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# МОДЕРНІЗАЦІЯ КОРПОРАТИВНОГО ЗАКОНОДАВСТВА РЕСПУБЛІКИ КАЗАХСТАН В КОНТЕКСТІ ЗАКОНОДАВЧИХ РЕФОРМ І КОНЦЕПЦІЙ

**Анотація.** *Вивчення корпоративного права та корпоративних правовідносин за останні кілька років перетворилося на один із найактуальніших напрямків правових досліджень в науковому співтоваристві. Це явище зумовлене багатьма факторами, серед яких превалюють: глобалізація, трансформації економічних правовідносин, нові виклики сучасних демократій, динаміка реформ національного корпоративного законодавства та посилення міждержавного транскордонного співробітництва. В умовах трансформації суспільних відносин новітні погляди на корпоративні правовідносини стали невід'ємною складовою сучасного світу, умовою його існування, і отримали екстериторіальний характер. Метою статті є проведення комплексного дослідження тенденцій і проблем модернізації корпоративного законодавства Республіки Казахстан в контексті законодавчих реформ і концепцій, а також формування авторських пропозицій у зазначеній сфері, спираючись на аналіз Концепції вдосконалення законодавства Республіки Казахстан, спрямованого на поліпшення правового регулювання корпоративних правовідносин, корпоративного управління, діяльності корпоративних груп і правового становища холдингових компаній. Методологічну основу наукового дослідження становить ряд загальнонаукових та спеціальних методів пізнання, зокрема: діалектичний, системний, формально-логічний, метод системного аналізу, соціологічний та ін. Автором констатовано, що, незважаючи на велику кількість новел, які містяться в проаналізованій Концепції, закон на її основі так і не був прийнятий, що пов'язують, в своїй більшості, зі збільшеною деталізацією договірного правового регулювання, яка може привести до обмеження свободи угоди. Також в роботі аргументована доцільність виключення необґрунтованого впливу на корпоративні відносини за допомогою норм кримінального та адміністративного права; акцентовано увагу на необхідності законодавчого закріплення публічної достовірності реєстру юридичних осіб; розроблено та обґрунтовано пропозиції якісного реформування корпоративного законодавства Республіки Казахстан за допомогою внесення змін в існуючі норми національного правового регулювання.*

**Ключові слова:** корпоративне право, концепція, корпоративні правовідносини, модернізація законодавства, юридична особа.

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# MODERNIZATION OF CORPORATE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN IN THE CONTEXT OF LEGISLATIVE REFORMS AND CONCEPTS

**Abstract.** *The study of corporate law and corporate relations in the past few years has become one of the most relevant areas of legal research in the scientific community. This phenomenon is caused by many factors, among which prevail the following: globalization, the transformation of economic relations, the new challenges of modern democracies, the dynamics of reform of national corporate legislation and the strengthening of interstate transborder cooperation. In the context of the transformation of public relations, the latest views on corporate legal relations have become an integral component of the modern world, a condition for its existence and have acquired extraterritorial character. The purpose of the article is to perform a comprehensive research of the trends and issues of modernization of the corporate legislation of the Republic of Kazakhstan in the context of legislative reforms and concepts, as well as the formation of original proposals in this field, proceeding from the analysis of the Concept of improving the legislation of the Republic of Kazakhstan targeted at improving the legal regulation of corporate legal relations, corporate management, activities of the corporate groups and the legal status of holding companies. The methodological basis of scientific research is represented by a number of general scientific and special methods of cognition, namely: dialectical, systemic, Aristotelian methods, method of system analysis, sociological and others. The author stated that, despite the large number of new laws contained in the analysed Concept, the law on its basis was never adopted, which is connected, for the most part, with increased detailing of contractual legal regulation, which may lead to a restriction of freedom of contract. In addition, the paper argues the prudence of eliminating unreasonable effects on corporate relations through criminal and administrative law; the necessity for legislative consolidation of the public reliability of the register of legal entities is emphasized; proposals are developed and reasoned for a qualitative reform of the corporate legislation of the Republic of Kazakhstan by means of amending existing provisions of the national legal regulation.*

**Keywords:** corporate law, concept, corporate legal relations, modernization of legislation, legal entity.

## INTRODUCTION

In 2018, on the instructions of the Ministry of Justice of the Republic of Kazakhstan and its contractor, the Reed Smith company, a Concept was developed for improvement of the legislation of the Republic of Kazakhstan aimed at bettering the legal regulation of corporate legal relations, corporate management, the activities of corporate groups and the legal status of holding companies (hereinafter referred to as the "Concept")[1].

