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CORPORATE BOARD AND GOVERNANCE STRUCTURE IN UZBEKISTAN COMPARED WITH COMMON LAW COUNTRIES PRACTICE (UNITED STATES OF AMERICA AND UNITED KINGDOM)

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ABSTRACT

This article demonstrates weaknesses of general corporate governance practices in the Republic of Uzbekistan through a comparative analysis of existing corporate governance practices in the US and the UK. At the same time, it puts forward suggestions that may contribute to the development of the industry and may be consistent with existing corporate governance relationships. Our comparative study is a collection of valuable data on the general principles of corporate governance in each of the above countries, corporate board and governance structure. Using functional and structural methods of comparison, our study first describes the data on the practices of the Republic of Uzbekistan, then the existing systems in the Anglo-Saxon countries and lists their differences and similarities. The article concludes with a number of suggestions which are close to reality and could be a solution to the problems in this area in our country.

The research results show that the corporate governance model in Uzbekistan is modeled on the German model, and takes place through a two-tier board structure. In the precedent countries, governance is largely unitary, with a large number of independent board members, a unified management structure and relative gender diversity.

Keywords: board composition, “comply-or-explain”, corporate governance, supervisory board, two-tier board system, unitary board system.

INTRODUCTION

"Corporate governance is arguably one of the most important differentiating themes that affect the profitability, growth and even sustainability of a business. It is a multi-stage, multi-layered process that stems from an organization's culture, its policies, values and ethics, especially how it deals with business people and various stakeholders" (Kshama K.V., Dutta K., 2012).

High-profit corporate conflicts have begun to raise serious questions about the effectiveness of corporate boards around the world and the concerns of corporations and their board members. Examples of such scandals include the US (ENRON fiasco, World Com and Tyco scandals), the UK (Maxwell Publishing Group collapse), Germany (Holtzman, Berliner Bank and HIH fraud) and Australia (Ansett Airlines vs. One Tel), France (Credit Lyonnais and Vivendi), Switzerland (Swissair scandal) and Uzbekistan (MTS, Russia's largest telecommunications company’s corruption for getting license in the Uzbek market). The failure of these large companies, which can have an impact on the economy, is linked to the fact that the board of directors is not properly formed, there is no mechanism for monitoring the management of companies, and

there is a lack of transparency (especially in the activities of big business in the former Soviet Union countries). Therefore, corporate governance is one area that requires further study.

In this context, the purpose of this dissertation is to explain the elements of stakeholder governance in countries with two different corporate governance structures, the origins, development and current status of this model, as well as shortcomings in corporate governance in comparable countries and their solutions, through comparing main aspects of corporate governance structure between United Kingdom, United States and the Republic of Uzbekistan. The reasons I chose these three countries being compared are:

First, the UK and the USA have long advocated an Anglo-American model of corporate governance, a form of governance in which the goal of the company is to maximize profits for the benefit of shareholders. However, the changes and scandals of recent years have led to significant changes in the corporate legislations of these countries in order to strengthen the idea of a stakeholder in corporate governance. At present, these processes and the transition to another corporate governance model are widely discussed by the public. Unlike the United Kingdom or the United States, Uzbekistan has long been seen as a supporter of the stakeholder model in corporate governance, and studies show that corporate governance structure is based on the German model in which companies are concerned with a broader group of stakeholders, including employees, suppliers, customers and others as well as shareholders. However, there are significant shortcomings in practice legislation, which have hampered the full implementation of this concept.

Second, as UK or US in comparison is a developed country, there has been sufficient written research and scholarly articles on their corporate governance. In this regard, the corporate governance and legal framework of Uzbekistan are almost new to many, and there is little research. Therefore, we hope that the corporate governance of the little-studied state will be of interests to readers.

RESEARCH METHODOLOGY

A comparative study of the corporate board`s structure practice in Uzbekistan and Common Law Countries was done on the basis of Uzbek Law on "Joint-Stock Companies and Protection of Shareholders` Rights" and other by-laws as well as United Kingdom Companies Act 2016, Corporate Governance Code 2018, Stewardship Code, applicable cases and European Union Directives and Regulations, in terms of United States, Delaware General Corporate Law, cases, Securities Regulations respectively. The comparison is done in the following format: DULP → DJLP → SDBP, that is, first comes the description of Uzbek legal practice (DULP), and then we describe judge-made law Countries legal practice (DJLP), later on, we compare the practices by revealing the similarities and differences between practices (SDBP).

