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THE CONCEPT, CHARACTERISTICS OF CORPORATE-TYPE LEGAL ENTITIES (CORPORATIONS) AND DESCRIPTION OF GOVERNING BODIES

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The strengthening and development of economic and business relations, the deepening and further expansion of trade among different countries in the contemporary time require processing and implementation of marketing methods and forms in line with these conditions.

It is obvious that the increase in the volume of business turnover leads to the increase of the economic activity of the subjects involved, as well as creation, change and termination of numerous legal relations. In the Republic of Armenia, among other states, everyone has the right to engage in economic, including entrepreneurial activities (part 1 of article 59 of the Constitution[1] of the Republic of Armenia).

In these terms, the subjects of civil relations primary operate by means of creating (establishing) legal entities with different organizational-legal forms, and managing them.

The identification of characteristics of legal entities with different organizational and legal forms, and classification thereof according to appropriate criteria is given special attention both theoretically and practically. Moreover, the problem is somewhat complicated due to the existence of different views and approaches on the concept and features of legal entities.

Therefore, in order to get a complete picture of the subject matter, it is first necessary to find out the concept and content features of corporate and non-corporate-type legal entities in professional literature. It should be noted that the presented approaches do not and cannot exclude other positions on them.

Thus, the term “corporation” comes from the Latin term “corpus habere”, which means the rights of a legal entity, which began to be partially recognized only by private unions in the Roman Empire (mainly since the reign of Marcus Aurelius)[2].

Suvorov notes that Roman jurists used the term “corpus habere” to refer to associations of individuals with legal personality. Later, at the end of the 4th and the beginning of the 5th century, the word “corporatio”[3], was often used to describe the members of the union in the Roman Empire, which collectively expressed the rights of individuals[4].

[1] Adopted on 06.12.2015, HHPT 2015.12.21/Special issue article 1118.

[2] See **Danelyan A. A. ,** Corporation and corporate conflicts, dissertation for the degree of candidate of legal sciences, Moscow, 2006, p. 16, **Khvostov V.M.,** The system of Roman law. M. Spark, 1996, p. 114.

[3] See **Suvorov N.S.,** On legal entities under Roman law. M.: “Statut”. 2000, p. 32.

[4] See **Avetisyan V. D.,** Current issues of corporate legal relations in the Republic of Armenia (by the example of economic companies), Yerevan, YSU Publishing House, 2013, p. 13, **Pokrovsky I. A.,** History of Roman Law, M., 1917, p. 75, **Kozlova N.V.** The concept and essence of a legal entity. M., 2003, p. 210.

It is noteworthy that the concept and understanding of a corporation in the legislation of different countries is not the same and certain features are manifested due to the differences in the legal systems of those states.

English law provides for the possibility of using various legal forms of entrepreneurial/business activities, including sole trader, joint venture, partnership, trust, unincorporated association, corporation. Only corporations of the mentioned have the status of a legal entity, therefore a corporation is the same legal entity.

On the other hand, the English legislation divides corporations into 2 main types: corporation sole and corporation aggregate. Corporation sole is designed to give corporate status to a single (usually high-status) natural person, who is authorized to represent the interests of a state or a religious organization.

Corporation aggregate confers corporate status on a group of persons and is divided into 2 types: commercial and non-commercial corporations[1]. Commercial corporations are called companies and in turn, are divided into public and private corporations[2].

US legislation uses the term “corporation” instead of the term “company”. Corporations are divided into 4 types: public, quasi-public, entrepreneurial and non-entrepreneurial. Public corporations are state and municipal bodies, quasi-public corporations serve the general needs of the population. Entrepreneurial corporations pursue profit as their main objective, while non-entrepreneurial corporations do not.

In Switzerland, a corporation, along with institutions, is considered one of the two main types of legal entities[3].

In Canada and Australia, the term “company” was originally used, but later it was replaced by the term “corporation”. In the English-language documents of the EU, the term “company” is usually used, so in the legal literature of English-speaking countries, the concepts of “corporation” and “company” are often used as synonyms[4].

When classifying legal entities in France and Germany, the term “corporation” is generally not used, in particular, in France, legal entities are divided into partnerships and associations, and in Germany - into unions and institutions[5].

