

МЕХАНІЗМИ ДЕРЖАВНОГО УПРАВЛІННЯ

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THE CODE OF CORPORATE ETHICS AS A NECESSITY FOR THE FURTHER DEVELOPMENT OF CORPORATE RELATIONS

This article discusses the international experience of the legal regulation of Corporate Governance by taking on corporations, on a voluntary basis, additional obligations through the use of its own internal collections of rules - Codes of Corporate Conduct. Such actions are due to competition and the generally accepted rules of international organizations and unfortunately not fixed in our state but which have found application in other countries with more developed corporate governance.

Key words: Corporation; Ethics; Codex; Code of Corporate Ethics; Corporate Governance.

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КОДЕКС КОРПОРАТИВНОЇ ЕТИКИ ЯК НЕОБХІДНІСТЬ ДЛЯ ПОДАЛЬШОГО РОЗВИТКУ КОРПОРАТИВНИХ ВІДНОСИН

У даній статті розглянуто міжнародний досвід правового регулювання Корпоративного управління шляхом взяття Корпораціями на себе, в добровільному порядку, додаткових зобов'язань через застосування власних внутрішніх збірок правил - Кодексів корпоративної поведінки. У процесі конкурентної боротьби корпоративні суб'єкти господарювання (Корпорації) змушені доводити суспільству свою надійність і одним з таких доказів є взяття суб'єктом господарювання на себе додаткових зобов'язань перед суспільством таким як додаткові гарантії виконання зобов'язань перед клієнтами, дотримання традиції не закріплених законом, всередині своєї діяльності (моралі і філософії). В результаті світ побачив такий результат розвитку Корпорацій як Корпоративні кодекси. Даний внутрішній документ описував в собі цілі, філософію, вимоги, права і зобов'язання компанії, співробітників перед клієнтами. Необхідно вказати що в нашій країні застосовується подібний вузькоспеціалізований інструмент у вигляді Професійних Кодексів - Кодексу Адвокатської Етики, Кодексу професійної етики та поведінки працівників прокуратури, Міжнародний кодекс поведінки державних посадових осіб та Кодексу суддівської етики, обов'язок дотримання яких закріплені законом. Однак законом не передбачено навіть рекомендацій до наявності у Корпораціях таких Кодексів на відміну від ряду інших країн (Росія, Німеччина, та інші 35 держав членів ОЕСР).

Наука стверджує що Корпоративні кодекси в організаціях виконують такі основні функції: управлінську, розвиток корпоративної культури в організації, та репутаційну. Існують безліч кодексів корпоративної етики і всі вони містять в собі правила, включаючи санкції, передбачені у випадка Порушення кодексу, регулюють зобов'язання перед клієнтами, вкладниками, акціонерами, співробітниками, положення про цінності організації, її філософію та цілі (викладають основи корпоративної культури) визначення міжособистісних стосунків в організації і погоджують взаємодію працівників та організації (наприклад, договори, які укладаються між адміністрацією та профспілкою). В рамках даного дослідження з урахуванням безлічі корпоративних кодексів в світі, автором будуть розглянуті 2 основних корпоративних кодексу це Кодекс Корпоративного поведінки ФКЦБ Росії і Принципи корпоративного управління G20 / ОЕСР. На сьогоднішній день основні стандарти Кодексу корпоративної етики є в «Принципах корпоративного управління G20» Організації Економічного Співробітництва та Розвитку (ОЕСР).

Описані кодекси корпоративної етики показують явний результат саморегулювання і запобігання конфліктам, як внутрішніх, так і зовнішніх (на рівні законодавства). Обтяження Корпорації додатковими зобов'язаннями в інтересах її учасників є доступним і ефективним інструментом регулювання бізнес-асоціацій різних форм бізнесу.
Ключові слова: Корпорація; Етика; Кодекс; Кодекс корпоративної етики; корпоративне управління.

