

**TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI
ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.01
RAQAMLI ILMIY KENGASH**

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

SAIDOV IBROHIM ANVAROVICH

**XO‘JALIK JAMIYATLARIDA DIREKTOR MAJBURIYATLARI
DOIRASINI BELGILASHNING QIYOSIY-HUQUQIY TAHLILI**

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

**yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi
AVTOREFERATI**

Toshkent – 2025

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KIRISH (falsafa doktori (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda direktorlarning majburiyatlari korporativ huquqning eng muhim institutlaridan biri sifatida qaraladi. Ushbu majburiyatlar sodiqlik, oqillik va halollik kabi fundamental huquqiy tamoyillarga tayangan holda shakllangan bo‘lib, ularning tashkiliy shakllari va doktrinal asoslari turli huquqiy tizimlarda turlicha talqin etiladi. Biroq, bu majburiyatlarning mazmun-mohiyati umumiy bo‘lib, ular, avvalo, vakolatdan chetga chiqish va uni suiiste‘mol qilinishini oldini olish, boshqaruv jarayonlarida adolat va shaffoflikni ta‘minlash hamda direktorlarning faoliyatlari uchun javobgarlikni huquqiy jihatdan mustahkamlashga qaratilgan. Direktor majburiyatlari nafaqat kompaniya manfaatlarini himoya qilishga, balki korporativ boshqaruv tizimining barqarorligini ta‘minlashda ham asosiy huquqiy mexanizm sifatida xizmat qiladi. Shu sababli ushbu institutning dolzarbligi masalasi bugungi kunda yanada kengroq o‘rganilishini talab etadi.

Jahonda, xususan, anglo-sakson huquq tizimida ushbu majburiyatlar tarixan ishonch huquqi (trust law) doirasida shakllangan bo‘lib, u adolat (*equity*) prinsiplariga tayangan. Bunday majburiyatlar “*sui generis*” ya‘ni shartnoma yoki zarardan kelib chiquvchi (delikt) majburiyatlardan farqlanuvchi o‘ziga xos huquqiy majburiyatlar, ya‘ni fidutsiar majburiyatlar sifatida tan olingan.¹ Kontinental huquq tizimi, xususan Germaniya huquqida esa, direktor majburiyatlar alohida doktrinal majburiyat sifatida ko‘rilmaydi. Aksincha, bunday majburiyatlar xususiy huquqning umumiy prinsiplaridan kelib chiqadi. Jumladan, sodiqlik majburiyati (*Treuepflicht*) va Germaniya Fuqarolik kodeksining (*BGB*) 242-moddasida nazarda tutilgan vijdonlilik va halollik (*Treu und Glauben*) tamoyillari shular jumlasidandir. Bunday majburiyatlar uchun javobgarlik alohida huquqiy choralar bilan emas, balki shartnomaviy yoki zarardan kelib chiquvchi (*delikt*) javobgarlik doirasida amalga oshiriladi.²

O‘zbekistonda so‘nggi yillarda korporativ munosabatlarning huquqiy asoslarini yanada takomillashtirishga³, xususan, xo‘jalik jamiyatlarining ijro organi, kuzatuv kengashining fidutsiar majburiyatlari va ular bo‘yicha javobgarligini aniqlashtirishni nazarda tutuvchi normativ-huquqiy hujjat ishlab chiqishga alohida e‘tibor qaratilmoqda.⁴ Shu sababli direktor majburiyatlari, xususan, fidutsiar majburiyatlar institutining nazariy asoslarini qiyosiy-huquqiy jihatdan o‘rganish muhim ahamiyat kasb etmoqda.

Dissertatsiya tadqiqoti O‘zbekiston Respublikasining Fuqarolik kodeksi (1995, 1996), O‘zbekiston Respublikasining “Aksiyadorlik jamiyatlari va

¹ A Burrows, Principles of English Law of Obligations (Oxford University Press 2015) para 2.328

² S Markesinis, The German Law of Obligations, Volume II: The Law of Torts: A Comparative Introduction (Clarendon Press 1997), b 895

³ “Korporativ munosabatlarning huquqiy asoslarini yanada takomillashtirish chora-tadbirlari to‘g‘risida”gi O‘zbekiston Respublikasi Prezidentining qarori, 08.11.2022 yildagi PQ-415-son

⁴ Normativ-huquqiy hujjatlar muhokamasi portali, “Xo‘jalik jamiyatlarining ijro organi, kuzatuv kengashi hamda majoritar aksiyadorlarining (ishtirokchilarining) mas‘uliyatini oshirishga qaratilgan o‘zgartirish va qo‘shimchalar kiritish to‘g‘risida”gi qonun loyihasi, ID-90058 <https://regulation.gov.uz/uz/d/90058>

aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi qonuni (2014), O‘zbekiston Respublikasi “Mas’uliyati cheklangan jamiyatlar to‘g‘risida”gi Qonuni (2001), 2022-yil 8-noyabrdagi “Korporativ munosabatlarning huquqiy asoslarini yanada takomillashtirish chora-tadbirlari to‘g‘risida” PQ-415-sonli, 2024-yil, 19-apreldagi “Iqtisodiyotda davlat ishtirokini qisqartirishning qo‘shimcha chora-tadbirlari to‘g‘risida”gi qarorlari, 2021-yil, 29-martdagi O‘zbekiston Respublikasi Vazirlar Mahkamasining “2021 — 2025 yillarda davlat ishtirokidagi korxonalarni boshqarish va isloh qilish strategiyasini tasdiqlash to‘g‘risida” qarori va boshqa qonunchilik hujjatlarida belgilangan vazifalarni amalga oshirishga muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo‘nalishlariga mosligi. Mazkur dissertatsiya respublika fan va texnologiyalar rivojlanishining “Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy va ma’naviy-ma’rifiy rivojlantirishda innovatsion g‘oyalar tizimini shakllantirish va ularni amalga oshirish yo‘llari” ustuvor yo‘nalishiga muvofiq bajarilgan.

Muammoning o‘rganilganlik darajasi. Mazkur dissertatsiya mavzusini tadqiq etishda xo‘jalik jamiyatlari boshqaruv organlari, xususan, ijro organi sifatidagi direktorlarning huquqiy maqomi, ularning majburiyatlari va javobgarlik doirasini tartibga solishga qaratilgan O‘zbekiston Respublikasining amaldagi qonunchilik hujjatlari, ularni qo‘llash bo‘yicha sud amaliyoti, arxiv hujjatlari hamda yuridik fanda mavjud bo‘lgan konseptual yondashuvlar va ilmiy-nazariy qarashlar tahlil qilindi.

Shuni ta’kidlash lozimki, xo‘jalik jamiyatlaridagi direktorning fidutsiar majburiyatlari doirasini huquqiy jihatdan belgilash, fidutsiar majburiyatlarning muhim tamoyillari bo‘lgan halollik, oqillik va sadoqat masalalari O‘zbekiston huquqshunos olimlari tomonidan to‘liq va tizimli tarzda alohida tadqiqot obyekti sifatida yetarli darajada o‘rganilmagan. Biroq, mazkur mavzuning ayrim jihatlari mamlakatimizdagi qator yuridik olimlar — H.Raxmonqulov, I.Zokirov, S.Gulyamov, N.Imomov, A.Muxammadiyev, J.Yuldashev, O‘.Xolmirzayev, D.Karaxodjayeva, D.Valiyev, M.Saidov, N.Murodov, M.Tadjibayevalar tomonidan qisman yoritilgan.¹

MDH hududida ham xo‘jalik jamiyatlarida boshqaruv organlari, xususan direktorlarning huquqiy maqomi va ularning majburiyatlariga oid masalalar olimlar tomonidan ilmiy tahlil etilgan. Jumladan, bu yo‘nalishda E.Suxanov, A.Egorov, Y.Klyuchareva, I.Shitkina, I.Chuprunov, I.Zikun, Filipenkov va boshqa olimlar tomonidan tadqiqotlar olib borilgan. Ularning ishlari korporativ boshqaruvning huquqiy asoslari, ishonchli boshqaruv institutlari, direktorlarning javobgarligi va manfaatlar to‘qnashuvini tartibga soluvchi normalarni tahlil qilishga bag‘ishlangan.²

¹ Mazkur olimlarning ilmiy ishlari dissertatsiya ishining foydalanilgan adabiyotlar ro‘yxatida berilgan.

² Mazkur olimlarning ilmiy ishlari dissertatsiya ishining foydalanilgan adabiyotlar ro‘yxatida berilgan

Xalqaro miqyosda ham xo‘jalik jamiyatlarida boshqaruv organlarining, xususan, direktorlarning huquqiy maqomi, ularning fidutsiar majburiyatlari va javobgarlik chegaralari keng ko‘lamli ilmiy tadqiqotlar mavzusi bo‘lgan. Jumladan, korporativ boshqaruv nazariyalari yo‘nalishida E.Dodd, A.Berle, M.Friedman, L.Bebchuk, S.Bainbridge, F.Easterbrook, D. Fischel, J.Velasco, F.Fama, A.Alchian, C.Coffee, C.Jensen, H.Meckling, A.Keay, J.Loughrey, J.Dean, M.Blair, L.Stoutlar, fidutsiar majburiyatlar yo‘nalishida A.Burrows, M.Conaglen, M.Eisenberg, R.Grantham, R.Nolan, L.Sealy, S.Worthington, P.Davies, J.Farrar, R.Zimmermann, A.Cahn kabi nufuzli olimlar tomonidan nazariy va amaliy yondashuvlar ishlab chiqilgan.¹

Ushbu olimlarning ishlari korporativ boshqaruvning zamonaviy modelini huquqiy asosda tahlil qilish, kompaniya direktorlari zimmasidagi sadoqat, halollik, ehtiyotkorlik kabi fidutsiar majburiyatlarni aniqlashtirish, shuningdek, manfaatlar to‘qnashuvi, ulushdorlar va manfaatdor tomonlar huquqlarining muvozanati, boshqaruv mas’uliyatining chegaralarini aniqlash kabi dolzarb masalalarga bag‘ishlangan.

Dissertatsiya tadqiqotining dissertatsiya bajarilgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan bog‘liqligi. Mazkur dissertatsiya ishi Toshkent davlat yuridik universitetining ilmiy-tadqiqot ishlari rejasiga muvofiq amalga oshirilgan bo‘lib, u “Tadbirkorlik subyektlari faoliyati erkinligining kafolatlari va huquqiy himoya tizimini yanada mustahkamlash masalalari” ustuvor yo‘nalishi doirasida bajarilgan.

Tadqiqotning maqsadi: O‘zbekiston korporativ boshqaruv tizimida direktor majburiyatlari qanday tushunilishi, talqin qilinishi va amaliyotda qanday qo‘llanilishini aniqlashdan iborat.

Tadqiqotning vazifalari:

direktor majburiyatlari nazariyasining konseptual asoslarini o‘rganish, ya’ni sadoqat, halollik, oqillik kabi fidutsiar tamoyillarning kelib chiqishi va huquqiy mohiyatini xalqaro yondashuvlar asosida tahlil qilish;

O‘zbekiston qonunchiligida direktor majburiyatlariga oid normalarni tahlil qilish orqali amaldagi qonun hujjatlarida ushbu majburiyatlar qanday shakllantirilganini o‘rganish va mavjud bo‘shliqlarni aniqlash;

direktor majburiyatlariga sud amaliyotida qanday yondashilayotganini tahlil qilish orqali ushbu institutga nisbatan amaliy talqinlarning izchilligini va samaradorligini o‘rganish;

xo‘jalik jamiyatlari direktorlari va iqtisodiy sud sudyalari tomonidan direktor majburiyatlarini tushunish, aniqlash hamda qo‘llashdagi konseptual muammolarni o‘rganish;

AQSH, Buyuk Britaniya, Germaniya va Rossiya kabi ilg‘or yuridik tizimlarda direktorlar majburiyatlari qanday huquqiy asosda tartibga solinayotganini qiyosiy

¹ Mazkur olimlarning ilmiy ishlari dissertatsiya ishining foydalanilgan adabiyotlar ro‘yxatida berilgan

taqqoslash hamda ushbu tajribalarni O‘zbekiston qonunchiligiga moslashtirish imkoniyatlarini baholash.

Tadqiqotning obyekti: O‘zbekiston Respublikasida faoliyat yuritayotgan xo‘jalik jamiyatlari (aksiyadorlik jamiyatlari va mas’uliyati cheklangan jamiyatlar)da korporativ boshqaruv doirasida direktorlarning huquqiy maqomi, xatti-harakatlari va ularning majburiyatlari bilan bog‘liq huquqiy munosabatlardir.

Tadqiqotning predmeti: O‘zbekiston Respublikasida direktor fidutsiar majburiyatlari (sadoqat, halollik, oqillik)ning huquqiy mazmuni, ularni qonunchilikda belgilash, amaliyotda qo‘llash va talqin etish bilan bog‘liq nazariy hamda amaliy yondashuvlar, shuningdek, ushbu institutning ingliz va nemis huquqiy tizimlari bilan qiyosiy tahlilidir.

