Volume 3, Issue 2, February - 2025 **ISSN (E):** 2938-3811

THE LEGAL NATURE OF THE CORPORATE CONTRACT IN U. S. LAW

Sattorov Mironshokh Husenovich
Independent Researcher

Abstract
In Uzbek civil law not so long ago a new institute - corporate agreement - has emerged, the reasons for the appearance of which in the legislation differ from those that have developed in the business activities of corporations on the territory of the USA. The subject of consideration of this article is the regulation of shareholder agreements by the laws of individual states of the USA. The relevance of this topic is due to the unceasing disputes about the nature of the corporate agreement and its role in the management of the joint-stock company. The USA became the first country in the law of which the corporate agreement appeared. The author considers the reasons that prompted state legislators to introduce provisions on shareholder agreements into the laws on business corporations. Close attention in the article is paid to closed corporations and their differences from business corporations, as the first agreements began to be concluded by shareholders of closed business corporations. It is noted that not all state laws recognize the closed corporation. In order to examine in detail the content of shareholder agreements, the governance structure of an entrepreneurial corporation, which does not involve shareholders in its management, is examined. All management is concentrated in the hands of the board of directors and its appointed managers. Today, such a situation is no longer in the best interest of shareholders. Shareholders realize their desire to manage the corporation and participate in the distribution of profits by entering into shareholder agreements. Analyzing state legislation, the author identifies three types of shareholder agreements, two of which were not previously known to the common law. Attention is drawn to the fact that all norms regulating shareholders' agreements are contained in the laws on business corporations. It is these laws, referred to corporate law, that determine the types, form, and duration of shareholder agreements, as well as their terms and relationship to the provisions of the corporation's articles of incorporation.

Keywords: Close corporation, business corporations, shareholder agreement, corporate law, board of directors, corporate governance, state laws, voting trust..

Introduction

In the Uzbek legal reality, the corporate agreement, which will be discussed in this article, appeared relatively recently, and its appearance in the legislation was caused by different reasons than those that have developed in the business activities of corporations in the United States. At the outset, it is necessary to define the concepts used in Russian and US legislation. In general, they coincide, but the corporate agreement is referred to by state laws and the Uniform Act as an agreement of stockholders. “Shareholders” is the term used in state and federal law when referring to members of an entrepreneurial corporation. By its legal nature, an entrepreneurial corporation is a joint-stock company, and, as a consequence, the holders of

Web of Scientists and Scholars: Journal of Multidisciplinary Research

the corporation's shares are certainly shareholders, but in US legislative practice the term "shareholders" is used rather than "stockholders".

Shareholders' agreements in the USA are regulated by the legislation of individual states, which has developed on the basis of uniform laws, and quite sparingly. It is also necessary to note the strong influence of judicial practice on the expansion of shareholders' rights. Legislative regulation of shareholders' agreements in the USA began to be implemented after the states adopted laws on business corporation and was conditioned by a number of reasons. However, it should be noted that such type of shareholders' agreement as a voting trust was already regulated by the first corporation laws and common law provisions[1].

The emergence of shareholder agreements in the entrepreneurial practice of corporations in the United States was caused by the desire of shareholders to participate in the management of the affairs of the entrepreneurial corporation, since shareholders had no other opportunity to manage the activities of the corporation.

Here it is appropriate to recall that according to the current legislation of the states, the structure of management of business corporations in the U.S. does not assume participation of shareholders in it. All management is concentrated in the hands of the board of directors and managers appointed by them. Shareholders are completely excluded from operational management decisions and hardly participate in the development of strategic objectives and decision-making. Even before the first state laws regulating business corporations, common law shareholders had only the right to receive a portion of the corporation's profits in the form of dividends and the right and duty to form a board of directors. The courts also reserved to shareholders the right to decide such momentous matters as the liquidation of a corporation, its merger with another corporation, and the sale of all of the corporation's assets.

