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**MANAGEMENT ISSUES IN COMPANIES:
Comparative and Legal Analysis of Limited
Companies (UK and USA), Investment Companies
(Russia) and Business Companies (Uzbekistan)**

Аннотация: ушбу мақолада олимларнинг илмий нуқтаи-назарлари ҳамда Буюк Британия ва АҚШ, Россия ҳамда Ўзбекистон Республикаси ҳуқуқий тартиботларининг қиёсий-ҳуқуқий таҳлили асосида миллий ва хорижий қонунчиликда акс этган ширкатлардаги бошқарув ҳамда ишларни юритиш масалалари чуқур таҳлил қилинади. Шунингдек, ҳозирги миллий қонунчиликдаги юридик шахслар фаолияти билан боғлиқ бошқарув ҳамда ишларни юритишга доир долзарб муаммолар келтирилади. Шу нуқтайи назардан, хорижий тажриба асосида ушбу муаммоларни бартараф этиш ва ширкатларнинг бошқарув ҳамда ишларни юритишга доир масалаларини ислоҳ қилиш бўйича таклифлар берилади.

Калит сўзлар: чекланган ширкат, инвестицион ширкат, ҳўжалик ширкати, бошқарувчи шерик, чекланган шерик, инвестиция фаолияти, шерикчилик шартномаси, юридик шахслар, профессионал бошқарувчилар.

Аннотация: в данной статье тщательно анализируются вопросы управления в партнерствах, существующих в национальном и зарубежном законодательствах на основании научных работ ученых и сравнительно-правового анализа правовых систем Великобритании и США, России и Республики Узбекистан. Более того, в статье приведены актуальные проблемы национального законодательства, касающиеся вопросов управления и ведения дел в юридических лицах, такие как отсутствие механизма распределения рисков и профессиональных инвесторов. Также, в данной статье изложены предложения по устранению перечисленных проблем и совершенствованию вопросов управления в партнерствах.

Ключевые слова: ограниченное партнерство, инвестиционное товарищество, хозяйственное товарищество, управляющий партнер, ограниченный партнер, инвестиционная деятельность, соглашение о партнерстве, юридические лица, профессиональные управляющие.

Abstract: this article provide a thorough investigation of management issues in partnerships, existing in national and foreign legislations based on the scientific views of scientists and a comparative-legal analysis of legal systems of the United Kingdom and the USA, Russia and the Republic of Uzbekistan. Furthermore, this article enumerates the actual problems existing in national legislation related to the management and conduct of business in legal entities, such as the absence of risk sharing mechanism and professional managers, which, subsequently, adversely influences on the decision making of investors. Additionally, this article provides suggestions for the elimination of the enumerated problems and the improvement of management issues in partnerships.

Keywords: a limited partnership, an investment partnership, a business partnership, a general partner, a lim-

ited partner, investment activity, a partnership agreement, legal entities, professional managers.

Nowadays the Republic of Uzbekistan has determined the course of enhancing the level of economic and social development of the country by means of encouraging the attraction of investment capital and enhancing the role of innovations. However, as it is mentioned in the Decree of the President of the Republic of Uzbekistan No.5583 "On additional measures on improvement of mechanisms of financing projects in the field of entrepreneurship and innovation" dated on November 24, 2018 (<http://lex.uz/docs/4076954>), in contrast to the developed foreign countries, in the Republic of Uzbekistan, business activity is conducted mainly on the terms of concentration of risks, that is to say that the same persons are engaged in the accumulation of funds and their management. The absence of risk sharing mechanisms and professional managers of investment assets adversely affects the decision-making of foreign investors on the implementation of investment projects in the Republic of Uzbekistan [1].

Taking into account the aforementioned, it is of a paramount importance to investigate the management issues and conduct of business in limited partnerships, which are widely developed in both Common law countries and Continental law countries, and investment partnerships, which are becoming more and more popular among business entities in Russian Federation as well as make a comparative analysis with business partnerships in the Republic of Uzbekistan, which include general (full) partnerships and special partnerships.

Primarily, it would be appropriate to understand clearly the essence of the abovementioned types of partnerships with reference to foreign and national legislation.

