ORGANIZATION OF THE STATE REGULATION OF CORPORATE GOVERNANCE

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Abstract: The issues of ensuring the state support of the corporate relations development, participation of the state in the corporate relations forming have been considered. The condition and drawbacks of normative-legal regulation of the corporate relations have been considered. Regulatory level of normative-legal base concerning ensuring corporate security has been determined. The principles of creation of an effective model of corporate governance have been considered. The state directions of forming and regulation of the corporate relations and ensuring corporate security have been defined. The principles of development and adoption of the Code of corporate governance of Ukraine have been defined.

Keywords: security, economic security, legal regulation of ensuring corporate security, state regulation, corporate relations.

Introduction

Efficiency analysis of normative-legal framework and relations regulation in Ukraine has shown its low level and imbalance. The modern market relations define the necessity of creation of the national model of legal regulation of corporate security of the enterprises, studying the experience of developed countries and taking account of the historical, traditional and cultural peculiarities of our country.

The analysis of recent researches and publications. Issues of the state regulation of the corporate relations were studied by such scientists as: Sitko, 2002; Kibenko, 2004; Blank, 1998; Kiriienko, 2000; Safronova, 2005; Ponamarenko, 1999; Pasternak-Taranushenko, 2003; Dolzhenkov, 2004; Zhukovska, 2007; Golovchenko, 2004. Efficiency of economic and legal mechanisms and corporate governance are the defining factors to expand the opportunities of internal and external investments attraction. Therefore, there is an urgent need to increase the role of the state in protection of the property rights of all participants of the corporate relations.

Method. Taking the foregoing into account, the purpose of the article is to describe the normative-legal base of regulation of the corporate relations in Ukraine, which requires adaptation to the European requirements and regulations, with special attention to the national peculiarities. To achieve this purpose the whole complex of research methods was used: theoretical methods of analysis, synthesis, substantiation, generalization, systematization of theoretical and practical material of the research.

Results

One of the aspects of ensuring economic security of the enterprise is a legal regulation of security. It includes legislative regulation of all aspects of conducting business activities of the enterprises. On the other hand, legal regulation of activity of the enterprise, that is one of ways to ensure economic security of the enterprise, provides both stable and growing economy and is one of the ways to form the national security.

All public relations are regulated by the laws established by the state or society. From the point of view of security, the law ensures economic security of the business activity subjects functioning. The principles of protection of economic security by the enterprise, institutes and means of security enforcement, regulation and scopes of responsibility for violation of the right of the subject to safe economic activity create normative-legal base.

Modern market conditions: globalization and integration processes, raider captures threats growth and enterprise takeovers demand creation of effective system of legal regulation of security. Therefore, the majority of developed countries build system of protection in the field of corporate governance, create and adopt Codes of corporate governance, the task of which is ensuring effective corporate governance. They describe structure, duties and responsibility of Board of Directors, methods of internal financial control, compensation to board members and the management of joint-stock companies and differ on extent of regulation of the corporate relations.
The common principles for the corporate relations are the following: equal attitude towards all shareholders; accountability of the supervisory board and executive body; disclosure of information and transparency, which means timely and complete providing of financial and other reporting; responsibility for observance of interests of minority shareholders and other groups of interests.

Provisions of codes are usually reviewed and adjusted according to the changes happening in the country in order to adapt to new market conditions. Importance of the issue of the corporate relations management from the security point of view is explained by peculiarities of conditions and threats which arise in the course of transition of economy to the market relations. The transition stage from public administration to market economy is defined by emergence and development of private patterns of ownership. At the same time the role of the state increases in relations management at the legislative level, therefore this period is characterized by adoption of a number of laws, regulations, acts on regulation of such activity. However, the majority of questions are not still considered and settled at the legislative level in sufficient extend, for example, the questions concerning regulation and protection of the property right (including the property rights to shares), regulation of stock market and the banking sector, creation of equal conditions of the competition for all subjects of managing, these reasons become barrier on the way of development of investment activity of individuals.

So, proceeding from above mentioned, the problem of the state is creation of the balanced relations with all participants of the corporate relations, which is performed via mechanisms of legislative regulation in accurately defined sphere of state regulation, formation of effective economic system and favourable business climate through protection of the rights of private property (the property right to securities).