Over time, this situation ceased to meet the interests of shareholders, as the Board of Directors' strict dictate on the issues of determining the amount of dividends and their payment did not contribute to the growth of shareholders' income. Shareholders had no influence on the procedure for distributing the corporation's profits. Absolute powerlessness, the inability to influence the distribution of profits, unscrupulous behavior of board members and managers, the emergence of new opportunities for abuse, and more complex economic relations - all of these factors led state legislators to adopt special laws regulating the activities of business corporations. These laws were subsequently amended by the Model Business Corporation Act. The developers of the model law took into account the existing mood of shareholders and judicial practice of recognizing agreements concluded by shareholders aimed at increasing their participation in management decision-making. The law contains provisions stipulating the right of shareholders to enter into agreements of various types, as well as provisions characterizing the types of entrepreneurial corporations stipulated by the law.

The first shareholder agreements were entered into by participants in close corporations, which differed from other types of corporations only by the absence of their shares and other securities on the stock exchange and over-the-counter market, a limited number of participants and a

[1] Easterbrook F. H., Fischel D. R. Corporate Contract, The //Colum. L. Rev. – 1989. – T. 89. – C. 1416.

special procedure for withdrawal from the corporation. It should be clarified that the laws of not all states distinguished closed corporations as an independent type of corporation and before the adoption of the model law on business corporation. Two approaches to the definition of a close corporation were enshrined in state statutes: a close corporation as a special type of business corporation and a close corporation as a status of a business corporation. In some states (New York State is a prime example) even today there are no restrictions on the number of members and the procedure for withdrawal from the corporation, which in other states is called a closed corporation. The laws of those states, whose legislation does not use the term "closed corporation", used to, and still do, distinguish entrepreneurial corporations as corporations whose shares (other securities) are not listed on the stock exchange and are not traded on the over-the-counter market. It is the public circulation of securities that is the qualifying feature and at the same time the condition that allows the members of the corporation to change the procedure of management of the corporation and distribution of profits established by the state law[2]. But to change the order of management of the corporation, the participants can not by entering into a shareholders' agreement, as in other states, but by amending the registered articles of incorporation of the corporation at a general meeting. Moreover, the decision on such amendment of the charter is made unanimously by all holders of shares and (or) their representatives. The procedure for amending the articles of incorporation of an entrepreneurial corporation is determined by both state law and the provisions of the articles of incorporation.

Prior to the development of the model law, individual state legislators had identified the close corporation as a separate type of corporation. However, during the preparation of the model law on business corporation, the developers carefully studied the legal regulation of the activities of closed corporations in those states whose laws singled out this type of corporation, and came to the conclusion that the closed corporation is not an independent type of corporation, but a type of business corporation. It was proposed to extend to this corporation the norms of the Model Business Corporation Act, which reinforced the researchers' conclusions that a close corporation is not a new type of corporation with qualifying characteristics, but only a type of business corporation.

At the same time, the internal organization of management of an entrepreneurial corporation - both closed and open - in accordance with the laws of the states is based on a single scheme and is somewhat specific to the Russian view.

To begin with, the laws of individual states, as well as the model law on entrepreneurial corporation, do not call the "general meeting of shareholders" of the corporation the governing body of the corporation. Only in the literature some authors sometimes conclude that the general meeting of shareholders makes certain decisions1. It should be clarified here that in the state laws regulating the procedure for the establishment of different types of legal entities and their activities, there is no such legal construction as a hierarchy of governing bodies. The legislation does not distinguish different types of bodies of a legal entity according to their competence

[2] Hansmann H. Corporation and contract //American Law and Economics Review. – 2006. – Т. 8. – №. 1. – С. 1-19.

and the order of formation. In other words, the laws lack any classification of bodies of a legal entity[3].

If the term “body” is used in the law, it is the supreme governing body of a legal entity that is meant, since the legislation does not single out other bodies. State legislators do not use such concepts as “supreme governing body”, “permanent governing body”, “executive body” in lawmaking practice. Only the term “body” is used. The notion of “executive body” is replaced by the notion of “executive directors”, who according to the legislation are representatives of a legal entity. Such term as “competence of the general meeting” or “exclusive competence of the general meeting” is not used in the scientific literature and legislation in the USA. The competence of the general meeting of shareholders in the legislation is designated as “the rights of shareholders and rights realized by voting on certain issues”. In our opinion, such legislative technique indicates a weak theoretical development of the concept of a legal entity and inertia of perception of a legal entity as an instrument for achieving the goal, rather than an independent participant of civil legal relations.