Tadqiqotning usullari: Tadqiqotda tarixiy-huquqiy usul, doktrinal va qiyosiy-huquqiy usul, tizimli yondashuv hamda empirik (sotsiologik) usullaridan foydalanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi (direktor)ning umumiy majburiyatlari sifatidagi jamiyat ustavi asosida o‘ziga yuklatilgan vakolatlar doirasida jamiyatning foydasini ko‘zlab harakat qilishi, jamiyat muvaffaqiyatini qo‘llab-quvvatlashi kabi majburiyatlarini muhimligi asoslantirib berilgan;

xo‘jalik jamiyatlari direktorlarining jamiyat manfaati uchun halol va vijdonan harakat qilish, to‘g‘ridan-to‘g‘ri yoki bilvosita jamiyat manfaatlariga zid keladigan harakatlardan tiyilishi kabi majburiyatlarini qonunchilikka kiritish zarurligi asoslantirib berilgan;

jamiyat o‘z majburiyatlari yuzasidan o‘ziga qarashli barcha mol-mulk bilan javobgar bo‘lishi, jamiyat ishtirokchilari uning majburiyatlari bo‘yicha javobgar bo‘lmasligi va jamiyat faoliyati bilan bog‘liq zararlar uchun o‘zlari qo‘shgan hissalar qiymati doirasida javobgar bo‘lishlari lozimligi asoslantirib berilgan;

jamiyatning to‘lovga qobiliyatsizligi shu jamiyat uchun majburiy ko‘rsatmalar berish huquqiga ega bo‘lgan jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi (direktor), kollegial ijro etuvchi organi yoki kuzatuv kengashi a‘zosi yoxud jamiyat ishtirokchisining g‘ayriqonuniy harakatlari tufayli vujudga keltirilgan bo‘lsa, jamiyatning mol-mulki yetarli bo‘lmagan taqdirda, bunday shaxs zimmasiga, agar jamiyat ustavida boshqacha qoida nazarda tutilmagan bo‘lsa, uning majburiyatlari bo‘yicha subsidiar javobgarlik yuklatilishi, agar zarar bir necha shaxs tomonidan yetkazilgan bo‘lsa, ular birgalikda solidar javobgar bo‘lishlari lozimligi asoslantirib berilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

direktor tushunchasi va fidutsiar majburiyatlar mohiyati bir qator doktrinalar hamda qarashlar asosida o‘rganilib, ushbu tushunchalarga mualliflik ta‘riflari ishlab chiqilgan;

Fuqarolik kodeksi va tegishli maxsus qonunlarga biznes qarorlarini qabul qilishda asosli tavakkalchilik uchun javobgarlikni istisno etuvchi normalarni kiritish zarurligi asoslab berilgan;

Fuqarolik kodeksi va tegishli maxsus qonunlarga “*norasmiy*” va “*soya*” direktorlarning javobgarligini belgilovchi maxsus normalarni kiritish taklif qilingan;

Fuqarolik kodeksiga vakillik munosabatlari bo‘yicha vakilning majburiyatlarini aniq belgilash zarurligi asoslab berilgan;

Fuqarolik kodeksiga zarar yetkazilishidan kelib chiqadigan majburiyatlarda fidutsiar majburiyatlar uchun javobgarlikni kuchaytirish bo‘yicha normativ asoslar ishlab chiqish taklif qilingan;

Fuqarolik kodeksiga bitimning haqiqiy emasligi bilan bog‘liq normalarda vakolatni suiiste‘mol qilishga doir maxsus normalarni kiritish taklif etilgan;

sudlar uchun sadoqat, halollik, oqillik va adolat tamoyillarining korporativ munosabatlarda qo‘llanishi va ushbu tamoyillarning buzilganligini baholovchi milliy muhitga moslashtirilgan mezonlarni ishlab chiqish, “*norasmiy*” va “*soya*” direktor tushunchalariga huquqiy ta‘rif berishga qaratilgan Oliy Sud Plenum qarori konsepsiyasi taklif etilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot natijalari xorijiy va milliy qonunchilik normalari, rivojlangan davlatlar tajribasi, huquqni qo‘llash amaliyoti hamda statistik va empirik ma‘lumotlarning tahlili asosida umumlashtirilgan. Natijalar rasmiy hujjatlar, ilmiy maqolalar va amaliy tavsiyalar bilan asoslangan, xulosalar esa korporativ huquq fanining ilg‘or nazariy yondashuvlariga tayangan holda ishlab chiqilgan.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati.

Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy-nazariy xulosalar, taklif va tavsiyalar kelgusidagi ilmiy faoliyatda, qonun ijodkorligida, huquqni qo‘llash amaliyotida, milliy qonunchilikni takomillashtirishda manba sifatida qo‘llashda hamda korporativ huquq fanini ilmiy-nazariy jihatdan boyitishga xizmat qiladi.

Tadqiqot natijalarining amaliy ahamiyati qonun ijodkorligi faoliyatida, xususan, normativ-huquqiy hujjatlarni tayyorlash hamda ularga o‘zgartirish va qo‘shimchalar kiritish jarayonida, huquqni qo‘llash amaliyotini takomillashtirishda hamda oliy yuridik ta‘lim muassasalarida xususiy huquq sohasidagi fanlarni o‘qitishda xizmat qiladi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot ishi bo‘yicha olingan ilmiy natijalaridan quyidagilarda foydalanilgan:

jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi (direktor)ning umumiy majburiyatlari sifatidagi jamiyat ustavi asosida o‘ziga yuklatilgan vakolatlar doirasida jamiyatning foydasini ko‘zlab harakat qilishi, jamiyat muvaffaqiyatini qo‘llab quvvatlashi to‘g‘risidagi majburiyatlarini belgilashdagi takliflari “Mas‘uliyati cheklangan jamiyatlar to‘g‘risida”gi qonunining yangi tahrirdagi loyihasi 44-moddasi birinchi qismining birinchi va ikkinchi bandlarida o‘z ifodasini topgan (Adliya vazirligining 2025-yil 14-fevraldagi 14/21-3/5-589-son dalolatnomasi). Ushbu takliflarning amaliyotga joriy etilishi xo‘jalik jamiyatlari

direktorlar tomonidan vakolat doirasidan chetga chiqish va vakolatni suiiste'mol qilish holatlarini oldini olishga xizmat qiladi.

jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi (direktor)ning jamiyat manfaati uchun halol va vijdonan harakat qilish, to'g'ridan-to'g'ri yoki bilvosita jamiyat manfaatlariga zid keladigan harakatlardan tiyilishi kabi majburiyatlarini belgilashdagi takliflari "Mas'uliyati cheklangan jamiyatlar to'g'risida"gi Qonunining yangi tahrirdagi loyihasi 44-moddasi birinchi qismining uchinchi va to'rtinchi bandlarida o'z ifodasini topgan (Adliya vazirligining 2025-yil 14-fevraldagi 14/21-3/5-589-son dalolatnomasi). Ushbu taklif jamiyat direktorlarining majburiyatlarini aniq belgilash, direktorlarning hisobdorlik va javobgarligini yanada kuchaytirish, kompaniya va ulushdorlar oldidagi mas'uliyatini oshirishga xizmat qiladi;

jamiyat o'z majburiyatlari yuzasidan o'ziga qarashli barcha mol-mulk bilan javobgar bo'lishi, jamiyat ishtirokchilari uning majburiyatlari bo'yicha javobgar bo'lmasligi va jamiyat faoliyati bilan bog'liq zararlar uchun o'zlari qo'shgan hissalar qiymati doirasida javobgar bo'lishlari to'g'risidagi takliflari mazkur qonun loyihasining 4-moddasida o'z ifodasini topgan (Adliya vazirligining 2025-yil 14-fevraldagi 14/21-3/5-589-son dalolatnomasi). Ushbu taklifning amaliyotga joriy etilishi biznesda tavakkalchilikning oldini olish, investorlar huquqlari qonun himoyasida bo'lishini ta'minlashga xizmat qilgan;

jamiyatning to'lovga qobiliyatsizligi shu jamiyat uchun majburiy ko'rsatmalar berish huquqiga ega bo'lgan jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi (direktor), kollegial ijro etuvchi organi yoki kuzatuv kengashi a'zosi yohud jamiyat ishtirokchisining g'ayriqonuniy harakatlari tufayli vujudga keltirilgan bo'lsa, jamiyatning mol-mulki yetarli bo'lmagan taqdirda, bunday shaxs zimmasiga, agar jamiyat ustavida boshqacha qoida nazarda tutilmagan bo'lsa, uning majburiyatlari bo'yicha subsidiar javobgarlik yuklatilishi, agar zarar bir necha shaxs tomonidan yetkazilgan bo'lsa, ular birgalikda solidar javobgar bo'lishlari mumkinligi to'g'risidagi takliflari mazkur qonun loyihasining 4-moddasida o'z aksini topgan (Adliya Vazirligining 2025-yil 14-fevraldagi 14/21-3/5-589-son dalolatnomasi). Mazkur norma korporativ boshqaruv tizimida mas'uliyatni sezilarli darajada oshirishga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 4 ta xalqaro va 2 ta respublika miqyosida o'tkazilgan ilmiy-amaliy konferensiya va seminarlarda sinovdan o'tgan.

Tadqiqot natijalarining e'lon qilinganligi. Tadqiqot mavzusi bo'yicha jami 9 ta ilmiy ish, shu jumladan, OAKning dissertatsiya asosiy ilmiy natijalarini chop etishga tavsiya etilgan nashrlarda 3 ta maqola, 3 tasi xorijiy nashrlardagi maqola va 3 tasi xalqaro va respublika ilmiy-amaliy anjumanlarda chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tuzilishi kirish, 14 ta paragrafnii qamrab olgan 3 ta bob, xulosa, foydalanilgan adabiyotlar ro'yxati va ilova qismlaridan iborat. Dissertatsiyaning hajmi 156 betni tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning kirish qismida tadqiqot mavzusining dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yoʻnalishlariga muvofiqligi, tadqiq etilayotgan muammoning oʻrganilganlik darajasi, dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy taʼlim muassasasining ilmiy-tadqiqot ishlari bilan bogʻliqligi, tadqiqotning maqsad va vazifalari, obyekt va predmeti, usullari, tadqiqotning ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchligi, tadqiqot natijalarining ilmiy va amaliy ahamiyati, ularning joriy qilinganligi, tadqiqot natijalarining aprobatsiyasi, natijalarning eʼlon qilinganligi, dissertatsiyaning hajmi va tuzilishi haqida maʼlumotlar yoritib berilgan.

Dissertatsiyaning **“Ijro etuvchi organ (direktor) majburiyatlari doirasini belgilashning nazariy asoslari”** deb nomlangan birinchi bobida korporativ huquqda keng tarqalgan va oʻzaro raqobatdosh ikki asosiy yondashuv – anʼanaviy “ulushdorlar ustuvorligi” (***Shareholder Primacy Theory***) nazariyasi hamda zamonaviy “manfaatdorlar tomonlar ustuvorligi” (***Stakeholders Theory***) nazariyasi solishtirilib, ularning nazariy asoslari, qonunchilikdagi huquqiy talqinlari chuqur tahlil etilgan.

Shuningdek, mazkur bobda ushbu nazariyalarda direktorning oʻrni va roli qanday ekanligi, u kimning oldida majburiyatga ega ekanligi muhokama qilingan. Direktorning oʻrni va rolini muhokama qiluvchi ikki asosiy nazariyalar yaʼni agentlik nazariyasi (***Agency theory***) va jamoaviy ishlab chiqarish nazariyasi (***Team production theory***) oʻzaro solishtirilib, hozirgi zamonaviy korporativ boshqaruvda direktor faqatgina ulushdorlarning koʻrsatmalarini bajaruvchi *agent* sifatida emas, balki kompaniya boshqaruvida turli manfaatdor tomonlar manfaatlarini hisobga oluvchi ***vositachi iyrarx (mediator)lar*** sifatida namoyon boʻlayotganligi eʼtirof etilgan.

Ushbu oʻzgarib borayotgan korporativ boshqaruv muhitida boshqaruvni egalikdan ajratilishi (***separation ownership and control***) jaroyini muhim ekanligi, kompaniyani esa sunʼiy tuzilma sifatida emas, balki koʻproq manfaatdor tomonlar oʻrtasida tuzilgan shartnomalar toʻplami (***nexus of contract***) sifatida qarash gʻoyasi ilgari surilgan.

Tadqiqotchi ushbu masalalarning nazariy jihatlarini tahlil qilishda koʻplab huquqshunos olimlar (E.Dodd, A.Berle, M.Friedman, L.Bebchuk, S.Bainbridge, F.Easterbrook, D.Fischel, J.Velasco, F.Fama, A.Alchian, C.Coffee, C.Jensen & H.Meckling, A.Keay, J.Loughrey, J.Dean, M.Blair L.Stout, H.Rahmonqulov, S.Gulyamov, J.Yuldashev) fikr va qarashlaridan foydalanib, ular bilan munozaraga kirishgan.

Mazkur munozara yakunlariga koʻra, tadqiqotchi hozirgi global dunyoda shiddat bilan oʻzgarib borayotgan ijtimoiy-iqtisodiy muhit asrlar davomida shakllangan qarashlarni savol ostiga olayotganligini, nazariy qarashlar mutloq emasligini, ularni mavjud muhitga moslashtirish yoki oʻzgartirish ehtiyoji kun tartibiga chiqayotganligini taʼkidlaydi. Masalan, hozirgi kunda rivojlangan

davlatlarda kompaniyalarning ijtimoiy javobgarligi (*corporate social responsibility*) g'oyasi kuchayib, endilikda kompaniyalardan o'zi mavjud bo'lgan jamiyat oldidagi ijtimoiy, iqtisodiy, ekologik muammolar uchun javobgarlikni kuchaytirish asosiy e'tibor markazida bo'layotganligini ta'kidlagan.

Shu sababli tadqiqotchi mazkur bobda yuqorida tilga olingan nazariy qarashlarning O'zbekiston huquqiy tizimi va iqtisodiy muhitida qanday shakllanayotganligi, ularning amaliy ifodasi, shuningdek, xalqaro tajribada ilgari surilayotgan yangi nazariyalarni milliy huquqiy tizimga implementatsiya qilishdagi o'ziga xosliklarini ham o'rganib chiqqan. Jumladan, mazkur bobda xo'jalik jamiyatlarining axloqiy va huquqiy tabiati, ularning boshqaruvdagi yondashuvlari tahlil qilinib, korporativ boshqaruv nazariyalarini joriy etishda milliy muhitni chuqur anglash va hisobga olish zarurligi asoslab berilgan.

Shuningdek, tadqiqotchi, O'zbekiston korporativ boshqaruvi tizimi *an'anaviy ulushdorlar ustuvorligi* nazariyasi asosida qurilganligini, bunga asosiy sabab esa qonunchilikdagi ko'pgina normalar mustaqillikdan keyin Yevropa davlatlari, xususan, Germaniya va Niderlandiya davlatlaridan huquqiy transplantatsiya qilinganligi ilmiy dalillar bilan ochib bergan.

Shu bilan birga, tadqiqotchi direktor tushunchasi va uning rivojlangan davlatlardagi turli talqinlarini o'rganib, O'zbekiston qonunchiligida mavjud huquqiy bo'shliqlarni aniqlagan hamda uni bartaraf etish bo'yicha asoslangan takliflar bergan. Masalan, milliy amaliyotda ko'p uchrayotgan *"norasmiy"* direktorlarni javobgarlikka tortish mexanizmining yo'qligi, milliy qonunchilik esa, *"de-fakto"* va *"soya"* direktorlarning huquqiy maqomini aniq belgilanmaganligi, sudlarda esa *"norasmiy"* direktorlar javobgarlikdan chetda qolayotganligi natijasida yuzaga kelayotgan amaliy muammolar tahlil qilingan.

Tadqiqotchi "direktor" tushunchasiga ta'rif izlar ekan, ko'pgina davlatlar qonunchiligida direktor atamasiga aniq ta'rif berilmaganligini, ushbu atamaning aniq va umumiy qabul qilingan ta'rifi mavjud emasligini ta'kidlaydi. Solishtirish uchun AQSH, Germaniya va Buyuk Britaniya korporativ huquq qonunchiligi o'rganilganda ham direktor atamasiga berilgan aniq ta'rif uchramaganligini bildiradi. Masalan, Amerika Qo'shma Shtatlari qonunlarida¹ korporatsiyaning barcha ishlari direktorlar kengashi tomonidan boshqarilishi yoki nazorat qilinishi belgilangan bo'lsa, Buyuk Britaniya qonunchiligida esa "direktor" tushunchasi "har qanday nom bilan ataladigan direktor lavozimini egallayotgan shaxsni o'z ichiga olishi"ni ta'kidlangan.