[1] The Concept of Improving the Legislation of the Republic of Kazakhstan. Retrieved from http://www.zqai.kz/sites/default/files/rus_2015.pdf

The purpose of the Concept is to state the most important aspects of improving Kazakhstani legislation on business enterprises of a corporate type in such a way, so as to:

– restore the logic of the initial (after the transition to a market type of national economy in the early 1990s) structure and content of corporate legislation in accordance with the general provisions of the Civil Code of the Republic of Kazakhstan ("Civil Code") on legal entities[1];

– modernize corporate legislation with consideration of the experience of developed democratic foreign countries of a market type in regulation of entrepreneurial activity and the legal forms available for its implementation;

– ensure the convergence of corporate legislation with the law of the states of the European Union, the United Kingdom, including the countries of the Commonwealth, and other member states of the Organization for Economic Cooperation and Development (OECD) on the basis of harmonization or implementation of the most effective and universal corporate law institutions in the legislation of Kazakhstan [1–3].

It is assumed that such improvement of the legislation will create additional conditions for enhancing entrepreneurial activity, reducing the number of corporate conflicts and changing their quality towards minimizing the degree of their materiality for general civil circulation, reducing the manifestations of raiding and corporate blackmail. The aim is also to create the soil for the formation in Kazakhstan of a sustainable class of professional directors and managers, committed in their activities to the best international standards of corporate governance, protection of shareholder rights and respect for investors.

Convergence of corporate legislation with the best examples of legal regulation will also facilitate the increase of the inflow of investments into the national economy, on the one hand, and mutually beneficial integration of the domestic market infrastructure into the system of international economic relations for Kazakhstan and the countries that are its business partners, on the other hand [4; 5]. In general, it is advisable to improve corporate law that would allow, within the framework of regulations relating to private international law, to develop modern and appropriate international corporate law (international law of companies).

## 1. MATERIALS AND METHODS

The methodological basis of scientific research is represented by a number of general scientific and special methods of cognition, in particular: dialectical, systemic, Aristotelian, conceptual, logical and legal, comparative law, historical-law, systemic-functional, system analysis method, sociological, abstracting, analogy method, legal modelling, etc.

[1] Civil Code of the Republic of Kazakhstan. (1994, December). Retrieved from https://online.zakon.kz/document/?doc_id=1006061

The dialectical method enabled the estimation of the state, tendencies and prospects for the development of scientific research in the field of corporate law reform in the context of the development factors of the state and national legal system. The systematic method was used during the analysis of corporate legislation of the Republic of Kazakhstan and other countries that underwent modernization of national corporate legal regulation. The Aristotelian method was used to identify the relationships and contradictions in the conceptual categorical apparatus that exist in the theory of corporate law, national and international corporate law.

The conceptual method served as a means of scientific research of the categories "corporate law", "protection of corporate rights", "corporate legislation", "corporation", etc. as concepts, which, in turn, allowed to go beyond the framework of the statutory approach and consider them as a multidimensional social and legal phenomenon. The historical-law method facilitates the identification of the basic laws and features of the emergence and development of the concept and essence of corporate law, its maturation and reform.

The comparative law method was employed to perform a comparative analysis of the legal regulation of the processes of corporate legislation improvement in the Republic of Kazakhstan and other states; the method of abstraction was applied to define and clarify individual concepts, in particular, the concept of corporations, corporate rights, corporate entity, corporate dispute. Using the systemic-functional method, a circle of conceptual directions for the modernization of corporate legislation in the Republic of Kazakhstan was determined. Aristotelian and logical and legal methods allowed to identify the shortcomings of the current legislation and substantiate the directions for its improvement. The analogy method allowed, with consideration of practices of other states, to conclude the necessity of improvement of the domestic system of corporate legislation. Upon formulating legislative proposals, we employed the statutory-semantic technique, logical methods of cognition and the method of legal modelling.