The principles of effective model of corporate governance in Ukraine: encouragement of broader investment attraction in real sector, protection of the rights of all shareholders and investors; transparent activity, availability of information (disclosure of information, transparency of the financial reporting for all shareholders); control of actions of the joint-stock company management and major shareholders, including the state from the supervisory boards, small shareholders, the public; increase of responsibility for the transactions, carried out with use of service information; justification and practical use in domestic corporate governance practice of instruments to work with affiliates; prevention of "washing out" of capital stock of the enterprises; antimonopoly restriction of shares crossholding for the purpose of increasing the competition level; involvement of independent assessors of capital stock; training of corporate governance specialists according to requirements of time, taking into account approaches of the modern theory and effective corporate practice.

In order to create an effective policy of the state in the field of corporate governance and protection of economic security methods and means of state regulation are used. Methods of state regulation of the corporate relations stand for the methods of power impact of state bodies on the development processes of the corporate sector of economy. The choice of methods of the corporate relations depends on the peculiarities of the corporate relations (Safronova, 2005), their character is complex and combines the contents, the directions, the main subjects and objects, spheres of regulation, and also level, term of impact of the state on the development of the corporate sector.

Characteristics of state regulation methods of the corporate relations are defined: according to the contents, the directions of influence, objects of influence, sphere of influence, level of participation of the state in management, validity period, legal nature, nature of influence, scope of regulations, nature of regulation. Characterizing the regulatory level of the normative-legal base concerning ensuring corporate security of business activity subjects in Ukraine we can highlight its imperfection. The regulations and laws regulating this sphere in most cases are imperfect or can contradict each other. Let's consider in details features of the legislation in Ukraine. Concerning the regulation level laws are subdivided into 3 levels:

1st level - The general, fundamental laws which define the fundamental principles of functioning of society (from the point of view of the question being considered, define the common safety rights of citizens and associations of citizens).

2nd level - Regulations define the legislative field of activity of the specialized security organizations and security services of the enterprises.

3rd level - The intra corporate documents concerning system of the normative-legal ensuring of the enterprise corporate security, they define functions, duties, responsibility, relationship of security service with other divisions.

The important aspect of ensuring corporate security is activity of security service of the enterprise. Tasks which are carried out by security service of the enterprise: monitoring and collection...
Information protection (trade secret). From the legal point of view the trade secret is a remedy from unfair competition within implementation of the intellectual property right. This conventional provision follows from the maintenance of point VIII of article 2 of the Convention of 1967 approved by World Intellectual Property Organization, of which Ukraine is a participant. Efficiency of accomplishment of functions on implementation of tasks by security service of the enterprise fully depends on perfection of the legislation, and on the level of development of intra corporate documents. In constituent documents of the enterprise it is necessary to describe the principles of creation, the purpose and mechanisms of activity, the main objectives of corporate security service of the enterprise, such documents as: the charter of the enterprise, the collective agreement, employment policies and procedures, job descriptions, the order of the enterprise to keep trade secret.

In our opinion, the main directions of improvement and reforming of legal-normative base for ensuring corporate security of the enterprises are the following: development, adoption and introduction of the Law of Ukraine "On protection of trade secret", settlement of problems connected with the concept of "trade secret" and "confidential information"; development and adoption of law on corporate security of the enterprise, which would accurately define the essence and designation, functions and duties, the rights and responsibility of the security service of the enterprise.

Today, the main shortcomings of legislative activity in the field of ensuring corporate security of the enterprises which need improvement are the following: imbalance between laws and subordinate legislations, as the majority of the questions which are within the competence of laws, are regulated by means of subordinate legislations; inconsistency between normative-legal base and realities of today, and pretentiousness of the existing documents; absence of the accurate institutional mechanism of monitoring, scientific examination of the legal support of safety of business subjects activity functioning; absence of direct action laws about corporate security of the enterprise, detective activity, rendering security services, protection of trade secret and confidential information.

Taking into account intentions of integration to the European Union, it is necessary for Ukraine to pay special attention to questions of improvement of the legislation on protection of economic security, especially concerning strengthening of legal protection of the individual, the enterprise, the national security. For this purpose it is necessary to reform the national legislature to ensure the safety of business activity subjects functioning. There is one more of the directions: regulation of the conflicts from legal aspect. For this purpose it is necessary to increase the level of corporate culture and corporate social liability, as the high level of corporate culture defines the absence of conflicts in the corporate relations. Origins of the conflicts are various, but conflict regulation from the legal aspect will help to solve the majority of problems.