Постановка
проблеми

Society has always wanted to regulate the maximum possible number of aspects of human life. However, some aspects of management is harder to

control than others through different cultures, nationalities and customs of different countries. One of these aspects was and remains ethics. National legislation provides

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for the control of fundamental violations of morality encroaching on the rights of their citizens such as property rights, the right to life, etc. In the process of competition fight, corporate entities (corporations) were forced to prove to the public their credibility and one of such evidence was the taking by itself additional obligations to society such as additional guarantees of fulfillment of obligations to customers, adherence to tradition not enshrined in the law, within its activities (morals and philosophy). As a result, the world saw such a result of the development of the Corporation as the Corporate Codes. This internal document describes the goals, philosophy, requirements, rights and obligations of the company, employees to clients. It is necessary to indicate that in our country such a specialized specialist tool is used in the form of Professional Codes - Code of Advocate's Ethics, Code of Professional Ethics and Behavior of Prosecutors, International Code of Conduct for State Officials and Code of Judicial Ethics, the duty of observance of which is established by law. However, the law does not even provide guidance for the existence of such Codes in the Corporation, as opposed to a number of other countries (Russia, Germany and others 35 OECD members).

Аналіз останніх досліджень і публікацій

At the time of writing, a publication article on this issue is extremely small. This indicates a small study of this topic in our country. From the last publications this topic is covered in the scientific article by V.A. Nidzieva. Corporate Code as a

Tool for Managing the Organizational Culture of General Education Institutions [6] The use of the corporate code for an educational institution is considered in connection with the failure to take into account national laws of the moral quality of a particular worker, the specifics of activities and attitudes in a particular institution. Similar question was also considered by Chabanov V. in the scientific article «Corporate Ethics of Public Administration» where the necessity of the Code of Corporate Ethics for civil servants was considered in connection with the indifference of civil servants to the fate of citizens. [7]

Мета

The study of the experience of foreign countries in the field of corporate ethics, in particular, the practical necessity and drafting of the state standard of the Code of Corporate Ethics.

Виклад основного матеріалу

Science claims that the Corporate Codes in organizations perform the following basic functions:

- managerial – regulate personnel behavior, Priorities in working with commercial clients, shareholders, partners, competitors, environment; the order of decision making and unacceptable forms of behavior are determined;
- the development of corporate culture in the organization - translate corporate values, orientate workers to the Unique corporate goals, thereby increasing the corporate identity of employees;
- Reputation - form the Trust in the organization on the part of the environment, increase its investment attractiveness. [1]

There are many codes of corporate ethics and all of them contain rules, including sanctions provided for in the case of Violations of the Code, regulate obligations

to customers, depositors, shareholders, employees, etc., the provisions on the values of the organization, its philosophy and objectives (outlining the foundations of corporate culture) Determine interpersonal relationships in the organization and Agree Capture of employees and organizations (for example, contracts concluded between the administration and the union).

The basis of effective activity and investment attractiveness of a society is trust between all participants of corporate behavior. Principles of corporate behavior, aimed at building trust in relations arising from the management of society. Thus, the Principles of Corporate Conduct are the initial principles that underlie the formation, functioning and improvement of the corporate governance system of the companies. [5]

In the framework of this study, taking into account the multitude of Corporate Codes in the world, the author will consider the 2 main Corporate Code is the Code of Corporate Conduct FCSM of Russia and the Principles of Corporate Governance G20 / OECD. To date, the main principle of the Code of Conduct for Corporate Ethics is the Corporate Governance Principles of the G20, the Organization for Economic Cooperation and Development (OECD). The OECD is an intergovernmental economic organization with 36 member countries, founded in 1961 to stimulate economic progress and world trade. It is a forum for countries that describe themselves as committed to democracy and a market economy, providing a platform for comparing political experience, finding answers to common problems, identifying best practices and coordinating the domestic and international policies of its members. Most OECD members are high-income countries with a very high human development index and are considered to be developed countries. As of 2017, the OECD countries accounted for 62.2% of the global nominal GDP (US \$ 49.6 trillion) and 42.8% of global GDP (US \$ 54.2 trillion) for parity of purchasing power. The OECD is an official observer of the United Nations.