In general, corporations are considered voluntary associations of natural persons and/or legal entities based on the membership of their participants. In other words, the main and general distinguishing feature of corporations is the membership of the corporation’s participants in that corporation in the amount of their respective investment in it.

It is noteworthy that the domestic legislation of the Republic of Armenia lacks the terms “corporation” or “corporate-type legal entity”, and articles 50 and 51 of the RA Civil Code[6] (hereinafter referred to as “CC”) define the concept and the types of a legal entity as carrying out profit seeking activities (commercial), or non-profit organizations, not distributing their profit among the participants (non-commercial). In other words, seeking/not seeking profit is taken as a basis for differentiation/classification of legal entities.

At the same time, it should be noted that chapter 25 of the RA Civil Procedure

[1] See **Kibenko E. R.,** Corporate Law of Great Britain, Kiev, “Yustinian”, 2003, p. 28.
[2] See Civil and commercial law of capitalist states. Edition **Vasilyeva E. A.,** M. 1993, p. 84.
[3] See **Vasilyeva E. A.,** the mentioned work, p. 81.
[4] See **Danelyan A.A.,** the mentioned work, p. 31.
[5] See **Vasilyeva E. A.,** the mentioned work, p. 80, 82.
[6] Adopted on 05.05.1998, ՀՀՊՏ 1998.08.10/17(50).

Code[1] (hereinafter referred to as "CPC") envisages provisions regulating the proceedings of corporate disputes, which is a progress in the context of protection of corporate rights and legal regulation, as it reveals, inter alia, the scope of corporate disputes.

Various bases/criteria for the classification of legal entities are offered in the professional literature, the analysis of which gives an opportunity to make a comprehensive and full picture about them.

According to professor Tariel Barseghyan, based on the nature of the right of the founders (participants) to the property, legal entities are conventionally divided into five groups.

1) legal entities, whose founders (participants) completely lose their property rights to the property by handing over that property to the legal entity (such as associations and companies),

2) legal entities, whose founders (participants) after handing over the property to the possession, use and management of the legal entity, continue to be its owners,

3) legal entities, whose founders (participants), lose the property right to that property and acquire binding rights by handing over the relevant property to the legal entity,

4) legal entities, a part of whose property is formed at the time of establishment and later transferred by the founder with the right of ownership, as well as from the property produced and acquired in the course of activity, and the other part - from the property transferred (fixed) with the right of free use for an indefinite period,

5) legal entities, whose founders (participants) hand over their property to the legal entity for ownership and do not acquire any right in respect of the legal entity, property or obligatory[2].

Kashanina defines a corporation as a legal entity being an organization, in which ownership is separated from management and is based on the union of capital (voluntary investments) for the performance of certain socially beneficial activities. Economic companies, both limited or additional liability companies, as well as joint stock companies can be considered as corporations. According to Kashanina, it is the separation of the property invested in the capital from the management that distinguishes the corporation from other commercial legal entities[3].

According to Danielyan, the main criteria for distinguishing a corporation from a non-corporate type are:

a) the principle of the participants` membership;

b) the formation of the property of the corporation at the expense of the of the founders' (participants) deposits (investments)[4].

In professional literature, the term corporation is understood in 2 meanings: broad and narrow. In the narrow meaning, corporation means only commercial, corporate-type organizations, and in a broad meaning, both commercial and non-commercial organizations[5].

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[1] Adopted on 09.02.2018, RASD 2018.03.05/16(1374) Art.208.

[2] See **Barseghyan T. K.,** Business law, Yerevan 2007, p. 90-93.

[3] See **Kashanina T. V.,** Corporate (intercompany law), M. 2003, p. 34.

[4] See **Danelyan A.A.,** the mentioned work, p. 27.

[5] See **Lomkin D.V.,** Corporate relations and the subject of civil law regulation // Legislation, N 5, 2004, p. 63.

According to professor Vahram Avetisyan, the term corporation includes all organizational forms of a private legal entity provided by the legislation, such as joint-stock companies, limited-liability companies, other additional liability companies, trust and full-fledged partnerships, cooperatives, as well as trade unions (associations, concerns, holdings, etc.)