RESULTS AND DISCUSSIONS

I. Corporate Governance: concept and definition

1.1. What is corporate governance: global understanding

Corporate Governance can be explained as a set of rules, practices and policies that govern the decision-making of corporations. According to the Organization of Economic Corporation and

Development (OECD), "Corporate Governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. It also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined".

The term "corporate governance" historically emerged in the 1970s in the United States. Later on, this term has widely spread in Europe where the researches in the spheres of corporate management, corporate law and establishment of corporate structures (organizations) were proceeded (Veasey E.N., 1993). We found out during our research that the first documented use of the word "corporate governance" was by Richard Eells (1960) to denote "the structure and functioning of the corporate polity". According to Becht, Bolton and Röell (2002) the "corporate government" concept itself is older and was already used in finance textbooks at the beginning of the 20th century. Particularly, corporate relations were first studied in 1932 by the American legal scientists A.Berle and G.Means (1932) in their classical works as a process for managing the corporate and private property. Although the term "corporate governance" was not mentioned in their works, they have studied the classical agency problems: how the corporate managers being as the shareholders` agents can be directed to manage the corporate assets and to act for the shareholders" interests? They linked the corporate governance to separation of ownership and management which expressed in the agency relationship between trustees of property – principals (outsiders, investors) and their agents (insiders, managers). According to their saying, the shareholders are attracted owing to presence of need for the great extent of financial resources for firm`s economic development, and this circumstance serves as a ground for separation of ownership and control.

Over the years, there have been different approaches to corporate governance around the world, with the major approaches been the "Shareholder" approach and the "stakeholder" approach. The Shareholder approach of corporate governance, which primarily focuses on shareholders has been adopted by the Anglo-American Systems (United Kingdom, United States, etc.) while the Stakeholder approach, which encompasses not only shareholders but also the wider class of employees, creditors, suppliers, communities, and more recently, the environment, has been adopted by the Continental European System.

However, with recent economic recessions and developments in corporate governance, particularly the emergence of Corporate Social Responsibility (CSR), Corporate Responsible Investing (CRI) etc., there has been an increase in discuss on the need for corporations to shift from the shareholder approach of corporate governance to the stakeholder approach for their longevity and growth. Recommendations have also been made for countries to overhaul their codes of corporate governance and company legislations to focus on the long-term success of corporations and on Environmental Social Governance (ESG).

The historical development of corporate governance has also contributed to the formation of corporate governance theories. Among such theories, the most common in practice are the theory of shareholders and the theory of stakeholders. In the future, more and more people believe that the theory of stakeholders will be the dominant model of corporate governance.

The expansion of corporations also serves to increase the number of direct stakeholders. Initially, only shareholders were considered stakeholders, but later the state, creditors,

employees, suppliers, buyers, and others began to be considered stakeholders. This, in turn, made it necessary to take into account their interests in decision-making. As a result, a theory of stakeholders was formed.

In addition to direct stakeholders indirect stakeholders also emerged. Residents of the region, research institutions, the public organizations, etc., that is, the whole of society became a stakeholder in the corporate structure. The aspects cited based on the concept (theory) of corporate social responsibility.

The Shareholder approach to corporate governance (shareholder primacy), is an approach that focuses primarily on the maximization of wealth/value/profit for shareholders. Under this approach to corporate governance, it is widely believed that corporations are owned by shareholders and directors are agents of the corporations and the shareholders, who owe the shareholders a "duty of loyalty, to pursue good faith strategy to maximize profits for the shareholders" (2017).

The notion of shareholder primacy can be traced back to the 1919 US case of Dodge v. Ford Motor Co., where the Michigan Supreme Court held that "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes" (Mich. 1919).

This notion was further developed into a theory by Milton Friedman in 1962, who argued his book "Capitalism and Freedom", "there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception fraud".

According to the Friedman doctrine, the shareholders are the only stakeholder group which matter in a company's decision making (1970).

Over the years, there has been an emphasis on the shareholder value approach to corporate governance by directors of corporations in the United Kingdom (UK) and the United States (US), which has been traced to factors such as the "globalization of capital markets, the rise of institutional investors, greater shareholder activism and the increasing importance of corporate governance issues' (Andrew Keay, 2014).

