

## **Protection of Shareholders' Rights When Purchasing a Large Package of Shares of a Joint Stock Company**

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**Abstract:** This article is devoted to clarifying the theoretical-scientific basis of the concept of large package shares of joint-stock companies and the comparative legal analysis of national and foreign legislation. In this work, the concept of large block shares, the issues of protecting the interests of shareholders in the purchase of large block shares are discussed. Also, the importance of large block shares in society, measures to protect the rights of minority shareholders in the procurement process, the reasons for adopting a special procedure for purchasing this type of shares, and the relationship between large block shares and corporate control are studied.

**Keywords:** joint stock company, stock, large block stock, majority, minority shareholder, corporate law, corporate dispute.

Today, corporate disputes arise in joint-stock companies on various grounds. Among these, buying large blocks of shares and protecting the interests of shareholders in the process is one of the least analyzed institutions. In accordance with the current provisions of the joint stock law, a special procedure for the purchase of a large share package is used in open joint stock companies whose shares are freely traded on the stock market<sup>1</sup>. This procedure is important because the legal entity is formed from the shares of many individuals and large block shares lead to the acquisition of corporate control in society. For example, a change in corporate control may affect the interests of many members of a joint-stock company, including minority shareholders.

According to the Law of the Republic of Uzbekistan "On the Securities Market", a share is the right to receive part of the profit of the joint-stock company in the form of dividends, to participate in the management of the joint-stock company, and to receive a part of the property remaining after its liquidation. Issuable security with the owner's name written on it, with an unspecified validity period, confirming the right to According to this law, shares are issued in the Republic of Uzbekistan without documents<sup>2</sup>. According to its legal nature, undocumented shares are a set of property and non-property rights owned by the shareholder and recorded in the register of shareholders<sup>3</sup>.

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<sup>1</sup> Khakberdiev AA ARBITRATION COURT: SOME ISSUES OF LAW PROTECTION //World Bulletin of Management and Law. - 2021. - Т. 4. - S. 9-12.

<sup>2</sup> Ўзбекистон Республикаси "Қимматли қоғозлар бозори тўғрисида"ги Қонуни. Тошкент ш., 03.06.2015. ЎРҚ – 387-сон.

<sup>3</sup> Корпоративное право: учебник/Е.Г.Афанасьева, В.Ю.Бакшинская, Е.П.Губин и др.; отв. ред. И.С.Шиткина. 2-е изд.; перераб. и доп. М: Кнопус, 2015.

A share is a security confirming the corporate rights of its owner to a joint-stock company, the most important of which is the right to participate in the management of the company and receive income from the invested capital<sup>4</sup>.

It follows from the content of legal documents that the action:

- Securities;
- A set of shares;
- A document confirming the shareholder's corporate rights to the company;
- Share in the charter capital<sup>5</sup>.

Shares can be issued only by joint-stock companies. Business companies, limited liability and additional liability companies, cooperatives have no right to issue shares. As a result of issuing and placing shares, the company's charter fund is formed<sup>6</sup>. Thus, as a security, a share confirms not only the shareholder's property rights, but also organizational and management rights. That is, the right to participate in the management of the joint-stock company, the right to receive information about the activities of the joint-stock company. However, the share does not give its owner any ownership rights to the property of the joint-stock company, or to a part of it, because all the property is the property of the joint-stock company, and the share is considered a property right<sup>7</sup>.

The peculiarity of shares as a security is that the range of rights of the shareholder is proportional to the number of shares owned by him, and this amount causes the change of rights of the shareholder. In particular, large-scale shares lead to the emergence of corporate control in society<sup>8</sup>.

According to the amount of rights arising as a result of shares, shares are divided into ordinary and preferred shares. Shareholder relations in the Republic of Uzbekistan are regulated on the basis of the normative legal document of the Republic of Uzbekistan *"On the protection of the interests of the joint-stock company and shareholders"* adopted in a new version on 06.05.2014 with the National Law No. 370<sup>9</sup>. According to this law, the person who became the owner of 50 % or more of the shares of the company, if he did not own the shares of this company before or owned less than 50% of the shares, he shall transfer the shares to the owners of the remaining shares at their market value. must announce its sales offer within 30 days. If the shareholder's written consent to sell his shares is received within 30 days from the date of announcement, the owner of 50 percent or more of the company's shares must purchase these shares. So, from this norm, we can come to the conclusion that, according to the current legislation of the Republic of Uzbekistan, large-package shares mean the part of shares that is more than 50%, regardless of whether they are ordinary or preferred shares (Article 40, Clause 4)<sup>10</sup>. In the legislation of other

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<sup>4</sup> KHAКBERDIEV A. HISTORY AND LEGAL CHARACTERISTICS OF THE ARBITRAL TRIBUNAL //International Journal of Early Childhood. - 2022. - Т. 14. - no . 02. – S. 2080-2090.

