**ТҮЙІНДЕМЕ**

Мақалада ғылыми-техникалық прогресс динамикасын және қазіргі өнеркәсіптік технологиялардағы инновациялық үрдістерді ескере отырып, әлемдік практикада макрологиялық жүйелерді құрудың қазіргі заманғы және өзекті әдіснамалық тәсілдері қарастырылды және егжей-тегжейлі қарастырылды. Макрологиялық жүйелерде өндірістердің материалдық ағындардан материалдық емес ағындарға көшуі шеңберінде трансформациялық өзгерістер орын алуына ерекше назар аударылды. Мақалада Қазақстан Республикасы экономикасының практикасында дами алатын макрологиялық жүйелерді құрудың маңызды ұйымдық-экономикалық тетіктері көрсетілген.

**РЕЗЮМЕ**

В статье затронуты и детально рассмотрены современные и актуальные методологические приемы построения макрологистических систем в мировой практике с учетом динамики научно-технического прогресса и инновационных тенденций в современных промышленных технологий. Особое внимание акцентировано на то, в макрологистических системах произошли трансформационные изменения в рамках перехода производств от материальных потоков к нематериальным. В комплексе в статье обозначены важнейшие организационно-экономические приоритеты построения макрологистических систем, которые могут получить развитие в практике экономики Республики Казахстан.

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## NATIONAL MODELS OF CORPORATE GOVERNANCE AND WAYS TO IMPROVE THEM IN THE EURASIAN ECONOMIC UNION COUNTRIES

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**ABSTRACT**

*Purpose of the research.* To identify the ways for improving the efficiency of the corporate governance models adopted and ways for harmonization of the legislation in countries -members of the Eurasian Economic Union effective January 1, 2015.

*Methodology.* Evaluation of the corporate governance models adopted at the national level in countries-members of the Eurasian Economic Union has been performed based on the analysis of the legislation. To grasp a practical ramifications of norms envisaged in the laws, an in-depth interview with corporate lawyers of Kazakhstan has been conducted.

*Originality / value of the research.* This research examines to what extent the right of shareholders, regardless of the country of origin and his/her share in the capital of the corporation, to be represented in the boards for the purpose of protection of their interests, could be realized in countries – members of the Eurasian

Economic Union. Further, this study looks at the role of independent directors in the process of realization of the rights of investors in selected jurisdictions.

*Findings.* The results of the research undertaken demonstrate notable deficiency in implementing an effective corporate governance model in courtiers – members of the Union. In this study ways for improving the efficiency of the corporate governance models and for harmonization of the legislation of countries -members of the Eurasian Economic Union are offered.

*Keywords:* corporate governance, minor shareholders, foreign investors, protection of the rights of shareholders, independent directors

## ЕУРАЗИЯЛЫҚ ЭКОНОМИКАЛЫҚ ОДАҚ ЕЛДЕРІНДЕГІ КОРПОРАТИВТІ БАСҚАРУДЫ ҰЛТТЫҚ МОДЕЛДЕРІ ЖӘНЕ ОЛАРДЫ ЖЕТІЛДІРУ ЖОЛДАРЫ

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### АҢДАТПА

*Зерттеу мақсаты.* 2015 ж 1 қантардан бастап қызмет ететін Еуразиялақ Экономикалық Одақ елдеріндегі қолданыстағы корпоративтік басқару үлгілері тиімділігін арттыру тәсілдерін және заңнаманы үйлестіру жолдарын анықтау.

*Зерттеу әдіснамасы.* Еуразиялақ Экономикалық Одақ елдеріндегі қолданыстағы корпоративтік басқару үлгілерін талдау заңнамалық базасын талдаудың негізінде жасалған. Қолданыстағы заңнама көздейтін қағидалар іс жүзінде қалай асырылатынын түсіну үшін Қазақстан корпоративтік заңгерлемен сұхбаттасулар жүргізілді.

*Зерттеудің бірегейлігі / құндылығы.* Мақалада Еуразиялақ Экономикалық Одақ елдеріндегі акционерлердің құқықтары, азаматтығына және бизнеске қатысу үлесіне қарамастан, өз мүдделерін қорғау мақсатымен директорлар кеңесінде өкілдік ету мүмкіндігі жағынан іске асырылу деңгейі туралы мәселе көтеріледі. Сонымен қатар таңдалған құзыреттерде инвесторлардың құқықтарын жүзеге асыру үдерісінде тәуелсіз директорлардың рөлі туралы мәселе қарастырылады.

*Зерттеу нәтижелері.* Одақ елдеріндегі қолданыстағы заңнамасының аясында корпоративтік басқарудың тиімді үлгісін жүзеге асыруға мүмкін еместігін көрсетеді. Жұмыста Еуразиялақ Экономикалық Одақ елдеріндегі қолданыстағы корпоративтік басқару үлгілері тиімділігін арттыру тәсілдері және заңнаманы үйлестіру жолдары ұсынылады.

*Түйін сөздер:* корпоративтік басқару, миноритарлық акционерлер, шетел инвесторлар, акционерлердің құқықтарын қорғау, тәуелсіз директорлар.