Thus, currently the professional literature distinguishes and separates legal entities of the corporate type and non-corporate (unitary) type. Those legal entities, whose founders (participants, members) have the right to participate in the management of their activities should be classified as corporate organizations (corporations), such as economic companies, associations, industrial and consumer cooperatives, non-governmental organizations, associations (unions). And those legal entities whose founders do not have the right to participate or be a member of a legal entity should be classified as a non-corporate legal entity, such as foundations, religious organizations, etc[1].

In view of the above, in our estimation, the following concept can be given to corporate-type legal entities (hereinafter referred to as "corporation"): ***a corporation is a legal entity founded in the manner prescribed by the legislation, the participants (members) of which, through their contribution (deposit), form its property and are endowed with the right to participate in the management of the corporation, and other rights and responsibilities provided by founding and/or internal documents of the corporation.***

We believe that fixing the mentioned concept in domestic legislation will provide an opportunity to clearly distinguish corporations from non-corporate (unitary) organizations and to separate and analyse their characteristic features and regulatory specifications.

The corporation participates in the civil turnover, enters into legal relations with other entities through its governing bodies, therefore it is necessary to reveal the essence and characteristic features of the governing bodies of the corporations.

The most important governance principle is that the corporation's participants cannot make decisions directly, but only through the relevant governing bodies within the scope of their competence[2].

The bodies of the corporation form and express their will, so the corporation participates in the civil turnover, performs its functions through them (their actions)[3]. In this context, it is necessary to find out the meaning and significance of the body of the corporation (legal entity).

According to Sadikov, a corporation's body is understood to be an integral part of it, and all its actions, which are carried out within its competence, are considered as corporation actions, and create rights or obligations for the corporation; while those actions that go beyond its competence do not give rise to any rights or obligations for the corporation[4].

Tikhomirov shares a point of view, according to which the body of the

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[1] See **Avetisyan V. D.,** mentioned work. , p. 50.

[2] See **Tikhomirov M. D. ,** Legal status of the governing bodies of a joint-stock company, dissertation for the degree of candidate of legal sciences, St. Petersburg 2005, p. 11-12, Legal Encyclopedia / Ed. **M.Yu. Tikhomirov.** M., 2002. p. 422.

[3] See comments on the Civil Code of the Russian Federation, part one (item-by-item) / Ed. **Sadikov O.N.** - M.: Leg. firm "Kontrakt", "INFRA-M", 2003. p. 238-243.

[4] See Civil law of Russia. General part: Course of lectures /Resp. ed. **O. N. Sadikov**. Moscow: Lawyer, 2001. p. 144.

corporation should be understood as a part of a legal entity, which is composed of one person or a group of persons acting within the limits of their authorities defined by the law and the founding documents, forming and expressing the will of the corporation and causing appropriate rights and obligations for the latter[1].

According to Yeliseev, the body of the corporation is a person (sole body) or a group of persons (collegial body) that represent the interests of the corporation in relations with other entities without special powers (without a power of attorney)[2].

Shereshevsky called the body of the corporation its "statutory representative"[3], and according to Kozlova, the body of the corporation is its corporate representative, that is, the special representative of the corporation[4].

Ioffe emphasized that the bodies of the corporation are not considered its representatives, but are an integral part of it. The representative is an independent subject of law, concludes a transaction on the basis of a power of attorney, by which rights and obligations arise for the represented. It is not the body that acquires rights and obligations for the corporation, but the corporation itself concludes transactions represented by the bodies that operate on the basis of the charter[5].

It should be noted that the positions on the bodies of the corporation expressed in the specialized literature are divided into two parts in terms of the content:

1 . the body of the corporation as a part of it (constituent element),

2 . the corporation body as its representative.

The analysis of the corporation's bodies specifications gives grounds to assert that it is necessary to be guided not by the opposition of the two mentioned approaches, but by the combination and harmonization. In particular, the bodies of the corporation, being an integral part of the corporation, are at the same time endowed with the opportunity to form, express and/or represent the will of that corporation.

Therefore, in our opinion, the bodies of the corporation are bifurcated, they are parts of the corporation, consisting of one or more persons, which, in accordance with the legislation, the founding and/or internal documents of the corporation form and express the will of the latter, and/or represent the rights and legitimate interests of the corporation by realizing the legal capacity of the corporation.

In addition to defining the bodies of a corporation, it is necessary to refer to the types and classifications of those bodies according to different criteria and bases. Various classifications have been put forward in the professional literature, which lead to the following.