The information base of the research is formed by the Constitution of the Republic of Kazakhstan, civil and corporate national legislation, international provisions and standards, decrees of the Constitutional Council of the Republic, laws and other regulations, data from ministries and sociological services, monographic and periodic literature, court case reports, results of author's personal research.

The analysis method allowed to determine that the emergence of variable forms of ownership caused the gradual maturation of modern forms of economic activity, which, in turn, facilitated a qualitative update of domestic legislation governing the existence and functioning of corporate legal relations in the Republic of Kazakhstan. In turn, today's realities require a qualitative review of the existing legal regulation, its modernization and fragmentary adaptation of foreign practices with consideration of the national identity.

## 2. RESULTS AND DISCUSSION

*2.1 Background and issues of adoption of the researched Concept in the Republic of Kazakhstan*

Over the years of independence, the entrepreneurial environment has undergone qualitative changes connected with the expansion of contractual types of commercial relations, the transformation of corporate legal relations mechanisms, the dynamic growth in the number of foreign economic operations, as well as an increase in the number of foreign investments. Integration processes today act as the basis, proceeding from which the approbation of foreign practices in legal regulation of economic relations in the Republic of Kazakhstan takes place, furthermore, law enforcement practice is also subject to the direct influence of foreign treaty institutions. It should be emphasized that in the context of globalization, the foundations of reforming corporate legislation and law, which as a result can create a qualitatively new level of the national legal system for the state and increase its competitiveness, are also of particular importance [6–8]. Thus, today one of the leading priorities of the national policy is to ensure high and sustainable rates of economic growth. For this, a developed and flexible corporate legislation is required that would allow investors to perform their activities in the Republic of Kazakhstan, as well as to contribute to the development of a new business and its conduct. It is precisely for these reasons that it is of paramount importance to implement international and approbated standards in this field into national legislation and law enforcement practice.

It should be noted that the adoption of the Concept in the Republic of Kazakhstan was not a spontaneous phenomenon, but was the result of a long discussion, thorough legislative work and doctrinal justification of its provisions in the context of the realities of globalized corporate legal relations. Thus, the main results of the research were reflected in the form of analytical reports, draft legislative acts and their concepts. With that, experts have repeatedly noted that the perception of the elements, principles of foreign legal systems should be exercised with great care, maintaining the identity of the legal system of Kazakhstan. In particular, a research of the trends in improving legislation on legal entities facilitated the development of an appropriate concept for legislation improvement, with consideration of the recommendations of participants in numerous conferences in the field of corporate law, legislation and management. This concept is based on the implementation of the provisions of English law, its main purpose is to identify a number of legal ideas and constructions that can be fragmented into legislation from English law with the justification of the corresponding possibility through the lens of the necessities of law enforcement practice and the achievements of the Kazakhstani civilistic doctrine.

It should be noted that for a long time, scientists have been suggesting and developing similar concepts. Thus, for instance, back in the 90s, F.S. Karagussov suggested areas in which the improvement of corporate legislation and management appears to

be most prudent. These developments were based on a research of the experience of development of joint-stock legislation and the practice of its application in the Republic of Kazakhstan and other CIS countries, on the results of a comparative comprehensive analysis of the legislation on joint-stock companies of developed market-type states (Germany, France, Switzerland, England, the USA) and regulatory documents of the European Union, as well as model (recommendation) acts of the Interparliamentary Assembly of the CIS Member States [3].

Consequentially, the adoption and gradual implementation of the Concept of legal policy of the Republic of Kazakhstan for 2010 – 2020 [3] had a special influence on the formation of the researched Concept. The main areas of development, among other things, in this document were identified as follows: limiting state interference in the field of private entrepreneurship and expanding the scope of application of the principle of free disposition in the regulation of proprietary relations and relations within the framework of the civil process, development of corporate law and legislation on non-profit organizations, "clarification of the concept of transactions, their composition and consequences of non-execution of transactions", "improvement of the institution of recognition of transactions as null and void". This Concept of legal policy in the field of vector corporate legislative reforms has become a partial example of the implementation of the provisions of English law. However, even the development of the Concept in scientific circles was perceived very ambiguously and became the subject of discussion. In the course of its subsequent examination, the head of the school of the Kazakhstani civilistic thought, academician M. K. Suleymenov, proposed the most appropriate ways and means of perceiving the concepts and institutions of English law proposed for "implementation" [9]. It should be highlighted that the linking of the analysed document to English law is rather conditional, due to the fact that many legal constructions are used in international trade or business practice, and are also subject to legal regulation in the legislation of many countries of the world.