Bu ta'rif tayinlangan rasmiy direktorlar bilan bir qatorda, direktor sifatida ishlayotgan, ammo rasmiy tayinlanmagan shaxslarni ham (**de facto direktorlar**) o'z ichiga oladi. Bu esa rasmiy yoki norasmiy ravishda direktor sifatida faoliyat yuritayotgan har qanday shaxsga mas'uliyat va potentsial javobgarlik doirasini kengaytiradi.

Tadqiqotchi yuqoridagi ta'riflardan kelib chiqib *"direktor"* tushunchasini quyidagicha ta'riflaydi: direktor bu – kompaniyaning umumiy yig'ilishi tomonidan

¹ Delaware General Corporation Law (DGCL) section 141(a).

yoki kuzatuv kengashi tomonidan tayinlanadigan, yoki har qanday nom bilan atalishidan qat'i nazar amalda kompaniya nomidan harakat qilish, tavakkalchilik asosida uning kunlik boshqaruvini amalga oshirish, strategik qarorlar qabul qilish va jamiyatning amaldagi qonun va qoidalariga rioya qilinishini ta'minlash kabi huquq va vakolatlariga ega bo'lgan, o'zining nohalol va noqilona harakatlari uchun kompaniyaga yetkazilgan zarar uchun javobgar bo'lgan shaxs yoki shaxslar guruhi.

Dissertatsiyaning "**Direktorning fidutsiar majburiyatlari, uning turlari, tasnifi va qo'llanilish chegarasi**" deb nomlangan ikkinchi bobida fidutsiar majburiyatning tarixiy shakllanishi, uning zamonaviy huquqiy konsepsiyalarda qanday ifodalanishi, shuningdek, uning axloqiy tamoyillar bilan qanday uzviy bog'liqligi atroflicha tahlil qilingan. Bu orqali direktorlarning kompaniya manfaatlariga sodiq qolgan holda oqilona qarorlar qabul qilishlari uchun qanday me'yoriy va axloqiy chegaralar mavjudligi ochib berilgan.

Tadqiqotchi mazkur bobda fidutsiar majburiyatlar institutini o'rganish jarayonida bir qator olimlar (A.Burrows, M.Conaglen, M.Eisenberg, R.Grantham, R.Nolan, L.Sealy, S.Worthington, P.Davies, J.Farrar, R.Zimmermann, A.Cahn, A.Muxammadiyev, O'.Xolmirzayev, M.Saidov, N.Murodov, M.Tadjibayeva)ning fikr va qarashlaridan foydalanib, ular bilan munozaraga kirishgan.

Mazkur bobda fidutsiar majburiyatlar institutining mohiyatini huquqiy munosabatlardagi o'ziga xos o'rniga alohida e'tibor qaratilgan. Jumladan, fidutsiar majburiyatlar o'zining asosiy maqsadi va fidutsiar shaxslarga qo'yilgan qattiq talablari bilan o'ziga xos va mustaqil majburiyat (*sui generis*) sifatida fuqarolik huquqining shartnoma va ziyon yetkazish (*delikt huquqi*)dan kelib chiqadigan majburiyatlardan farq qilish asoslab berilgan.

Fidutsiar majburiyatlarning asosiy jihati shundaki, bu majburiyatlar yuksak ishonch asosidagi munosabatlar ustiga qurilgan bo'lib, u o'ziga ishonch bildirilgan shaxs (*fidutsiar*)dan, ishonch bildirgan shaxs (*benefitsiar*)ning manfaatlarida sodiqlik, halollik, g'amxo'rlik asosida harakat qilishini talab qiladi. Ya'ni vakilning vakolat bergan shaxs manfaatlariga sodiqlik asosida xizmat qilishi, o'ziga bildirilgan ishonchni har qanday ko'rinishda suiiste'mol qilmasligi, o'z harakatlarini halol, oqilona bajarishi ushbu munosabatlarda muhim hisoblanadi.

Tadqiqotchi, ushbu turdagi munosabatlar doirasidagi majburiyatlar to'liqligicha shartnomadan yoki ziyon yetkazish (delikt)dan kelib chiqadigan majburiyatlardan tubdan farq qilishini ta'kidlaydi. Shuningdek, ushbu turdagi majburiyatlar uchun javobgarlikni ko'rib chiqishda fuqarolik huquqining asosiy tamoyillari bo'lgan halollik, oqillik va adolat prinsiplari muhim rol o'ynashini alohida e'tirof etadi.

Mazkur bobda ushbu turdagi munosabatlarni qanday qilib milliy fuqarolik qonunchiligida to'liq aks etmaganligi va hozirgi kunda esa ushbu munosabatlarni tartibga solishdagi ehtiyojning mavjudligi to'liq asoslantirib berilgan. Shuningdek, fidutsiar munosabatlar institutini milliy qonunchilikka joriy etishdagi to'siqlar hamda yuzaga kelishi mumkin bo'lgan salbiy ta'sirlari muhokama qilingan.

Jumladan, tadqiqotchi O‘zbekiston korporativ huquqining huquqiy transplantatsiyasi haqida so‘z yuritar ekan, Sovet ittifoqi davrida xususiy mulkchilikning mavjud bo‘lmaganligi natijasida fidutsiar munosabatlar institutining tarixiy va tadrijiy rivojlanmaganligini, mustaqillikdan keyingi post-sovet davlatlarida, xususan, O‘zbekistonda ham ushbu institutning kech kirib kelishiga yoki to‘liq huquqiy mexanizm sifatida shaklanmay qolishiga sabab bo‘lgan muammolarni ilmiy faktlar bilan asoslab berishga harakat qilgan.

Tadqiqotchi milliy fuqarolik huquqi tizimida hanuzgacha fidutsiar munosabatlarning mazmun mohiyatini tushuntiruvchi, fidutsiar majburiyatlar doirasini belgilovchi huquqiy normalar to‘liq shakllanmaganligini ta’kidlaydi. Masalan, Fuqarolik kodeksining 10-bobi vakillik munosabatlariga bag‘ishlangan bo‘lsada, biroq, ushbu bobdagi moddalarda vakillikning umumiy qoidalari to‘liq ochib berilmagan, vakilning vakolatlari va uning fidutsiar majburiyatlari aniq belgilanmagan. Qonunchilikdagi ushbu bo‘shliq esa jamiyatdagi ijtimoiy munosabatlarda vujudga kelayotgan muammolarni to‘liq hal etishga va nizolarning adolatli yechim topishiga to‘sqinlik qilmoqda.

Shuningdek, mazkur bobda fidutsiar majburiyatlarning huquqiy tabiati muhokama qilinib, uning tabiatan oldindan himoya qiluvchi *profilaktik himoya vositasi* sifatidagi xususiyati ochib berilgan. Bu xususiyat, fidutsiar majburiyatlar uchun javobgarlikda shunchaki zararni qoplash yoki buzilishlarni bartaraf etishdan ko‘ra, zarar yuzaga kelishidan avval uni oldini olishga yo‘naltirilgan *profilaktik choralar majmui* sifatida ajratib ko‘rsatadi.

Fidutsiar majburiyatlarning buzilishi natijasida kelib chiqadigan huquqiy oqibat ham shartnomaviy majburiyatlar yoki ziyon yetkazish (delikt)dan kelib chiqadigan majburiyat oqibatlaridan o‘zining og‘ir talablari bilan farq qiladi. Bu talablar esa fidutsiar shaxslarga qo‘yilgan yuqori darajadagi ishonch va sadoqatdan kelib chiqadi. Ushbu majburiyatlarni buzish uchun belgilangan asosiy javobgarliklardan biri bu nafaqat ko‘rilgan zararni qoplash, balki olingan foydani to‘liqligicha qaytarish va buzilgan huquqni asliga keltirish hisoblanadi.

Shuningdek, fidutsiar majburiyatlar bo‘yicha javobgarlikda shartnomaviy munosabatlardagi kabi majburiyat uchun javobgarlikni o‘zaro kelishuvga asosan o‘zgartirish yoki voz kechish imkoniyatlari cheklangan bo‘ladi. Majburiyatning ushbu xususiyati muhim himoya mexanizmi vazifasini bajarib, u fidutsiar shaxslardan o‘z majburiyati doirasini o‘z sharoitlariga qarab o‘zgartirish imkoniyatini cheklab, vakolat beruvchini potensial suiste‘molliklardan himoya qilish vazifasini o‘taydi.

Tadqiqotchi mazkur bobda fidutsiar majburiyatlar turlari sifatida sodiqlik (*duty of loyalty*), oqillik (*duty of care*) va halollik (*good faith*) majburiyatlarining huquqiy tabiatini alohida sharhlagan. Masalan, u sodiqlik majburiyatini muhokama qilar ekan, ushbu majburiyat fidutsiar munosabatlarda eng yuqori o‘rinda turishini ta’kidlaydi. Ushbu majburiyat fidutsiar shaxslardan faqat o‘z vazifalarini malakali bajarishni talab qilinmay, balki buni manfaatdor shaxs (benifitsiar)lar manfaati bilan

to‘qnash kelmasdan, ularning manfaatlariga to‘liq mos ravishda amalga oshirishlari kerakligini ta’lab qiladi.

Tadqiqotchi sodiqlik majburiyatining ichidagi eng asosiy qoidalar sifatida vakolatdan chetga chiqish (*ultra vires*) va vakolatni suiiste’mol qilish (*abuse of power*) doktrinalari muhim o‘rin egallashini ta’kidlaydi. Mazkur doktrinalar direktorga berilgan vakolatlarni faqatgina kompaniyaning maqsadlari va manfaatlari yo‘lida ishlatilishini ta’minlaydi. Vakolatlarni shaxsiy yoki boshqa noqonuniy maqsadlarda ishlatilishini ta’qiqlashda fidutsiar majburiyatlar o‘zaro bog‘lovchi va mustahkamlovchi huquqiy vosita sifatida xizmat qiladi.

Izlanuvchi milliy fuqarolik qonunchiligida vakolatdan chetga chiqishni huquqiy tartibga solishga qaratilgan normalar mavjud bo‘lsada, vakolatni suiiste’mol qilish bilan bog‘liq huquqiy normalar mavjud emasligini alohida ta’kidlaydi. Masalan, u dissertatsiya doirasida ayrim sud ishlarini tahlil qilar ekan,¹ mavjud fuqarolik qonunchiligi yangi paydo bo‘layotgan ijtimoiy munosabatlarni to‘liq qamrab ololmayotganligini, ulushdorlarning huquqlarini himoya qiluvchi va direktorlarni o‘z vakolatlarini suiiste’mol qilishdan tiyib turuvchi huquqiy mexanizmlar to‘liq shakllantirilmaganligini ta’kidlaydi.

Shuni aytib o‘tish kerakki, O‘zbekistonning amaldagi fuqarolik qonunchiligida vakolatlarni suiiste’mol qilishning ta’sirini bartaraf etishga qaratilgan maxsus normativ-huquqiy hujjatlar mavjud emas. Masalan, Fuqarolik kodeksining bitimning haqiqiy emasligi bilan bog‘liq (113-128) moddalarida faqat shartnoma va qonun talablariga zid bo‘lgan, shuningdek, vakolatdan chetga chiqish bilan bog‘liq bo‘lgan bitimlar haqiqiy emasligi tan olinadi. Biroq, vakolatni suiiste’mol qilgan holda tuzilgan bitimlarga doir alohida huquqiy qoidalar mavjud emas. Shu bois, korporativ munosabatlar va biznes yuritishda vakolatlarni suiiste’mol qilishning oldini olish va unga javobgarlikni kuchaytirish zarurati tug‘ilmoqda.

Tadqiqotchi amaldagi qonunchilikda vakolatni suiiste’mol qilish holatlariga qarshi samarali huquqiy mexanizmlarning yetishmasligini va sud amaliyotida esa fuqarolik huquqining umumiy tamoyillariga tayangan holatda adolatni qaror toptirish tajribasining sust rivojlanganligidan havotir bildiradi.

Tadqiqotchi korporativ huquqiy munosabatlarda vakolatlarning suiiste’mol qilinishiga aniq huquqiy baho bera oladigan va bunday holatlarning oldini oluvchi maxsus normalarning milliy qonunchilikda mavjud emasligi huquqni qo‘llash amaliyotida jiddiy bo‘shliqni keltirib chiqarayotganligini ta’kidlaydi.

Shu munosabat bilan mazkur dissertatsiyada Fuqarolik kodeksining 126-moddasida qonunchilikning talablariga muvofiq bo‘lmagan bitimning haqiqiy emasligi bilan birgalikda, vakolatni suiiste’mol qilish asosida tuzilgan bitimlarni haqiqiy emasligi bilan bog‘liq yangi normalarni kiritish taklifi ilgari suriladi.

Tadqiqotchi fidutsiar majburiyat turlari bo‘yicha tadqiqotini davom ettirar ekan, ushbu majburiyatlar orasida oqillik majburiyati alohida o‘rin tutishini ta’kidlaydi. Bu majburiyat, bir tomondan, kompaniya manfaatlarini himoya qilishga xizmat qilsa, boshqa tomondan, direktorning o‘z lavozim vazifalarini halollik,

¹ Toshkent tumanlararo iqtisodiy sudining 4-1001-2213/56554-sonli iqtisodiy ishi

professionallik va ongli ehtiyotkorlik asosida amalga oshirishini ta'minlaydi. Oqillik majburiyatining ildizlari Rim huquqi davriga borib taqalsada, u zamonaviy huquqiy tizimlarda o'ziga xos shakl va mazmun kasb etib kelmoqda. Xususan, Buyuk Britaniya va AQSh kabi ilg'or yurisdiksiyalarda bu majburiyat kompaniya boshqaruv organlari faoliyatini tartibga soluvchi asosiy prinsiplardan biri sifatida rivojlangan.

Shuni ta'kidlash kerakki, ushbu majburiyatning tub mohiyatida axloqiy va huquqiy tamoyil yotadi. Ushbu tamoyilga ko'ra, shaxs o'z harakatlari yoki harakatsizligi oqibatida asossiz zarar ko'rishi mumkin bo'lgan har bir kishiga nisbatan ehtiyotkorlik va g'amxo'rlik asosida harakat qilish majburiyatiga ega hisoblanadi.

Tadqiqotchi post-sovet davlati sifatidagi Rossiya federatsiyasi korporativ huquqida ham direktorlarning oqillik majburiyati tobora mustahkamlanib borayotganligini, ushbu majburiyatni ingliz huquqida shakllangan **“duty of care”** tamoyili bilan taqqoslab, uni Rossiya Fuqarolik kodeksida belgilangan **“oqillik” (разумность) va “vijdonlilik” (добросовестность)** prinsiplari bilan uyg'un deb baholaydi.¹

Shuningdek, izlanuvchi fidutsiar majburiyatlar ichida muhim o'rin tutadigan **halollik (good faith)** majburiyatiga to'xtalar ekan, ushbu majburiyat odatda sodiqlik va oqillik majburiyatlarining tarkibiy qismi sifatida namoyon bo'lishini va majburiyatlar buzilganligini aniqlovchi huquqiy vosita sifatida ishlatilishini ko'rsatadi.