## НАЦИОНАЛЬНЫЕ МОДЕЛИ КОРПОРАТИВНОГО УПРАВЛЕНИЯ В СТРАНАХ ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА И ПУТИ ИХ СОВЕРШЕНСТВОВАНИЯ

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### АННОТАЦИЯ

*Цель исследования.* Определение способов повышения эффективности применяемых моделей корпоративного управления и путей гармонизации законодательства стран Евразийского Экономического Союза, функционирующего с 1 января 2015 года.

*Методология исследования.* Анализ моделей корпоративного управления, применяемых в странах Евразийского Экономического Союза, произведен на основе анализа законодательной базы. Для понимания того, насколько нормы, предусмотренные действующим законодательством, реализуются на практике, проведены интервью с корпоративными юристами Казахстана.

*Оригинальность исследования.* В статье поднимается вопрос о степени, в которой права акционеров, вне зависимости от гражданства и доли участия в бизнесе, в части возможности быть представленными в совете директоров в целях защиты их интересов, могут быть реализованы в странах Евразийского Экономического Союза. Также, рассматривается вопрос роли независимых директоров в процессе реализации прав инвесторов в выбранных юрисдикциях.

*Результаты исследования – у*казывают на невозможность реализации эффективной модели корпоративного управления в рамках действующего законодательства в странах Союза. В работе предлагаются способы повышения эффективности применяемых моделей корпоративного управления и пути гармонизации законодательства стран Евразийского Экономического Союза.

*Ключевые слова:* корпоративное управление, миноритарные акционеры, иностранные инвесторы, защита прав акционеров, независимые директора.

**INTRODUCTION**

Most recent studies devoted to corporate governance have focused on developed countries. Studies of corporate governance systems in emerging economies are limited [1] (Yaacob & Basiuni, 2014) and there are none devoted to harmonization of corporate governance systems for countries – members of the Eurasian Economic Union, the agreement on creation of which was signed by the leaders of Russian Federation, Kazakhstan and Belarus in Astana, Kazakhstan, on May 29, 2014. Later, the Eurasian Economic Union (EAEU) was enlarged to Armenia and Kyrgyzstan. Given that those members of the EAEU are not located even partially in Europe (as this is a case for founders of the EAEU), Armenia and Kyrgyzstan are deliberately excluded from our research as we believe that influence of their cultural peculiarities on corporate governance requires separate study.

This research will focus on one of the elements of the corporate governance system, namely on the possibility of realization of the right of foreign and minor shareholders to be represented in the boards as this is one of the fundamental rights which basically lays the foundation for enhancing attractiveness of any market to foreign direct investments (FDIs). Pursuant to the Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance, foreign direct investments (FDI) could be intensified if there is a perception among foreign investors that legal environment enforces not only the protection of the rights of foreign investors but also of domestic ones as it is increases the overall level of credibility of any legal system.

Given that the Eurasian Economic Union was recently created, it would be beneficial to introduce amendments into the legislation of countries under review, if necessary, at early stages of functioning of the Union in order to avoid a situation when legal developments 'follow rather than precede economic change' as, pursuant to John Coffee, historical evidence suggests [2]. (Clarke, 2011).

The interest in this research area stems from the fact that the majority of backbone companies in Russia, Belarus and Kazakhstan, which are the driving sources of economic development and are of strategic importance to their national economies, are:

- fully or partially state-owned companies with the state being the only or major shareholder; or
- private companies which were fully-privatized during last 15-20 years

that has led to the inheritance of organizational practices, which were in place prior to privatization.

In addition, there is a very strong cultural aspect, which significantly affects the way business is conducted given that cultures are embedded into organizational practice and legal norms [3], (EWANS, 2014), that has very deep historical roots and implies that major decisions cannot be made without authorization, at least informally, of a very high status symbol, for example either the President of the country, Prime-Minister, or any Minister. This comes from the times when all countries were part of the USSR in which as a result of the centralized planning system, everything was subject to approval at the "highest" state level. This explains the findings of Hofstede scoring the Russia at 93 points at 'power distance' dimension, which implies very high

importance of status symbols in the national culture, which has its impact on the organizational culture, and scoring it at 95 points on the 'uncertainty avoidance' dimension, which means that any ambiguous situations are perceived as a direct threat, which in turn led to a domination of a bureaucracy [4]. (The Hofstede Center). There are no such results for Kazakhstan or for Belarus. However, due to common cultural and historical roots, extrapolation of results for Russia into Kazakhstan and Belarus, is defensible.

Further, given that the USSR had a closed economic system, right after the collapse of the USSR, the idea of protection of the rights of minor and foreign investors was new to Russia, Kazakhstan and Belarus, which led to existence of imperfect legal norms in this area. Such treatment of foreign investors can be an illustration of Russia, Belarus and Kazakhstan being collectivist societies as defined by Hofstede [5] (1983). Russia scored 39 points on the 'Individualism' dimension of Hofstede [4] (Hofstede Center), where everything which does not belong to the society is not considered as "ours" or "us" and as a result falls beyond the scope of interests of nations.

Such initial elements (importance of status symbols in the national culture along with high tendency to uncertainty avoidance and closed economic system during the USSR times) led to a situation when the rights of minor and foreign shareholders were not properly protected even though all three countries undertook massive legal reforms over the last 20-25 years. However, this becomes a key issue given that even within the Eurasian Economic Union, investors from other member states are treated as foreign investors in the neighbor countries despite citizens of Russia, Belarus and Kazakhstan perceive each other as "ours". This brings to the surface the issue of how to treat "foreign investors" from the EAEU given that they are "ours" in the context of nondiscrimination of so called "'real' foreign investors" (from non EAEU countries) against "foreign investors" from EAEU countries.