It is noteworthy that in the second half of 2018, a research group of scientists composed of M. K. Suleymenov [9], F.S. Karagussov [3], K. V. Mukasheva and A. E. Duisenova [10] conducted a comprehensive comparative research of Kazakhstani national legislation with legal regulation in other countries in the field of reforming and modernizing legislation on entrepreneurial activity, based on which a unified national report was developed containing proposals for adapting the positive experiences of other countries and expert conclusions on the results of the completion of reforms (including analysis of the laws of Russia, Germany, Singapore, the Canadian province of Quebec, and English law). This analysis was performed in such areas as: corporate law and management, regulation of holding companies and corporate groups, individual legal structures used in business, issues of contractual liability and protection of foreign investors [11]. The results of this work also laid the foundation for the basis of amendments and changes to the Concept of the draft Law of the Republic of Kazakhstan "On Amendments and Changes to Some Legislative Acts of the Republic of Kazakhstan on

the Improvement of Civil Legislation and Improving the Conditions for Entrepreneurship Based on the Implementation of the Principles and Provisions of English and European Law"[1].

Based on the results of processing theoretical and empirical material by scientists and practitioners with the participation of the Ministry of Justice of the Republic of Kazakhstan, a concept for improving the legislation of the Republic of Kazakhstan aimed at bettering the legal regulation of corporate legal relations, corporate management, the activities of corporate groups and the legal status of holding companies was developed and presented to the public [3]. We shall emphasize that the developers positioned this concept as a powerful mechanism for transforming legal reality through reformed corporate legislation, moreover, it was supposed to intensify cross-border cooperation and increase investment immediately after the adoption of this Concept. Without a doubt, this document is a comprehensive guideline, devoid of fragmentation, on the path to systematic implementation of a qualitative update of corporate legislation of the Republic of Kazakhstan.

Despite the large number of new laws contained in the analysed Concept, the law on its basis was never adopted. In particular, positions were expressed that an increased detailing of contractual legal regulation would lead to unnecessary build-up of provisions, and, as a result, to difficulties in law enforcement. Some scholars even emphasized that legalising the provisions of the Concept may lead to a restriction of freedom of agreement. To form a comprehensive understanding of the Concept and the corresponding conclusions, it is necessary to analyse its content and the subsequent impact on the modernization of corporate legislation of the Republic of Kazakhstan.

*2.2 Analysis of the conceptual provisions of the proposed Concept*

The Concept proposes steps to improve the legal regulation of profit corporate organizations created in those legal forms that provide legal guarantees and mechanisms to protect the rights of investors and shareholders, allow the formation of corporate groups (including transnational ones), for which effective regulatory measures aimed both at protecting the domestic market and at promoting international (transborder) economic ties[2]. This refers to the legal regulation of profit private-law corporations, which in foreign law are called business companies or companies based on membership using the principle of separation of membership in the corporation from its management [12–15]. The issues of legal regulation of non-profit corporations, as well as profit organizations based mainly on a personal element, which involves the personal participation of a member of the corporation in the conduct of its affairs, the implementation of its activities and its management (these are full and limited

[1] The concept of improving the civil legislation of the Republic of Kazakhstan on the basis of the implementation of the provisions of English law. Retrieved from http://www.zqai.kz/sites/default/files/rus_2015.pdf.

[2] *Ibidem*

partnerships, as well as production cooperatives) are left out of the framework of the Concept.

The presentation of the Concept itself is preceded by a brief description of the structure and content of the corporate legislation of the Republic of Kazakhstan, which is currently in force. In addition, a separate section of the Concept is devoted to the description of the development of corporate legislation in the Republic of Kazakhstan from 1991 to the present.