The direction of regulation of the legal property relations includes relations management in the companies concerning investing activities, as dividend policy does not always protect interests of investors (shares owners). The modern economic theory allocates rather various views of dividend policy forming. Among the most widespread we will consider the following theories of dividend policy (Blank, 1998): Modigliani-Miller's theory; "theory of benefit of dividends" of D. Gordon and D.Lintner; "theory of minimization of dividends" (theory of tax preferences); "the signalling theory of dividends"; "theory of compliance of dividend policy to shareholding structure" ("theory of clients").

Support direction: information security. The national information legislation, as fundamentals of legal information policy, is rather not settled. Examples of such questions are the following: right to information, protection of personal data, activity of the television companies. In order to implement effective methods of information security regulation it is necessary to develop and accept system of laws to form the policy on creation of information society fundamentals (Sitko, 2002). In the field of information security it is necessary to allocate questions of the electronic reporting system, the operating resource of the electronic register, and also electronic resource of the simplifed register, receipts of licenses, registration or liquidations of the enterprise. As an example, it is necessary to make use of experience of developed countries with the operating practice of electronic method of cooperation with bodies of local authorities and government. This method will allow to simplify business conditions and that, in its turn, leads to development of the corporate relations.

Directions of creation of an effective system of information disclosure: introduction of the relevant legislation, which defines the legal environment for the system of information disclosure, and provides transparency of the Ukrainian issuers, securities of which are publicly traded, and information
availability opened by them for a wide range of investors; improvement of control and supervision mechanisms of fulfilment of requirements on information disclosure, accountability for violation of such requirements; utilizing of modern information technologies to increase the efficiency of collecting, processing, analysing and public disclosing of information. It should be noted that in Ukraine there is still no commonly adopted Code of corporate governance of Ukraine. Its adoption will allow to define basic provisions of corporate governance, to establish regulations of the corporate relations.

Creating the Code of corporate governance of Ukraine it is necessary to consider the European methodological approaches and principles: distribution of legal regulation types depending on type and size of corporation; wide utilization of modern information and communication technologies by the corporate relations participants (the Internet, e-mail, etc.) for cooperation with bodies of state power; transparent information access, improvement of the mechanism of disclosure of information as means of relations management in the field of corporate governance; protection of interests of all participants of the corporate relations, balancing of interests of different groups of participants of corporate legal relationship in a legal framework, protection of interests of the companies. Characterizing national corporate governance system in Ukraine, we can note the low level of scientific grounding and adaptation to the European requirements and provisions, which are characterized by implementation and observance of the best standards of corporate governance (Kybenko; 2004).

Therefore, the state regulation of corporate relations is provided by the following mechanisms: in the field of legislative regulation: by improvement of state policy on development of stock market and activity of its participants; regulation and improvement of competition policy; regulation of the property relations; in the field of economic influence: improvement of fiscal policy, increase of the state investments into corporate sector.

Discussion

One of the efficient instruments of the security of enterprise functioning is a right. Due to the effective legislation the enterprise exercises the right to ensuring protection of economic security of activity. Normative-legal base of protection of security contains institutes and means of its implementation, rights and duties, scopes of responsibility for violation of the right of the subject to safe economic activity.

The normative-legal base of ensuring corporate security of the enterprise is not finalized in Ukraine. In some points laws cover problems not to the full extend, and in others – contradict each other. Having considered the legislation in the field of security of subjects of business activity development, we can draw a conclusion that today at the legislative level questions of corporate security of the enterprise are not considered (there are no laws of direct action on security services, detective activity, protection of trade secret and confidential information).

Conclusions

The practical realization of ensuring corporate security of the enterprise is enabled by creation of security service of the enterprise, with peculiarities depending on characteristics of the enterprise: its organizational structure, production and economic profile of activity, volumes of transactions, used technologies, number and structure of the personnel, regional and market peculiarities of external environment. The principles of the security service activity of the enterprise have to meet the following requirements: system approach in the solution of different problems of security, functional orientation and economic feasibility of corporate security service creation. Besides, from the legislation point of view, the question of protection of property rights of investors, information protection, and corporate security has been left unsolved. The majority of the enterprises, which are interested in a good reputation, create Codes of corporate governance, which describe the principle of ensuring economic security of the enterprise.

References


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