Certainly, the rights reserved to the participants, which they can exercise only by voting at the general meeting, constitute the competence of the general meeting as the governing body of the legal entity. However, state laws do not call the general meeting of participants of an entrepreneurial corporation neither the supreme governing body nor the body of the corporation at all[4]. Although on a number of issues only the holders of shares have the right to make a decision, and this is their exclusive right, which they cannot transfer to anyone both in an entrepreneurial corporation (the term “open corporation” is not used in the state laws) and in a closed entrepreneurial corporation. Based on the above, the shareholders of any corporation are entitled to exercise their rights both by voting at a general meeting and by entering into a shareholders' agreement. At the same time, such a logical construction does not exclude possible contradictions between the decision of the general meeting and the content of the agreement. Among other things, the legislative regulation of shareholder agreements by the model law was aimed at eliminating possible inconsistencies[5]. However, to date, there is a clear tendency to reduce the role of shareholders' agreements that redistribute the powers of the board of directors in favor of shareholders or otherwise increase the influence of shareholders on the management of an entrepreneurial corporation (e.g., using the possibility of full or partial removal of the board of directors from the management of the activities of an entrepreneurial corporation through amendments to the charter of the corporation enshrined in the laws of a number of states; this mechanism was not provided for by the model law).

What are the matters which fall within the exclusive competence of the general meeting and the voting on which may be the subject of arrangements in the shareholders' agreements of any corporation? The agreement of the members of the corporation in this case implies only the determination of the voting procedure on the following issues:

[3] Macey J. R. Corporate Law and corporate governance a contractual perspective //J. Corp. L. – 1992. – T. 18. – C. 185.
[4] Brudney V. Contract and fiduciary duty in corporate law //BCL Rev. – 1996. – T. 38. – C. 595.
[5] Klausner M. Corporations, corporate law, and networks of contracts //Va. L. Rev. – 1995. – T. 81. – C. 757.

formation of the board of directors by electing its members;
increasing the authorized capital stock of the corporation, unless the matter has been referred to the board of directors for resolution;
drafting and amending the articles of incorporation and bylaws of the corporation;
leasing, selling or transferring (in the form of reorganization) all of the corporation's property to a third party, and approving unusual particularly large transactions;
transferring all property of the corporation to a third party to conduct business for a period of time;
appropriate amendments to the articles of incorporation related to the suspension of business activities, if this entails a change in the scope of shareholders' rights for certain types of shares; reorganization by merger or through the sale of all assets; and liquidation of the corporation[6].
The Articles of Incorporation of the corporation allow the founders to expand the list of issues to be decided only by the members of the corporation at their meeting. Thus, a shareholder agreement concluded between two or more shareholders may contain a voting procedure, i.e. the use by the participants of the agreement of their voting rights, or an obligation to follow an agreement on the voting procedure, which the participants may agree on, or an obligation to vote at a general meeting in accordance with the procedure established in the agreement.
Since the legislator has recognized a closed corporation as a type of business corporation, it is necessary to dwell on the emergence and current existence of the closed corporation, especially since the peculiarities of the legal status of this type of business corporation have affected the content of the agreement that the shareholders of the corporation are entitled to conclude between themselves. The agreement of shareholders of an entrepreneurial corporation and a closed entrepreneurial corporation are aimed at achieving the same goals, but differ greatly in content.
A shareholder agreement of the shareholders of a business corporation containing agreements on the above issues may affect the change of the shareholders' management of the corporation and, to some extent, allow interference with the distribution of the corporation's profits. To be sure, the legislature has greatly expanded the rights of shareholders, but this expansion has brought shareholders little closer to the management of the corporation.
Only the board of directors has the right, in accordance with state laws, to determine the procedure for using profits and to carry out operational management of the corporation. The participants of an entrepreneurial corporation do not have the right to change the provisions of the corporation's charter by their agreement. However, such a statement is true only in relation to an entrepreneurial corporation, while for closed entrepreneurial corporations a different relationship is established between the provisions of the charter and the shareholders' agreement. In fairness, it should be noted that the limited possibilities of the agreement of shareholders of an entrepreneurial corporation in some states are compensated for by a legislatively established mechanism for transferring the management of the corporation into the

[6] Epstein R. A. Contract and Trust in Corporate Law: The Case of Corporate Opportunity //Delaware Journal of Corporate Law. – 1996. – T. 21. – C. 1.

