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STATE REGULATION OF CORPORATE MANAGEMENT: EU NORMS IMPLEMENTATION

The article deals with defining the role of state regulation in the corporate sphere by summarizing the negative effects caused by abuse, manipulation, unfair and illegal actions in the market. It is noted that good governance helps to strengthen trust in the company, increase its competitiveness, efficiency and growth, and thus helps to attract foreign investment and is the basis for innovative development of the state. In addition, the system of investor protection and the powers of the National Commission on Securities and Stock Market in this area are defined. Thus, the necessity of state supervision in the field of corporate relations is proved and the ways of improving the state regulation of this sphere of relations are considered. Also generally accepted principles (standards) that underlie effective corporate management are recognized, which are implemented by the new institutions of Ukrainian legislation under EU law in connection with the signing of the Association Agreement with the European Union.

Key words: *proper corporate management; state regulation and supervision; investor protection; improvement of state regulation; international standards.*

Trust is a key factor in the survival and successful functioning of any financial market in the world. Trust among market participants is the foundation on which the market is built. The financial market operates as long as most participants are convinced that market events soon will proceed approximately as they predict, and as long as securities prices reflect real demand and supply for the security.

The theoretical basis of the study are the scientific works by O. Vinnyk, O. Kakhovych, R. Kolosov, O. Kravtsova, I. Lukach., Ya. Marushchak, N. Poida-Nosyk, K. Rovinska, O. Safronova, M. Shashina; a monograph by N. Orlova and works on the regulation of the corporate sector in foreign countries (by M. Isakov, T. Koryagina, K. Kruts, L. Melekh, V. Parkulab, I. Rodionova, O. Harun).

The purpose of the study is to substantiate the theoretical and legal foundations of corporate management within globalization and European integration.

One of the main factors influencing the successful operation of the company is the possibility of its access to investment resources. At the same time, the company cannot count on investor confidence and external financing if it does not take measures to implement effective corporate management, namely, proper protection of investors' rights, reliable management and control mechanisms, openness and transparency in its activities.

A crisis begins, which, with extremely negative developments, ends with the collapse of the market. Of course, every market failure has its real causes, which can be attributed to the sphere of economic logic, but a big role in the development and acceleration of the market crisis is played by panic, primarily caused by the loss of confidence of market participants. Sometimes even a small blow to the market in one part of the world due to the domino effect causes a serious crisis on the other side of the world.

A fuse of the above situations at the state level is the National Securities and Stock Market Commission, hereinafter referred to as the «NSSMC», which following its tasks, provides methodological support for the implementation and development of corporate management principles, conducts inspections of issuers on corporate management and summarizes the practice of corporate management legislation. And therefore, the NSSMC, through its regulatory and supervisory functions, creates the conditions for the formation of powerful domestic investors and ensure the protection of investors' rights [1].

The state system of investor protection is based on the following three pillars:

- Timely, complete and correct reporting and publication, i.e. presentation of information on issuers of securities and the securities themselves;
- Qualification, knowledge and ethical integrity of professional market participants;
- Prevention of market abuse and manipulation.

There is a lot of competition all over the world for investment funds. Therefore, the arrival of investors in domestic enterprises depends on the establishment of a system of disclosure of information about their financial and economic activities. Any decision to invest in securities under normal conditions should be based on reliable information. Investor protection in this segment is achieved through the introduction of a single information system and constant insistence on the application of this system.

Regulations on Disclosure of Information by Issuers of Securities establishes one of the principles of corporate management: disclosure of information, according to which the company must timely and available means to disclose complete and accurate information on all relevant issues relating to the company, to enable users' information (shareholders, creditors, potential investors, etc.) and take a balanced decision [2].

According to Art. 40 of the Law of Ukraine 'On Securities and the Stock Market', the purpose of information disclosure is to help creditors assess risk, ensure the responsibility of the company's management to shareholders and other persons, and ensure the functioning of capital markets [3, Art. 40].