Masalan, halollik tamoyilining huquqni suiiste'mol qilishga yo'l qo'ymaslikdagi roli ham muhimdir. Tomonlar huquq va majburiyatlarini halol niyatda amalga oshirishlari, ularni faqat qonuniy va adolatli maqsadlarda qo'llashlari lozim. Aks holda, sudlar tomonidan nohalol harakatlar huquqni suiiste'mol qilish deb baholanib, bitimlarning haqiqiy emasligiga olib keladi.

Shuni alohida ta'kidlash kerakki, halollik majburiyati o'zining huquqiy tabiati jihatidan sodiqlik va oqillik majburiyatlaridan farqlanadi. An'anaviy fidutsiar majburiyatlar hisoblangan sodiqlik va oqillik majburiyatlari barcha turdagi huquqbuzarliklarni to'liq qamrab ololmaydi. Masalan, sodiqlik majburiyatining asosiy mohiyati direktorning shaxsiy manfaatlarini kompaniya manfaatlaridan ustun qo'yishining oldini olishga qaratilgan bo'lsa, oqillik majburiyati esa direktorning kompaniya manfaatlariga ehtiyotkorlik va oqilona qarorlar asosida yondashishini ta'minlashga yo'naltirilgan. Biroq shunday huquqbuzarliklar borki, ular sodiqlik va oqillik majburiyatlarini to'g'ridan-to'g'ri buzmasa ham, halollik majburiyati doirasida baholanadi va huquqiy jihatdan hal etiladi.

Tadqiqotchi halollik majburiyatini boshqa fidutsiar majburiyatlardan huquqbuzarlik uchun to'g'ridan-to'g'ri javobgarlikni cheklash xususiyati bilan ajralib turishini ko'rsatadi.

¹ Bernard Black and others. Legal liability of directors and company officials Part 1: Substantive grounds for Liability (Report to the Russian Securities Agency) ECGI LAW WORKING PAPER. Columbia Business Law Review, pp. 614-799, 2007. 666-bet.

Shuningdek, izlanuvchi tomonidan dissertatsiyaning mazkur bobida fidutsiar munosabatlarning huquqiy tabiatini chuqur tahlil qilish bilan birga, ularning O'zbekiston huquqiy tizimida to'laqonli shakllanmasdan qolayotganligining sabablarini aniqlashga e'tibor berilgan. Bunda milliy huquqiy va ijtimoiy muhitning o'ziga xos xususiyatlari, huquqiy tafakkurdagi an'anaviy yondashuvlar hamda institutsional tuzilmalarning yetarlicha rivojlanmagani kabi omillar alohida tahlil qilingan.

Dissertatsiyaning ***“Xo'jalik jamiyatlarida direktor majburiyatlarini tushunish, aniqlash va qo'llashdagi muammolar hamda ularni bartaraf etish yo'llari”*** deb nomlangan uchinchi bobi ko'proq konseptual muammolarga bag'ishlangan bo'lib unda fidutsiar majburiyatlar institutining mazmun mohiyatini direktorlar tomonidan amaliyotda tushunilishi va his qilinishi hamda sudlar tomonidan fidutsiar majburiyatlarni aniqlash, baholash va qo'llashdagi muammolar muhokama qilingan.

Tadqiqotchi mazkur bobda milliy qonunchilik va biznes muhitidagi muammolarni o'rganishda olimlar (L.Enriques, H.Raxmonqulov, S.Gulyamov, N.Imomov, J.Yuldashev, O'.Xolmirzayev, M.Saidov) fikr-mulohazalaridan foydalanib, ular bilan munozaraga kirishgan.

Izlanuvchi ushbu muammolarni o'rganish va tahlil qilish maqsadida O'zbekistonda faoliyat yuritayotgan kompaniya direktorlari va iqtisodiy sud sudyalari o'rtasida so'rovnomalar o'tkazgan.

Tadqiqotchi O'zbekistonda kompaniya direktorlari o'z majburiyatlarini, ayniqsa, fidutsiar majburiyatlari mohiyatini yetarli darajada tushunmasligini korporativ boshqaruvning samarali faoliyat yuritishiga to'sqinlik qilayotgan asosiy omillardan biri deb biladi. Direktorlarning kompaniya manfaatlariga sodiqlik bilan xizmat qilish, halollik, adolat va oqilona boshqaruv asosida harakat qilish majburiyatlari xorijiy korporativ boshqaruv amaliyotida asosiy tamoyillar sifatida qaralsada, O'zbekiston tajribasida bu tamoyillar hali to'liq qonunchilikda mustahkamlab qo'yilmaganligi va amaliyotda esa umuman joriy etilmaganligiga alohida e'tibor qaratadi.

Amaliyotda ko'p hollarda direktorlar o'z vazifasini bajarishda kompaniya manfaatlarini emas, balki uning asoschilari, qarindoshlari yoki o'z shaxsiy manfaatlarini ustun qo'yayotganligini, bu holat esa ularga ishonib topshirilgan vakolatlarni suiiste'mol qilishga, manfaatdorlik mavjud bo'lgan bitimlar tuzishga, axborotlarni yashirish yoki moliyaviy hisobotlarni soxtalashtirish singari ko'plab xavfli xatti-harakatlarni sodir etilishiga olib kelayotganligini ta'kidlaydi. Natijada, ushbu holatlar nafaqat kompaniya manfaatlarini, balki ulushdorlar, xodimlar, kreditorlar va hatto davlatning iqtisodiy barqarorligini xavf ostiga qo'yayotganligini ta'kidlaydi.

Direktorlar o'rtasida o'tkazilgan so'rovnoma natijalariga ko'ra, ularning aksariyati kompaniya boshqaruvidagi o'z rolini mustaqil va yakka tartibda amalga oshirayotganligini hamda ulushdorlar va umumiy yig'ilish oldida muayyan majburiyatlarga ega ekanligini, o'z zimmasidagi boshqaruv majburiyatlarini yaxshi

anglashlari va moddiy javobgarlikni his qilishlarini ta'kidlagan bo'lsalar, ularning ayrimlari hanuzgacha kompaniya boshqaruvida ulushdorlarning aralashuvi ostida harakat qilayotganliklarini, o'z majburiyatlari mazmuni va bu majburiyatlar buzilganda qanday javobgarlik yuzaga kelishini aniq tushunmasliklarini bildirganlar.¹ Ayniqsa, ehtiyotkorlik va g'amxo'rlik qilish hamda shartnomaviy majburiyatlar borasida ularning xabardorlik darajasi past ekanligi ayon bo'lgan. Bu esa direktorlar o'rtasida fidutsiar majburiyatlar institutiga oid huquqiy ong va madaniyatning bir xilda shakllanmaganligini anglatadi.

Tadqiqotchi tomonidan iqtisodiy sud sudyalari o'rtasida so'rovnoma o'tkazilgan bo'lib, undan asosiy maqsad, aynan milliy sudlar tomonidan direktor majburiyatlari institutini tushunish va qo'llashdagi konseptual muammolarni o'rganish va qonunchilikka kiritilishi kutilayotgan ushbu institutni amaliy qo'llashda sudlar qay darajada tayyorligini tahlil qilish hisoblanadi. Buning pirovardida esa, ushbu institutni amaliy muhitda samarali ishlashiga to'siq bo'lishi mumkin bo'lgan muammolarni aniqlash va ularni oldini olishga qaratilgan takliflar berish asosiy maqsad qilingan.

Tadqiqotchi tomonidan sudyalar o'rtasida o'tkazilgan so'rovnoma natijalari ko'ra, ishtirok etgan respondentlarning aksariyati (51.7%) sudlarda direktor majburiyatlarni aniqlash va baholashda izchil yondashuv yo'qligini tan olgan.² Bundan tashqari, ko'pchilik respondentlar bu institutni nazariy asoslari to'liq o'zlashtirilmaganligini, uni amaliyotga joriy qilishda hali biznes muhiti va sud amaliyoti tayyor emasligini ta'kidlashgan. Bundan shuni xulosa qilish mumkinki, fidutsiar majburiyatlar institut milliy qonunchilikka kiritilgan taqdirda ham, sudlar ushbu qonunni bir xilda qo'llashga tayyor emasligi, uning nazariy asoslari to'liq o'rganilmaganligi mazkur institutni amalda yaxshi ishlab ketishiga to'sqinlik qilishi yoki biznes uchun ortiqcha xavf va byurokratik to'siqlarni vujudga keltirishi ehmoli mavjud.

Shu sababli tadqiqotchi sud tizimida tub islohotlarni amalga oshirish, xususan, sudlarning institutsional mustaqilligini ta'minlash, sudlarda qaror qabul qilishda huquqiy qadriyatlar va tamoyillarga asosiy ustuvorlikni berish fidutsiar majburiyatlarni O'zbekistonga mos shaklda joriy etish uchun zaruriy shart deb biladi. Aks holda, qonunchilik darajasidagi har qanday o'zgarishlar sud tizimining tayyorgarligi yo'qligi sababli samarasiz bo'lishi mumkinligidan xavotir bildiradi.

Tadqiqotchi O'zbekistonda fidutsiar majburiyatlar institutini joriy etish faqat qonunchilikdagi o'zgarishlar bilan emas, balki ushbu institutning nazariy asoslarini milliy huquqiy tafakkur darajasida mustahkamlash bilan ham bog'liqligini ta'kidlaydi.

¹ Tadbirkorlar uchun so'rovnoma. Dissertatsiya 1-ilovasi

² "Direktorlarning fidutsiar majburiyatlari: sud amaliyotida tushunilishi va qo'llanishi" mavzusida sudyalar o'rtasida qilingan so'rovnoma. Dissertatsiyasi 2-ilovasi.

XULOSA

Xo‘jalik jamiyatlarida direktor majburiyatlari doirasini belgilashning qiyosiy-huquqiy tahliliga doir tadqiqot ishi natijasida quyidagi ilmiy-nazariy xulosalar, qonunchilikni va huquqni qo‘llash amaliyotini takomillashtirishga qaratilgan quyidagi taklif va tavsiyalar ishlab chiqildi:

I. Ilmiy-nazariy takliflar:

1. Dissertatsiyada korporativ huquqning eng keng tarqalgan ikki nazariyasi bo‘lgan an‘anaviy **“ulushdorlar ustuvorligi”** nazariyasi hamda zamonaviy **“manfaatdor tomonlar ustuvorligi”** nazariyalari o‘zaro solishtirilib tahlil qilindi. O‘zbekistondagi korporativ boshqaruv tizimi asosan an‘anaviy ulushdorlar ustuvorligi nazariyasiga asoslanib shakllangani ta‘kidlandi. Buning asosiy sababi sifatida mustaqillikdan keyingi davrda qabul qilingan ko‘plab normativ-huquqiy hujjatlar Yevropa davlatlari, xususan, Germaniya va Niderlandiyadan olingan huquqiy transplantatsiya natijasida shakllanganligi ilmiy asosda bayon qilindi.

2. Shuningdek, mavjud nazariyalarning O‘zbekiston milliy huquqiy tizimi va ijtimoiy-iqtisodiy muhitida qanday namoyon bo‘layotgani ham tahlil qilindi. Xususan, zamonaviy **“manfaatdor tomonlar ustuvorligi”** nazariyasini O‘zbekiston huquqiy tizimiga implementatsiya qilish jarayonidagi o‘ziga xosliklar, mavjud to‘siqlar va moslashuv ehtiyojlari atroflicha o‘rganildi. Bu jarayonda mahalliy kompaniyalarning axloqiy me‘yorlari, boshqaruv madaniyati hamda huquqiy amaliyotlari tahlil qilinarkan, nazariyalarni to‘g‘ridan-to‘g‘ri joriy etish emas, balki ularni milliy sharoitdan kelib chiqqan holda bosqichma-bosqich va ehtiyotkorlik bilan moslashtirish zarurligi asoslantirildi.

3. Fidutsiar majburiyatlar institutini samarali joriy etish uchun faqat qonunchilikdagi o‘zgarishlar bilan cheklanmasdan, balki ushbu institutning nazariy asoslarini milliy huquqiy tafakkur darajasida chuqur anglash va mustahkamlash zarurligi ilgari surildi. Shu bilan birga, fidutsiar majburiyatlarning doktrinal asoslari va ularni baholash mezonlarini O‘zbekistonning huquqiy tizimi va ijtimoiy-huquqiy an‘analari bilan uyg‘unlashtirib, milliy huquqiy muhitga mos shakllantirish lozimligi asoslab berildi.

4. Shuningdek, “direktor” tushunchasining turli huquqiy talqinlari tahlil qilinib, O‘zbekiston qonunchiligidagi mavjud bo‘shliqlar aniqlab berildi. Xususan, amaliyotda keng tarqalgan, lekin rasmiy tayinlovdan o‘tmagan “norasmiy” direktorlar, ya‘ni **“de-fakto”** va **“soya”** direktorlarning huquqiy maqomi qonunchilikda ochiq-oydin belgilab qo‘yilmagani sababli yuzaga kelayotgan dolzarb muammolar tahlil qilindi. Shu nuqtai nazardan, bunday shaxslarni javobgarlikka tortishning aniq mexanizmlarini joriy etish zarurligi asoslab berilib, mavjud huquqiy bo‘shliqni bartaraf etishga qaratilgan taklif va tavsiyalar ishlab chiqildi.

5. Fidutsiar majburiyatlar o‘zining mazmun-mohiyati, maqsadga yo‘naltirilganligi va fidutsiar shaxslarga nisbatan qo‘yilgan yuqori darajadagi axloqiy va huquqiy talablari bilan ajralib turadi. Shu sababli dissertatsiya doirasida

fidutsiar majburiyatlar *“sui generis”*, ya’ni o‘ziga xos va mustaqil turdagi majburiyat sifatida e’tirof etildi. Bu yondashuv orqali fidutsiar majburiyatlar fuqarolik huquqidagi an’anaviy shartnomaviy yoki zarardan kelib chiqadigan majburiyatlaridan tubdan farqlanishi ilmiy asosda asoslab berildi.

6. Xususan, fidutsiar majburiyatlarning huquqiy tabiati batafsil tahlil qilinib, uning *oldindan himoya qiluvchi (profilaktik)* huquqiy vosita sifatidagi o‘ziga xos funksiyasi ochib berildi. Bu majburiyatlar faqatgina zararni qoplash yoki sodir bo‘lgan huquqbuzarliklarni bartaraf etish bilan cheklanmaydi. Aksincha, ularning asosiy vazifasi – potensial zarar va huquqiy xatolarni oldindan aniqlash va ularning oldini olishdan iborat ekani ilmiy asosda isbotlab berildi. Shu jihatdan, fidutsiar majburiyatlar *oldindan himoya qiluvchi (profilaktik)* huquqiy tabiatga ega bo‘lgan o‘ziga xos majburiyat shakli sifatida e’tirof etildi.