Depending on the circumstance of forming and/or expressing the will of the corporation (role in the process of expressing the will)[6], the bodies of the corporation can be divided into bodies that form the will (creating) and express the

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[1] See **Tikhomirov M. D. ,** mentioned work, p. 18.

[2] See Civil law. Textbook. part 1 / resp. ed. **A.P. Sergeev, Yu.K. Tolstoy. M. T.K Welby,** edition Prospect 2005, p. 153-154.

[3] See **Shereshevsky I.V.,** Representation. Trust and power of attorney. Practical comment to GK, RSFSR. - M., 1965, p. 102-105.

[4] See **Kozlova N. V.,** mentioned work, p. 348-352.

[5] See **Ioffe O.S.,** Soviet civil law. - M., 1967, p. 197.

[6] See **Sumskoy D.A. ,** mentioned work, p. 228-230.

will (expressing) [1]. The bodies that from the will are those bodies that make decisions within their competence, and those who express their will implement those decisions; therefore, they enter into legal relations with other subjects of law (i.e., the external relations of the corporation).

In a corporation, the meeting, the board, the collegial executive body form the will of the corporation, and the sole executive body, which concludes transactions on behalf of a legal entity without a power of attorney, represents its interests in relations with other persons[2].

Depending on the method of formation[3], one can distinguish between bodies established in elective, appointed and other way. The board and the audit committee are among the elective bodies. As for the executive body, the meeting (or the board, if it is vested in its authority by the statute) has the right to both appoint and elect a sole executive body and/or members of a collegial executive body. While the meeting cannot be considered either an elected or appointed body, the members (participants) of the corporation or their representatives take part in it[4].

Depending on the number of decision-making persons included in them (according to the structure/composition) [5], individual and collegial bodies are distinguished. The peculiarity of sole bodies is that they consist of one person who independently (within the scope of their competence) makes and/or executes decisions. The executive body and the supervisor are among the individual bodies of the corporation. The collegial body consists of a group of individuals, who make collective decisions through joint discussions, in accordance with the procedure established by law and founding documents. Collegial bodies include the meeting, the board, the collegial executive body, and the audit committee[6].

Depending on the nature of the functions performed, the management and the control bodies can be distinguished. Management leads to the regulation of this or that activity, and to manage a corporation means to determine the main directions of its development, to set goals, to contribute to their achievement. The functions of corporate governance are planning, regulation, management, organization, coordination[7]. Accordingly, the executive bodies can be considered the executive body and the meeting, and the control body – the board.

Depending on the possibility of representing the interests of the corporation in civil turnover, they are divided into representative and non-representative bodies.

The representative body acts on behalf of the corporation on the basis of the law and the founding documents without a power of attorney, while the non-representative body is not endowed with such opportunities (it has internal administrative powers). Non-representative bodies may participate in the

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[1] See Cherepakhin B. B. named those bodies also as representative (wilfull) and non-representative (creator), **Cherepakhin B. B.,** Will formation and will of a legal entity // Cherepakhin B.B. Works on civil law. M., 2001. p. 301). **Ebzeev B.B.,** Participation of joint-stock companies in civil circulation. Autoref.disc. ... cand. legal Sciences. M, 2001. p. 12-26, **Zbaratskaya L.A.,** Organizational unity in the system of mandatory features of a legal entity. Autoref. diss. ... cand. legal Sciences. Vladivostok., 2003. p. 17-18.

[2] See **Tikhomirov M. D. ,** mentioned work, p. 16.

[3] See **Sumskoy D. A.,** mentioned work, p. 233.

[4] See **Tikomirov M. D.,** mentioned work, p. 16-17.

[5] See **Sumskoy D.A. ,** mentioned work, p. 230-233.

[6] See **Tikhomirov M. D. ,** mentioned work, p. 17-18.

[7] See **Tikhomirov M. D. ,** mentioned work, p. 18.

conclusion of a separate category of transactions (large, interested, other provided by law) by giving their consent or making a decision on their execution, and the representative bodies ensure their execution[1].

According to the functions performed, the bodies of the corporation are higher (governing), executive and other.

The higher (governing) bodies carry out the general management of the corporation's activities, determine the development strategy of that corporation, approve the charter, amend and supplement it. The meeting of the corporation is considered such a body.