<sup>5</sup> Корпоративное право: учебник/Е.Г.Афанасьева, В.Ю.Бакшинская, Е.П.Губин и др.; отв. ред. И.С.Шиткина. 2-е изд.; перераб. и доп. М: Кнопус, 2015

<sup>6</sup> Štefánik L., Khakberdiev A., Davronov D. CLASSIFICATION AND TYPES OF ARBITRATION COURTS // Norwegian Journal of Development of the International Science. - 2022. - no . 79-2. - S. 19-25.

<sup>7</sup> А.А.Хакбердиев Низоларни муқобил тартибда ҳал қилишда ҳакамлик ва арбитраж судининг ўрни ва уларнинг турлари // Журнал правовых исследований. - 2022. - 7-йил. - 4.

<sup>8</sup> Степанов Д. Корпоративные споры и реформа процессуального законодательства // Вестник ВАС РФ. 2004.

<sup>9</sup> Ўзбекистон Республикасининг «Акциядорлик жамиятлари ва акциядорларнинг ҳуқуқларини ҳимоя қилиш тўғрисида»ги Ўзбекистон Республикаси қонунига ўзгартиш ва қўшимчалар киритиш ҳақида»ги Қонуни. Тошкент ш., 2014 йил 6 май, ЎРҚ – 370.

<sup>10</sup> Ўзбекистон Республикасининг «Акциядорлик жамиятлари ва акциядорларнинг ҳуқуқларини ҳимоя қилиш тўғрисида»ги Ўзбекистон Республикаси қонунига ўзгартиш ва қўшимчалар киритиш ҳақида»ги Қонуни. Тошкент ш., 2014 йил 6 май, ЎРҚ – 370.

countries, in particular in Russia, this amount is 30 percent<sup>11</sup>. In developed countries, the specific amount of a large package share is not determined, the amount of a "large package share" varies depending on the concentration of such shares and the complexity of the society's structure<sup>12</sup>.

In the shareholding law, the concept of large block shares and the existence of a separate mechanism for the purchase of large block shares are of great importance. Consequently, the concept of large block shares is closely related to the concept of corporate control. Corporate control is interpreted differently in different schools of law. For example, in continental law, control is considered as an inspection, while in common law countries, corporate control is considered as control over the corporation. According to the common law doctrine, corporate control is considered as the result of the distribution of power, positions and opportunities between the subjects of the corporate relationship<sup>13</sup>. Corporate control not only means the concentration of a large package of shares in the hands of one or a group of shareholders, but also the decisive influence of this shareholder(s) on the long-term goals and programs, strategies and policies of the society. According to **D. Stepanov**, corporate control is evident in the following two ways:

- Formation of bodies of a legal entity: formation and management of management, board of directors, council;
- Ability to influence the disposal of property belonging to society<sup>14</sup>.

From the above, we can conclude that the importance of large block shares is that such shares are collected under the ownership of one person, which can affect the interests of not only minority shareholders, but also members of the company's management bodies<sup>15</sup>. Therefore, in order to prevent corporate control, the term "**large block shares**" and the mechanism of "**sale of large block shares**" were introduced<sup>16</sup>.

It has been repeatedly noted in the literature of corporate law that there are two main models of legal regimes for the purchase of large stakes in world practice<sup>17</sup>: American and European (British)<sup>18</sup>. The Thirteenth Directive of the European Union of April 21, 2004 (*Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004 on takeover bids*) is considered the main regulatory document in the European (or British) model of the purchase of large blocks of shares<sup>19</sup>.

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<sup>11</sup> Пояснительная записка к проекту Федерального закона от 18.04.2005 № 162770-7 «О внесении изменений в Федеральный закон «Об акционерных обществах» и некоторые другие законодательные акты Российской Федерации». Статья 84.1.

<sup>12</sup> Abdumurad K. Ensuring Confidentiality in the Detection and Investigation of the Crimes of Money Laundering // Rechtsidee . - 2019. - Т. 5. – no. 2. - S. 10.21070/ jhr . 2019.5. 65-10.21070/ letter . 2019.5. 65.

<sup>13</sup> Khakberdiev A. THE PROCESS OF TERMINATION OF AN EMPLOYMENT CONTRACT WITH AN EMPLOYEE OF A FOREIGN EMBASSY //Science and innovation. - 2022. - Т. 1. – no. C7. - S. \_ 303-306.