Proponents of the shareholder approach to corporate governance are of the opinion that "shareholders have a greater stake in the outcome of the corporation, they benefit from its profits as well as suffer for its losses" hence the focus on wealth maximization for shareholders as opposed to other stakeholders.

1.2. What is corporate governance: Uzbekistan context

The Uzbek corporate governance structure has been traditionally based on the German corporate governance model. Therefore Uzbek corporate governance model can be said more favor to stakeholder theory, although not fully justify it. Corporate governance conception was not prevalence until 2007 and 2008. After big global scandals such as ENRON fiasco, Lehman Brothers, Maxwell Publishing Group scandals, the corporate governance has become a popular

area of discussion, a great number of works on corporate governance have been done. The Uzbek researchers and scientists do not stand aside either when defining the corporate governance and its different models. The first scientist who defined and reviewed the corporate governance was Madiyorov stating that the corporate governance is carried out in balance with development of production activity, rational use of existing material, financial and human resources, attraction of capital and new technology (1993). A scientist Zohidov, in his researches, proposed to define the corporate governance as the management system ensuring the priority of shareholders' interest in combination with increasing the company performance (2004).

Another Uzbek scholar, Bozorboy Berkinov, describes corporate governance as follows: "Corporate governance system is a complex and rapidly changing mechanism which includes many interrelated constituents, including a set of legislative, subordinate regulatory as well as internal standard acts which are the corporation's internal mechanism of control by owners, managers and creditors (2005).

Furthermore, Vohidov has given legal definition to corporate governance in his written research. He states the corporate governance as the managerial activity of the company managers directed at ensuring the shareholders to participate in company governance, and held for the interests of shareholders in earning profit out of their shares, and posits that all stakeholders as creditors, company employees and partners as well as the society as a whole (customers) can and must take part in the corporate governance (2007). Economists and practitioners such as Sh.

Zaynutdinov and D. Rakhimova mention the definition, in their book, by stating that the corporate governance is a joint activity of the stakeholders with a view to make profit (2007).

If we look at the definition of corporate governance by scholars and practitioners, it is emphasized that the company should be managed not only in the interests of shareholders, but also in the interests of all stakeholders. However, this does not mean that the full stakeholder model in Uzbekistan is a form of corporate governance. The reason is that in practice there are no strict norms that pushes or obliges shareholders to do business in the interests of all stakeholders. As is the case all over the world, it is only through incentives that company executives are encouraged to change their models.

Young researchers are also doing research on new concepts of corporate governance today. In particular, the researcher A. Ibragimov (2021) conducted research on the possibility of applying fiduciary obligations in the management of corporations in Uzbekistan, while D. Imomniyozov (2021) studied the importance of fiduciary obligations in corporate governance in comparison with other countries. In addition, the peculiarities of corporate governance of state-owned enterprises was covered by Sh. Asadov with his scientific work (2021).

II. Specificity of corporate governance in Uzbekistan

2.1. The state of corporate legislation in Uzbekistan

Formation of a basis of company governance in our nation has begun with establishing company legislation, initial of all, with enacting necessary laws control the company relations. Uzbek corporate governance is based totally on civil law that forms main legal rules with reference to company governance, and consists chiefly of:

- The Civil Code of the Republic of Uzbekistan (enacted in 1995, last amended in 2020);
- Law on Joint-Stock Companies and Protection of Shareholders` Rights" (enacted in 1996, revised in 2020);
- Law on restricted and extra Liability firms (enacted in 2001, last amended in 2020);
- Law on Business Partnerships (2001, last amended in 2020);
- Law on Bankruptcy (revised in 2003, last amended in 2020);
- Law on exchange (enacted in 2008, last amended in 2020);
- Law on Accounting (enacted in 1996, last amended in 2020);
- Law on Auditing Activity (revised in 2000, last amended in 2020);
- Law on Competition (enacted in 2020).

These laws set formal procedures for establishing companies, verify the mechanism of governing and functioning of business companies (companies) and therefore the mechanism of interaction between governing bodies and stakeholders, specify the most rights of shareholders, verify exchange players and supply mechanisms for shielding the rights of market participants and investors, and thus constitute the legal framework for company governance in Asian nation.