II. Qonunchilikni takomillashtirishga qaratilgan takliflar:

7. Fuqarolik kodeksi 45-moddasiga quyidagi tahrirdagi to‘rtinchi qism bilan to‘ldirilishi taklif qilinadi:

“...Yuridik shaxs nomidan ish olib boradigan shaxsning harakat (harakatsizlik)lari fuqarolik muomalasining odatdagi shartlariga yoki odatdagi tadbirkorlik tavakkalchiligiga asoslangan bo‘lsa, noqonuniy, nohalol va (yoki) nooqilona deb hisoblanmaydi”

8. Fuqarolik kodeksi 48-moddasining, beshinchi qismini fidutsiar majburiyatlar institutining huquqiy tabiatiga zidligi sababli qonundan chiqarib tashlash va uni quyidagi yangi norma bilan to‘ldirish tavsiya qilinadi.

“Muassis (ishtirokchi) yoki yuridik shaxs mol-mulkining mulkdori shu yuridik shaxsning ta’sis hujjatlarida nazarda tutilgan taqdirdagina majburiy ko‘rsatmalar berish huquqiga ega.” (Ushbu normani kodeksdan chiqarib tashlash tavsiya qilinadi.)

“Ushbu moddaning 4-qismida ko‘rsatilgan shaxslarning nohalol va nooqilona harakatlar sodir etganlik uchun javobgarligini bartaraf etish yoki cheklash to‘g‘risidagi har qanday bitim o‘z-o‘zidan haqiqiy emasdir.”

9. Fuqarolik kodeksi 129-moddasining, birinchi qismi quyidagi tahrirda bayon etilishi taklif qilinadi:

“Vakillik - bu ishonch asosidagi huquqiy munosabat bo‘lib, unga ko‘ra, bir shaxs (vakil) qonun, ishonchnoma, sud qarori yoki vakolatli davlat organi hujjati asosida boshqa shaxs (vakolat beruvchi) nomidan va uning manfaatlari yo‘lida huquqiy harakatlar amalga oshiradi. Vakil tomonidan tuzilgan bitimlar bevosita vakolat beruvchiga nisbatan fuqarolik huquq va majburiyatlarini vujudga keltiradi, o‘zgartiradi yoki bekor qiladi.

10. Fuqarolik kodeksiga vakilning majburiyatlarini belgilovchi 129¹-moddasini kiritish taklif qilinadi:

129¹-modda. Vakilning majburiyatlari

Vakillik munosabatlari o‘z mohiyatiga ko‘ra ishonch asosidagi munosabatlar bo‘lib, ushbu munosabatlarda vakil vakolat beruvchining manfaatlari halol, sodiq va g‘amxo‘rlik bilan ko‘zlab harakat qilishi lozim.

Vakil ushbu munosabatlar doirasida vakolat beruvchining manfaatlarini ustuvor qo'yishi; halollik, xolislik va sodiqlik tamoyillariga amal qilishi; o'z vakolat doirasida ehtiyotkorlik bilan harakat qilishi; manfaatlar to'qnashuviga yo'l qo'ymasligi; vakolat beruvchiga zarur vaqtda hisobot taqdim etishi; o'zining yoki uchinchi shaxsning foydasiga yashirin harakatlar qilmasligi kabi fidutsiar (ishonch asosidagi) majburiyatlarga egadir.

Mazkur moddaning qo'llanilishi chog'ida, vakillik ishonch asosidagi munosabat bo'lib, unda vakilning harakati nafaqat huquqiy vakolatga, balki ma'naviy yuksak mas'uliyatga ham asoslangan deb e'tirof etiladi. Shu sababli, vakillik munosabatlariga nisbatan ishonchni suiiste'mol qilish, vakolatni noto'g'ri yoki zarar yetkazuvchi tarzda amalga oshirish fuqarolik-huquqiy javobgarlikka olib keladi.

11. Fuqarolik kodeksining 985-moddasining, ikkinchi qismiga quyidagi tahrirdagi yangi norma kiritilishi taklif qilinadi.

"...Agar zarar fidutsiar majburiyatlar doirasida, ya'ni ishonch asosidagi sodiqlik, halollik yoki g'amxo'rlik majburiyatlari buzilgan holda yetkazilgan bo'lsa, bunday zarar uchun fidutsiar shaxs solidar tartibda javobgarlikka tortiladi."

12. Fuqarolik kodeksining 985-moddasi, uchinchi qismini quyidagi tahrirda bayon etilishi taklif qilinadi.

"...Qonunchilikda yoki shartnomada jabrlanuvchilarga zararni to'lashdan tashqari tovon to'lash majburiyati belgilab qo'yilishi mumkin. Jabrlangan tomon fidutsiar majburiyatni buzgan shaxs tomonidan ushbu buzilish oqibatida bevosita yoki bilvosita qo'lga kiritilgan barcha foydani, shuningdek, fidutsiar shaxsning qonunga xilof yoki ishonchga zid ravishda o'z foydasiga qilgan barcha bitimlaridan tushgan daromadlarni qaytarishni talab qilish huquqiga ega."

13. Ma'muriy javobgarlik to'g'risidagi kodeksiga 178²-moddasini kiritish taklif qilinadi:

178²-moddasi. Korporativ boshqaruv to'g'risidagi qonunchilikni buzish

Xo'jalik jamiyatlarining yakka yoki kollegial tartibdagi ijro organi yoki kuzatuv kengashi tomonidan quyidagi holatlarning sodir etilishi:

jamiyatning umumiy yig'ilishini qonunchilikda belgilangan tartibda va muddatda chaqirmaslik yoki uni qonun talablariga zid ravishda o'tkazish;

ishtirokchilarning (ulushdorlarning) ulushlarini boshqa shaxslarga o'tkazishni (sotishni) qonunchilikda belgilangan tartibda rasmiylashtirmaslik;

manfaatdor bitimlar mavjudligini oshkor qilmaslik yoki ularni tasdiqlash tartibini buzish;

ishtirokchilarning qonuniy manfaatlarini ko'zlab harakat qilish majburiyatini buzish;

- bazaviy hisoblash miqdorining o'ttiz baravaridan ellik baravarigacha miqdorda jarima solishga sabab bo'ladi.

14. Fuqarolik kodeksiga 125¹-moddasini kiritish taklif qilinadi.

125¹-modda. Vakolatni suiiste'mol qilish natijasida tuzilgan bitimning haqiqiy emasligi

“Yuridik shaxsning vakolatli shaxsi (ijro etuvchi organi, kuzatuv kengashi, umumiy yig‘ilish) tomonidan o‘ziga berilgan vakolatni suiiste‘mol qilib, fuqarolik huquqining halollik, sodiqlik va oqillik tamoyillarini buzgan holda, o‘z shaxsiy manfaatlari yoki boshqa noqonuniy maqsadlarda tuzilgan bitim, yuridik shaxsga zarar yetkazgan yoki ulushdorlarning umumiy manfaatlariga zid bo‘lgan taqdirda, sud tomonidan haqiqiy emas deb topilishi mumkin.”

15. “Mas’uliyati cheklangan jamiyatlar to‘g‘risida”gi qonunning 42-moddasi ikkinchi qismi va “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi qonunning 81-moddasi birinchi qismini quyidagi tahrirda bayon qilishni taklif qilamiz:

“Jamiyat kuzatuv kengashi a‘zolari, jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi, jamiyatning kollegial ijro etuvchi organi a‘zolari unga o‘zlarining aybli harakatlari (harakatsizligi) yoki fidutsiar majburiyatlarini bajarmasligi tufayli yetkazilgan zarar uchun, agar qonun hujjatlarida boshqa asoslar va javobgarlik miqdorlari ko‘rsatilgan bo‘lmasa, jamiyat oldida javobgar bo‘ladilar. Bunda jamiyatga zarar yetkazilishiga olib kelgan qarorga qarshi ovoz bergan yoki ovoz berishda ishtirok etmagan jamiyat kuzatuv kengashining a‘zolari, jamiyatning kollegial ijro etuvchi organining a‘zolari javobgar bo‘lmaydilar”;

16. “Mas’uliyati cheklangan jamiyatlar to‘g‘risida”gi qonunning 42-moddasi uchinchi, to‘rtinchi va beshinchi qismlar bilan to‘dirilishini va “Aksiyadorlik jamiyatlari va aksiyadorlarning huquqlarini himoya qilish to‘g‘risida”gi qonunning 81-moddasiga quyidagi mazmundagi yettinchi, sakkizinchi va to‘qqizinchi qismlar bilan to‘ldirishni taklif qilamiz:

“Jamiyat kuzatuv kengashi a‘zolari, jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi, jamiyatning kollegial ijro etuvchi organi a‘zolarining fidutsiar majburiyatlariga quyidagilar kiradi:

vijdonan harakat qilib, o‘z vazifa va majburiyatlarini amalga oshirishda jamiyat va ishtirokchilarlar manfaatlarini nisbatan maqbul darajada ifoda etuvchi usullardan foydalanish;

jamiyat mol-mulkidan jamiyatning ustavi va ichki hujjatlariga zid ravishda va (yoki) ishtirokchilarning umumiy yig‘ilishi va (yoki) kuzatuv kengashi qarorlarisiz shaxsiy maqsadlarda foydalanmaslik yoki boshqa shaxslar tomonidan bunday foydalanilishiga yo‘l qo‘ymaslik;

jamiyatning tegishli boshqaruv organlari roziligisiz o‘zi yoki boshqa shaxslarga shaxsiy foyda olishga ko‘maklashish maqsadida o‘z vazifalarini bajarishda yoki mavqeidan kelib chiqqan holda unga taqdim etilgan (ma‘lum bo‘lgan) jamiyatga tegishli yoki jamiyatning qiziqish obyekti bo‘lishi mumkin bo‘lgan biznes imkoniyatlaridan foydalanmaslik;

jamiyatning tegishli boshqaruv organlari roziligisiz jamiyatning asosiy faoliyati yo‘nalishlariga xos bo‘lgan sohada tadbirkorlik faoliyati bilan shug‘ullanmaslik;

qonunchilikka muvofiq jamiyat faoliyati to‘g‘risidagi sir tutiladigan axborotni oshkor qilmaslik.

Qonunchilikda, jamiyat ustavida va ichki hujjatlarida jamiyat jamiyat kuzatuv kengashi a'zolari, jamiyatning yakkaboshchilik asosidagi ijro etuvchi organi, jamiyatning kollegial ijro etuvchi organi a'zolarining boshqa fidusiar majburiyatlari belgilab qo'yilishi mumkin.

Harakatlar (harakatsizlik), agar ular fuqarolik muomalasining odatdagi shartlariga yoki odatdagi tadbirkorlik tavakkalchiligiga asoslangan bo'lsa, noqonuniy, nohalol va (yoki) nooqilona deb hisoblanmaydi."

III. Huquqni qo'llash amaliyotini takomillashtirish bo'yicha taklif va tavsiyalar:

17. Xo'jalik jamiyatlari direktorlarining jamiyat va uning ishtirokchilari oldidagi majburiyatlari doirasini aniqlovchi, baholovchi mezonlar va ushbu mezonlarni buzganlik uchun javobgarlikni qo'llashda aniq tushuntirishlar berish maqsadida maxsus Oliy sud Plenumi qarori ishlab chiqilishi zarur.

Chunki, amaldagi qonunchilikda direktorlarning halol va oqilona harakat qilish majburiyatlari belgilangan bo'lsa-da, amaliyotda ushbu majburiyatlarning qachon va qanday holatlarda buzilishini aniqlash hamda baholashda sudlar tomonidan aniq bir yondashuvlar mavjud emas.

18. Shuningdek, "direktor" tushunchasi va uning turli talqinlari o'rganilib, O'zbekiston qonunchiligida ushbu institutga doir mavjud huquqiy bo'shliqlar aniqlanib, ularni bartaraf etishga qaratilgan asosli takliflar ishlab chiqildi.

Xususan, milliy amaliyotda keng uchrayotgan "norasmiy" direktorlar tushunchasi huquqiy tartibga solinmaganligi, ularni javobgarlikka tortishning samarali mexanizmlari mavjud emasligi, shuningdek, amaldagi qonunchilikda "*de-fakto*" yoki "*soya*" direktorlar tushunchasi huquqiy jihatdan aniq belgilanmaganligi oqibatida vujudga kelayotgan amaliy muammolar tahlil qilindi va Oliy Sud Plenumi qarori orqali "norasmiy rahbar" tushunchasiga yagona, aniq huquqiy ta'rif berish taklifi ilgari surildi.

19. Direktorlarning fidutsiar majburiyatlari va korporativ javobgarlik institutining samarali ishlashini ta'minlash uchun davlat organlari hamda fuqarolik jamiyati institutlari o'rtasidagi o'zaro hamkorlikni kuchaytirish muhim ahamiyat kasb etadi. Shu maqsadda, Adliya vazirligi, Oliy sud va Savdo-sanoat palatasi o'rtasida korporativ boshqaruv subyektlari jumladan, direktorlar, aksiyadorlar va boshqa manfaatdor tomonlar uchun mo'ljallangan kompleks chora-tadbirlar rejasini ishlab chiqish va amalga oshirish taklif etildi. Mazkur reja huquqiy ongini yuksaltirish, amaliy ko'nikmalarni shakllantirish hamda sud amaliyotining izchilligini ta'minlashga qaratiladi.

20. Direktorlarning fidutsiar majburiyatlarini huquqiy jihatdan tartibga solishdan avval, ushbu institutning nazariy va amaliy mohiyatini sudyalardan tomonidan chuqur anglanishiga zamin yaratish zarurligi alohida ta'kidlandi. Bunda, xususan, sudyalardan ishtirokida metodik o'quv mashg'ulotlar, tahliliy seminarlar hamda xorijiy mamlakatlar tajribasini o'rganishga qaratilgan bosqichma-bosqich yondashuvni qo'llash muhim ekanligi asoslab berildi. Bu esa, sud amaliyotida

fidutsiar majburiyatlarga nisbatan yagona yondashuv shakllanishiga va ushbu institutning samarali qo‘llanishiga xizmat qiladi.

21. Korporativ boshqaruv tizimini yanada takomillashtirish, direktorlarning jamiyat manfaatlarini ustuvor qo‘ygan holda faoliyat yuritishini ta’minlash hamda ularning mas’uliyatini kuchaytirish maqsadida Korporativ boshqaruv kodeksiga direktorning fidutsiar majburiyatlari nimalardan iborat ekanligi va ularga qanday rioya etilishi kerakligini tushuntiruvchi qo‘shimcha bandlar kiritish taklif etiladi.

**SCIENTIFIC COUNCIL No DSc.. 07/30.12.2019.Yu.22.01 FOR AWARDING
SCIENTIFIC DEGREES AT TASHKENT STATE UNIVERSITY OF LAW**

TASHKENT STATE UNIVERSITY OF LAW

SAIDOV IBROKHIM ANVAROVICH

**COMPARATIVE LEGAL ANALYSIS OF DETERMINING THE SCOPE
OF DIRECTORS' DUTIES OF COMPANIES**

12.00.03. – Civil law. Business Law.
Family Law. International Private Law

ABSTRACT

of a doctoral (Doctor of Philosophy) dissertation on legal sciences

Tashkent – 2025

The doctoral dissertation (PhD) theme was registered at the Supreme Attestation Commission under the Ministry of Higher Education, Science, and Innovations of the Republic of Uzbekistan by B2025.2.PhD/Yu1932.

