Rights and Duties of shareholders in Corporate Law

[1]Rupendra Singh Udawat, [2] Prof. (Dr.) Sanjaya Choudhary

[1]Research Scholar , Law Deptt., Bhagwant University, Ajmer, Rajasthan

[2]Professor, Law Deptt., Bhagwant University, Ajmer, Rajasthan

Abstract

Stakeholders have many legal rights, but not all of them are of equal importance. In this article, I will argue that two rights - the right to elect directors and the right to sell shares are more important than any other, that these rights should be considered "fundamental" shareholder rights, " And as such, they deserve a great deal Respect and protection by law. The history of corporate law has been one of increasing flexibility for directors and decreasing rights for shareholders. This is a result of competition between states for incorporation and is presented as an alarming "race for the bottom" and an efficient "race" at the top. This paper argues that stealth governance is inappropriate for corporations and instead advocates a uniform structural approach to corporate law that would limit private order to charter and bye-laws. It criticizes the use of shareholder agreements to avoid statutory limitations on the Charter and Bylaws provisions, arguing that existing limitations are undesirable, should they be the subject of legislative reform.

Keywords: *Legal rights, Corporate law, Efficient, Competition etc.*

Introduction

In contemporary times the traditional model of public service delivery and public policy does not conform to the expectations of citizens. Unlike traditional models, governance structures have developed various tools and politics to deepen democracy through transfer, decentralization and decontrol to meet the growing needs of each section of society. Networking with people has become important in various organizations and governance structures. Hence the importance of stakeholder participation in governance is considered. Stakeholders have many legal rights, but not all of them are of equal importance. In this article, I will argue that two rights - the right to elect directors and the right to sell shares [1] are more important than any other, that these rights should be considered "fundamental" shareholder rights, " And as such, they deserve a great deal Respect and protection by law. The history of corporate law has been one of increasing flexibility for directors and decreasing rights for shareholders. [2] This is a result of competition between states for incorporation [3] and is presented as an alarming "race for the bottom" [4] and an efficient "race" at the top. Efforts are being made in this direction globally. Communication, collaboration, consultation, participation are gaining prominence. In this unit, we will discuss the need and importance of stakeholders participation in governance, and explain through examples how the active participation of stakeholders impedes the governance process. "A stakeholder in an organization is any group or individual who is or may be influenced by the achievement of the organization's objectives" (Feeman - Freeman, 1984). A stakeholder is a person who either has a vested interest in or has a vested interest in a project, or organization, or a government program.

---

1. In this article, when I refer to the shareholder right to "sell shares," I mean only the right to sell any outstanding shares that the shareholder already owns. The right to issue new shares belongs to the corporation itself, provided that such shares have been authorized by the shareholders in the charter. See DEL. CODE ANN. tit. 8, § 151(a) (2006); MODEL BUS. CORP. ACT § 6.01(a) (2004).
2. See Victor Brudney, Corporate Governance, Agency Costs, and the Rhetoric of Contract, 85 COLUM. L. REV. 1403, 1410 & n.19, 1417-20 (1985); William J. Carney, Controlling Management Opportunism in the Market for Corporate Control: An Agency Cost Model, 1988 WIS. L. REV. 385, 415; Harold Marsh, Jr., Are Directors Trustees?, 22 BUS. LAW. 35, 36-46, 57 (1966); Ralph K. Winter, Jr., State Law, Shareholder Protection, and the Theory of the Corporation, 6 J. LEGAL STUD. 251, 255 (1977).
3. See ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 4-12 (1993).

4. See William L. Cary, Federalism and Corporate Law: Reflections upon Delaware, 83 YALE L.J. 663, 666 (1974).

They are people who are actively involved with the work of projects or programs, or as a result of its implementation, either to gain or to lose something. For example, when the government or local body prepares a project to connect the highway, motorists, local residents and highway users are stakeholders who are positively or negatively affected by the implementation of the project. Amidst all this, during the implementation of this project, residents living near the highway can be negatively affected due to pollution, noise, dust pollution and increased traffic. Motorcar users and highway users benefit after the implementation of the project.

Objective

After studying this unit you will be able to understand the following:

• Meaning of stakeholders;
• Interpretation of stakeholder theory;
• Importance of stakeholders in governance;
• Forms of involvement of stakeholders in the governance process;
• Examples of successful participation of stakeholders in governance.

