, as well as disputes arising from civil legal relations between such persons and the legal entity in connection with the implementation, termination, suspension of their powers;
- 6) the emission of securities;
- 7) maintaining of a system of registers of securities holders, taking into account the rights to shares and other securities, as well as disputes related to placement and (or) circulation of securities;
- 8) annulment of state registration of issue of shares;
- 9) convening and holding General meeting of participants of the legal entity and adopted it solutions;
- 10) challenging of decisions, actions (inaction) of management bodies of the legal entity [7].

The concept of "corporate dispute" is complex because of the dual meaning: the adjective "corporate" defines the subject structure of disputable legal relations, the subject and the object of the dispute; the noun "dispute" indicates the procedural nature of the concept. Entities of a corporate dispute may be: a legal entity, the management body of a legal entity, business association of legal entities, the shareholder, the participant (founder).

At the core of corporate dispute lies a conflict of interest. The legal structure of a commercial organization is that in its subjective composition a significant number of individuals who are carriers of property interests is included. The background is a conflict of interest - the limitations of many resources for stakeholders, money and other property resources[8], psychologically determined by the contradiction of personal interests and the interests of the company.

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Redaktion:

Prof. Dr. Otto Luchterhandt,
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Prof. Dr. Andreas Steininger

Ostinstitut Wismar
Philipp-Müller-Straße 14
23966 Wismar
Tel +49 3841 753 75 17
Fax +49 3841 753 71 31
office@ostinstitut.de
www.ostinstitut.de

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