Equal treatment of investors regardless of the country of origin implies primarily that both groups have equal rights that are enforced and protected to the same extent. One of such rights which must be fully realized is a right of representation of any shareholder in the board [6] (OECD Principles of Corporate Governance). This factor is a primary one in the guarantying legitimacy of the boards given that this is a starting point in framing the model to be followed in boards operations. The main issue here is to ensure that board members can have high level of "assertiveness" as defined by the GLOBE team [3] (EVANS, 2014) and "independence" to ensure that they can ask "tough" questions for the benefit of all stakeholders and as a result for the benefit of the nations.

Given that all countries under review continue to have a 'collectivist culture' highly influenced by status symbols, "independence" and "assertiveness" of the board members in the organizations operating in Russia, Belarus, and Kazakhstan is questionable per se and lack of legitimacy of the boards due to improper realization of one of the fundamental right of shareholders to be represented in the boards will not contribute to the efficacious performance of any board.

## THE MAIN PART OF THE RESERACH

### Literature review

The importance of corporate governance systems at both macro and micro levels has been assessed by a variety of scholars. Most recent studies were triggered by a growing interest in three primarily areas: the roles of executives, directors, shareholders and their actions to protect their interests; corporate governance in international settings; and the effect of corporate governance systems on foreign direct investments. Those studies are interdisciplinary and were undertaken by scholars from different fields such as finance, law, economics, management and accounting [7] (Bebchuk & Weisbach, 2010).

There is a whole stream of research devoted to the effect of protection of the rights of investors. Pursuant to La Porta et al. [8] (1998) the greater protection of investors contributes to the increase in "investors' willingness to provide financing and should be reflected in lower costs and greater availability of external financing" [9, p. 704] (Klapper & Love 2004, 704). In the developing countries foreign direct investments are "considered the most stable component of capital flows … and can also be a vehicle for technological progress" [10, p. 765] (Bénassy-Quéré, Coupet & Mayer 2007, 765) which augments the necessity for protection of foreign investors' rights. Further, "investor protection turns out to be crucial because, in many countries, expropriation

of minority shareholders and creditors by the controlling shareholders is extensive" [11, p. 4] (La Porta et al. 2000, 4). Recent studies on the issue of protection of the rights of minority investors suggest that "minority investors are only protected when they have power relative to controlling shareholders" which can be realized through the institute of independent directors given that the latter "can intervene to protect the interests of all shareholders" [12, p. 210] (Anderson & Reeb 2004, 210). This gives a rise, in general, to the issues of the role of independent directors in governance system and their effect on organization performance that have been addressed in the prior studies.

Theoretically, the existence of boards is justified by the necessity to address "the agency problems inherent in managing an organization" [13, p. 7] (Hermalin & Weisbach 2001, 7).

Given that "monitoring and review of managers by the board of directors is a major internal managerial control mechanism" [14] (Coughlan and Schmidt, 1985) increase in firms' performance with introduction of independent directors in the boards is explained by better monitoring provided by outside directors who are defined as not employees of the company [15] (Klein, 1998).

Further, analysis of the bidirectional relationship of board independence and firms performance suggests that the strong performance of the firms effects the behavior of independent directors in a way that in such situations independent directors demonstrate higher level of readiness to actively participate in the decision making process which leads to the increase in firms' value [16, p. 69]. (Lee and Wang 2014, 69)

However, findings of Rosenstein and Wyatt, 1990 are supportive of the hypothesis "that outside directors are chosen in the interest of shareholders" and provide 'no clear evidence that outside directors of any particular occupation are more or less valuable than others". Meantime, Jenwittayaroje and Jiraporn [17] (2019) found that board independence is more valuable during stressful times (in particular, during Great Recession in 2008) than during normal times.

In regard to the ability of independent directors to effectively perform their functions in corporations with high level of ownership concentration, Lee and Wang [16, p. 70] (2014, 70) suggested that their actions will be limited given that "the appointment of independent directors is likely to be manipulated by controlling shareholders". This gives a rise to the issue of who should have a privilege to appoint independent directors.

Another function of the independent directors of the boards, which received attention in the literature, is providing independent professional consultancy services which directly contribute to the improved firm performance [16, p. 70] (Lee and Wang 2014, 70), and at the same time can "enhance monitoring process" which ultimately will positively affect firm value [18, p. 28] (Adams & Ferreira 2007, 28). Findings of Miletkov et al. [19] (2017) provide evidence that through monitoring and advising functions foreign directors can positively affect firm performance. Further, their findings suggest that such relationship is more pronounced in "countries with lower quality legal institutions" implying that foreign directors come from "countries with higher quality legal institutions".

Overall, recent research advances highlight the importance of the corporate governance system, in general, and its components such as investors' rights protection and board independence, in particular, for an increase in the flow of capital and improvement of firm performance.