According to Section 4 of Limited partnership Act of 1907, a limited partnership must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners [2 s.4].

According to the Article 2 of Federal Law of Russian Federation "On investment partnership" of 2011, an investment partnership is a joint investment activity, which is carried out by companions jointly based on the agreement of investment partnership on investment of common property of companions in the objects of investment allowed by the Federal law and this agreement for the implementation of investment, including innovative, projects [3 article 2].

According to Article 60 of Civil Code (<https://lex.uz/docs/111181>), a general (full) partnership is established as a legal entity by concluding an agreement between partners, who are directly engaged in entrepreneurial activity on behalf of the partnership. Article 61 of Civil Code states that a special partnership is also established as a legal entity by concluding an agreement between partners, some of whom (full partners) are directly engaged in entrepreneurial activity of the partnership, while the other partners (depositors or limited partners) do not participate in daily activity of the partnership [4 articles 60, 61].

In spite of the fact that the abovementioned types of partnerships, existing in national legislation, have several features constituting the essence of partnership that has been developed in foreign countries, unfortunately, they have not gained much popularity among population, particularly business entities and investors. In testimony whereof, it would be appropriate to present the facts stating that as of 01.12.2018, there are only 186 business

partnerships duly organized and acting in the Republic of Uzbekistan, while the number of German partnerships exceeds 260 thousand, and the number of partnerships in the United States exceeds 7.4 million. Generally, the main reasons of not establishing the business partnerships for the aims of entrepreneurship are their status as a legal entity and the formal procedures of their operation, double taxation system as it is common for corporate structures, the subsidiary liability of the partners and others.

Turning to the management issues and conduct of business in partnerships, it is of great importance to notice that foreign experience to be introduced in this article provides the risk sharing mechanisms and professional managers of investment assets in the system of management and conduct of business in partnerships.

Regarding the limited partnerships in the United Kingdom and the USA, Don Mayer, Daniel Warner, George Siedel, and Jethro K. Lieberman their work state that in a limited partnership both classes of partners do not generally share the control. The control of the limited partnership is in the hands of the general partners, which are in most cases are legal entities [5 p.178-181].

According to Section 406 of Uniform Limited Partnership Act, general partners govern all management issues and conduct of general affairs of the partnership. Except as expressly provided in this act, the general partner may exclusively decide any matter relating to the activities of the limited partnership or, if there is more than one general partner, by a majority of the general partners. This Section defines that the consent of each partner is necessary to: amend the partnership agreement; amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership; and sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities. According to Section 302 of Uniform Limited Partnership Act, limited partners have barely no management rights and fiduciary duties [6 s. 406, 302].

According to Section 6 of Limited Partnership Act of 1907, a limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm, provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon [7 s.6].

As for the conduct of business, Section 408 of Uniform Limited Partnership Act determines that the only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care [8 s.408]. According to Robert D. Flannigan, the limited partnership legislation may grant specific powers to limited partners. For instance, it may be provided that a limited partner may carry out the following conduct of general affairs: to inspect the partnership books, demand full information on all matters affecting the partnership, acquire a formal account of partnership affairs, dissolve the partnership by court order, receive a share of the profits or other income and obtain the return of his contribution [9 p.303].

According to Sarah Talpis - Guillet, a limited partner's participation in the limited partnership is usually confined to one thing: making a financial contribution toward the partnership's development [10 p.118].

Having analyzed the legislative acts and authors' points of view, it is found out that the legislation on limited partnerships does not determine any provisions regarding the separate governance bodies of a limited partnership like a general meeting of partners or an executive body. A general partner acts as a management body of the limited partnership and takes full control over management issues of the partnership and general conduct of common affairs. Limited partners play a minimum role in the management and conducting common affairs on behalf of the limited partnership. However, it may be deduced that there are some cases abovementioned when both general and limited partners have voting rights and participate in partnership's life. It can be stated that a general partner acts as an executive body (agent, director) and manages daily activity of the partnership, also a general partner can delegate his authority to manage daily issues to another person, who will be an agent (director, executive body) of a limited partnership. In practice, general partners are mainly considered as highly qualified investors with professional management skills; therefore, this fact may serve as the basis for the establishment of risk sharing mechanisms in the limited partnerships.