Stakeholder theory

Stakeholder Theory is a conceptual framework of business ethics and organizational management that addresses practical and ethical values in managing an organization. It was originally expanded in his book 'Stakeholders of the Organizational Mind' published in 1983 by Ian Mitroff. The theory states that it is not just the people holding stock in the business, which are derived due to decisions made in the organization. Every business decision potentially affects the well-being of many more than just stakeholders [5]. Therefore every business has an obligation / duty to all those involved directly or indirectly under which all the shareholders, employees, suppliers, customers, local communities etc. fall. Employees and share holders are stakeholders in a collective organization. They provide both resources and strive for the successful running of the organization. In this way, it is important to clarify the needs of stakeholders in any organization, this argument was referred to as supporting stakeholder theory. This theory also talks about the need to pay attention to other stakeholders who are affected by the value of the firm (Firm) [6]. It also talks about focusing on the governance of the stakeholders and securing their interest to get the maximum benefit from their contribution to the organization.

There are two other perspectives on stakeholder theory [7]. This is a descriptive and authentic approach. Descriptive stakeholders approach identifies and classifies various components in an organization. It gives any value to their claims or power. But the policy approach gives intrinsic value to stakeholder claims, justifying those affected by moral rights or collective decisions. From an ethical standpoint, stakeholders need to engage in collective administration to respect their moral rights. To ensure justice, stakeholders' dialogue is not political, but open and deliberative. The stakeholder integrates both ideas / opinions, resource-based ideas and market-based ideas / views and unites / unites socio-political.

Stakeholders in governance

The new approach to governance is changing in the 21st century with the issues of neo-liberal economic policy and globalization and among other challenges including environmental collapse, migration, sustainable development, grassroots development and all other governance-related help. The socio-economic challenges and governance issues of the 21st century need to be addressed with the participation of all stakeholders. According to Deitz and Kun- (Deetz and Kuhn, 2007), the traditional governance model gives organizational leadership the privilege to make decisions. In the traditional model, motivated / pressure groups act primarily as representatives and seek political gains for certain sections of the population. He further stated that unlike the traditional model of governance, a stakeholder model of governance provides necessary benefits to large sections of the population by ensuring their active participation in the process of governance. It has the potential to provide socio-economic benefits to a large section of the population. It also has the potential to increase the visibility of participants in the organization. If an organization makes some decisions that affect certain sections of the population, then stakeholder theory proposes to bring all affected populations into the decision-making process, so as to ensure justice for all. We will now explain what the organization is before discussing further the governance of stakeholders.

---

5. Google Inc., Registration Statement (Amend. No. 9 to Form S-1), at 1 (Aug. 18, 2004).
6. 3 2020 Del. Ch. LEXIS 264, *27.
7. Venture-Capital Contracts, 7 ENTREPREN. BUS. L.J. 45 (2012) (exploring how venture capital financing contracts address entrepreneurial opportunism)