**Methodology**

Evaluation of the corporate governance models adopted at the national level in Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan, in general, and its selected components like the extent to which the fundamental rights of shareholders (both foreign and minority shareholders) can be realized in particular, has been performed based on the analysis of the following laws, which lay the foundation for governance systems of any corporation operating in a chosen jurisdiction:

• The Federal Law of Russian Federation #203-FL dated December 26, 1995 "On Joint-Stock Companies" [20],

• The Law of the Republic of Belarus #2020-XII dated December 9, 1992 "On partnerships" [21],

• The Law of the Republic of Kazakhstan #415-II dated May 13, 2003 "On Joint-stock companies" [22].

In addition to that, in order to grasp a practical ramifications of norms envisaged in the laws, which probably were unforeseen by lawmakers, an in-depth interview with lawyers from 10 joint-stock companies of Kazakhstan has been conducted.

## RESEARCH RESULTS AND DISCUSSION

### 1) Rights of shareholders and the institute of independent directors

Legal environment is a huge source of risk for any business and at the same time it is intended to provide support for economic development of any state. The main mechanism through which the rights of all shareholders could be realized, to ensure the effective implementation of the corporate governance model and to mitigate risks emerging from laws and regulations, involves incorporation of the norms governing the process of taking into account the interests of investors into the laws. Such norms are expected to encompass the right of shareholders, regardless of the country of origin and share in the shareholding capital of a corporation, to be represented in the boards. Given that minor shareholders have limited capacity to affect the decision about boards composition, the only way to ensure that their interests are counted appropriately is to introduce regulatory requirement with respect to having independent directors in the boards. If the right of shareholders to be represented in the boards as a rule is fixed in the laws through the right to elect board members, the requirement to have independent directors in the boards is quite often omitted though, which limits the extent to which the interests of minor shareholders are taken into account.

Corporate governance systems at the national level of countries-members of the Eurasian Economic Union are governed by the Law of the Republic of Belarus #2020-XII dated December 9, 1992 “On partnerships” [21], the Federal Law of Russian Federation #203-FL dated December 26, 1995 “On Joint-Stock Companies” [20] and by the Law of the Republic of Kazakhstan #415-II dated May 13, 2003 “On Joint-Stock Companies” [22].

Regulatory framework of each country of interest ensures that shareholders decide who should be on the boards and acknowledges the existence of the institute of independent directors. However, the degree of recognition by national legislations of the necessity to have independent directors in the boards varies. In particular, only in Kazakhstan, the regulator clearly defines who is an independent director[1] and requires to have at least 30 % of independent non-executive directors in the boards (clause 5, article 54 of the Law of the Republic of Kazakhstan #415-II “On joint stock companies” [22]) which implies that all decisions which are in the domain of the board should be made with participation of independent directors (if they present at the board meetings). In contrast, in Belarus only financial organizations are required to have two independent non-executive directors (Bank’s Code of the of the Republic of Belarus # 441-3 dated October 25, 2000 [23]; Resolution of the Board of the National Bank of the Republic of Belarus №557 dated October 30, 2012 [24]), which are defined as those who are not affiliated with shareholders and with management of the organizations where they are members of the board, but all other corporations of Belarus are not subject to this requirement (Article 84 of the Law of the Republic of Belarus #2020-XII dated December 9, 1992 “On partnerships” [21]). Russian regulatory framework assumes the same concept of independent directors as in Belarus, and does not require having independent directors in the boards either.

Further, the existence of independent directors is becoming an acute concept in Russia and Belarus only in the process of making decision on major transactions, which are defined as a transaction or a set of related transactions in regard to acquisition of disposal of assets valued at 20 % (Belarus) / 25 % (Russia) or more of the carrying value of the total assets based on the data derived from the balance sheets of the company (art. 79 of the Federal Law of Russian Federation #203-FL and art 58 of the Law of the Republic of Belarus #2020-XII [21]). It is worthwhile to mention that approval of major transactions in Russia and Belarus requires unanimous decision of all members of the board (part 4 of the art 58 of the Law of the Republic of Belarus #2020-XII and part 2 of art. 79 of the Federal Law of Russian Federation #203-FL [21]), which means that such

[1] Independent director – a member of the board of directors who is not an affiliate of the joint stock company, and who was not an affiliate within three years preceding his/her election to the board of directors (except for the case where he/she held the position of the independent director at the said joint stock company), who is not an affiliate to affiliates of the said joint stock company; who is not bound with subordination to officers of the said joint stock company or organizations which are affiliates of the said joint stock company, and who was not bound with subordination to the said persons within three years preceding his/her election to the board of directors; who is not a state official; who is not an auditor of the said joint stock company and who was not the same within three years preceding his/her election to the board of directors; who does not participate in audit of the said joint stock company as an auditor working with an auditing organization, and who did not participate in such audit within three years preceding his/her election to the board of directors (clause 20 of article 1 of the Law of the Republic of Kazakhstan #415-II “On Joint-Stock Companies”)

decision cannot be made if at least one of the board members is absent regardless of the reason. If the decision on major transaction cannot be made, this issue should be moved on for consideration of the shareholders. In Kazakhstan the decisions on major transactions are in the domain of the board whereas quorum for making any decision is at least 50 % of the total number of all board members and no one decision can be made unless at least 50 % of board members present at the meeting support a decision; meantime corporations at their own discretion have a right to impose tighter requirements on quorum and proportion of votes casted to support a decision in order to ensure that a decision is adopted.

