

Artículo de investigación

Legal regulation of public companies in the countries of the anglo-saxon legal system

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Regulamentação legal de empresas públicas nos países do sistema jurídico anglo-saxão

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Abstract

The article provides an overview of public corporation legal regulation in the Anglo-American law. The article defines the peculiarities of legal regulation of public companies in the USA and the UK. It also identifies requirements that public companies must meet. A comparative analysis was conducted concerning the organization and the activities of public and private companies. Similarities in the legal regulation of public companies in the United States and the United Kingdom are due to the fact that the American and British legal systems have the same historical roots.

Keywords: public company, private corporation, public joint stock company, stock exchange, share capital.

Resumen

El artículo proporciona una descripción general de la regulación legal de las corporaciones públicas en la ley angloamericana. El artículo define las peculiaridades de la regulación legal de las empresas públicas en los Estados Unidos y el Reino Unido. También identifica los requisitos que deben cumplir las empresas públicas. Se realizó un análisis comparativo sobre la organización y las actividades de las empresas públicas y privadas. Las similitudes en la regulación legal de las empresas públicas en los Estados Unidos y el Reino Unido se deben al hecho de que los sistemas legales estadounidense y británico tienen las mismas raíces históricas.

Palabras claves: empresa pública, empresa privada, sociedad anónima, bolsa de valores, capital social.

Resumo

O artigo fornece uma visão geral da regulamentação legal de empresas públicas na lei anglo-americana. O artigo define as peculiaridades da regulamentação legal de empresas públicas nos EUA e no Reino Unido. Ele também identifica os requisitos que as empresas públicas devem atender. Uma análise comparativa foi realizada sobre a organização e as atividades de empresas públicas e privadas. As semelhanças na regulamentação legal das empresas públicas nos Estados Unidos e no Reino Unido devem-se ao fato de que os sistemas jurídicos americano e britânico têm as mesmas raízes históricas.

Palavras-chave: empresa pública, empresa privada, sociedade anônima de capital aberto, bolsa de valores, capital social.

Introduction

Public corporations are among the legal entities that are the subject of public law, which in our

country constitute a large part of the business affiliated companies. These companies cover the

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government's economic and commercial activities, and their differences with other government executive agencies relate to their type of activity. As the activity of state-owned companies is related to the business and economic affairs of the state, which is in line with public interest, the issue of the activities of other executive agencies is the management of other public affairs other than commercial matters. The lack of self-interest of the government in its commercial practices and the consideration of the public interest in this part of government activities will prevent a businessman from recognizing the state, but this will not affect the commercial nature of this part of the government's actions, which is why The constitution that covers the general economic activity is based on the policies of privatization and the transfer of corporations, firms, and government business activities to individuals outside the government.

Analyzing the state of public company legal regulation, as well as their comparison with non-public (private) companies, one should turn to the American experience first of all. The very appearance of such a classification of companies can be attributed to Anglo-American law. And only then this structure was borrowed in the continental European legal system. To identify the similarities and differences of such a design, let us analyze the experience of the relevant legislation in the US and UK.

Methodology

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative legal methods.

Discussion and Results

A public company is a company that has issued securities such as stocks and bonds that can be bought and sold by the public on a stock exchange or an over-the-counter market.

As Assigning more than fifty percent of the capital and shares of the enterprise to the government, this feature, which is referred to as the "absolute majority" of capital and stock, is the most prominent and most stable sign of the statehood of a company. Because it is always possible that the company will be removed from the state by transferring a state-owned company

under the law, but the probability that it would be privately owned by assigning more than 50% of the company's shares to the government It is discontinued.

An invaluable point in this regard is how this section of the law is written, in which it refers to "government ownership of a certain amount of capital of state-owned enterprises." While according to the basic principles governing the legal entities, the independence of the character of these companies leads to the independence of their property from the property of investors. Therefore, the mention of the allocation of these companies' capital to the government does not only imply the independence of the legal personality of the state-owned corporations, but also the generalization of the rules and regulations governing the property of the state on the property of these companies as well. While the government's incentive to operate in the form of state-owned companies is generally due to the use of the facilities governing the independent activity of these companies. Therefore, considering that the legislator refers to the amount of their shareholding in other state-owned companies, not the capital of these companies, so that the provisions of this section of the law may be regarded as the neglect of its authors, and the ownership of the capital belongs to the shares and The contribution of these companies is known (Manne, 1967).

Like other legal entities, state-owned companies need legal personality to operate. But what differs in these companies is how they create the legal personality of these companies. As in the case of companies whose establishment on the basis of specific law, from the outset, they have been carried out in the form of a government, the law of observance of their establishment also has their legal personality. However, in companies that are created without the backing of a law and solely with the discretion and investment of the state sector of executive machinery, the creation of the legal personality of this type of company is subject to its establishment in accordance with the general provisions on the registration and establishment of private sector companies. And in this respect, the law of commerce, which applies to non-commercial companies, can not be considered the legal personality of the company. But in the case of other companies that acquire a certain amount of shares or shares of the company by the state, a state-owned enterprise, or by a law or a court of law, a national company or confiscated, according to the prior existence of these companies, the person Their rights have already been researched in accordance with the

law of commerce and their continuance will be subject to other public law (Sarbanes, 2002, July).