Information disclosure is extremely important for the evaluation of the corporation's activities by shareholders, potential investors and other stakeholders because information disclosure about corporations helps to raise capital and maintain trust in the corporation. Insufficient, and sometimes contradictory, information about corporations obtained from various media sources, on the other hand, can hinder the formation of objective opinion and the maintenance of business relations.

Information disclosure on the integration of risk-oriented management into key enterprise processes and decision-making, as well as information on individual risk management in the company's annual reports or on its website, is a positive feature for partners, inspection bodies, investors and clients, which makes it possible to increase the investment attractiveness of the enterprise.

In connection with the above, information on the results of financial and economic activities of the issuer must be regularly disclosed in the stock market, including by submitting it to the NSSMC. Besides, in all financial markets, issuers of securities are required to compile and publish securities prospectuses when issuing or listing

securities on the stock exchange (as well as mandatory elements of these prospectuses) and are required to publish periodic business reports and report on all events that have a significant impact on the activities of the issuer.

One of the key tasks of corporate management is the supervision and ability of the state to control the actions of management staff, carried out to ensure the effectiveness of the company and protect the interests of its owners, including the regulation of internal and external risks. Such supervision and control are provided at the level of state regulation through bodies of general and special competence, which create norms and rules of corporate control, and responsibility of corporations.

In particular, the NSSMC in this area in this area has the authority to supervise the activities of primary financial monitoring entities by conducting scheduled and unscheduled inspections, including on-site ones, to regulate and monitor taking into account the policies, procedures and systems of control, risk assessment to determine the compliance of measures carried out by primary financial monitoring entities and reduce risks during the activities of such entities and require primary financial monitoring entities to comply with the requirements of legislation, regulating relations in the field of preventing and combating the legalization (laundering) of the proceeds of crime or the financing of terrorism, and in case of detection of violations of legal requirements, take measures provided for by the law [1].

Besides, the investor protection system is supplemented by prudential supervision, i.e. risk-based supervision. Regulations on prudential standards of professional activity in the stock market and requirements for the risk management system fixes that prudential supervision is an integral part of the general system of supervision by government agencies in the financial market and is based on regular assessment of the overall financial condition of the financial institution, the results of the system and the quality of its management, compliance with mandatory standards and other indicators and requirements limiting risks of financial assets [4].

The NSSMC sets prudential standards and supervises professional stock market participants within the activities carried out by such a participant based on an issued license. Professional participants submit to the NSSMC information on the results of the calculation of prudential standards and the data based on which they are calculated.

Corporate management in the activities of professional stock market participants, which considers the requirements of prudential standards, requires the introduction of international standards. Creating a new corporate management system involves restructuring the corporate management infrastructure in the capital markets for professional participants, namely: increasing the role and functions, changing approaches to the structure of supervisory boards, implementing a proportionate approach, new requirements for internal audit and control, compliance and risk management, and increasing the role of stakeholders.

To this end, to implement the Comprehensive Program for the Development of the Financial Sector of Ukraine's Economy until 2020, The Concept of Corporate Management in Professional Capital Markets of Ukraine was approved, which considers corporate management

as an integral part of the risk management system of a professional capital market participant and which should implement international best practices in the capital markets.

The implementation of this Concept in the future should lead to the creation of an effective system of risk-oriented management model in professional participants in capital markets and provides the followings:

- Increasing the efficiency of professional participants in capital markets;
- Increasing the reliability and attracting new customers (including foreign and national investors);
- Increasing the value of the business and its investment attractiveness and competitiveness;
- Management and prevention of corporate conflicts;
- Creating an optimal management structure that is stress-resistant and ensures long-term continuous business operations;
- Ensuring the balance of interests of controllers, management and stakeholders;
- Ensuring the protection of the rights of consumers of financial services; and
- Risk management and cost reduction of realized risks [5].