Regulator does not impose on all corporations of Kazakhstan a requirement to ensure that independent directors are taking part in voting.

Thus, the results of the analysis of the corporate governance models adopted at the national level in the countries – members of the Eurasian Economic Union reveals that the institute of independent directors in its pure form exists only in Kazakhstan, while in Russia and Belarus the concept of independent directors appears and used primarily in relation to the major transactions which are required to be approved with participation of directors who does not have a particular interest in a deal under consideration of the board. This itself stimulates the discussion on the necessity to harmonize legislation of countries under the review through amending the laws of Russia and Belarus by a clear and unambiguous definition of independent directors and by a required proportion of them in the boards.

Further, the issue of independence of directors is more relevant to Kazakhstan and to Belarus rather than to Russian Federation given that population in these two countries is substantially lower than in Russia and by the time when anybody can be nominated to the board due to his / her experience, social status, etc. such potential nominees cannot be truly independent, first and foremost, because they are chosen since they are known by shareholders. Further, there is no legal mechanism in any country-member of the Eurasian Economic Union in place that can ensure sufficient level of independence of board members from shareholders, given that board members are appointed by the decision of shareholders. It means that even if any other group of stakeholders decides to nominate anybody to the board, there is no any guarantee that shareholders approve at least one nominee who can represent the interest of such group of stakeholders.

One of the mechanisms of attracting independent directors to ensure at least to some extent their independence is to appoint directors from overseas. However, it is worth pointing out that inclusion of foreign citizens into the boards is more crucial for foreign shareholders rather than for domestic ones given that for former category of investors the issue is realization of their primarily right for being represented in the boards in general, while for the latter category the issue is to ensure sufficient level of independence of the board.

**2) Status of the board of directors members: employees of the organization or not?**

Analysis of the legislation of Russian Federation, Belarus and Kazakhstan seems to demonstrate that board members and corporations where they perform their functions have civil relations given that board members are not viewed as employees. This implies that they do not need to get a work permit unless they work in the corporation in any other capacity in addition to taking a role of a board member (pursuant to the article 97 of the Eurasian Economic Union Treaty signed in Astana on May 29, 2014 [25] there is no need to get a work permit in order to be employed in Kazakhstan, Russia or Belarus, if you are a citizen of any of these countries). It means that they can perform their duties without any limitations based on the business visa.

However, an in-depth analysis of the legal environment and current practice in Kazakhstan with respect to the status of Board members and issuing work permits by state authorities demonstrates existence of a legal gap between intention of the state to provide legal support and protection to shareholders, which is envisaged in the Law of the Republic of Kazakhstan "On Joint-Stock Companies" [22], and mechanism in place to ensure that such norms can be enforced.

Pursuant to the art. 1 of the Law of the Republic of Kazakhstan "On Joint Stock Companies", board members are recognized as officials of a corporation while there is no clarification about whether officials are employees of the organization or not. Pursuant to the clause 43 of art. 1 of the Labor Code of the Republic of Kazakhstan, an employee is a person who performs job duties based on the labor contract. Given that board members are appointed by the shareholders, it can be assumed that they can perform their functions without any labor agreement and meantime be liable for their decisions as it prescribed by the Law "On Joint-Stock Companies".

However, the Decree of the Government of the RK #802 dated December 15, 2016 [26], which govern the decision making process concerning issuance of work permits in Kazakhstan specifies exemptions in regard to getting work permits. In particular, those who perform duties of the board of directors at the National Holdings (Samruk-Kazina, Baiterek, KazAgro) are exempted from getting work permits (clause 20 of the Anex 2 to the of the Decree of the Government of the Republic of Kazakhstan #802 dated December 15, 2016). The existence of this norm per se implies that board members of all other joint-stock companies are viewed by regulator as employees and, therefore, are subject to getting work permits.

However, the analysis of the results of the interview with lawyers of corporations which have citizens of countries-not members of the Eurasian Economic Union in their boards manifests that in practice corporations operating in Kazakhstan do not treat board members as employees and do not apply for work permits. This implies that those relations are civil once. Further, it was revealed that the state authorities do not tend to enforce the norms envisaged in the Decree of the Government of the Republic of Kazakhstan #802 in regard to seemed requirement to secure by corporations' work permits for their board members. Given that, in Kazakhstan actions of public authorities are governed by principles that whatever is not allowed is forbidden which "dictates that every decision it takes must be authorized by the terms of a positive legal power conferred upon it, whose limits it must not transgress" [27, p. 256] (Andenas and Slynn 2000, 256), such selective, whether it is intentional or not, nonenforcement of certain norms by regulator helps.

Given that scrutiny of national regulations of Russia and Belarus did not reveal any collusion in laws with respect to relationship between board members and the corporations where they found to be civil ones, conducting interviews with lawyers of corporations operating in Russia and Belarus is not justified.

Therefore, in order to avoid any conceptual misunderstanding about the status of the board members with respect to the nature of their relations, civil or labor, with corporations in Kazakhstan, it is absolutely necessary to change at least the Decree of the Government of the Republic of Kazakhstan #802 by excluding the norm that board members of the National Holdings (Samruk-Kazina, Baiterek, KazAgro) are not subject to work permits.