The Concept itself is very extensive in content. However, all directions of the development of legislation contained therein can be divided into three large groups. The first group includes ideas regarding a general model for regulating corporate relations, the structure and content of corporate legislation, as well as the basic concepts and classifications of corporate law and corporate organizations. The second group deals with the provisions governing the issues of corporate structure and corporate management, and first and foremost, upon using the legal form of a joint-stock company. The third group of ideas focuses on the institution of corporate groups as a set of provisions, proceeding wherefrom the existence of a group of companies and the emergence of holdings are recognized, and corporate management is regulated within the framework of such a group of companies.

The number of proposed improvement directions is quite large. In this regard, only some conceptual (ideological) directions of the proposed modernization and improvement of corporate legislation are outlined below.

It appears prudent to proceed from the fact that it is legislation as a set of legal provisions united by a single purpose (namely, to regulate corporate relations) that is preserved by the source of corporate law and regulation of corporate relations; self-regulation in this field should be substantially limited. It can be stated that corporate law at this stage is a branch of civil legislation, the object of which is corporate relations, regulated on the basis of general principles (fundamentals) of civil legislation by special rules of corporate law, as well as contractual and obligatory law, other applicable legal provisions.

The preservation of the current model of civil relations regulation was noted as promising: general provisions of the Civil Code (general principles of civil legislation, rules on legal entities and corporations, general provisions on property, obligations, contracts and civil law liability) and corporate legislation based on them (on profit organizations of corporate type of various legal forms, legislation on non-profit organizations)[1].

A legislative classification of corporate contracts, regulation of the grounds and conditions for their conclusion, performance and termination is proposed. With that, the features of the exclusive or combined application of the provisions of contractual

[1] Civil Code of the Republic of Kazakhstan. (1994, December). Retrieved from https://online.zakon.kz/document/?doc_id=1006061

and/or corporate law upon regulating corporate contracts still require understanding. It will be necessary to determine how much in a certain case the corporate legislation can take precedence over the general provisions of the Civil Code[1] on contracts and obligations? Can there be special features of regulation of issues of validity of corporate contracts, can special or other grounds for the invalidity of corporate contracts be established?

A special block includes proposals on improving regulation of the issue of liability of company officials, the regulation of so-called derivative actions, increasing the degree of personal and professional independence and competence of members of the board of directors, reviewing requirements for the status of an independent director.

Among other proposals directly related to issues of organizational structure and corporate management, the idea of an agreed withdrawal from the shareholders/members of the company should be noted; new provisions governing changes in the composition of shareholders; on improving the mechanism for withdrawing from the membership of a limited liability partnership (LLP (LLC)); regulation of remote control in companies; improving regulation of corporate management transparency issues and disclosing information on the company and its activities; creating a register of beneficiaries of companies; improving the rules on special categories of transactions of a joint-stock company (JSC). Additionally, it is proposed to restore full transparency in decision-making regarding the conclusion of transactions by the company with an interest in their implementation and public disclosure of information on each of them [16–18]. It is proposed to improve the procedures of merger and separation of joint-stock companies, the regulation of mixed forms of reorganization, as well as measures for the efficient distribution of property remaining after the liquidation of the joint-stock company among its shareholders.

It is separately proposed to accept the idea of the legal formation of a corporate group on the basis of an agreement; regulate in detail all transactions between a holding (dominant) company and a subsidiary (subordinate company). It is important to establish certain exemptions for subsidiaries included in the corporate group in terms of corporate management issues, based on the right of the holding company to give binding instructions to the subsidiary and liability of the holding company for the obligations of the subsidiary.

Proceeding from the abovementioned main provisions of the Concept, it can be stated that, in spite of the expressly modernizing component, there is an inherent excessive detailing that can both minimize the risks of activities of subjects of corporate legal relations and lead to confusion in legal regulation and enforcement. It is worth emphasizing that only subsequent drafting of the provisions, which are proposed in the Concept, by the legislator with the participation of representatives of doctrine and

[1] *Ibidem*

practice, will lead to the achievement of the necessary result and increase the efficiency of the current corporate legislation of the Republic of Kazakhstan.