<sup>14</sup> Степанов Д. «Поглощение, осуществляемое путем приобретения крупного пакета акций, и вытеснение миноритарных акционеров». Хозяйство и право. 2006, №6, С. 3-18.

<sup>15</sup> Hakberdiev AA CHALLENGES OF ARBITRATION IN REFORMING CIVIL AND ECONOMIC PROCEDURAL PROCESSES //Archive of Conferences. - 2021. - S. 159-162.

<sup>16</sup> Корпоративное право. Учебник для студентов вузов, обучающихся по направлению «Юриспруденция». / отв. ред. И.С. Шиткина. – М.: Волтерс Клувер, 2007 – 648 с.

<sup>17</sup> Khakberdiev AA PROSPECTS OF IMPROVING ARBITRATION COURTS AS ONE OF THE METHODS OF ALTERNATIVE DISPUTE RESOLUTION IN UZBEKISTAN //Web of Scientist: International Scientific Research Journal. - 2023. - Т. 4. – no. 1. - S. 77-88.

<sup>18</sup> Качалова А. В. Интересы мажоритарных и миноритарных акционеров при приобретении более 30% акций открытого акционерного общества // Законодательство. 2010. № 2. С. 28

<sup>19</sup> <http://eur-lex.europa.eu> (Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids).

The main purpose of the directive is to:

1. Obligation to send a share purchase offer to the minority shareholders who have acquired a share of shares giving the right to manage in the company;
2. Giving minority shareholders the opportunity to sell their shares at a reasonable price;
3. There should be no pressure from a major shareholder during the decision-making process of shareholders to sell their shares;
4. Protection of the interests of minority shareholders who did not accept the public offer.

The EU Directive 2004/25 is based on the following main provisions:

- mandatory offer rule;
- non-interference rule by the company's board of directors;
- disclosure rules;
- minority shareholder exclusion rule;
- a put clause that gives minority shareholders the right to demand that the controlling shareholder buy back their shares.

The same basic rules regulate the purchase of large share packages in the Republic of Uzbekistan. Therefore, it can be reasonably argued that the legislation of Uzbekistan follows the European approach<sup>20</sup>. Therefore, according to our legislation, a shareholder who has purchased a large package of shares must offer other shareholders to sell their shares at market value, and if the shareholders accept this offer, they must buy their shares.

It is known that the purchase of large blocks of shares leads to a change of management in the company. For example, according to our legislation, large shareholders have a number of rights, and as a result of these powers, they have a decisive vote in the enterprise. In particular, in accordance with **Article 68**, the general meeting of shareholders is authorized (has a quorum) if the shareholders (their representatives) who have a total of more than fifty percent of the votes of their voting shares are registered. It can be concluded that the owner of 50+ shares is decisive for the general meeting of shareholders to be considered authorized<sup>21</sup>. Therefore, the introduction of the norm on sending an offer into the legislation was carried out primarily in order to protect the interests of minority shareholders and to protect them from the pressure of large shareholders.

*Of the Central Depository of Securities*, the state owns 82% of the total number of shares in the Republic of Uzbekistan, and 8.3% is disposed of by other shareholders. It can be seen that joint stock companies in our country are not as highly concentrated as in developed countries. The form of joint-stock company is still in the process of development. However, according to the reforms of recent years, large-scale privatization is taking place, and it is today's task to further improve the provisions of our legislation on the purchase of large packages of shares and further optimize the interests of shareholders and society.

**the fourth paragraph of Article 40** of the Law *"On Protection of Joint-Stock Companies and Shareholders' Interests"*, a person who becomes the owner of 50% or more of the company's shares shall send an offer to sell shares to other shareholders. We have seen above that this requirement applies to owners of **30 percent** or more shares *in Russian legislation*. In our opinion, the 50 percent limit established by our legislation cannot adequately protect the interests of minority shareholders. For example, 30 percent or more of the shares may allow to influence

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<sup>20</sup> Yu P., Khakberdiev A. ABOUT PSYCHOLOGICAL FEATURES CONDUCTING AN INTERROGATION //Norwegian Journal of Development of the International Science. - 2021. - no . 60-3. - S. 6-9.

<sup>21</sup> Khakberdiev AA WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN //INTELLECTUAL EDUCATION TECHNOLOGICAL SOLUTIONS AND INNOVATIVE DIGITAL TOOLS. - 2023. - T. 2. – no. 14. - S. 75-81.

the establishment of control in the company. For this reason, we should reduce the size of the large package shares in the above norm.

In short, this institute is considered a new field in the legislation of our country. As suggested above, by introducing a number of changes and new concepts to our legislation, it is possible to minimize the conflict of interests of shareholders and effectively protect the rights of minority shareholders and society in the process of purchasing large blocks of shares.

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