By doing so, the legislation in Kazakhstan, Belarus and Russian Federation will be harmonized regarding the way how all board members, regardless of their country of origin, are treated in all countries- members of the Eurasian Economic Union to ensure that they are treated equally. Further, it will ensure that the rights of both foreign and domestic investors can be fully realized given that they will have a freedom to choose and appoint board members. Unless it is done so, the position of board members of corporation in Kazakhstan is jeopardized and their ability to function properly is limited and unsecure, which will result in inability to ensure adequate level of transparency that, in turn, makes it impossible to guarantee from the start "independence" and "assertiveness" of the board members.

**Conclusion**

The results of the research undertaken demonstrate notable deficiency in implementing an effective corporate governance model in courtiers – members of the Eurasian Economic Union, namely, the Russian Federation, Kazakhstan and Belarus.

In particular, the analysis of legal basis of the countries under review with respect to corporate governance system demonstrates a lack of recognition of the institute of independent directors in Russia and Belarus at the national level and requires an inclusion of the norms into the legislation of these countries which will clearly define the notion of independent directors, their role and minimum required proportion of independent directors in the boards. This will ensure that the fundamental rights of minor shareholders for taking into account their interests are assured along with improving corporate governance system of corporation operating in these jurisdictions.

Further, given that any corporation has different groups of stakeholders, it seems expedient to work out the procedure for appointment of independent directors. This issue is relevant for all countries – members of Eurasian Economic Union, whereas corporations are characterized by high level ownership concentration which implies that the independent directors can be manipulated by major shareholders so that their level of independence will be negligible and corporations should not expect from the independent directors to perform

advisory and monitoring functions and, as a result, they should not expect any changes in the performance in the result of an appointment of such board members.

One of the options could be to transfer the right to appoint independent directors to the boards from shareholders to the public. This can be done through introducing the norm which will make it clear that independent directors are appointed by stakeholders while the process of such appointment should be governed by rules and regulation adopted at the company level. In order to ensure that qualified people are nominated to the boards, who have sufficient skills and expertise to contribute to the development of any organization at the strategic level, such process could be facilitated through creation of a bank of candidates for the positions of independent directors. In Kazakhstan, the foundation for such process is laid already by the Association of Independent Directors whereas such dataset is started to be created. However, such initiative could fail if there is no state support in the form of proper regulatory framework.

Further, the collision in Kazakhstan legislation regarding the status of board members (whether they are viewed as employees of an organization or not) should be eliminated. It is seen that the easiest way to do so is to eliminate the norm in the Terms and Conditions which stipulates that Board members of selected organization are not subject to getting work permits and to amend the Labor Code of the Republic of Kazakhstan with a provision pursuant to which it will be made clear that Board members are not employees of the corporations and no labor agreement should be signed with them as this is the case in Russian Federation and Belarus.

The proposed changes will allow legal foundations to be effective in ensuring equal treatment of all categories of shareholders by providing mechanisms though which their fundamental rights for representation in the boards for the sake of protection of their interests could be realized. The suggested changes will contribute to the improvement and harmonization of corporate governance systems adopted at the national level by Russian Federation, Kazakhstan, and Belarus. This is fundamental not just in ensuring the free flow of capital within the Union but also in increasing the level of foreign direct investments into each jurisdiction of the Eurasian Economic Union.

## REFERENCES

1. Yaacob H., Basiuni J. Corporate governance model of a state-owned enterprise: evidence from an Asian emerging market // Corporate Governance. – 2014. – Vol. 14 (4). – P. 504–514.

2. Clarke D. C. "Nothing but Wind"? The Past and Future of Comparative Corporate Governance // American Journal of Comparative Law. – 2011. – Vol. 59(1). – P. 75–110.

3. Evans G. L. A mega review of cultural studies: linking leadership to corporate governance // Poznan University of Economics Review. – 2014. – Vol. 13(1). – P.

4. Hofstede Center. – URL: http://geert-hofstede.com/russia.html (accessed: January 16, 2020).

5. Hofstede G. National cultures in four dimensions: A research-based theory of cultural differences among nations // International Studies of Management & Organization. – 1983. – P. 46–74.

6. OECD Principles of Corporate Governance. – Informational System Paragraph, 1999. – 46 p.

7. Bebchuk L. A., Weisbach M. S. The State of Corporate Governance Research. Review of Financial Studies. – 2010. – Vol. 23(3). – P. 939–961.

8. La Porta R., Lopez-de-Silanes F., Shleifer A., Vishny R. Law and finance // Journal of Political Economy. – 1998. – Vol. 106. – P. 1113–1155.

9. Klapper L. F., Love I. Corporate governance, investor protection, and performance in emerging markets // Journal of corporate Finance. – 2004. – Vol. 10(5). – P. 703–728.

10. Bénassy-Quéré A., Coupet M., Mayer T. Institutional determinants of foreign direct investment // The World Economy. – 2007. – Vol. 30(5). – P. 764–782.

11. La Porta, R., Lopez-de-Silanes, F., Shleifer, A., Vishny, R. Investor protection and corporate governance // Journal of financial economics. – 2000. – Vol. 58(1). – P. 3–27.

12. Anderson R. C., Reeb D. M. Board composition: Balancing family influence in S&P 500 firms // Administrative Science Quarterly. – 2004. – Vol. 49(2). – P. 209–237.