Furthermore, besides the laws we have a tendency to mentioned higher than, variety of Presidential decrees and Government resolutions are adopted aiming at rising company governance system in Republic of Uzbekistan.

2.2. The Uzbek corporate governance framework in brief

The corporate governance framework of Uzbek firms has been improved for several years in accordance with national legislation and taking into consideration the international observe. We visually bring the typical corporate governance framework which is applied in almost all joint-stock companies (exception may be banks and other financial organizations) operating in the territory of Uzbekistan.

According to the current Law (the Law on Joint-Stock Companies and Protection of Shareholders` Rights is implied) in Uzbekistan, the General Meeting of Shareholders, Supervisory Board and Executive Body are the governing bodies of the joint-stock company (hereinafter "company").

The General Meeting of Shareholders, according to the Article 58 of the Law, is the superior body of the corporate governance in company and is compulsorily held at least one time in a year and thus annually. Its function includes giving opportunity to owners to obtain from the other governing bodies the detailed and reliable information about a policy pursued by the company, about the prospective achievements and plans, to participate in discussions and making decisions on the more crucial issues of the company`s activity. The general meeting is often the opportunity for the shareholders to obtain information about the company`s performance and ask the management all interesting questions. Only the shareholders who are secured in the register of company`s shareholders which was generated 3 calendar days before the official announcement about the date of holding General Meeting of Shareholders have right to participate in the general meeting.

The General Meeting of Shareholders is usually led by the chairman or panel of general meeting which is approved by the general voting of the shareholders attending the general meeting.

There often elected a chairman of the Supervisory Board as a chairman of the General Meeting of Shareholders.

The Secretary of General Meeting keeps the minutes according to agenda of the General Meeting of Shareholders. The Secretary of General Meeting draws up the minutes of the general meeting not later than 10 days after the closing of the General Meeting of Shareholders in two copies which should be signed by him/her and the person presiding the general meeting.

The Committee of Minority Shareholders is new in the corporate governance practice of Uzbekistan. It was introduced in the national corporate governance system following the revision and enactment of the new version of the law on joint-stock companies. Actually, the Committee of Minority Shareholders can be established in the companies among minority shareholders in order for their rights and legal interests to be protected. Number of members of this committee is determined by the company`s Article of Association. The main competences of the committee include participation in preparation of suggestions for the review of General Meeting of Shareholders or Supervisory Board on matters about concluding big deals and deals with affiliated persons; examination of requests of the minority shareholders related to protection of their rights and legal interests; addressing to the state security market regulating authority with protection of rights and legal interests of minority shareholders.

The external auditor, who is also considered independent from the company, participates in corporate control to conduct a verification of the financial and economic performance of the company, and presents an auditor's conclusion in the prescribed manner. The auditor, whether it is one person or a whole auditing organization, legally bears responsibility to the company for damage caused as a result of its auditor's statement containing an incorrect conclusion about financial reporting and other financial information of a company.

The Revision Commission is considered one of the bodies of corporate control in the company. According to Law the Revision Commission is elected by the General Meeting of Shareholders for serving the functions of internal financial, economic and legal control over company`s activity, its departures and services, its branches and representative offices. More accurately, the Revision Commission effectuates the verification (or revision) of the financial and economic activity of a company with regard to the results of the activity for a year or other period on initiative of the revision commission, on decision of the General Meeting of Shareholders, Supervisory Board, or at the request of the shareholders possessing in aggregate not less than five percent of the voting shares. This commission has
also the right to request from the person holding offices in the governing bodies in a company to present it the financial and economic documents. Upon completion of verification of the company`s financial and economic activity the Revision Commission draws up a statement which contains the evaluation of data adequacy of the reports and other financial documents, the information on the facts of violation of accounting procedures and financial reporting as well as of legislation when holding a financial and economic activity.

The Supervisory Board, being as a corporate governance body, acts as a nexus between owners and company managers. It provides a strategic management of the company, quality control of management performance as well as takes the ad hoc measures in cases when managers cease coping with operational management. In accordance with Law the Supervisory Board

effectuates the general management over company`s activity, except for deciding of issues relating to the exclusive competence of the General Meeting of Shareholders. In the Chapter IV of this paper we will analyze the role and functions of the Supervisory Board in Uzbek companies in more detail.