*2.3 Proposals for the modernization of corporate legislation in the context of the analysed Concept*

Particular attention in the context of modernizing corporate legislation should be given to the essence of corporate relations that it regulates. Note that currently there is no legalized definition of the concept of "corporate relations", however, it is prudent to outline them as relations regulated by civil legislation and limit the circle of subjects of such relations. It appears necessary to unambiguously determine that corporate relations are those related to the establishment, membership and management of corporations.

A clear understanding of who can be recognized as subjects of corporate relations is important. These include: the corporation itself, its members and officers. Only they can act as parties to a corporate dispute, and only in relation to them can the criminal and administrative-law prosecutions for socially dangerous acts stipulated by the law be applied. Establishment of the definitions and the list of subjects of corporate relations is considered as inappropriate from the standpoint of universally recognized methods of legal technology. However, the development of a single position is possible in judicial practice and/or as a result of its generalization.

Profit and non-profit corporations are the majority of legal entities involved in modern civil circulation. However, until the final abandonment of the form of state enterprise in Kazakhstan law, the possibility of the existence of both corporate and unincorporated profit organizations will remain. In this regard, it is deemed appropriate to legislatively consolidate the legally relevant criteria of the corporation, determining that the corporation is a legal entity, the founders/members of which, in exchange for contributions to its property or charter capital, acquire the rights (or possess rights) of membership in relation to it (this legal entity ) The content and/or scope of the concept of "membership right" should be determined in relation to the corporation of each individual type (profit or non-profit) and each individual legal form.

The methodological approach is also important for establishing special regulation of not only legal forms, but also of types of legal entities, since the unifying factor in each type is not so much the organizational moment of membership in the corporation as the permissibility or prohibition of the distribution of its income among members of the corporation. This factor directly affects the content of membership rights, the regulation of the corporation, the features of its corporate structure and corporate management; it also conditions the impossibility of type transformations for legal entities (in any case, the transformation of a non-profit organization into a commercial organization is prohibited, and this must be enshrined in the Civil Code)[1].

[1] Civil Code of the Republic of Kazakhstan. (1994, December). Retrieved from https://online.zakon.kz/document/?doc_id=1006061

In this regard, the law of non-profit organizations should be separately outlined, combining the regulation of such legal entities that can be established as corporations and in other (unincorporated) forms, in particular, institutions and foundations [19–21]. In turn, there is separate corporate legislation related to the regulation of commercial legal entities established and operating as corporations (corporate type organizations). It also seems appropriate to prevent the use of the same legal forms for profit and non-profit organizations. And business companies and business partnerships should be recognized by commercial organizations only by virtue of their respective legal form [22]. With consideration of the foreign practices, it is reasonable to provide for classification of commercial corporations into business companies and business partnerships in the Civil Code[1], as well as to ensure separate regulation of companies and business partnerships. It is also prudent to maintain a commitment to an approach where the legal forms of profit corporations (as well as of all profit organizations in general) should be regulated by law, and their legally established list should be exhaustive[2].

Legislative regulation of features with regard to companies recognized by legal entities of public law (LEPL) may be permissible. At present, Kazakhstani law does not recognize the existence of LEPL. However, if this concept is adopted, one should bear in mind that such LEPL can be created in the legal forms provided for legal entities of private law, including in the form of business companies. Corporate structure and corporate management issues should be fully regulated by the legislation on companies. Features may relate to the regulation of issues regarding the grounds for their establishment, determination of special legal capacity, control over the achievement of the creation purposes and grounds for termination of activity.

At the same time, considering the diversity of types of entrepreneurial activity, it appears to be appropriate to consolidate the concept of "national corporate management standard" ("NCMS") in the field of entrepreneurship and to allow the creation of such non-statutory legal standards as well as model internal corporate acts (such as, for instance, model code of corporate management, regulations on company bodies, regulations and methodologies) by an authorized entity in order to promote the improvement of practices of corporate management and improve the investment attractiveness of Kazakhstani companies. Of course, such NCMSs should not contradict the legislation as the minimum mandatory standard.