Concerning the investment partnerships in Russian Federation, according to Federal law "On investment partnership" of 2011, general partners take full control over management of the investment partnership. Article 3 of this Federal law states that general partner's right to accomplish the exact fiduciary duty or the scope of the general partner's authority in the management of the investment partnership are indicated in this Federal law or investment partnership agreement. Article 5 of this Law states that the general partner has the right to receive remuneration for the conduct of the general affairs of the partners in the amount and in the manner established by the agreement of the investment partnership [11 articles 3, 5.].

Here it can be deduced that in an investment partnership similarly as in a limited partnership a general partner takes full control over daily conduct of affairs as well as deals with management issues of the partnership. Moreover, similarly, in an investment partnership a general partner also may delegate his authorities to other agent, who will take control over day-to-day activities of the partnership. However, in comparison with a limited partnership, there is a separate management body, called an Investment committee, which is formed by the partners and entitled to decide on issues, provided in the legislation or investment partnership agreement.

As for the business partnerships in the Republic of Uzbekistan, according to Article 18 of the Law of the Republic of Uzbekistan "On business partnerships" of 2001 (<https://lex.uz/docs/2457>), the supreme governing body of the general (full) or special partnership, taking the full control over its management issues, is the general meeting of participants. Management of the partnership is carried out by the general agreement of all its participants, i.e. the decision regarding management issues is taken by a majority vote of its participants. Each participant of the partnership, regardless of whether he is authorized to conduct the affairs of the partnership, has the right to be acquainted with all the documentation on the conduct of affairs. According to Article 19 of this Law, each member of the partnership is entitled to act on behalf of the partnership, unless the founding agreement determined that all the participants conduct affairs jointly or the conduct of affairs is entrusted to the individual participants (with the excep-

tion of a special partnership: here special partners cannot take part in conduct of affairs) [12 articles 18, 19].

Having analysed the national legislation, it can be deduced that in a general (full) partnership and a special partnership there two main governance bodies: executive body and a general meeting of participants. The scope of each body's authorities is provided in a memorandum of association or the Charter of the partnership. In a full partnership, all participants take part in general conduct of affairs of the partnership, while in a special partnership as in a limited or in investment partnership, only full (general) partners are authorized to act on behalf of the partnership. It should be noticed that conducting jointly the common affairs by all participants of the partnership is not always advisable, because it is not appropriate when the same persons both establish the business entity and take control over its activity. Therefore, maybe general (full) partnerships and ordinary partnerships are becoming less and less attractive nowadays. Special partnerships, it should be said that, are also not attractive because of the provisions which give an opportunity to a general partner to leave partnership whenever he intends to do this. This in turn will sufficiently decrease the confidence of limited partners and third parties to the stable activity of the partnership.

Thus, we have made thorough comparative analysis of management and conduct of affairs of a limited partnership in the United Kingdom and the USA, investment partnership in the Russian Federation, business partnerships in the Republic of Uzbekistan. Now, it is preferable to develop suggestions regarding the order of management and conduct of affairs, which could be introduced in the draft law of the Republic of Uzbekistan "On partnerships", the adoption of which is provided in the Decree of the President of the Republic of Uzbekistan No.5583 "On additional measures on improvement of mechanisms of financing projects in the field of entrepreneurship and innovation" dated on November 24, 2018.

Implementing the positive foreign experience discussed in previous paragraphs, it can be suggested that general partners should take full control over management and daily conduct of affairs. The relationship among general and limited partners regarding management issues and general conduct of common affairs should be determined in a partnership agreement. In cases determined in a partnership agreement, both general and limited partners may participate in management and act on behalf of the partnership. A general partner will act on behalf of the partnership without power of attorney. A general partner may delegate his authorities to one of the limited partners or another person, who will conduct general affairs of a commercial partnership on the basis of power of attorney.

In conclusion, it should be stated that the system of management and conduct of business, suggested in a previous paragraph, will contribute to the establishment of risk sharing mechanisms and availability of professional managers of investment assets in the partnerships, which consequently will favorably effects the decision-making of foreign investors on the implementation of investment projects in the Republic of Uzbekistan.

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