The Internal Auditing Service is a structural unit of the company which is usually established in those joint-stock companies which have assets with book value of more than one hundred thousand of minimum wage (approximately 5.54 million US$ as of October 2020). It means that the internal auditing service should be established in the companies with required asset value and is not mandatory to be established in those companies which have assets with book value of less than one hundred thousand of minimum wage. The Internal Auditing Service may consist of 2 to 4 persons, and is independent and directly accountable only to the company`s Supervisory Board. Within the company it performs an internal audit by means of conducting inspection and monitoring of the business plan execution progress, the observance of corporate governance principles, the state of accounting and financial reporting, the correctness of calculation and payment of taxes, the observance of legislation on financial and economic activity, the state of assets and internal control. In fact, in the framework of Uzbek corporate governance the Internal Auditing Service is also considered one of the bodies of corporate control.

The Corporate Consultant has come out since 2006 as a separate institute in the governance structure as for enhancing the level of corporate governance in the company. According to Law the corporate consultant is appointed by and accountable to the company`s Supervisory Board, if introduction of such position is stipulated in the Article of Association. The role and functions of the corporate consultant to control over observance of corporate legislation is not so far regulated in detail in the Law, but however, they should be stipulated in the by-laws approved by the Supervisory Board. At present, this institute of corporate governance is not deeply adopted by the Uzbek companies, but, none the less, some companies use it to increase their level of corporate governance.

The key link of corporate governance in company is the Executive Bodies which are imposed by the Law to manage a day-to-day operation of the company, except for issues relating to the exclusive competence of the General Meeting of Shareholders or the Supervisory Board. The Executive Body, being responsible

for implementation of goals, strategies and policy of the company, is obliged to effectuate the management of company`s activity so that to ensure the shareholders to obtain dividends and to provide company development. At the same time, keeping performing the functions charged, the executive body possesses the considerable credentials to dispose of the assets of company, therefore its activity should be organized thus so that to exclude a distrust from the side of shareholders. The trust must be ensured with high requirements to personal and professional merits and competence of the executive officers as well as with accepted procedures in the company which impose them under the effective control of shareholders.

To say more about executive body as one of the governing bodies of a company, it should be stated that according to Law the executive body may be in the form of a one-man executive body which is usually called Director, or in the form of a collective executive body which is generally

referred to as Management Board. If the management of current activity of the company is carried out by the Management Board, the company`s Article of Association should also specify the competence of the head of Management Board (Chairman). By decision of the General Meeting of Shareholders, the credentials of the Executive Body may be transferred to a commercial organization (or proxy manager) on the basis of contract. With every member of Executive Body there made a contract for one year which, on behalf of the company, is signed by the Chairman of Supervisory Board or by the person authorized by the Supervisory Board. The contract is subject to prolongation (renewal) or termination (cancellation) every year by the decision of the General Meeting of Shareholders.

III. Corporate Board structure in Uzbekistan compared with United States and United Kingdom.

3.1. Corporate Board and Governance in Uzbekistan and Anglo-Saxon countries : An Overview

Uzbekistan

Uzbek corporate governance structure is based on German model, while UK traditionally has Anglo-American corporate governance model. Therefore, the following subsections compare the corporate governance models of the two countries and make recommendations for their shortcomings.

In Uzbekistan, the format of corporate governance is mainly considered in the example of joint-stock companies, and this format is acceptable for almost all joint-stock companies with some exceptions such as banks and investment firms. Generally, Uzbek stock corporations have a two-tier board structure: Supervisory Board and Management Board. As I said above this model is similar with Germany governance model as the nature of law is the same, Roman-German. Under the Law “On Joint-Stock Companies and Protection of Rights of Shareholders” (hereinafter “Uzbek Company Law”) joint-stock companies are managed by the General Meeting of Shareholders, Supervisory Board and Executive Body, which can be exclusive executive body (director) or collegial executive body (board of directors/board of administrators).