A certain acceptability may be gained by the idea of legislative classification of the NCMS as mandatory for certain categories of companies (for example, depending on the type of activity it performs, being listed on a stock exchange, circulation of its shares in trading or quotation systems of the OTC market, the circle or number of its share-

[1] Civil Code of the Republic of Kazakhstan. (1994, December). Retrieved from https://online.zakon.kz/document/?doc_id=1006061

[2] The concept of the legal policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by Decree of the President of the Republic of Kazakhstan. (2009, August). Retrieved from http://www.adilet.gov.kz/ru/policy-documents.

holders, other circumstances) and recommendatory (including referring to them model corporate acts as well). With that, it will be necessary to determine by whom and in what cases NCMSs of a certain kind must or might be accepted, and what are the consequences of their non-compliance.

Legislative identification of decisions of meetings in the Civil Code as the basis for the emergence of civil rights and obligations will facilitate the introduction of legal certainty in relations connected with corporate management, reduce the number of corporate disputes, increase the degree of responsibility of corporation members and its officers for the proper exercise of their membership rights and company management responsibilities, and in general will improve the quality of corporate legislation, and will also facilitate its convergence with the legislation of developed countries and countries that are major economic partners of Kazakhstan[1].

The aforementioned register of legal entities is one of two public registers that are of importance to joint-stock companies. To confirm and exercise the rights of shareholders with respect to shares, the register of securities holders is of legal significance.

In the legislation, it is prudent to unambiguously determine that the formation of the bodies of the company is the responsibility of its founders, subject to execution upon deciding to establish a company. The obligation of the members/shareholders of the company to ensure the continuity of proper management of the company should be established separately. Effective mechanisms should be created in order to encourage or coerce the members/shareholders to form company bodies at any time during the company's activity, when it becomes necessary. This is especially important for joint-stock companies, as well as for any other public interest companies.

Regarding the corporate structure regulation issues, it is proposed to strictly follow the principle of separating membership from management, to narrow the competence of the general meeting, the model of mixed regulation of the issue of the applicable corporate structure of the company, as well as to bring the regulated corporate structure models in line with the models applied in developed jurisdictions.

## CONCLUSIONS

The analysed Concept, developed with consideration of varied doctrinal approaches and positive foreign experience, facilitated the formation of a comprehensive idea of the necessity for modernization and high-quality reform of the current corporate legislation of the Republic of Kazakhstan, as a result of which the following conclusions were proposed.

The necessity of excluding unreasonable impact on corporate relations via provisions of criminal and administrative law is argued: public-law sanctions should be applied only in cases of deliberate illegal actions against property and proprietary

[1] The Concept of Improving the Legislation of the Republic of Kazakhstan. Retrieved from http://www.zqai.kz/sites/default/files/rus_2015.pdf

interests of corporate relations entities that are unable to enjoy civil-law remedies in the absence of direct legal relationship with the offender.

It is proved that the legal status of joint-stock companies and limited liability companies (superadded liability companies) should be regulated by independent laws, and the approach used in the current legislation to regulate the features of legal entities from these legal forms appears to be prudent. A separate law should regulate the legal status of business partnerships in the form of a full and limited partnership, without extending the provisions general for them to companies with limited and superadded liability. The legal status and corporate management system in a joint-stock company should be governed primarily by imperative regulations. In turn, LLCs and SLCs can be used for start-up businesses, small and medium enterprises. Regulation of the legal status of such companies may be more dispositive and, in many matters concerning the formation of a corporate structure and performing corporate management, allow their members to take more initiative and establish rules at their discretion to the extent permitted by law, without violating third party rights and public policy.

It was stated that corporate legislation should constitute the minimum standard for creating a corporate structure and regulating relations within the framework of corporate management. With that, such a standard should be common for all companies of the corresponding legal form (JSC or LLC), regardless of which entity is its major shareholder/member. In this regard, it seems prudent to establish a rule on the unconditional applicability of the legislation on companies to any joint-stock companies and limited liability companies with the exception of companies belonging to corporate groups that are governed by special rules on corporate groups, regardless of whether these companies some are part of a certain corporate group provided for by law or arising by force of law. Furthermore, such legislative exceptions should also be common in application to any corporate groups.

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