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The dissertation defense will be held on 25 October 2025 at 12:00 a.m. at the session of the Scientific Council DSc.07/30.12.2019.Yu.22.01 at Tashkent State Law University. (Address: 100047, Sayilgokh street, 35, Tashkent city. Phone: (99871) 233-66-36; fax: (998971) 233-37-48; e-mail: info@tsul.uz).

The doctoral dissertation is available at the Information-Resource Center of Tashkent State University of Law (registered under No.1345), (Address 100047, Tashkent city, A.Timur Street, 13. Phone: (99871) 233-66-36).

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INTRODUCTION (abstract of PhD thesis)

The actuality and relevance of the dissertation theme. In the world, the duties of directors are considered one of the most important institutions of corporate law. These duties are based on fundamental legal principles such as loyalty, prudence, and honesty, and their organizational forms and doctrinal foundations are interpreted differently in various legal systems. However, the essence of these duties is common, and they are primarily aimed at preventing the abuse and misuse of authority, ensuring fairness and transparency in management processes, and legally strengthening the responsibility of directors for their activities. The duties of directors serve not only to protect the interests of the company, but also as a key legal mechanism for ensuring the stability of the corporate governance system. Therefore, the relevance of this institution today requires further study.

In the world, particularly in the common law system, these obligations have historically been formed within the framework of trust law, which is based on the principles of equity. Such obligations are recognized as “*sui generis*”, as specific legal obligations, fiduciary obligations, which are distinct from contractual or tortious obligations.¹ In the continental law system, particularly in German law, fiduciary obligations are not considered separate doctrinal obligations. On the contrary, such obligations arise from general principles of private law. In particular, the duty of loyalty (*Treuepflicht*) and the principles of good faith and honesty (*Treu und Glauben*), as provided for in Article 242 of the German Civil Code (BGB), are among them. Liability for such obligations is not exercised through separate legal measures, but rather within the framework of contractual or tortious liability.²

In recent years, Uzbekistan has paid special attention to further improving the legal framework of corporate relations, particularly in developing a regulatory legal act that clarifies the fiduciary duties and responsibilities of the executive body of business companies, as well as the supervisory board.³ Therefore, it is essential to examine the theoretical foundations of the director's duties, particularly the institute of fiduciary responsibilities, from a comparative legal perspective.⁴

The dissertation research contributes to the implementation of the tasks set out in the Civil Code of the Republic of Uzbekistan (1995, 1996), the Law of the Republic of Uzbekistan “On Joint-Stock Companies and Protection of Shareholders’ Rights” (2014), the Law of the Republic of Uzbekistan “On Limited Liability Companies” (2001), the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On Additional Measures to Reduce State Participation in the Economy” dated November 8, 2022 No. PQ-415, the Resolution of the Cabinet of Ministers of the Republic of

¹ A Burrows, *Principles of English Law of Obligations* (Oxford University Press 2015) para 2.328

² S Markesinis, *The German Law of Obligations, Volume II: The Law of Torts: A Comparative Introduction* (Clarendon Press 1997) 895

³ Resolution of the President of the Republic of Uzbekistan "On measures to further improve the legal framework of corporate relations", No. PQ-415 dated 08.11.2022

⁴ Portal for discussion of regulatory legal documents, draft law "On amendments and additions aimed at increasing the responsibility of the executive body, supervisory board and majority shareholders (participants) of economic entities", ID-90058 <https://regulation.gov.uz/uz/d/90058>

Uzbekistan “On Approval of the Strategy for the Management and Reform of Enterprises with State Participation in 2021-2025” dated April 19, 2024, and other legislative acts.

Compliance of the research with the main priority areas of the development of science and technology of the republic. This dissertation was completed in accordance with the priority area of the development of science and technology of the Republic I. “Formation of a system of innovative ideas and ways of their implementation in the social, legal, economic, cultural, and spiritual-enlightenment development of an information society and a democratic state.”

The level of study of the problem. In studying the topic of this dissertation, the current legislation of the Republic of Uzbekistan aimed at regulating the legal status of directors as the governing bodies of business companies, in particular, the executive body, their obligations and scope of responsibility, judicial practice on their application, archival documents, as well as conceptual approaches and scientific and theoretical views existing in legal science were analyzed. It should be noted that the legal definition of the scope of fiduciary duties of directors in business companies, including the issues of honesty, prudence, and loyalty, which are important principles of fiduciary duties, has not been sufficiently studied by Uzbek legal scholars as a separate object of research, comprehensively and systematically.

However, some aspects of this topic have been partially covered by several legal scholars in our country, including H. Rakhmonkulov, I. Zokirov, S. Gulyamov, N. Imomov, A. Mukhammadiev, J. Yuldashev, O. Kholmirezayev, D. Karaxodjayeva, D. Valiyev, M. Saidov, N. Murodov, and M. Tadzhibayeva.¹

In the CIS, scholars have analyzed various issues related to the legal status of management bodies in business entities, particularly directors and their obligations. In particular, research in this area has been conducted by E. Sukhanov, A. Egorov, Y. Klyuchareva, I. Shitkina, I. Chuprunov, I. Zikun, Filipenkov, and other scholars.² Their works are devoted to analyzing the legal foundations of corporate governance, institutions of trust management, the responsibility of directors, and norms regulating conflicts of interest.

Internationally, the legal status of management bodies, particularly directors, in business companies, their fiduciary duties, and the limits of their liability have been the subject of extensive scientific research. In particular, in the field of corporate governance theories, theoretical and practical approaches have been developed by such influential scholars as E. Dodd, A. Berle, M. Friedman, L. Bebchuk, S. Bainbridge, F. Easterbrook, D. Fischel, J. Velasco, F. Fama, A. Alchian, C. Coffee, C. Jensen & H. Meckling, A. Keaay & J. Loughrey, J. Dean, M. Blair, L. Stout, and in the field of fiduciary duties, A. Burrows, M. Conaglen, M. Eisenberg, R. Grantham, R. Nolan. L. Sealy, S. Worthington, P. Davies, JH. Farrar, R. Zimmermann, and A. Cahn.³

The works of these scholars are devoted to the legal analysis of the modern model of corporate governance, clarification of fiduciary duties such as loyalty, honesty, and prudence on the part of company directors, as well as to such pressing issues as conflicts

¹ The scientific works of these scientists are listed in the list of references of the dissertation.

² The scientific works of these scientists are listed in the list of references of the dissertation.

³ The scientific works of these scientists are listed in the list of references of the dissertation.

of interest, the balance of rights of shareholders and stakeholders, and the definition of the boundaries of management responsibility.

The connection of the dissertation research with the research plans of the higher educational institution where the dissertation was completed. This dissertation work was carried out in accordance with the research plan of Tashkent State University of Law, which was conducted within the framework of the priority area "Issues of further strengthening the system of guarantees of freedom of activity of business entities and legal protection."

The purpose of the study is to determine how the duties of directors are understood, interpreted, and applied in practice in the corporate governance system of Uzbekistan.

Research tasks:

To study the conceptual foundations of duties, that is, to analyze the origin and legal essence of fiduciary principles such as loyalty, honesty, and prudence based on international approaches;

to study how these duties are formulated in current legislation and identify existing gaps by analyzing the norms related to the fiduciary duties of directors in the legislation of Uzbekistan;

to study the consistency and effectiveness of practical interpretations of this institution by analyzing how the fiduciary duties of directors are approached in judicial practice;

to assess the level of understanding of these duties among corporate governance entities - to determine their knowledge and understanding of fiduciary duties based on interviews and questionnaires with directors, shareholders, and judges;

to study, through comparative analysis, the legal framework regulating directors' fiduciary duties in advanced legal systems such as the USA, the UK, Germany, and Russia, and to assess the possibilities of adapting these experiences to Uzbek legislation.

The object of the research of this dissertation work is the legal status, actions of directors, and legal relations related to their fiduciary duties within the framework of corporate governance in business entities (joint-stock companies and limited liability companies) operating in the Republic of Uzbekistan.

The subject of the research is the legal content of the fiduciary duties of directors (loyalty, honesty, prudence) in the Republic of Uzbekistan, theoretical and practical approaches to their definition in legislation, application in practice, and interpretation, as well as a comparative analysis of this institution with the English and German legal systems.

Research methods. The study used the historical-legal method, the doctrinal and comparative-legal method, the systematic approach, and empirical (sociological) methods.

The scientific novelty of the study is as follows:

The importance of such obligations as acting in the interests of the company within the framework of the powers assigned to it by the company's charter and supporting the success of the company, as general obligations of the sole executive body (director), is substantiated.

The need to include in legislation the obligations of directors of business companies to act honestly and conscientiously for the benefit of the company and to refrain from actions that directly or indirectly contradict the interests of the company is substantiated.

It is justified that the company is liable for its obligations with all its property, that the participants of the company are not liable for its obligations, and that they are liable for losses associated with the activities of the company within the value of their contributions.

if the insolvency of the company is caused by the illegal actions of the sole executive body (director), a member of the collegiate executive body or the supervisory board of the company, who has the right to issue binding instructions for this company, or a participant of the company, and if the company's property is insufficient, such a person, unless otherwise provided for by the company's charter, shall be subject to subsidiary liability for its obligations. If several persons caused the damage, they shall be jointly and severally liable.

The practical results of the study are as follows:

The concept of a director and the essence of fiduciary duties are studied based on theoretical doctrines and views, and the author's definitions of these concepts are developed.

The need to include norms in the Civil Code and relevant special laws that exclude liability for reasonable risks when making business decisions is substantiated.

It is proposed to include special norms in the Civil Code and relevant special laws that determine the liability of informal and shadow directors.

The need to clearly define the obligations of a representative in representation relations is substantiated in the Civil Code.

It is proposed to develop a normative framework for strengthening liability for fiduciary obligations arising from damage to the Civil Code.

It is proposed to include special norms on abuse of power in the norms related to the invalidity of a transaction in the Civil Code.

It is proposed to develop criteria tailored to the national environment for courts to assess the application of the principles of loyalty, honesty, prudence, and justice in corporate relations, as well as the violation of these principles. Additionally, a legal definition of the concepts of “informal” and “shadow” directors is to be provided.

Reliability of research results. The research results are summarized based on an analysis of foreign and national legal norms, the experience of developed countries, law enforcement practices, and statistical and empirical data. The results are based on official documents, scientific articles, and practical recommendations, and the conclusions are developed using advanced theoretical approaches in legal science.

Scientific and practical significance of the research results.

The theoretical foundations of the institute of fiduciary obligations are studied within the framework of Uzbekistan's legal system, based on a systematic, conceptual, and comparative analysis. The scientific significance of the research results lies in the use of the scientific and theoretical conclusions, proposals, and recommendations contained within as a source in future scientific activities, lawmaking, law enforcement practices, the improvement of national legislation, and the scientific and theoretical enrichment of the discipline of corporate law.

The practical significance of the research results lies in lawmaking activities, particularly in the process of preparing regulatory legal acts and making amendments and additions to them, in enhancing law enforcement practices, and in teaching subjects in the field of private law at higher legal educational institutions.

Implementation of research results. The scientific results obtained in the research work were used in the following:

The proposals for determining the powers of the sole executive body (director) of a company to act in the interests of the company within the framework of the powers assigned to it under the company's charter; to support the success of the company are reflected in the first and second paragraphs of the first part of Article 44 of the new draft of the Law "On Limited Liability Companies" (Act of the Ministry of Justice No. 14/21-3/5-589 dated February 14, 2025). The implementation of these proposals will serve to prevent cases of directors of business companies exceeding their authority and abusing their authority.

The proposals to define the obligations of the sole executive body (director) of a company to act honestly and conscientiously in the interests of the company, to refrain from actions that directly or indirectly contradict the interests of the company are reflected in the third and fourth paragraphs of part one of Article 44 of the new draft Law "On Limited Liability Companies" (Act of the Ministry of Justice No. 14/21-3/5-589 dated February 14, 2025). This proposal serves to clearly define the obligations of the company's directors, further strengthen the accountability and responsibility of directors, and increase their responsibility to the company and shareholders;

The proposals that the company shall be liable for its obligations with all its property, that the company's participants shall not be liable for its obligations, and that they shall be liable for losses related to the company's activities within the value of their contributions are reflected in Article 4 of this draft law (Act of the Ministry of Justice No. 14/21-3/5-589 dated February 14, 2025);

The proposals that if the insolvency of a company is caused by the illegal actions of a sole executive body (director), a member of the collegiate executive body or the supervisory board of a company that has the right to issue binding instructions for this company, or a participant in the company, and if the company's property is insufficient, such a person, unless otherwise provided for in the company's charter, may be subject to subsidiary liability for its obligations, and if several persons caused the damage, they may be jointly and severally liable, are reflected in Article 4 of this draft law (Act of the Ministry of Justice No. 14/21-3/5-589 dated February 14, 2025). This norm serves to significantly increase responsibility in the corporate governance system because it creates a legal basis for holding accountable those who intentionally brought a company into bankruptcy or made decisions contrary to the interests of creditors.

Approval of research results. A total of 9 scientific works on the topic of the research, including 3 articles in publications recommended for publication of the main scientific results of the dissertation of the SAC, 3 articles in foreign publications, and 3 at international and republican scientific and practical conferences.

Structure and volume of the dissertation. The structure of the dissertation consists of an introduction, 3 chapters covering 14 paragraphs, a conclusion, a list of used literature, and appendices. The volume of the dissertation is 156 pages.

MAIN CONTENT OF THE DISSERTATION

The introduction to the dissertation contains information on the relevance and necessity of the research topic, the correspondence of the research to the main priority areas of the development of science and technology of the republic, the level of study of the problem under study, the connection of the dissertation topic with the scientific research work of the higher educational institution where the dissertation is being conducted, the goals and objectives, object and subject, methods of the research, the scientific novelty and practical result of the study, the reliability of the research results, the scientific and practical significance of the research results, their implementation, the approval of the research results, the publication of the results, the volume and structure of the dissertation.

The first chapter of the dissertation, entitled “**Theoretical Basis for Determining the Scope of Responsibilities of the Executive Body (Director)**”, compares two main approaches that are widespread and competing in corporate law which are the traditional “*shareholder primacy theory*” and the modern “*stakeholder theory*” and provides an in-depth analysis of their theoretical foundations and legal interpretations in legislation.

This chapter also discusses the role and place of the director in these theories, as well as the obligations he has to whom. The two main theories debating the role and place of the director namely, the agency theory and the team production theory are compared. It is recognized that in modern corporate governance, the director is not only an agent who carries out the instructions of shareholders, but also a mediator who considers the interests of various stakeholders in the management of the company.

In this changing corporate governance environment, the concept of separating ownership from control is important, and the company is considered not as an artificial structure, but rather as a set of contracts concluded between interested parties (the nexus of contracts).