Executive bodies carry out the day-to-day management of the corporation's activities and are accountable to the highest governing body. Among such bodies is the executive body.

Other bodies include, for example, the audit committee (auditor), which supervises the financial and economic activities of the corporation[2].

Auxiliary bodies are not considered to be the bodies of the corporation as a whole, they exist within the bodies of the corporation and ensure their activities, for example, the accounting committee, the secretary, etc[3].

Advisory bodies are also distinguished, the main function of which is to provide advice to the executive bodies of the corporation[4].

In the literature, the counting and auditing commissions, as well as the liquidation commission are included in corporate governing bodies[5].

Therefore, it is necessary to consider whether the auditor (audit committee), the counting committee or the liquidator (liquidation commission) can be considered the governing bodies of the corporation.

Article 75 of the Law on Joint Stock Companies (hereinafter the Law on JSCs)[6] (parts 1, 4) stipulates that a counting commission is established in a company with more than fifty shareholders (owner of voting shares), which decides the quorum of the meeting, gives explanations to the shareholders and their representatives on the agenda of the meeting, ensures the established voting procedure and the shareholders' right to participate in the voting, counts the votes; summarizes the voting results; draws up a protocol on them, and transfers the ballots to the company's archive.

It follows from the citation that the counting commission does not carry out any administrative function on its own, it is an organizational-consultative body attached to the meeting, but not a separate governing body[7].

At the same time, it follows from the cited regulation that the counting commission is an optional (not mandatory) body, as it is established not in all, but in companies with more than 50 shareholders. Consequently, in companies with less than that number of shareholders, a counting commission may not be formed

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[1] See **Sumskoy D.A. ,** mentioned work, p. 234.

[2] See **Lomakin D.V.,** General provisions on the bodies of a joint-stock company // Essays on the theory of joint-stock law and the practice of applying joint-stock legislation. - M., 2005, p. 101.

[3] See **Mogilevski S. D.,** mentioned work, p. 133.

[4] See **Sumskoy D. A.,** mentioned work, p. 234-237.

[5] See **Bakshinskas V.Yu., Dedov D.I., Karelina S.A.,** Legal regulation of activities of joint-stock companies (Joint-stock law). Tutorial. - M.: "Zerkalo" Publishing House, 1999**, Glushetsky A.,** Governing bodies of a joint-stock company // Economics and Life. 1996. No. 9.

[6] Adopted on 25.09.2001, ՀՀՊՏ 2001.11.06/34 (166) article 831.

[7] See **Lomakin D.V.,** Judicial-arbitration practice of application of the Federal Law "On Joint-Stock Companies". - M., 2005, p. 194-195.

at all.

Pursuant to article 91 (parts 1-3) of the Law on JSCs, in order to implement the control over the financial and economic activities of the company, an audit committee (auditor) is elected in an OJSC, and may be elected in a CJSC, which monitors the implementation of the decisions of the company's management bodies, checks the compliance of the company documents with the laws, other legal acts and charters and is accountable to the meeting.

The audit committee (auditor) carries out the monitoring of annual results of the financial and economic activity of the company, audits the financial and economic activity of the company; as well as at the request of the latter, all necessary documents, materials and explanations related to the financial and economic activity of the company and its branches must be provided.

As a result of the combination of the above-mentioned provisions of the legislation, it can be concluded that the audit committee (auditor) has a rather wide range of supervisory powers: it is called to supervise the financial and economic activities of the corporation and ensure legal compliance, moreover, such control is internal (external control is vested in the external auditor) [1].

It should be noted that the audit committee (auditor) is a non-mandatory (optional) body, as its establishment in CJSCs is optional. At the same time, it should be emphasized that the competence of the body under discussion does not include the adoption or implementation of administrative decisions: its powers are mostly of a controlling nature[2].

The liquidation commission (articles 27-29 of the Law on JSCs) is a body established for the liquidation of the company (within the framework), from the moment of the appointment of which the powers of managing the company's affairs are transferred to, and the latter represents the company in court.

The liquidation commission places an announcement on the procedure and term of liquidation and creditors' claims, carries out re-assessment of property, takes measures to find creditors and receive receivables, informs creditors about liquidation, prepares interim liquidation balance sheet, liquidation balance sheet, conducts public auctions to sell the property, makes payments to the creditors, distributes the property remaining after fulfilling the obligations among the shareholders, etc.