Forms of stakeholder participation in governance
Participation of stakeholders takes various forms. Contains
• News: By sharing information to all those involved / affected.
• Consultation: gathering information and experience from stakeholders for the end result.
• Participation: to involve them in the policy / project.
• Representation: Involving options to help them determine.
Duties of Shareholders
The shareholders also have responsibilities and duties that they must perform. Apart from the many rights that they hold, there are many duties. They are: Shareholders should attend general body meetings so that they can see and also advise on matters that they feel are not going well. Shareholders should consult on matters of finance and other matters. The shareholders should be in contact with other members of the company so that they can see the progress of the company[9].
Rights of shareholders
When there is a sale of any material of a company, the shareholders should get the amount they are entitled to receive; When a company is converted into another company it needs prior approval of the shareholders. Also, all appointments should be done according to all the procedures and also the auditors and directors should be right to approach the court in case of insolvency. In most jurisdictions, directors have the duty to gain the trust of shareholders, care about the safety of the interests of the company and all its members, and make themselves efficient for this.
The skills and duties of a director are often to gain sufficient knowledge and understanding of the company's business so that they can perform their role well[10].
Directors are strongly expected to exercise their powers only for the proper purpose. For example, if new shares are issued by the director to avoid the possibility of acquisition rather than raising capital, this would be an inappropriate objective.
Directors have a duty to be efficient, care about the interests of the company and be diligent. This right entitles the company to compensation from its director if it is proved that the company has suffered losses due to lack of adequate efficiency or care in the director[11].
It is also the duty of directors not to conflict with their interests or duties to act in the best interests of the company. This rule is so strictly enforced that even if the conflict of interests or duties is wholly speculative, the directors may be compelled to return the personal benefits derived from it.
Result
Compared to companies and partnerships
(A) A company can be formed only by certain prescribed statutes - usually by registration under the Companies Act 1985. A partnership is formed by express or implied agreement of the parties, and no formalities are required, although it is a common written agreement.
(b) A company spends more and more on formation throughout its life and during dissolution, although these are not necessarily excessive.
(c) A company is an artificial legal person separate from its members. Although a partnership in Scotland has a different legal personality based on s.4 (2) of the Partnership Act 1890, it is much more limited than the personality expressed on companies.
(d) A company can have as little as one member and there is no upper limit of membership. A partnership must have at least two members and has an upper limit of 20 (with some exceptions).
(E) Shares in a company are normally transferable (must be so in a public company). A partner may not transfer his or her share of the partnership without the consent of all other partners.
(F) The members of a company are not entitled to participate in the management of the company unless they are also its directors. Each partner is entitled to participate in the management of the partnership business unless the agreement provides otherwise.
(G) A member of a company who is not a director is not considered an agent of the company, and cannot bind the company to its functions. A partner in the firm is an agent of the firm, who will be bound by his acts.
(H) The liability of a member of a company to the debts and obligations of the company may be limited. In a simple partnership, the partner can be made liable for the debts and obligations of the firm without limitation.

8. https://blog.ipleaders.in/shareholders-rights-duties/
9. https://hi.wikipedia.org/wiki/कॉरपोरेट_कानून

10. https://www.businessmanagementideas.com/hi/company-management/corporate-governance-company-management/corporate-governance/21145

(i) The powers and duties of a company, and those which run it, are vested in the Association of Memorandums and Articles by the Companies Acts and its own constitution. Partners have more freedom to change the nature of their business without agreement and formality, and to make their own arrangements as a way of running the firm.
(J) A company must follow the formalities regarding the keeping of registers and auditing of accounts which do not apply to the partnership[11].
(k) The affairs of a company are subject to more publicity than a partnership - e.g. Companies must file accounts that are available for public inspection.
(l) A company can create a security on its assets called floating charge, which allows it to raise funds without hindering its ability to deal with its assets. A partnership cannot create a floating charge[13].
(M) If a company owes a debt to any of its shareholders, they can claim payment from their assets to their other creditors. A partner who has partnership money cannot claim payment in competition with other creditors.
(N) A partnership (unless entered into for a specified period of time) may be dissolved by any partner, and unless otherwise provided a compromise, the death of one partner on its own Or dissolved by bankruptcy. A company cannot usually be injured at the will of any one member, and will not result in the death, bankruptcy, or insanity of a member[14].
The main features of the company are as follows: -
Artificial juridical person: A company is an artificial person in the sense that it is created by law and does not have the qualities of a real person. It is invisible, intangible, immortal and exists only in the eyes of law. Therefore, it has to work through a board of directors made up of individuals.
Separate Legal Bodies: - A company is a distinct legal body other than its members or shareholders. This means that: - The company property belongs to him and not to the members or shareholders; A member cannot claim ownership either personally or jointly on the assets of the company, no one member can be held responsible for the wrongdoings of the company even if it has all the share capital; Members of the company can execute contracts with the company.
Continuing Succession: - The company continues uninterrupted and its continuation does not affect the death, insolvency of its members, its mental or physical disability. It is created by law and only the law can dissolve it.
Limited Liability of Members: - Liability of its members is limited to the amount unpaid on the shares subscribed by them. Thus, in case of liquidation of the company, the members cannot be asked to contribute further in case of fully paid up shares.
Witness seal: - The company has a common stamp which is the signature of that company and expresses the consensus of all the members. The stamp of the company is applied to him and all the documents executed on his behalf.
Transferability of shares: - Shares of a public company may be freely transferred without the permission of the company but in the manner prescribed in the Articles. Shareholders can transfer their shares to any other person and this does not affect the company's funds. However, a private company has to ban the transfer of its shares.
Separate assets: - All the property of the company is vested in it. The company can control, manage and hold it in its own name. Members do not own any individual or collective ownership rights to the company. The shareholder also does not have insurable rights in the property of the company. The creditors of the company can claim only on the property of the company and not on the property of the individual members.
Ability to file or have a lawsuit: - The company can enforce its rights by filing a lawsuit and it can be sued if it violates the statutory rights.