The United States

The Anglo-Saxon countries – the United States and the United Kingdom have adopted variants of one-tier models. In Anglo-Saxon one-tier board model, executive directors and nonexecutive directors operate together in one organizational layer (the so-called one-tier board). The members of the one-tier board are elected by the shareholders, while the members of the management board are usually elected by the supervisory board. Some one-tier boards are dominated by a majority of executive directors while others are composed of a majority of nonexecutive directors. In addition, one-tier boards can have a board leadership structure that separates the CEO and chair positions of the board. One-tier boards can also operate with a board leadership structure that combines the roles of the CEO and the chairman known as CEO duality. One-tier boards also make often use of board committees like audit remuneration and nomination committees.

In the United States, the governance structure of corporations is regulated by both federal and state securities laws and state corporation laws. In the U.S. the board of directors is the focal point under corporate law. Each of the 50 states in the U.S. has its own corporation's code and an individual state is free to design its legislation in whatever manner it sees fit, assuming it does not violate constitutional principles protecting the flow of trade and commerce throughout the U.S. (Cheffins, 2012)

The United Kingdom

Despite the formally continuing unitary structure of the British board, has it functionally become a two tier structure with the non-executives monitoring (supervising) the performance of the executive directors?

According to UK Corporate Governance Code, "The board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively" – main principles B.1.

The provisions supporting this say that the board should have a "strong presence" of both executive and non-executive directors so that no individual or small group can dominate its decision-taking. At least half the board, not counting the chairman, should be independent non-executive directors.

This means that a board of nine, for example, needs to have at least four independent non-executives to balance four executive directors, with the chairman being the ninth director.

An exception is made for a "smaller company", defined as a company outside the FTSE 350 for the whole of the year before the year being reported on. Those smaller companies are urged to have at least two independent non-executive directors. Indeed, they will need two if they are to comply with the Code's requirements for board committees.

Again, these principles and provisions are for guidance only: a company is free to explain why it believes such numbers of independent non-executives are excessive or not right for its own particular circumstances.

What does all this mean for the structure of the board? Does it effectively create two tiers? The Code is keen to stress that it still believes in the unitary board. The non-executives are not meant to comprise a separate supervisory body on, for example, the German or Uzbek model. Executive and non-executive, independent and chairman are all members of the single decision-making board at the heart of a UK company.

3.2. Board size

According to the Uzbek Company Law the size of Supervisory Board of a company is determined by the Articles of Association or by the decision of the General Meeting of Shareholders. For the joint-stock company with a number of shareholders of:

more than 500 – not less than 7 members,

more than 1,000 – not less than 9 members.

U.S.A: Most state corporation laws are indifferent to the maximum and minimum board size. However, the Model Act and Delaware's corporation laws require a minimum of one director.

UK: According to UK Company Act, every private limited company must have at least one company director. The directors of the company make up its board of directors. At least one

director must be a natural person (as opposed to another company). A public limited company must have at least two directors. Company directors are responsible for ensuring the business complies with company law. They can be found personally liable for the firm's failings. Other individuals can be invited to attend board meetings. To achieve the right balance it might sometimes be necessary to include employees who are not classed as directors to link up relevant parts of the board meeting. The company secretary (if one has been appointed) acts as the chief administrative officer for the company. Employees can have the term director in their job title, such as a sales director, without being company directors.

3.3. Board Composition

In Uzbekistan, the company`s Supervisory Board may be composed of anyone. As practice shows, the Supervisory Board may be consisted of shareholders of that company, representatives of parent and affiliated companies, representatives of banks, suppliers, partner companies and other organizations, government attorney if the share of government in a company`s authorized capital (share capital) is more than 25 percent, as well as government officials ex officio. However, according to the Uzbek Company Law the members of a one-man and collective executive body as well as the persons working on labor contract in the same company cannot be the members of the Supervisory Board. This legal requirement has introduced in 2003 has substantially improved the corporate governance level in Uzbekistan, and thus, not allowing the executive management to act as a member of the Supervisory Board. There is also another case having impact on the composition of the Supervisory Board in Uzbekistan. According to the Uzbek Company Law, if in regard to the joint-stock company there made decision to introduce a special right for government`s participation in company governance ("golden share"), a government representative is appointed by the Commission on Monitoring of Effective Use of the State Share in the Joint-Stock Associations and Companies, and the quantitative composition of the Supervisory Board, which was previously specified in the company`s Article of Association, will be increased and the specially appointed government representative will be introduced in it.

Like other two-tier board model countries, Uzbekistan board model give employees a say in corporate governance. This is achieved via their representation on the governing bodies.