Also, the NSSMC has approved Corporate Management Standards for Professional Stock Market Participants, which are based on the above Concept and aim to ensure the sound and sustainable operation of professional capital market participants. According to these Standards, the corporate management system should become an integral part of the professional participant's risk management system and help determine the risk propensity and acceptable level of risk, maintain adequate internal rules and procedures to prevent and manage risks, and take adequate measures, aimed at minimizing these risks [6].

In order to bring corporate management standards to a single standard worldwide, the Council of the Organization for Economic Cooperation and Development (OECD) in May 1999 approved the Principles of Corporate Management. These principles of corporate management are of a recommendatory nature and are a guide for creating a legal framework for corporate governance at the state level, as well as for the assessment and development of the company's own practice. They are aimed at assisting governments in their work to assess and improve the legal, institutional and regulatory framework for corporate management in their own countries, as well as to provide guidance and advice to stock exchanges, investors, corporations and other participants in corporate relations [7].

In Ukraine, the basic principles of corporate governance were developed by the National Securities and Stock Market Commission (NSSMC) in 2003 in order to gradually approximate Ukrainian legislation to the rules and recommendations of the European Union and take into account the OECD Principles of Corporate Management. Due to the evolutionary nature of this document, on July 22, 2014 the new version of the principles was updated taking into account the current realities of the stock market and to bring domestic corporate management standards closer to the world, as well as to determine the place, role and priority areas of corporate management in the system of economic relations in the country and abroad.

In addition, in order to ensure reliable and sustainable operation of professional capital market participants, create a competitive environment in the financial markets of Ukraine, ensure protection of investors and consumers of financial services in August 2019, the NSSMC approved Corporate Management Standards for professional stock market participants. They define approaches to building a corporate management system and internal control system and take into account European legislation on corporate management and the functioning of capital markets and are based on the Concept of corporate management in professional capital markets of Ukraine, approved by the NSSMC Decision of 29.03.2018 №173 [5].

Also, in March 2020, the NSSMC approved the Code of Corporate Management of Ukraine, which reflects the latest developments in the field of integrated environmental, social and corporate management and contains recommendations for good corporate management, including environmental and social risk management [8]. The Code applies, first of all, to joint-stock companies whose shares are admitted to trading on the stock exchanges of Ukraine. However, it can be an important benchmark for all public and private companies seeking to build an effective management system. Ukrainian legislation does not require companies to comply with the provisions of this Code. As in many other countries, in Ukraine it is a recommendation document. The application of the Code is strongly recommended primarily to companies entering the capital markets [1].

This Code is expected to become the national standard of corporate management in Ukraine. Subsequently, additional extensions (for state-owned companies, financial market participants, non-listed companies, etc.) and separate policies on more specialized topics will be developed on its basis, the role of shareholders in management, risk management, functioning of the audit committee prevention of corruption, etc.) [1].

In addition, paragraph 9 of the Directive of the European Parliament and of the Council «On Acquisition Proposals» stipulates that EU Member States, as well as Ukraine under the Association Agreement between Ukraine and the European Union, must take measures to ensure the protection of holders of securities. holding a smaller share of shares, in the case of establishing control over their companies, by offering all holders of securities of a particular company for all their assets a fair price in accordance with the overall assessment [9]. Also, this Agreement provides for the obligation of the parties to «cooperate in protecting shareholders' rights and further development of corporate governance policy in accordance with international standards, as well as in matters of gradual convergence with EU rules and recommendations in this area» [10, p. 387].

The «squeeze-out» procedure is a fairly new institution of Ukrainian legislation, implemented from the norms of EU legislation in connection with the signing of the Association Agreement with the European Union. The agreement provides for the implementation of the Directive of the European Parliament and the Council «On Acquisition Proposals» in the national legislation of Ukraine, which is a very important act regulating the issue of through-out at the international level [9]. The purpose of such implementation is to ensure effective management of the company in the process of consolidation of shares

of the company in the hands of one shareholder or several affiliated shareholders on terms most favorable to majority and minority shareholders, and protect the company from raider attacks in which «stakeholders» use minority shareholders as a tool [10].