According to Caplin, the liquidation commission is not a body of the corporation, as its activities are strictly limited to liquidation issues, and the latter is not authorized to take any action that constitutes the normal activities of the corporation[3].

According to Tikhomirov, the liquidation commission does not manage the normal commercial and production-economic activity of the company, but simply organizes and conducts its liquidation, so it should not be included in the system of the company's governing bodies[4].

According to Sumskoy's point of view, the liquidation commission is a body of the corporation with special authority defined by the legislation and founding documents, whose activities lead to the termination of the corporation's activities

[1] See **Sumskoy D. A. ,** mentioned work, p. 246:

[2] See **Lomakin D.V.,** mentioned work, p. 101, **Sumskoy D. A.,** mentioned work, p. 235-236.

[3] See **Kaplin P.,** Bodies of a joint-stock company during the period of liquidation // Weekly Soviet Justice. 1926.-№40, p. 1156.

[4] See **Tikhomirov V. D. ,** mentioned work, p.21-22.

and the execution of actions (powers) aimed at the final settlement with creditors[1].

We agree with the approach of A. Soghomonyan, according to which the liquidation commission is a special body of a legal entity, as it has all the features attributed to it in the sense of a management body of a legal entity, but since it is created only in the event of liquidation of a legal entity, it should be accepted as a special body[2].

The analysis of domestic corporate legislation makes it possible to identify the system of corporate governing bodies, moreover, different corporations have their inherent features.

Thus, according to chapter 5 (article 35) of the RA Law on Limited Liability Companies[3] a limited liability company has the following management bodies: **a) general meeting b) board c) executive body d) audit committee (auditor).**

Chapters 10-12 of the RA Law on JSCs provide for the following bodies of joint stock companies: **a) general meeting b) board c) sole/collegial executive body d) audit committee (auditor).**

Chapter 5, 3 § 3 (article 119) of the RA CC refers to the following bodies for the management of cooperatives: **a) general meeting b) supervisory board, c) executive bodies: management board and/ or chairman**.

Chapter 4 of the RA Law on Non-Governmental Organizations[4] lists the following management bodies: **a) the meeting b) the executive body c) the collegial governing body d) the supervisory body.**

It should be noted that the legislation provides for somewhat different legal regulations in relation to certain types of corporations. This is especially about the companies licensed by the Central Bank of Armenia.

For example, article 21 of the Law of the Republic of Armenia on Banks and banking activity[5] defines the following bodies for banks: **a) the general meeting of participants, b) the board, c) the executive director or the chief executive officer, in cases provided by the charter- the directorate or department.**

Moreover, according to part 3 of article 21 of the law, banks are required to have the management bodies provided for in part 1 of this article (above), regardless of the type of organization – **a chief accountant, an internal audit unit, a person responsible for performing the risk management functions, and a person responsible for carrying out the compliance function**.

And according to article 8. 1. of the RA Law on Credit Organizations[6], the credit organization is obliged to have a board of directors (observer board), which must consist of at least 3 with a maximum of 15 members, regardless of the organizational-legal type and other criteria.

Article 21 of the RA Law on Insurance and Insurance activities[7] provides for the following management bodies of the insurance company: **a) general meeting b) board c) executive body - the executive director, and in the case provided by the company's charter, the directorate.**

The combined analysis of the above-mentioned legislative provisions shows

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[1] See **Sumskoy D.A. ,** mentioned work, p. 417.

[2] See **Soghomonyan A. M.,** Issues of legal regulation of liquidation of economic companies in RA, dissertation for the scientific degree of candidate of legal sciences, Yerevan, 2021, p. 123.

[3] Adopted on 24.10.2001, RASD 2001.12.07/38(170) art.910.

[4] Adopted on 16.12.2016, RASD 2017.01.25/5(1280) Art.58.

[5] Adopted on 30.06.1996, RA SD 1996/12.

[6] Adopted on 29.05.2002, RASD 2002.07.03/23(198) Art.526.

[7] Adopted on 09.04.2007, RASD 2007.05.30/27(551) Art.647.

that though certain types of corporations in the Republic of Armenia are endowed with certain features, all of them are inherent in the following classical systems (models): two-tier (two-layer) and three-tier (three-layer). This is due to the fact that in the case of some corporations (for example LLCs, cooperatives, non-governmental organizations) the formation of the board, either by law or by charter, is optional (not mandatory).