The distinction between state-owned companies and other executive agencies is related to economic activity that government companies operate directly. For example, in this regard, the National Oil Company, which is involved in the field of oil recovery and sale, and the National Transportation Company in the field of transportation and postal affairs, which deals with the transfer of postal items and government banks that provide financial and monetary services Iran's Central Insurance Company and other companies, each of which, depending on the necessity, are part of the government's economic activities. While the goal of institutional activity such as the organization of registration of documents and real estate that is active in the field of reorganization of registry and real estate activities or the social security organization active in the field of provision of services to community members or even the foundations of housing and the oppressed And the martyr, who works solely for the purpose of providing services to particular classes of society, is considered as a business enterprise, although the economic activities of these organizations and foundations and many investments, some of which are in the form of their subsidiaries or The public organs are not covered by anyone, but it is noticeable to do so The economic activity of these foundations and organizations, mainly in the form of affiliated companies, is aimed at financing the core activities of the organization and the foundation and is subordinate to their inherent duty, and in any case, it impedes the passage of the title " The trading company is not affiliated with these organizations (Boot et al, 2004).

The difference in the origin and how to create state-owned companies has led to the diversification of these companies. Therefore, the appointment of the directors of these companies is not followed by a single procedure. In state-owned companies, established and launched from the outset in accordance with its own law and in the form of a government, the selection of directors is subject to predetermined conditions set forth in the law establishing them or the articles of association of the company and, if these laws are not in order In the case of the selection of company directors, according to the law, the selection of the directors of these companies will be subject to the general provisions of this law, in which case the board will usually be formed by the relevant

organizations, and the board of directors will be appointed from among the real representatives affiliated to these organizations. And this board will also appoint a director who will be approved by the highest authority The relevant agencies, as well, are. In state-owned corporations or public affiliates who have a non-governmental background and after being established by a court order or an act of law, they are owned and publicly owned by the state or the public sector, Ali al-Qaeda, with the exception of the preceding general rules governing them, has a special legal structure for the structure The new companies should not be ruled out. But at the same time, beneficiary organizations in practice, in choosing the director of these companies, mostly without any specific legal order, appoint one person among their agents to the management of these companies, and these managers, in essence, execute the intentions and goals and grammatical policies Your organization will be your respective company (O'Neal, 1972).

Another category of state-owned companies, which are established without any legal backing from the state capital, are also required under the provisions of the Commercial Law to decide how to manage their business, including the selection of company directors in accordance with this regulation. The rule will also apply to companies that own a certain portion of their shares or capital by the government to the government jirga, and the government, along with other shareholders, will decide on issues related to participation in legal form of the decision They pay (Sukhanov, 2014).

The right of Great Britain is known as one of the most stable and attractive for business entities. In England, the status of companies is determined by a number of laws (statutes). The Companies Act of 2006 is among them, above all (Companies Act 2006). This statute does not contain a legal definition of "a company" concept.

By virtue of Art. 4 - 6 of the Law, legal entities are created in the form of public and private companies. Depending on the responsibility of company participants the companies are divided into: the companies where the liability of participants is limited by the value of shares (company limited by shares); the companies in which the liability of participants is limited to the size of a certain guarantee (company limited by guarantee); the companies in which the liability of participants is unlimited one (unlimited company). While private companies can be established in any of these three varieties, public

companies may be established as limited liability companies.

Around 95% of companies in the UK are private limited companies. The public limited company (or plc) is rarer and tightly regulated, but often seen as more prestigious. Like a private company limited by shares, a plc is owned by its shareholders (or single shareholder) and run by its directors, each benefiting from limited liability. While many of the features are exactly the same as the private equivalent, in this article we look at what makes a public limited company unique and the specific requirements it must meet. Elsewhere, we look at the advantages and disadvantages of a plc compared to a private limited company.

A public limited company is the only type of business in the UK which can, if it chooses, offer its shares to the public to raise funds for commercial use. However, many public companies do not offer their shares in this way and are effectively privately owned, sometimes by another plc. In these cases, it may be the extra prestige apparently conferred by plc status or other reasons that made public limited company status desirable (Melo et al, 2017; Davoodabadi & Aghajani, 2013).

Conclusions

Analysis of the legal regulation of public companies shows that in the countries of the Anglo-Saxon legal system, it is aimed at increased protection of shareholders' interests. The separation of public companies (corporations, societies) is intended to protect a wide range of persons who invest (or are going to invest) their capital in the shares of such legal entities. Such protection is carried out by the presentation of mandatory requirements to their activity and the disclosure of relevant information.

The analysis of the American experience concerning legal regulation makes it possible to distinguish four legal regimes of public companies with various degrees of rigidity, which are allocated depending on the methods of their security placement, as well as on the volumes of their trade. As a rule, increased requirements for public corporations include the establishment of: 1) a sufficiently high minimum of authorized capital; 2) an increased volume of information about a company performance to be disclosed; 3) the requirements for a minimum number of participants in a public business corporation; 4) the requirements of the quantitative and qualitative composition of

corporation management bodies (in particular, the establishment of a supervisory board and a board of directors).

These and some other increased legislative requirements for a company and the operation of public companies constitute a commensurate fee for the possibility of free raising of funds at a stock market. The need to acquire such a status should be determined taking into account the objectives of a company and a specific economic situation in a particular state.

Conflict of Interest

The authors confirm that the information provided in the article does not contain a conflict of interest.

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