One of the reforms of Ukrainian legislation in this area was the adoption in March 2017 of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine to Increase the Level of Corporate Governance in Joint Stock Companies», which introduced into the national legal system mechanisms of «squeeze-out» and «sell-out», as well as improved the procedure for repurchase of shares by a new controlling shareholder at the request of other shareholders [11].

The most significant consequences of such a reform were the provisions of Article 652 of the Law of Ukraine «On Joint Stock Companies» concerning cases of mandatory sale of shares by shareholders at the request of a person (persons acting jointly) who owns a dominant controlling stake [12]. Thus, the essence of the «squeeze-out» procedure is the right of the owner or group of owners who control at least 95% of the company's shares to forcibly repurchase the remaining shares from minority shareholders at a price determined by the company.

This procedure has a reverse mechanism, when the right to claim redemption is already a minority shareholder, ie the procedure «sell-out». Article 653 of the Law of Ukraine «On Joint Stock Companies» provides for the mandatory acquisition by a person (persons acting jointly), who is the owner of the dominant controlling stake in a joint stock company, shares at the request of shareholders [12]. The «sell-out» procedure is provided to minority shareholders under the same conditions as the «squeeze-out» procedure to large shareholders.

«Squeeze-out», although it is a forced redemption of shares from minority shareholders, is a prerequisite for redemption at fair value. This condition is an essential feature that distinguishes «squeeze-out» from the misappropriation of minority shares, which violates the right of ownership enshrined in Art. 41 of the Constitution of Ukraine [13]. Thus, the owners of a small block of shares will be able to sell their securities at market value and will be relieved of the obligation to bear the costs of the services of depository institutions.

The introduction of the above-mentioned instruments indicates that a fundamentally new mechanism for protecting the corporate rights and interests of both minority and majority shareholders has been formed in Ukraine at present. Administrative control over the «squeeze-out» procedure in Ukraine is exercised by the National Securities and Stock Market Commission, which monitors the securities market pricing system in accordance with the legislation, establishes the presence of signs of manipulation in the stock market and considers cases of violation of the legislation on the securities market [14].

Taking into account the official statistics of the National Commission on Securities and Stock Market, it is already known about the successful implementation of 317 procedures «through-out» and transfer within the declared procedures to bank accounts of conditional storage («escrow»), opened for minority shareholders, 436 million hryvnias. In addition, since the introduction of the «squeeze-out» from such accounts, in accordance

with the submitted requirements, 980 million hryvnias have already been paid and during the share repurchase 33 thousand minority shareholders have already received funds [1]. This indicates the unconditional success of the state's introduction of such corporate management tools and the achievement of the main goal of protecting the rights of investors, regardless of the size of the block of shares through administrative control.

In addition, it should be noted that Ukraine is currently moving towards the introduction of ethical standards in financial markets. Thus, in November 2020, the NSSMC presented a study of 12 codes of ethics in the financial and investment sector, prepared in the framework of the USAID Financial Sector Transformation Project and the Association of Investment Professionals (CFA Society Ukraine). In the future, this study will promote the introduction of ethical standards in the Ukrainian financial markets [1]. It is expected that the prepared review of the leading world codes will be the basis for the development of their own codes by Ukrainian professional associations and self-regulatory organizations, which will ensure strict adherence to the daily ethical conduct of financial institutions.

At the same time, the Strategy for the Development of the Financial Sector of Ukraine until 2025 [15] aiming to further improve the legislation regulating corporate management issues of companies provides for the introduction of the possibility of using a single-level model of the management system, regulating the procedures for holding general meetings through electronic means, anticipating the implementation of procedures in the event of a significant reduction in the company's capital, bringing the conditions, procedures and consequences of mergers, acquisitions, divisions and separation of joint-stock companies under the regulations of the European Union.

Висновки

Globalization processes are increasingly playing a decisive role in the formation of national corporate sectors of the economy. And, although there is no single model of corporate management in the world, there are generally accepted principles (standards) that underlie effective corporate management and can be applied in a wide range of legal, economic and political conditions.

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