The researcher, in analyzing the theoretical aspects of these issues, drew upon the ideas and views of numerous legal scholars (E.Dodd, A.Berle, M.Friedman, L.Bebchuk, S.Bainbridge, F.Easterbrook, D.Fischel, J.Velasco, F.Fama, A.Alchian, C.Coffee, C.Jensen, H.Meckling, A.Keay, J.Loughrey, J.Dean, M.Blair, L.Stout, H.Rahmonkulov, S.Gulyamov, J.Yuldashev, and entered into a discussion with them.

According to the results of this discussion, the researcher emphasizes that the rapidly changing socio-economic environment in the current global world is questioning the views formed over the centuries, suggesting that at least theoretical views are not absolute, and that the need to adapt or change them to the current environment is becoming an agenda item. For example, the idea of corporate social responsibility is gaining momentum in developed countries, emphasizing that companies are now increasingly responsible for the social, economic, and environmental problems of the society in which they exist.

Therefore, in this chapter, the researcher has examined how the aforementioned theoretical views are formed within the legal system and economic environment of

Uzbekistan, their practical application, as well as the specifics of implementing new theories derived from international experience into the national legal system. In particular, this chapter analyzes the ethical and legal nature of business entities and their approaches to management. It justifies the need to thoroughly understand and consider the national context when introducing corporate governance theories.

The researcher also revealed, with scientific evidence, that the corporate governance system of Uzbekistan is built on the traditional theory of shareholder primacy. The main reason for this is that many norms in the legislation were legally transplanted from European countries, particularly Germany and the Netherlands, after independence.

At the same time, the researcher examined the concept of a director and its various interpretations in developed countries, identified legal gaps in Uzbekistan's legislation, and proposed reasonable solutions to address them. For example, the lack of a mechanism for holding “informal” directors accountable, which is often found in national practice, and the practical problems arising from the fact that national legislation does not clearly define the legal status of “*de facto*” and “*shadow*” directors, and informal directors are excluded from liability in courts, were analyzed.

The researcher, while searching for a definition of the concept of “*director*,” notes that in the legislation of many countries, there is no clear definition of the term “*director*,” and no generally accepted definition exists. For comparison, when examining the corporate law legislation of the United States, Germany, and Great Britain, it is noted that there is no clear definition of the term 'director'. For example, while the laws of the United States of America stipulate that all the affairs of a corporation are managed or controlled by a board of directors, in the law of Great Britain, the concept of “director” is emphasized, which includes a person holding the office of director by whatever name he is called.”

This definition includes, in addition to the officially appointed directors, those who act as directors but are not formally appointed (*de facto* directors). This expands the scope of responsibility and potential liability to any person who acts as a director, whether formally or informally.

Based on the above definitions, the researcher defines the concept of “*director*” as follows: a director is a person or group of persons appointed by the general meeting of the company or the supervisory board, or by any other name, who has the right and authority to act on behalf of the company, carry out its daily management on a risk-based basis, make strategic decisions and ensure compliance with applicable laws and regulations of the company, and is responsible for the damage caused to the company for his dishonest and unreasonable actions.

The second chapter of the dissertation, entitled “*Fiduciary duties of directors, their types, classification and scope of application*,” provides a detailed analysis of the historical formation of fiduciary duty, its expression in modern legal concepts, and its close relationship to ethical principles. This reveals the normative and moral boundaries that exist for directors to make rational decisions while remaining loyal to the company's interests.

In this chapter, the researcher, in the process of studying the institute of fiduciary obligations, used the ideas and views of scientists (A.Burrows, M.Conaglen, M.Eisenberg, R.Grantham, R.Nolan, L.Sealy, S.Worthington, P.Davies, J.Farrar, R.Zimmermann, A.Cahn, A.Mukhammadiyev, O.Kholmirezayev, M.Saidov, N.Murodov, M.Tadzhibayeva, and entered into a discussion with them.

This chapter focuses on the essence of the institute of fiduciary obligations and their specific place in legal relations. In particular, the difference between fiduciary obligations, as a specific and independent obligation (*sui generis*) with its main purpose and strict requirements imposed on fiduciary persons, is justified from the obligations arising from the contract and tort (*delict law*) of civil law.

The primary feature of fiduciary duties is that these duties are based on a relationship of high trust, which requires the person entrusted with the duty (fiduciary) to act with loyalty, honesty, and care in the best interests of the person entrusted to them (beneficiary). That is, it is essential in these relationships that the representative serves the interests of the person who granted the power of attorney with loyalty, refrains from abusing the trust placed in them in any way, and performs their actions honestly and reasonably.

The researcher emphasizes that the obligations within the framework of this type of relationship are fundamentally different from those arising from a contract or from causing harm (delict). He also specifically recognizes that the principles of honesty, reasonableness, and justice, which are fundamental to civil law, play a crucial role in determining liability for this type of obligation.

This chapter fully justifies the fact that this type of relationship is not fully reflected in national civil legislation and the need to regulate these relationships today. It also discusses the obstacles to introducing the institution of fiduciary relations into national legislation and the potential negative effects. In particular, the researcher, speaking about the legal transplantation of Uzbek corporate law, tried to substantiate with scientific facts the historical and progressive underdevelopment of the institution of fiduciary relations as a result of the absence of private ownership during the Soviet Union, and the problems that led to the late introduction of this institution or its failure to form as a full-fledged legal mechanism in post-Soviet countries after independence, in particular in Uzbekistan.

The researcher emphasizes that the legal norms that explain the content of fiduciary relations and determine the scope of fiduciary obligations in the national civil law system are still not fully formed. For example, although Chapter 10 of the Civil Code is devoted to representation relations, the articles of this chapter do not fully disclose the general rules of representation, and the powers of the representative and his fiduciary obligations are not clearly defined. This gap in the legislation, in turn, prevents the full resolution of problems arising in social relations in society and the fair resolution of disputes.

This chapter also discusses the legal nature of fiduciary obligations, revealing their inherent preventive nature as a means of protection. This feature distinguishes liability for fiduciary duties as a set of preventive measures aimed at preventing damage before it occurs, rather than simply compensating for damage or eliminating violations.

The legal consequences arising from the breach of fiduciary duties also differ from those arising from contractual obligations or torts in that they impose more stringent requirements. These requirements stem from the high level of trust and loyalty that fiduciaries are expected to maintain. One of the main responsibilities established for breaching these obligations is not only to compensate for the damage suffered, but also to restore the benefits received fully and to restore the violated right.

Additionally, in the context of liability for fiduciary duties, the possibility of changing or waiving liability for the obligation through mutual agreement, as in contractual relations, is limited. This feature of the obligation serves as an important protective mechanism, limiting the ability of fiduciaries to change the scope of their obligation to suit their circumstances and protecting the principal from potential abuses.

In this chapter, the researcher provides separate commentary on the legal nature of the duties of loyalty, care, and good faith as types of fiduciary duties. For example, when discussing the duty of loyalty, he emphasizes that this duty is of the highest order in fiduciary relations. This duty requires the fiduciary not only to perform his duties competently, but also to perform them in full accordance with the interests of the interested parties (beneficiaries), without conflicting with their interests.

The researcher emphasizes that the doctrines of ultra vires and abuse of power or proper purpose occupy an important place as the most basic rules within the duty of loyalty. These doctrines ensure that the powers granted to the director are used only for the purposes and interests of the company. It serves as a legal instrument that binds and reinforces fiduciary duties by prohibiting the use of authority for personal or other unlawful purposes.

The researcher emphasizes that although national civil legislation contains norms aimed at the legal regulation of abuse of authority, there are no specific legal norms related to abuse of authority. For example, analyzing certain court cases within the framework of the dissertation, he emphasizes that existing civil legislation does not fully cover newly emerging social relations, and that legal mechanisms protecting the rights of shareholders and preventing directors from abusing their powers are not yet fully developed. It should be noted that the current civil legislation of Uzbekistan does not contain special normative documents aimed at eliminating the effects of abuse of authority. For example, in articles (113-128) of the Civil Code on the invalidity of a transaction, only transactions that contradict the requirements of the contract and law, as well as those related to abuse of authority, are recognized as invalid.

However, there are no specific legal provisions regarding transactions concluded through abuse of authority. Therefore, there is a need to prevent and strengthen accountability for abuse of authority in corporate relations and business.

The researcher expresses concern about the lack of effective legal mechanisms to address the abuse of power in current legislation and the underdevelopment of judicial practice in adjudicating justice based on general principles of civil law.

He emphasizes that the absence of special norms in national legislation that could provide a clear legal assessment of power abuse in corporate legal relations and prevent such cases creates a serious gap in law enforcement practice.

In this regard, this dissertation proposes introducing new norms in Articles 116 and 126 of the Civil Code, in addition to invalidating transactions that do not comply with the law's requirements, as well as invalidating transactions concluded through the abuse of power.

Continuing his study of the types of fiduciary duties, the researcher emphasizes that the duty of prudence (prudence and care) occupies a special place among these duties. This duty, on the one hand, serves to protect the company's interests, and on the other hand, ensures that the director performs their official duties with honesty, professionalism, and conscious care. The roots of the duty of prudence go back to the era of Roman law.

However, it has acquired its own form and content in modern legal systems. In particular, in advanced jurisdictions such as England and the USA, this duty has evolved as one of the fundamental principles regulating the activities of corporate bodies. It should be noted that the basic essence of this duty lies in the moral and legal principle. According to this principle, a person is obliged to act with prudence and care in relation to anyone who may suffer unjustified harm as a result of his actions or inaction.

The researcher argues that the duty of care of directors is increasingly being strengthened in the corporate law of the Russian Federation, as a post-Soviet state, and compares this duty with the principle of “duty of care” developed in English law, assessing it as consistent with the principles of “**reasonableness**” (*разумность*) and “**good faith**” (*добросовестность*) established in the Russian Civil Code.

The researcher also focuses on the duty of good faith, which occupies an important place among fiduciary responsibilities, and demonstrates that this duty is typically manifested as a component of the duties of loyalty and prudence, and is utilized as a legal tool to determine the violation of these duties.

For example, the principle of good faith plays a crucial role in preventing the abuse of rights. The parties must exercise their rights and obligations in good faith and use them only for lawful and fair purposes. Otherwise, unfair actions will be considered by the courts as an abuse of rights and will lead to the invalidity of the transactions.

It should be noted that the duty of good faith differs in its legal nature from the duties of loyalty and prudence. The duties of loyalty and prudence, which are considered traditional fiduciary duties, may not fully encompass all types of violations. For example, the primary purpose of the duty of loyalty is to prevent the director from prioritizing their personal interests over those of the company. In contrast, the duty of prudence aims to ensure that the director approaches the company's interests with caution and makes reasonable decisions in the best interests of the company.

However, there are offenses that, although they do not directly violate the duties of loyalty and prudence, are assessed and legally resolved within the framework of the duty of honesty.

The researcher shows that the duty of honesty is distinguished from other fiduciary duties by the feature of limiting direct liability for violations.

Additionally, in this chapter of the dissertation, the researcher, along with an in-depth analysis of the legal nature of fiduciary relations, focused on identifying the reasons for their incomplete formation within the legal system of Uzbekistan. In this regard, factors such as the specific features of the national legal and social environment, traditional approaches to legal thinking, and the insufficient development of institutional structures were analyzed separately.

The third chapter of the dissertation, entitled ***“Problems in Understanding, Determining and Applying Directors’ Obligations in Business Companies and Ways to Eliminate Them,”*** is devoted to more conceptual problems, where the essence of the institution of fiduciary duties is understood and perceived by directors in practice, as well as the difficulties in determining, assessing and applying fiduciary duties by courts.

In this chapter, the researcher drew upon the ideas and views of scholars (L.Enriques, H.Rakhmonkulov, S.Gulyamov, N.Imomov, J.Yuldashev, O.Kholmirezayev, M.Saidov) to study problems in national legislation and the business environment, and engaged in a discussion with them.

To study and analyze these problems, the researcher conducted questionnaires among directors of companies operating in Uzbekistan and judges of economic courts.

The researcher considers the lack of understanding of company directors' obligations, especially their fiduciary duties, as one of the main factors hindering the effective functioning of corporate governance in Uzbekistan. Although the obligations of directors to serve the interests of the company faithfully, act with honesty, fairness, and sound management are considered basic principles in foreign corporate governance practice, in the experience of Uzbekistan, these principles have not yet been fully enshrined in legislation and have not been implemented in practice.

He emphasizes that in practice, in many cases, directors, in the performance of their duties, prioritize not the interests of the company, but its founders, relatives or their own personal interests, which leads to the abuse of the powers entrusted to them, the conclusion of transactions with a vested interest, the concealment of information or the falsification of financial statements. As a result, it emphasizes that in these cases, not only are the interests of the company at risk, but also the economic stability of shareholders, employees, creditors, and even the state.

According to the survey results, most directors stated that they independently and individually carry out their roles in company management, have certain obligations to shareholders and the general meeting, and understand their management obligations well, feeling a sense of material responsibility. In contrast, some of them stated that they still act under the interference of shareholders in the management of the company, that they do not clearly understand the content of their

fiduciary duties, and what liability arises in the event of a breach of these obligations. In particular, it was clear that their level of awareness regarding the exercise of prudence and care, as well as contractual obligations, is low. This suggests that the legal awareness and understanding of fiduciary duties are not uniformly established among directors.

The researcher also conducted a survey among economic court judges, the main purpose of which is to study the conceptual problems in understanding and applying the institution of fiduciary duties by national courts and to analyze the level of readiness of the courts in the practical application of this institution, which is expected to be introduced into legislation. Ultimately, the primary goal is to identify problems that may hinder the effective functioning of this institution in a practical setting and to propose solutions aimed at mitigating or preventing them.

According to the results of a survey conducted by the researcher among judges, the majority of respondents (51.7%) acknowledged that there is no consistent approach to defining and assessing directors' duties in the courts. In addition, most respondents noted that the theoretical foundations of this institution have not been fully mastered, and the business environment and judicial practice are not yet ready to implement it in practice. From this, it can be concluded that even if the institution of fiduciary duties is included in national legislation, the courts are not ready to apply this law uniformly, and its theoretical foundations have not been fully studied, which will prevent these changes from working well in practice or create unnecessary risks and bureaucratic obstacles for business.

Therefore, the researcher considers the implementation of fundamental reforms in the judicial system, particularly ensuring the institutional independence of the courts and prioritizing legal values and principles in decision-making, as a necessary condition for introducing fiduciary duties in a form suitable for Uzbekistan. Otherwise, he expresses concern that any changes at the legislative level may be ineffective due to the lack of preparation of the judicial system. The researcher emphasizes that the introduction of the institution of fiduciary duties in Uzbekistan is associated not only with changes in legislation, but also with strengthening the theoretical foundations of this institution at the level of national legal thought.