Web of Scientists and Scholars: Journal of Multidisciplinary Research

hands of the shareholders. The essence of this mechanism is that at a meeting, shareholders have the right to make changes to the charter, according to which they completely or partially remove the board of directors and all managers from managing the corporation and take control into their own hands, i.e. all management issues or issues determined by the charter are resolved by voting. The possibility of changing the management procedure established by law by the provisions of the charter of a business corporation is provided for by laws of only individual states[7].

Unlike a shareholders' agreement of a business corporation, a shareholders' agreement of a closed corporation may contain terms that change the corporation's management procedure established by the charter, as well as the profit distribution procedure. In other words, the provisions of a shareholders' agreement of a closed corporation may change the provisions of the charter of a closed corporation when the corporation's management procedure established by the shareholders' agreement does not correspond to what is determined by the charter. At the same time, shareholders of a closed corporation have the right to enter into agreements that do not change the established management and profit distribution procedure, i.e., those that concern only the voting procedure at a general meeting on issues within their competence.

All of the above indicates that today state laws provide for several types of shareholder agreements. The content and number of participants in these agreements depend on the shareholders (stockholders) of which corporation the agreements are concluded. Despite the different approaches of state legislators to shareholder agreements concluded in closed business corporations and entrepreneurial corporations, it is possible to distinguish between shareholder agreements available to shareholders of any entrepreneurial corporation and shareholder agreements permitted only to shareholders of a closed corporation. Agreements available to shareholders of any entrepreneurial corporation, in turn, can be conditionally divided into two types.

The first type of shareholder agreement is an agreement on the voting procedure at a general meeting on all issues within the competence of the general meeting. This type of shareholder agreement is concluded between two or more shareholders of a business corporation in simple written form. In all states, a written form of a shareholder agreement means a paper form[8]. The term of this agreement is limited by law. In most states, it does not exceed 10 years, but can be extended an unlimited number of times in accordance with the procedure established by law. The provisions of the agreement are binding only on its participants. However, it should be noted that state laws on business corporations do not provide for any consequences for shareholders violating their obligations under the agreement. It is in the agreement that shareholders must determine the consequences of its violation by the participants.

The second type of shareholder agreement is an agreement to transfer the right to vote at a general meeting by the shareholders who signed the agreement, either to one of the shareholders

[7] Allen W. T. Contracts and communities in corporation law //Wash. & Lee L. Rev. – 1993. – T. 50. – C. 1395.
[8] Casper S. The legal framework for corporate governance: explaining the development of contract law in Germany and the United States. – 1998.

or to a third party. This type of shareholder agreement is called a "voting trust" by state law, and it must be in simple written form. In addition to the shareholders, other persons may be parties to this type of shareholder agreement, such as a creditor of the corporation, a trustee of the corporation's shares, or a pledgee of the corporation's shares or bonds. A voting trust is often used as security for the corporation's performance of its contractual obligations. All states have statutory limitations on the period for which a voting trust may be entered into, as well as on the transfer of shares by shareholders under an agreement to a trust. Entering into a shareholder agreement to transfer the right to vote for a longer period than that established by state law makes the agreement invalid. For example, in the states of California, New York, Delaware, according to the current legislation, a voting trust is concluded for a period of no more than 10 years. Upon expiration of the established term or before its expiration (in this case, the norms of state laws differ), the voting trust is concluded again or extended. This type of shareholder agreement is subject to mandatory registration with the body registering business corporations, and is not a confidential document, unlike the shareholders' agreement on the voting procedure. Moreover, shareholders have the right to familiarize themselves with it.

The third type of shareholders' agreement, if provided for by state laws, is available only to shareholders of a closed corporation. It is this type of shareholders' agreement that enables shareholders to change the order of corporation management, establish the order of profit distribution, limit the powers of the board of directors, or completely deprive the board of directors of the powers established by law. State laws contain a list of provisions of the charter that cannot be changed by an agreement of shareholders of a closed corporation. Another feature of this type of shareholders' agreement is the fact that it is concluded only between all participants of the closed corporation. It is the participation of all members of the corporation in the agreement that removes the question of the legality of this type of shareholders' agreement. Mandatory participation of all members of a closed corporation in this type of shareholders' agreement was provided for by the model law on a business corporation and was not subject to change by state laws when implementing the model law into state legislation. However, not all states provide for this type of shareholders' agreement by law. In some states, shareholders can achieve the same goals by other means: through the redistribution of powers or their transfer to one or more participants by amending the corporation's charter. And this type of shareholders' agreement is concluded in simple written form.