«Corporate Governance Principles of the G20 / OECD» consists of 6 chapters and annexes to the recommendations of the Board on corporate governance principles for participating countries.

Section 1 contains recommendations on the structure of Corporate Governance, namely - The need to develop an infrastructure of corporate governance taking into account the relevant market, The need for compliance with legal and regulatory requirements not only transparency but also implementation in accordance with the interests of the participants of the Corporation, the need for a clear division of responsibilities, Regulation the market should support corporate governance, the need for professionalism and integrity of supervisory, regulatory and enforcement agencies as well as timely truth, transparency and full clarity of their decisions and the need for expanding cross-border cooperation through the exchange of information.

Section 2 includes recommendations on the rights of participants in the corporation in terms of equal treatment and key functions of ownership. This section focuses on fast (receiving information about the work of the corporation as soon as possible) and effective disposal of the rights of the participants of the corporation (transfer of information, participation in the meeting, equality of votes present and cross-border).

Section 3 contains recommendations for the development of Corporate Governance in the presence of the Institutional Investors Corporation, since today the real world of corporate governance and ownership is no longer characterized by direct and uncompromising relationships between the results of the companies' activities and the income of the final beneficiaries of the owners. [2]

Section 4 contains recommendations for stakeholders, such as the right to compensation for violated rights, the development of a mechanism for employee participation, the right of access to information relating to them.

Section 5 includes recommendations on disclosure and transparency, in particular regarding the accurate and timely disclosure of information about financial position, performance, assets of corporations, operations, risk factors and corporate governance.

Section 6 describes the principles of corporate ethics regarding the responsibilities of the board of directors (board), strategic planning, effective control over management and its accountability.

The annex pays tribute to a number of international treaties and definitions, and recommends that States that are and not members of the United Nations that have acceded to this Recommendation duly take into account the above Principles and also invites the Secretary-General, the acceding and non-associated States to extend this Recommendation.

This document contains many principles is already a mandatory requirement under national law, but it also contains a number of principles, only partially or not at all prescribed by law. In particular, these are the rights of interested parties and institutional investors.

The FCSM Code of Corporate Conduct, though built on the basis of the G20 / OECD Principles of Corporate Governance, was built in more detail, which in principle meant the OECD, as the « Principles of Corporate Governance G20 / OECD» are basic and require the introduction of a system of national legislation, such as and was specified in the OECD Principles itself. It should be noted that, unlike the Corporate Principles of Corporate Governance G20 / OECD, the Code of Corporate Conduct of the Federal Commission for Securities of the Russian Federation is aimed not only at joint-stock companies in the stock sector but also in all types of business associations. On the whole, it is built on the basis of OECD recommendations but with a number of additions. In the part of the plan, the document is divided into 10 chapters on the branches of the corporation, as well as actions and for the first time - dividends.

Chapter 1 describes the already mentioned principles of corporate behavior.

Chapter 2 describes in detail the general meeting of shareholders (convocation, preparation, process of conducting). It is important to note the additional paragraph 1.5. absent from the OECD Recommendations - Shareholders' rights to require convening a general shareholders' meeting and making proposals to the agenda. This item allows organizing a general meeting convening for the fastest response to events in the market or country. In today's competition, rapid reaction plays a decisive role in the development of Corporations.

Chapter 3. The board of directors of a society describes their functions, composition, formation, responsibilities. It is important to note the indication of a

new recommendation. It is recommended that the Board of Directors include independent directors. Inclusion in the board of directors only of persons who are not members of the board will not protect the interests of shareholders sufficiently. Effectiveness of the functions of the board of directors requires the inclusion in the board of directors of independent directors, that is, individuals who are not only members of the board but also independent of the company's officials, their affiliates, major counterparties of the partnership, and not being in partnership with other partners, which may affect the independence of their judgments. [5]

Chapter 4 describes the organization of the work of executive bodies of the Corporation. Reward of the executive body where it is recommended that the remuneration of the general director and members of the collegial executive body corresponded to their qualifications and took into account their actual contribution to the results of the company's activity and the responsibility of the general director and members of the board of the company where it is recommended to actively exercise the right to apply to the court with a claim for compensation of losses by the indicated persons not only in order to compensate for the losses incurred by them, but also in order to encourage them to fulfill their duties appropriately.