Conclusion

Inadequate monitoring and evaluation mechanisms to assess the effectiveness of stakeholder governance. In governance, beyond traditional authorities there are other actors who control the influence. It is very important to understand their dynamics and engage them through communication, consultation and participation. It seeks to establish a suitable institutional environment, which facilitates general consensus on issues of information dissemination, exchange and governance. We learned about the importance of stakeholders in governance. There are various tools and techniques to increase stakeholder participation in governance. These include decentralization, ideological democracy, community-based planning, governance at the grassroots level. There are various efforts and initiatives to ensure the participation of stakeholders in India.

11. For a mapping of these duties, see Birkmose, H. S. and Möslein, F.: Introduction: Mapping shareholders' duties, in: Birkmose, H. S. (ed.): Shareholders' Duties, Alphen aan den Rijn, 2017, pp. 1–25.
12. E.g. the 2010 Green Paper, Section 3.5 and the 2011 Green Paper, introduction and Sections 1.4 and 2.2.

13. Birkmose, H. S.: Forcing Shareholder Engagement: Theoretical Underpinning and Political Ambitions, European Business Law Review, 29(4) 2018, p. 633
14. See Recitals 1 and 3, Directive 2007/36/EC.

This has been explained by the Planning Campaign and Community Forest Management of the people of Kerala. Communication is very important in stakeholder governance. This paper has explored the role of covert governance - the use of shareholder agreements by startups as substitutes for corporate charter and bylaws in adopting firm-specific private orders. It has been argued that the widespread use of shareholder agreements is based on an illusion between contract law and corporate law paradigms and this leads to existing limitations on the scope and structure of corporate law values important to corporate participants in the realm of personal ordering sacrifices Exits are allowed. Shareholders thereby playing an important role in the functioning of a company. They have various rights which include the appointment of the managing director, auditor etc., to voting rights and having a say when the company goes insolvent. With every right, comes a corresponding responsibility which the shareholder must carry out diligently.

References

[1]. The 2010 Green Paper, section 3.5.
[2]. The 2012 Action Plan (COM(2012) 740 final), section 3.
[3]. See the 2012 Action Plan (COM(2012) 740 final), section 2.4.
[4]. Palko v. Connecticut, 302 U.S. 319, 325 (1937).
[5]. Ryngaert, M. (1988). The effect of poison pill securities on stockholders wealth. *Journal of Financial Economics, 20,* 377–417.
[6]. ICGN. (2009). Global corporate governance principles: Revised (2009). London: International Corporate Governance Network.
[7]. Report from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions application of directive 2004/25/EC on takeover bids - http://ec.europa.eu/internal_market/company/do cs/takeoverbids/COM2012_347_en.pdf.
[8]. Rules of the Special Working Group on corporate governance and shareholder rights - http://www.uaib.com.ua/about_uaib/vectors/secti onse/section_2002/section_4/spec_rab_group/16 986.html.
[9]. Schulz, M., Wasmeier, O. (2012). The Law of Business Organizations: A Concise Overview of German Corporate Law. Springer.
[10]. Securities and Stock Market State Commission - http://www.nssmc.gov.ua/.
[11]. Sørensen, K. E. (2010). Duty of Loyalty of Shareholders - A Possible Remedy for Conflicts in SMEs? (January 1).
[12]. Statistics about state registration companies and individual entrepreneurs. The State Registration Service in Ukraine.
[13]. Antonenko, L. (2009). The Myth of Transformation through EU Law: A Case-Study of the Company Law Reform in Ukraine.
[14]. Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. Council of the European Union. Retrieved 2014-07-04.
[15]. Hall, T., Jörgensen, F. (2012). Ownership and Performance in Europe.
[16]. Ivasiv, I. (2011). Corporate governance in financial institutions in the structure of global financial regulation - Sumy. - Vol. 31 – P. 277-287.
[17]. Kostyuk, A. (2005). Business innovations and structure of corporate ownership in Ukraine. Corporate Governance.