In general, the above-mentioned types of shareholders' agreements are regulated by laws uniformly in all states whose legislation permits their conclusion, with some exceptions. In fairness, it should be noted that this regulation is very brief. State laws on business corporations do not determine either the procedure for changing or terminating a shareholders' agreement and do not contain reference rules to laws regulating contractual relations. In the absence of legislative regulation, shareholders themselves must establish in their agreement both the procedure for a shareholder to withdraw from the agreement and the procedure for joining an already concluded agreement, and liability for violating the provisions of the agreement. The legislation of no state even mentions the application of provisions on contracts to shareholders' agreements, as was not the case in the model law on a business corporation. The stinginess of

legislative regulation of shareholders' agreements is due, in our opinion, to the fact that legislators have not yet overcome the dualism in state contractual practice2. It is noteworthy that all the rules regulating shareholders' agreements are contained in the laws on business corporations. It is these laws, which are classified as corporate law, that determine the types, form, duration of shareholder agreements, as well as their terms and relationship to the provisions of the corporation's charter and bylaws. Neither the laws governing contractual relations, nor the Uniform Commercial Code, and subsequently the state commercial codes, contain any indication of their application to shareholder agreements.

The fact is that in the legislative practice of individual US states, two contractual models still coexist. The process of their convergence is intensive, but unification has not yet occurred. Neither the courts nor the legislators have yet decided on which contractual model a shareholder agreement is based on. Perhaps this circumstance largely explains the fact that the provisions of contract law do not apply to shareholder agreements.

On the one hand, it is obvious that a shareholders' agreement is the result of the coordination of the wills of its participants and clearly indicates its legal nature, corresponding to the European contractual model, which allows the rules governing business contracts to be extended to the shareholders' agreement. On the other hand, neither legislators nor courts yet classify shareholders' agreements as business contracts. And there may be another explanation for this, namely that legislators classify shareholders' agreements as instruments of corporate regulation, which also does not really fit into the theory of the contractual nature of a legal entity, which is currently dominant in the legal doctrine of the United States. From the above it follows that the doctrine has not developed a specific view on the legal nature of a corporate agreement. The fact that a shareholders' agreement is regulated by the rules of corporate law is more a matter of chance than the result of the consolidation of scientific research. Due to the current situation, the need for legislative regulation of the activities of entrepreneurial corporations has led to the emergence of provisions regulating shareholders' agreements in state laws on entrepreneurial corporations. Legislative regulation has identified three types of shareholder agreements, two of which were previously unknown to common law and US law. The voting trust previously existed under the common law of the states. Understanding the legal nature of shareholder agreements is likely still to come.

References

1. Easterbrook F. H., Fischel D. R. Corporate Contract, The //Colum. L. Rev. – 1989. – Т. 89. – С. 1416.
2. Hansmann H. Corporation and contract //American Law and Economics Review. – 2006. – Т. 8. – №. 1. – С. 1-19.
3. Macey J. R. Corporate Law and corporate governance a contractual perspective //J. Corp. L. – 1992. – Т. 18. – С. 185.
4. Brudney V. Contract and fiduciary duty in corporate law //BCL Rev. – 1996. – Т. 38. – С. 595.

5. Klausner M. Corporations, corporate law, and networks of contracts //Va. L. Rev. – 1995. – T. 81. – C. 757.
6. Epstein R. A. Contract and Trust in Corporate Law: The Case of Corporate Opportunity //Delaware Journal of Corporate Law. – 1996. – T. 21. – C. 1.
7. Allen W. T. Contracts and communities in corporation law //Wash. & Lee L. Rev. – 1993. – T. 50. – C. 1395.
8. Casper S. The legal framework for corporate governance: explaining the development of contract law in Germany and the United States. – 1998.

Web of Scientists and Scholars: Journal of Multidisciplinary Research