Chapter 5 Describes the Corporate Secretary of the Society. It is only a permanent person who possesses the necessary professional qualifications and does not combine this activity with the fulfillment of other functions in the society can effectively ensure compliance with the mentioned procedures. Existing public bodies and officials, in particular, the board of directors and executive bodies, do not meet these requirements and are not intended to solve such problems. Therefore, in a society it is recommended to appoint (select) a special officer, whose sole task will be to ensure that the bodies and officials of the company comply with the procedural requirements guaranteeing the rights and interests of the company's shareholders, the Secretary of the Society.

Chapter 6 describes Significant corporate actions that can lead to fundamental corporate changes, including changes in shareholders' rights such as company reorganization, the acquisition of 30% or more of the shares of the company (sinking) that significantly affect the structural and financial position of the company and, accordingly, to the state of shareholders. Significant corporate actions also include the commission of significant transactions and transactions in which there is an interest, reduction or increase of authorized capital, amendments to the charter of the company and a number of other issues, the solution of which is essentially for society.

Chapter 7 describes the disclosure of the company in accordance with the OECD recommendations with one essential clarification - The society must control the use of insider information. Nowadays, knowledge of essential information about the Corporation's activities can cause significant damage to shareholders and cause significant negative consequences for the financial position of the company and its business reputation.

Chapter 8 describes the control of the financial and economic activities of the company to protect the capital investments of shareholders and assets of the company.

This section is described in more detail than in the OECD Recommendations. Here is a detailed review of the control system, the audit committee and the audit itself, the procedure for review of non-standard operations and the Audit Commission.

Chapter 9 describes the Dividend and is an initiative not foreseen by the OECD. It describes a series of bank claims for payments and the consequences of non-payment.

Chapter 10 describes the most painful part of Corporate Governance - Corporate Conflict Management. Unfortunately, this topic is devoted to little information but describes important aspects such as the effectiveness of work on the prevention and settlement of corporate conflicts, the position of the society in a corporate conflict, the order of the company in resolving corporate conflicts.

Висновки

The described codes of corporate ethics show an explicit result in self-regulation and prevention of conflicts, both internal and external (at the level of legislation). The encumbrance of the Corporation with additional obligations in the interests of its participants is an affordable and effective instrument for the regulation of business associations of different forms of business. Our country does not provide guidance on the codes of corporate ethics, and this does not prevent corporations themselves from introducing such documents into their structure, but the lack of a position of our state leads to a lack of order in this matter.

References

1. Chika G. L. Culture of Business Communication Manager Manager. K.: Knowledge, 2005. 442 c.
2. G20 Corporate Governance Principles. URL: https://read.oecd-ilibrary.org/governance/g20_9789264252035-ru#page2.
3. Bochaeva G.V. The Code of Corporate Conduct as an Element of the Corporate Governance System. *Young Scientist*. 2016. №10. P. 630–634. URL <https://moluch.ru/archive/114/30047/> (reference date: 09/5/2018).
4. Federal Commission for the Securities Market Regulation No. 421 / p on the Recommendation to the Code of Corporate Conduct / FCSM of Russia of April 4, 2002.
5. Code of Corporate Conduct / Website of the Federal Financial Markets Service. URL: http://www.cbr.ru/sbrfr/archive/fsfr/fkcb_ffms/catalog.asp@ob_no=1772.html
6. Nidzieva V. A. Corporate Code as a Tool for Managing the Organizational Culture of General Education Educational Institutions. *Education and Development of a Gifted Person* No. 7 (38) / 07/2015. URL: http://nbuv.gov.ua/UJRN/Otros_2015_7_10.
7. Chabanov V. Corporate Ethics of Government. *Political Sciences*. 2016. Vol. 2, No. 2.