Generally, US boards comprises a mix of independent directors (known as outside directors) and insiders (executive directors). Both the NYSE and NASDAQ listing standards require that a majority of a listed company's directors can be independent. Under Section 303A.02 of the NYSE listing standards, there are five categories of relationships between the listed company and the director or any of his or her immediate family members that disqualify the director from being independent.

The new NASDAQ listing rules take a different but similar approach to defining independence. Rule 5605(a) (2) of NASDAQ listing rules defines provides a list of certain relationships (under six categories) that preclude a board finding of independence.

In the US boards, employee representation does not exist, a situation similar to that of the UK. In the precedent countries, shareholders/ blockholders representation on the board is limited or nonexistent. The dispersed nature of the shareholding base that characterizes most companies has given rise to a very weak, symbolic or even non-existent representation on the

board. Significant shareholders are not automatically given a seat on the board and without the acquiescence of the board to a specific director nomination, a shareholder wishing to be represented on the board must go through a costly difficult and uncertain proxy process. Most institutional investors behave more like traders than owners (Miguel A. Mendez, 2014).

3.4. Election of board members

According to Uzbek legislation the members of the Supervisory Board are elected by the General Meeting of Shareholders for one year period, and besides, persons to the Supervisory Board may be re-elected for an unlimited number of times. Only the owners of the common share have rights to elect the board members. As it was said before, the members of a collective and one-man executive body may not be elected to the Supervisory Board as well as the persons working at the same company on labor contract may not also be elected to the Supervisory Board. A member of the Supervisory Board can be anyone whom we described in the board composition subchapter.

It is generally also accepted in practice that election of members of the Supervisory Board is implemented on the basis of cumulative voting rule. According to this rule a number of votes (shares) each shareholder owns is subject to multiply by a number of candidates to the Supervisory Board, and thus, a shareholder has a right to give his/her votes fully to one candidate or allot the votes between two and more candidates. The government representative or government attorney is appointed by the appropriate authority to be a member of the Supervisory Board and is not subject to election (re-election) by the General Meeting of Shareholders.

In the UK and US, this process is the same. Most commonly, directors are appointed by the shareholders at the Annual General Meeting (AGM), or in extreme circumstances, at an Extraordinary General Meeting (EGM). A resolution for the appointment is put to a vote, and passed if a majority of shares are voted in favor.

When a vacancy arises unexpectedly, the remaining directors may appoint a new director temporarily. His appointment must be confirmed by the shareholders in general meeting as soon as possible. This would be appropriate for example, on the death of a director who represented an institutional lender-shareholder. Another example might be the unexpected departure of a technical director from a science based business where there was an obvious successor.

The shareholders, or an appointed committee of them, may delegate the power to appoint a new director to the existing directors. Delegating the power to appoint may be convenient for shareholders, but does remove a key shareholder power.

In most circumstances, a proposal for a new director would be a matter for discussion between the shareholders and directors at leisure and not something for an immediate decision. In terms of power and tactics, of course the absence of a director and / or the appointment of a new one change the balance of management power. Every shareholder should be aware of this.

The process for appointing new directors is usually recorded in the company's articles of association. It is not the same for all companies. The number of directors may be limited by the articles of association, so that a new director may be appointed only if a vacancy arises.

3.5. Gender diversity

In Uzbekistan, you cannot find any provisions or specific rules about gender diversity, especially imposing an obligation to companies to make a gender balance during shaping company board. In our country, the ability and potential of a person is the first priority in the selection of board members. But it does not allow companies disregard for the non-discrimination principle.

In the United States, the SEC requires disclosure if the board has a diversity policy including gender diversity, yet there is no quota for women on boards or in senior management positions. In the United Kingdom, it is also the same with United States. There is no requirement for minimum number of women on boards, even though companies must disclosure gender diversity policy, if they have. If they have not, they need explain it.