13. Hermalin B. E., Weisbach M. S. Boards of directors as an endogenously determined institution: A survey of the economic literature (No. w8161). National Bureau of Economic Research. – 2001.

14. Coughlan A. T., Schmidt R. M. Executive compensation, management turnover, and firm performance: An empirical investigation // Journal of Accounting and Economics, 1985. – Vol. 7(1). – P. 43–66.

15. Klein A. Firm performance and board committee structure. The Journal of Law and Economics. – 1998. – Vol. 41(1). – P. 275–304.

16. Lee Y., Wang M. Does the appointment of independent directors drive multiple effects? // The International Journal of Business and Finance Research. – 2014. – Vol. 8(1). – P. 69–88.

17. Jenwittayaroje N., Jiraporn P. Do independent directors improve firm value? Evidence from the great recession // International Review of Finance. – 2019. – Vol. 19(1). – P. 207–222.

18. Adams R. B., Ferreira D. (2007). A theory of friendly boards // The Journal of Finance. – 2007. – Vol. 62(1). –P. 217–250.

19. Miletkov M., Poulsen A., Wintoki M. B. Foreign independent directors and the quality of legal institutions // Journal of International Business Studies. – 2017. – Vol. 48(2). – P. 267–292.

20. Federal Law of Russian Federation #203-ФЗ dated December 26, 1995 “On Joint-Stock Companies” (with amendments as of 15.04.2019) [Electronic source] // Informational System Continent [web-portal]. – URL: https://cis-legislation.com/document.fwx?rgn=1465 (accessed: January 16, 2020).

21. Law of the Republic of Belarus #2020-XII dated December 9, 1992 “On partnerships” [Electronic source] // National Legal Internet-portal of the Republic of Belarus. – URL: http://www.pravo.by/ (accessed: January 16, 2020).

22. Law of the Republic of Kazakhstan #415-II dated May 13, 2003 “On Joint-stock companies” (with amendments as on 01.07.2019) [Electronic source] // Informational System Paragraph [web-portal]. – URL: https://clck.ru/QRFD4 (accessed: January 24, 2020).

23. Bank Code of the Republic of Belarus № 441-3 dated October 25, 2000 (with amendments as of 17.07.2018) [Electronic source] // National Legal Internet-portal of the Republic of Belarus. – URL: http://www.pravo.by/ (accessed: January 24, 2020).

24. Resolution of the Board of the National Bank of the Republic of Belarus №557 dated October 30, 2012 (with amendments as of 29.12.2017) [Electronic source] // National Legal Internet-portal of the Republic of Belarus. – URL: http://www.pravo.by/ (accessed: January 16, 2020).

25. Eurasian Economic Union Treaty (Astana, May 29, 2014) [Electronic source] // Informational System Paragraph. [web-portal]. – URL: https://clck.ru/QRFUd (accessed: January 24, 2020).

26. Decree of the Government of the Republic of Kazakhstan # 802 dated January 15, 2016 (with amendments as of 11.08.2018) [Electronic source] // Informational System Paragraph [web-portal]. – URL: https://clck.ru/QRFYb (accessed: January 24, 2020).

27. Andenas M., Slynn, H. G. Judicial review in international perspective. The Hague [u.a.: Kluwer Law Internat]. – 2000. – 542 p.

## REFERENCES

1. Yaacob, H., Basiuni, J. (2014). Corporate governance model of a state-owned enterprise: evidence from an Asian emerging market. *Corporate Governance*, 14 (4), 504 – 514.

2. Clarke, D. C. (2011). " Nothing But Wind"? The Past and Future of Comparative Corporate Governance. *American Journal of Comparative Law*, 59(1), 75-110.

3. EVANS, G. L. (2014). A mega review of cultural studies: linking leadership to corporate governance. *Poznan University of Economics Review*, 13(1).

4. Hofstede Center, available at: http://geert-hofstede.com/russia.html (accessed: January 16, 2020).

5. Hofstede, G. (1983). National cultures in four dimensions: A research-based theory of cultural differences among nations. *International Studies of Management & Organization*, pp. 46-74.

6. *OECD Principles of Corporate Governance* (May 26-27, 1999). Source: Informational System Paragraph. [Принципы корпоративного управления ОЭСР (26-27 мая 1999 года). Источник: ИС Параграф].

7. Bebchuk, L. A., & Weisbach, M. S. (2010). The State of Corporate Governance Research. *Review of Financial Studies*, 23(3), 939-961.

8. La Porta, R., F. Lopez-de-Silanes, A. Shleifer, and R. Vishny, 1998, Law and finance, *Journal of Political Economy* 106, 1113-1155.

9. Klapper, L. F., & Love, I. (2004). Corporate governance, investor protection, and performance in emerging markets. *Journal of corporate Finance*, *10*(5), 703-728.

10. Bénassy-Quéré, A., Coupet, M., & Mayer, T. (2007). Institutional determinants of foreign direct investment. *The World Economy*, *30*(5), 764-782.

11. La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (2000). Investor protection and corporate governance. *Journal of financial economics*, *58*(1), 3-27.

12. Anderson, R. C., & Reeb, D. M. (2004). Board composition: Balancing family influence in S&P 500 firms. *Administrative Science Quarterly*, *49*(2), 209-237.

