

## **KAZAKHSTAN: IMPROVING A LEGAL FRAMEWORK FOR A CORPORATE STRUCTURE**

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Kazakh legislation adopted a classic dualistic model of corporate structure. Such a structure is prescribed for formation in limited liability partnerships (LLPs). Such regulation of the corporate structure of an LLP is mandatory. However, for years there have been LLPs whose corporate structure does not comply (in fact, violates) that legal requirements. Although not a common practice, such cases are puzzling, since both in accordance with the best practices of corporate governance and in accordance with Kazakhstani legislation, the responsibility for managing a company, observing rights of its creditors and other stakeholders lies entirely with the company's bodies. At the same time, depending on a corporate structure of the company, the responsibility for observing the rights and interests of stakeholders is distributed differently.

The clarity of the corporate structure allows investors to understand who has the right to make corporate decisions in the company, to represent it and interact with them. Such a clear understanding creates appropriate conditions for investors to make an informed decision on investing their funds in the company's capital or providing it with debt financing.

According to best international practice and Kazakhstani legislation, a proper corporate structure is one of the key elements of an effective corporate governance system. The objectivity of formation of a corporate structure leads to the imperativeness of regulating acceptable models of a corporate structure, including the situation when a national law introduces the modern approach of mixed regulation. This largely determines the level and quality of legal guarantees, as well as a degree of protection of rights of members of commercial corporations, the companies' creditors, investors and other stakeholders.

Resistance to regulate the legal status of companies by mandatory provisions of national legislation will cause a return to the practice of self-regulation, which in developed jurisdictions has long been recognized not only as ineffective, but also harmful. The imperative nature of regulating the corporate structure does not allow any contractual regulation of these matters by members (shareholders) of a company. The corporate structure prescribed in the law cannot be changed by a contract between the members (shareholders).

Although the corporate law presupposes and ensures coordination of the will of participants in corporate relations, traditionally contractual arrangements within the framework of these relations has a very specific expression and, therefore, a very limited application.

Corporate law offers other mechanisms and tools for coordinating wills, i.e. the one within the framework of the constituent assembly and the general meeting of members of corporations, as well as within the framework of decision-making by collegiate bodies of the company. It also implies accountability, appropriate execution of corporate decisions, compliance with the rules established by the company's bodies, i.e. something that does not exist in traditional contractual relationships. The very dynamics of corporate relations and contractual relations fundamentally differ from each other, and does not allow their interchangeability.

In this regard, modernization of the corporate legislation of Kazakhstan should start not with fragmentary changes, but peculiarities of our legal system (as the law of the Civil Code) shall be taken into account. Particularly, it should be legislatively recognized that, among other types of legal relations, civil legislation specifically regulates corporate relations. In addition, the list of grounds for the emergence, change and termination of civil rights and obligations shall be correspondingly expanded in the Civil Code. Besides, the existing classifications of legal entities and their organizational and legal forms shall be changed, as well as a number of other changes and additions at the level of the existing Civil Code shall be introduced.

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