CONCLUSION

As a result of the research work on the comparative legal analysis of determining the scope of director responsibilities in business companies, the following scientific and theoretical conclusions, proposals, and recommendations aimed at improving legislation and law enforcement practice were developed:

I. Scientific and theoretical proposals:

1. The dissertation compared and analyzed the two most common theories of corporate law: a) the theory of traditional "*shareholder primacy*" and b) the theory of "*stakeholder priority*". It was noted that the corporate governance system in Uzbekistan was formed mainly based on the theory of traditional shareholder priority. The primary reason for this was that many regulatory documents adopted in the post-

independence period were formulated as a result of legal transplantation from European countries, particularly Germany and the Netherlands.

2. It was also analyzed how existing theories are manifested in the national legal system and socio-economic environment of Uzbekistan. In particular, the specifics, existing obstacles, and adaptation needs in implementing the modern “*stakeholder priority*” theory into Uzbekistan's legal system were studied in detail. In this process, while analyzing the ethical standards, management culture, and legal practices of local companies, it was proposed that the theories should not be introduced directly, but rather that they should be gradually and carefully adapted to national conditions.

3. To effectively introduce the institution of fiduciary duties, it was put forward that the need to deeply understand and strengthen the theoretical foundations of this institution at the level of national legal thinking, not limited to changes in legislation. At the same time, it was justified to harmonize the doctrinal foundations of fiduciary obligations and the criteria for their assessment with the legal system and socio-legal traditions of Uzbekistan, and to formulate them in accordance with the national legal context.

4. Also, various legal interpretations of the concept of “director” were analyzed, and existing gaps in the legislation of Uzbekistan were identified. In particular, the current problems arising from the fact that the legal status of “informal” directors, i.e., “de facto” and “shadow” directors, which are widespread in practice but have not been officially appointed, is not clearly defined in the legislation, were analyzed. In this regard, the need to introduce clear mechanisms for holding such persons accountable was substantiated, and proposals and recommendations were developed to eliminate the existing legal gap.

5. Fiduciary obligations are distinguished by their content, goal-oriented nature, and high ethical and legal requirements imposed on fiduciary persons. Therefore, within the framework of the dissertation, fiduciary obligations were recognized as “*sui generis*” - that is, a unique and independent type of obligation. Through this approach, it has been scientifically proven that fiduciary obligations are fundamentally distinct from traditional contractual or tort obligations in civil law.

6. In particular, the legal nature of fiduciary obligations was analyzed in detail, revealing their specific function as a ***preventive legal instrument***. These obligations are not limited to compensation for damage or elimination of committed violations. On the contrary, it was scientifically proven that their main task is to identify potential damage and legal errors in advance and prevent them. In this regard, fiduciary obligations were recognized as a specific form of obligation with a preventive legal nature.

II. Proposals to improve the legislation:

7. It is proposed to supplement Article 45 of the Civil Code with the following wording:

“...*The actions (inactions) of a person acting on behalf of a legal entity shall not be considered illegal, unfair,/or) unreasonable if they are based on the usual conditions of civil transactions or usual entrepreneurial risk.*”

8. It is proposed to amend Article 48 of the Civil Code, Part Four, to read as follows:

“...The following persons, although not having the status of a governing body of a legal entity, shall be recognized as “acting managers” and shall be held jointly and severally liable in civil law in accordance with the procedure established by law, in accordance with the procedure established by law.

9. It is proposed to amend the first part of Article 129 of the Civil Code as follows:

“Agency is a legal relationship based on trust, according to which one person (the agent) performs legal actions on behalf of and in the interests of another person (the principal) based on a law, power of attorney, court decision, or document of an authorized state body. Transactions concluded by the agent directly create, change, or terminate civil rights and obligations in relation to the principal.

10. It is proposed to include Article 129¹ in the Civil Code, which defines the obligations of a representative:

Article 129¹. Obligations of a representative

A representative relationship, by its very nature, is a relationship based on trust. In this relationship, the representative must act honestly, faithfully, and with due regard for the principal's interests.

The representative has fiduciary obligations within this relationship, such as: to prioritize the interests of the principal; to adhere to the principles of honesty, impartiality and loyalty; to act prudently within the scope of his authority; to avoid conflicts of interest; to submit reports to the principal promptly; and not to commit secret actions in his own or a third party's favor.

When applying this article, representation is a relationship based on trust, in which the representative's actions are recognized as being based not only on legal authority, but also on high moral responsibility. Therefore, the abuse of trust in relation to representation relationships, as well as the improper or harmful exercise of authority, leads to civil liability.

11. It is proposed to introduce a new norm in the second part of Article 985 of the Civil Code as follows:

“...If the damage was caused within the framework of fiduciary obligations, that is, in violation of the obligations of loyalty, honesty, or care based on trust, the fiduciary person shall be held jointly and severally liable for such damage.”

12. It is proposed to amend the third part of Article 985 of the Civil Code as follows:

“...The law or contract may establish an obligation to pay compensation to the injured party in addition to compensation for damage. The injured party has the right to demand the return of all profits directly or indirectly obtained by the person who violated the fiduciary obligation as a result of this violation, as well as income from all transactions made by the fiduciary person in his favor in violation of the law or in breach of trust.”

13. It is proposed to include Article 178² in the Code of Administrative Responsibility:

Article 178². Violation of the legislation on corporate governance

The following actions by a single or collective executive body or supervisory board of a business company:

failure to convene a general meeting of the company in the manner and within the time limit established by law or to hold it contrary to the requirements of the law;

failure to formalize the transfer (sale) of shares of participants (shareholders) to other persons in the manner established by law;

failure to disclose the existence of interested parties or violate the procedure for their approval;

violation of the obligation to act in the legitimate interests of participants;

— shall entail the imposition of a fine in the amount of thirty to fifty times the base calculation amount.

14. It is proposed to include Article 125¹ in the Civil Code.

Article 125¹. Invalidity of a transaction concluded as a result of abuse of authority

“A transaction concluded by an authorized person of a legal entity (executive body, supervisory board, general meeting) in violation of the principles of honesty, loyalty and prudence of civil law, for his own personal interests or for other illegal purposes, may be declared invalid by a court if it harms the legal entity or contradicts the common interests of shareholders.”

15. It is proposed to amend Part 2 of Article 42 of the Law “On Limited Liability Companies” and Part 1 of Article 81 of the Law “On Protection of the Rights of Joint-Stock Companies and Shareholders” as follows:

“Members of the supervisory board of a company, the sole executive body of a company, members of the collegial executive body of a company shall be liable to the company for damage caused to it by their guilty actions (inaction) or failure to fulfill their fiduciary duties, unless other grounds and amounts of liability are specified in the legislation. In this case, members of the supervisory board of a company, members of the collegial executive body of a company who voted against the decision that caused damage to the company, or did not participate in the voting, shall not be liable.”;

16. It is proposed to supplement Article 42 of the Law “On Limited Liability Companies” with parts three, four, and five, and to supplement Article 81 of the Law “On Joint-Stock Companies and Protection of Shareholders’ Rights” with parts seven, eight, and nine, with the following content:

“The fiduciary duties of members of the supervisory board of a company, the sole executive body of a company, and members of the collegial executive body of a company include:

to act in good faith and use methods that reasonably reflect the interests of the company and its participants in the performance of their duties and obligations;

not to use the company’s property for personal purposes in violation of the company’s charter and internal documents, and/or without the decisions of the general meeting of participants and/or the supervisory board for personal purposes or to prevent such use by other persons;

not to make any transactions with other persons without the consent of the relevant management bodies of the company, not to use business opportunities that belong to the company or may be of interest to the company, provided to him (or her) by virtue of his position in the performance of his duties, or to assist individuals in obtaining personal benefit;

not to engage in entrepreneurial activity in the field of the company's main activities without the consent of the relevant management bodies of the company;

not to disclose information about the company's activities that is considered confidential in accordance with the legislation.

The legislation, the company's charter, and internal documents may establish additional fiduciary duties for members of the company's supervisory board, its sole executive body, and its collegial executive body.

Actions (inaction) shall not be considered illegal, unfair,/or) Unreasonable if they are based on the usual conditions of civil transactions or usual entrepreneurial risk.

III. Suggestions and recommendations for improving the practice of law enforcement:

17. A special Supreme Court Plenum resolution should be developed to clarify the criteria for determining and assessing directors' obligations to the company and its participants, as well as liability for their breach. Although current legislation requires directors to act honestly and reasonably, courts lack consistent approaches for identifying when these duties are violated.

18. The concept of "director" and its various interpretations were also studied, the existing legal gaps in the legislation of Uzbekistan regarding this institution were identified, and reasonable proposals were developed to eliminate them. In particular, the practical problems arising from the lack of legal regulation of the institution of "informal" directors, which is widespread in national practice, the absence of effective mechanisms for holding them accountable, as well as the lack of a clear legal definition of the concept of "de facto" or "shadow" directors in the current legislation were analyzed, and a proposal was put forward to provide a single and clear legal definition of the concept of "informal leader" through a resolution of the Plenum of the Supreme Court.

19. Strengthening cooperation between state bodies and civil society institutions is essential to ensure the effective functioning of the fiduciary duties of directors and the institution of corporate responsibility. To this end, it was proposed to develop and implement a comprehensive action plan for corporate governance entities, including directors, shareholders, and other stakeholders, in collaboration between the Ministry of Justice, the Supreme Court, and the Chamber of Commerce and Industry. This plan will focus on raising legal awareness, developing practical skills, and ensuring consistency in judicial practice.

20. It was emphasized that before legally regulating the fiduciary duties of directors, it is necessary to create a basis for judges to understand the theoretical and practical essence of this institution deeply. In particular, it was justified that a step-by-step approach is essential for conducting methodological training sessions with the participation of judges, holding analytical seminars, and studying the experiences of foreign countries. This will contribute to the formation of a unified approach to fiduciary duties in judicial practice and the effective application of this institution.

21. To enhance corporate governance, ensure directors act in the company's best interests, and strengthen accountability, it is proposed to add provisions to the Corporate Governance Code clarifying the nature of directors' fiduciary duties and the standards for their observance.

**НАУЧНЫЙ СОВЕТ DSc.07/30.12.2019.Уч.22.01 ПО
ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ
ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ**

**ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ
УНИВЕРСИТЕТ**

САИДОВ ИБРАГИМ АНВАРОВИЧ

**СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ОПРЕДЕЛЕНИЯ КРУГА
ОБЯЗАННОСТЕЙ ДИРЕКТОРА В ХОЗЯЙСТВЕННЫХ ОБЩЕСТВАХ**

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АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Ташкент – 2025

Тема диссертации доктора наук (Doctor of Philosophy) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № В2025.2.PhD/Yu1932

Диссертация выполнена в Ташкентском государственном юридическом университете. Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на веб-сайте Научного совета (www.tsul.uz) и Информационно-образовательном портале «Ziyoune» (www.ziyoune.uz).

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Ведущая организация:	Правоохранительная академия Республики Узбекистан

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С диссертацией можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1345). (Адрес: 100047, г. Ташкент, ул. Амира Темура, 13. Тел.: (99871) 233-66-36).

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ВВЕДЕНИЕ

(аннотация диссертации доктора философии (PhD))

Цель исследования: Определить, как в системе корпоративного управления Узбекистана осознаются, интерпретируются и применяются на практике обязанности директоров.

Объект исследования: правовой статус директоров, их деятельность, а также правовые отношения, возникающие в связи с исполнением ими обязанностей в рамках корпоративного управления в хозяйственных обществах (акционерных обществах и обществах с ограниченной ответственностью), действующих в Республике Узбекистан.

Научная новизна исследования заключается в следующем:

обоснована важность того, что единоличный исполнительный орган общества (директор), в пределах предоставленных ему полномочий, закреплённых в уставе общества, обязан действовать в интересах общества и способствовать достижению его успеха;

доказана необходимость внесения в законодательство нормы, устанавливающей обязанность директоров хозяйственных обществ действовать честно и добросовестно в интересах общества, а также воздерживаться от действий, прямо или косвенно противоречащих его интересам;

обосновано, что общество отвечает по своим обязательствам всем принадлежащим ему имуществом, а его участники не несут ответственности по обязательствам общества и обязаны возмещать убытки, связанные с его деятельностью, лишь в пределах стоимости внесённых ими вкладов;

аргументировано возложение субсидиарной ответственности по обязательствам общества (если иное не предусмотрено уставом общества) в случае неплатёжеспособности общества, вызванной незаконными действиями единоличного исполнительного органа (директора), коллегиального исполнительного органа, члена наблюдательного совета либо участника общества, обладающего правом давать обязательные указания, а при причинении ущерба несколькими лицами несение ими солидарной ответственности.

Внедрение результатов исследования. Научные результаты, полученные в ходе исследования, нашли применение в следующем:

предложения о закреплении обязанности единоличного исполнительного органа общества (директора) действовать в интересах общества в пределах полномочий, установленных уставом, и содействовать достижению его успеха нашли отражение в пунктах первом и втором части первой статьи 44 проекта новой редакции Закона «Об обществах с ограниченной ответственностью» (протокол Министерства юстиции от 14 февраля 2025 года № 14/21-3/5-589). Реализация данных предложений способствует предотвращению выхода директоров за пределы предоставленных им полномочий и злоупотребления ими;

предложения о закреплении обязанности единоличного исполнительного органа общества (директора) действовать честно и добросовестно в интересах общества, а также воздерживаться от действий, прямо или косвенно противоречащих его интересам, нашли отражение в пунктах третьем и четвёртом части первой статьи 44 проекта новой редакции Закона «Об обществах с ограниченной ответственностью» (протокол Министерства юстиции от 14 февраля 2025 года № 14/21-3/5-589). Данная норма направлена на уточнение обязанностей директоров, усиление их подотчётности и ответственности, а также повышение уровня их обязательств перед обществом и его участниками;

предложения о закреплении положения о том, что общество отвечает по своим обязательствам всем принадлежащим ему имуществом, а его участники не несут ответственности по обязательствам общества и возмещают убытки, связанные с его деятельностью, лишь в пределах стоимости внесённых ими вкладов, нашли отражение в статье 4 указанного законопроекта (протокол Министерства юстиции от 14 февраля 2025 года № 14/21-3/5-589). Данная норма направлена на снижение предпринимательских рисков и обеспечение прав инвесторов под защитой закона.

предложения о закреплении положения о том, что если неплатёжеспособность общества вызвана незаконными действиями единоличного исполнительного органа (директора), коллегиального исполнительного органа, члена наблюдательного совета либо участника общества, обладающего правом давать обязательные указания, то при недостаточности имущества общества на таких лиц может быть возложена субсидиарная ответственность по его обязательствам (если иное не предусмотрено уставом общества), а в случае, если ущерб причинён несколькими лицами, они несут солидарную ответственность, нашли отражение в статье 4 данного законопроекта (протокол Министерства юстиции от 14 февраля 2025 года № 14/21-3/5-589). Указанная норма способствует существенному повышению уровня ответственности в системе корпоративного управления и укреплению принципа добросовестности при осуществлении управленческих функций.

Структура и объём диссертации: Диссертация состоит из введения, трёх глав, охватывающих 14 параграфов, заключения, списка использованной литературы и приложений. Общий объём диссертации составляет 156 страниц.

E'LON QILINGAN ISHLAR RO'YXATI
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