13. Hermalin, B. E., & Weisbach, M. S. (2001). *Boards of directors as an endogenously determined institution: A survey of the economic literature* (No. w8161). National Bureau of Economic Research.

14. Coughlan, A. T., & Schmidt, R. M. (1985). Executive compensation, management turnover, and firm performance: An empirical investigation. *Journal of Accounting and Economics*, *7*(1), 43-66.

15. Klein, A. (1998). Firm performance and board committee structure. *The Journal of Law and Economics*, *41*(1), 275-304.

16. Lee, Y., & Wang, M. (2014). Does the appointment of independent directors drive multiple effects? *The International Journal of Business and Finance Research, 8*(1), 69-88.

17. Jenwittayaroje, N., & Jiraporn, P. (2019). Do independent directors improve firm value? Evidence from the great recession. *International Review of Finance*, *19*(1), 207-222.

18. Adams, R. B., & Ferreira, D. (2007). A theory of friendly boards. *The Journal of Finance*, *62*(1), 217-250.

19. Miletkov, M., Poulsen, A., & Wintoki, M. B. (2017). Foreign independent directors and the quality of legal institutions. *Journal of International Business Studies*, *48*(2), 267-292.

20. "Federal Law of Russian Federation #203-ФЗ dated December 26, 1995 "On Joint-Stock Companies" (with amendments as of 15.04.2019)", Informational System Continent, available at: https://cis-legislation.com/document.fwx?rgn=1465 (accessed: January 16, 2020).

21. "Law of the Republic of Belarus #2020-XII dated December 9, 1992 'On partnerships'", National Legal Internet-portal of the Republic of Belarus, available at: http://www.pravo.by/ (accessed: January 16, 2020).

22. "Law of the Republic of Kazakhstan #415-II dated May 13, 2003 "On Joint-stock companies" (with amendments as of 01.07.2019)", Informational System Paragraph, available at: https://clck.ru/QRFD4 (accessed: January 24, 2020).

23. "Bank Code of the Republic of Belarus № 441-З dated October 25, 2000 (with amendments as of 17.07.2018)", National Legal Internet-portal of the Republic of Belarus, available at: http://www.pravo.by/ (accessed: January 16, 2020).

24. "Resolution of the Board of the National Bank of the Republic of Belarus №557 dated October 30, 2012 (with amendments as of 29.12.2017)", National Legal Internet-portal of the Republic of Belarus, available at: http://www.pravo.by/ (accessed: January 24, 2020).

25. "Eurasian Economic Union Treaty (Astana, May 29, 2014)", Informational System Paragraph, available at: https://clck.ru/QRFUd (accessed: January 24, 2020).

26. "Decree of the Government of the Republic of Kazakhstan # 802 dated January 15, 2016 (with amendments as of 11.08.2018)", Informational System Paragraph, available at: https://clck.ru/QRFYb (accessed: January 24, 2020).

27. Andenas, M., & Slynn, H. G. (2000). Judicial review in international perspective. The Hague [u.a.: Kluwer Law Internat], 542 p.

**SUMMARY**

This research examines to what extent the right of shareholders, regardless of the country of origin and his/her share in the capital of the corporation, to be represented in the boards for the purpose of protection of their interests, could be realized in Russia, Kazakhstan, and Belarus – members of the Eurasian Economic Union effective January 1, 2015. Further, this study looks at the role of independent directors in the process of realization of the rights of investors in selected jurisdictions. This is done to identify the ways for improving the efficiency of the corporate governance models adopted and ways for harmonization of the legislation in Russian Federation, Kazakhstan, and Belarus.

**ТҮЙІНДЕМЕ**

Мақалада 2015 жылғы 1 қаңтардан бастап әрекет ететін Еуразиялық Экономикалық Одақтың мүшелері – Ресей Федерациясы, Қазақстан Республикасы және Беларусь Республикасында азаматтығы мен бизнестегі қатысу үлесіне қарамастан өз мүдделерін қорғау мақсатында директорлар кеңесінде өкілдік ету мүмкіндігіне қатысты акционерлер құқығын жүзеге асыру деңгейі қарастырылған. Сонымен қатар аталмыш еңбекте таңдалған юрисдикцияларда инвесторлар құқығын жүзеге асыру үрдісіндегі тәуелсіз директорлардың рөлі қарастырылады. Еңбектің мақсаты – корпоративті басқарудың қолданылмалы моделдерінің тиімділігін арттыру әдістерін және Ресей Федерациясы, Қазақстан Республикасы мен Беларусь Республикасының заңнамаларын үйлестіру жолдарын анықтау.

**РЕЗЮМЕ**

В статье поднимается вопрос о степени, в которой права акционеров, вне зависимости от гражданства и доли участия в бизнесе, в части возможности быть представленными в совете директоров в целях защиты их интересов, могут быть реализованы в Российской Федерации, Республики Казахстан и Республики Беларусь – членов Евразийского Экономического Союза, функционирующего с 1 января 2015 года. Также, в данной статье рассматривается вопрос роли независимых директоров в процессе реализации прав инвесторов в выбранных юрисдикциях. Целью данной работы является определение способов повышения эффективности применяемых моделей корпоративного управления и путей гармонизации законодательства Российской Федерации, Республики Казахстан и Республики Беларусь.

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