3.6. Remuneration of board members

According to the Uzbek Company Law the members of the Supervisory Board of a company may, in the period during which they perform their duties, be paid remuneration and/or expenses be contributory compensated which are related with the performance of functions of board members. The amounts of such remuneration and contributory compensation for each board member are established by the decision of the General Meeting of Shareholders. In addition to this, the Uzbek Supervisory Board Regulations states that the amounts of such remuneration for each board member are determined by the General Meeting of Shareholders against the effective performance. But, as we noticed at the same time, it is not clear: should the amount of remuneration depend on effective performance of the company or of the certain member of the Supervisory Board? If it suspects the effective performance of certain board member then it is not clear: on the basis of which criteria should the General Meeting of Shareholders determine the amounts of remuneration?

As Uzbekistan's executive compensation approach is almost identical to that of the EU (except from the UK), we quote Miguel Mendez, a professor at the University of Washington.

Most EU governance codes stress the importance of designing a compensation architecture that takes into account the fundamental differences between executive and non-executive directors of the board. The primary function of the latter is to oversee, hire and dismiss the former. Any compensation scheme that blurs or erases this distinction that is rewards both type of directors with stock options or similar devices that hinge on the short term performance of the company stock will weaken the indispensable independence of the oversight function. This is however not a concern in the American corporate governance debate. It further underlines that in the US the distinction and segregation between the oversight and executive functions of the board is not as much a focus of attention (it has become more so recently) and that remunerating executives and non-executive members with some of the same instruments i.e. stock options is not perceived as a problem. There are numerous examples in recent years of the perverse effects of this phenomenon amongst US companies. While most corporate codes in Europe (British, Dutch etc.) recommend against granting non-executive directors stock options or similar stock performance related incentive, (in France the law prohibit such practice) on the other side of the Atlantic, this issue has yet to find its way onto best practice recommendations.

The British Derek Higgs report reads “non executive directors should not hold options over the shares of their company. If exceptionally some payment is made by means of options,

shareholders approval should be sought in advance and any shares acquired by exercise of the options should be held until one year after the non-executive director leaves the board".
The Dutch code reads "the remuneration of the supervisory board members should not be linked to the company's profits. Supervisory board`s members must, therefore not receive options".
Another area of significant differences between the EU and the US is overall remuneration, both in terms of the level and composition. There are philosophical and cultural differences that account for the remuneration gap across the Atlantic for senior executives or how non executive directors are compensated. But the many times higher overall remuneration of American senior executives and board members is also a reflection of the unchallenged dominance management exerts over the governing body with the complicity of non-executive directors (Miguel A. Mendez 2014).
In conclusion, the United States and the United Kingdom are countries where much can be learned about corporate law, especially corporate governance and the board structure. In this regard, I think that Uzbekistan is a little behind and it is natural, because there are not enough social relations that are suitable for this area. To put it bluntly, the United States and the United Kingdom are the countries that have managed to unite the world's largest companies, and their economies are based on such large companies. So it is only natural that they should constantly worry about the company and their management. In fact, in both countries, this trend has developed significantly after the economic collapse of giant corporations. For example, in the wake of the ENRON tragedy in the United States and the bankruptcy of large companies such as BCCI and Parmalat in the United Kingdom, there has been a growing focus on corporate governance. Therefore, German dual board approach, which is almost same with Uzbek one, to corporate governance adds needed checks and balances to help ensure the integrity of the process and monitor whether the corporation pursues its strategic objectives in an ethical manner. A corporate governance system based on these principles would build on the positive changes already made since Sarbanes-Oxley, and it better represents the interests of those who provide the capital and labor inputs so essential to success.
Briefly, the differences between the compared countries are as follows:
1. Uzbekistan has two-tier board system, where as US and UK practice unitary board structure in their companies.
2. In Uzbekistan, there is neither code nor integral legislation which can compose almost all regulations and provisions related to corporate governance. In contrast, UK has several codes and US has its distinct State corporate laws and Federal Securities Laws.
3. Corporate Board leadership structure also differs which we briefly explained above.
4. Uzbek Company laws do not determine any provisions or specific rules about gender diversity, especially imposing an obligation to companies to make a gender balance during shaping company board. In contrast, Anglo Saxon countries focus on it specifically.
5. When it comes to Board composition and election UK and US does not exist employees` representation whereas Uzbek Company law takes it into consideration.
6. Uzbek Company Law did not include the term of "independent member of board" unlike UK or US.

7. Our Company law also does not include any recommendations which are to be observed on "comply-or-explain" basis.
8. Disclosure and transparency requirements are more and clear in Common Law countries legislation then Uzbek one.

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