The experience of different foreign countries on this issue is interesting, in particular, a two-tier system is typical for the Great Britain and the United States; a three-tier system is typical for Germany and Austria, while in France both models are used[1]. Therefore, 3 main models of government are distinguished: Anglo-American, German and French[2].

And the European Union (EU) recommends the introduction of a three-tier system, at the same time, EU member states can transfer the issue of governance to the discretion of corporations[3].

Thus, the model introduced in Armenia in connection with the corporate governance system is in line with the French model well-known in international legal practice, allows the formation and operation of both two-tier and three-tier governing bodies in accordance with the legislation of the Republic of Armenia and/ or the founding documents of the corporation.

Summarizing and generalizing the above mentioned, one can give the following concept to the corporate governing bodies: **the governing bodies of the corporation are the parts of the corporation, consisting of one or more persons, which, in accordance with the legislation, its founding and/or internal documents form, express the will of the corporation within the scope of their powers and authority, and/or represent the rights and legitimate interests of the latter, realizing the legal capacity of the corporation.**

The study of American legislation and practice shows that in addition to the classical (two-level, three-level) models of management, at present there are also venture companies to which other, differentiated structures are applied.

According to The European Venture Capital Association (EVCA) venture capital is viewed as a subset of private equity and refers to equity investments made for the launch, early development or expansion of a business.

In the USA, venture capital is defined as capital provided by professionals who invest alongside management in startups and rapidly growing companies [4].

Thus, venture capital financing is a risky investment by professional investment funds in private companies from the seed, early and late stages to dynamic growth, with the belief that the company will have exceptional growth potential and unique, long-term financial returns[5].

Therefore, as rightly emphasized, innovative startups have been a major force

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[1] See **Laptev V.V.,** Shareholder law. - M.: Legal firm “Kontrakt”, 1999.

[2] See **Prokhorenko V. V.,** Board of Directors in the system of bodies of a joint-stock company, dissertation for the degree of candidate of legal sciences, Yekaterinburg, 2006, p. 24, **Pavlova K . P. ,** Topical issues of legal regulation of the organization and activities of the board of directors (supervisory board) of a joint-stock company under Russian law, dissertation for the degree of candidate of legal sciences, Moscow 2013, p. 52.

[3] See **Torkanovskiy Ye.,** Management of a joint-stock company // Economy and law. 1997 No. 6-7.

[4] See **Thomas Andersson, Glenda Napier,** The Role of Venture Capital, Global Trends and Issues from a Nordic Perspective, Malmö, September 2007, p. 24.

[5] See **Daniel H. Aronson,** Venture Capital. A Practical Guidebook for Business Owners, Managers and Advisors, New York, August 2007, p. 10, 13.

in commercializing innovative science and revolutionizing the world we live in, and a startup is nothing more than an idea and an entrepreneur with a team looking for finance [1].

It should be noted that corporations with the corporate structure of C Corp, S Corp and LLC are known in the American legal system[2]. Taking into account the features of venture companies (including those with the participation of angel investors), C Corp type corporations are established in the USA, the main characteristics of which are as follows:

1. Limited liability is typical for C Corp corporations, which means that the corporation with its own assets is only responsible for its own obligations, but not for the obligations assumed by its participants.

2. C Corp shareholders can be any US citizen, non-citizen or company, moreover, the number of participants is unlimited, that is, there is no limit for this type of corporation in terms of participants.

3. Investments in C Corp are made mainly by venture funds and/or angel investors, who can acquire not only common (ordinary) shares, but also special preferred shares with their inherent privileges, advantages and additional rights.[3]

Venture funds act as financial intermediaries between investors (individuals, pension funds, banks or insurance companies) and the entrepreneurial companies in which they invest. That is, entrepreneurial companies receive investments either directly (by individual investors and companies) or indirectly (through specialized venture funds)[4].

Venture companies[5] are, in fact, similar to joint-stock companies in the sense that they also have the system of governing bodies of corporations: meeting, board and executive body(s), although they differ somewhat (sometimes significantly) in their structural and operational features.

In practice, the economic or financial and control rights/components with their sub-components (elements) are emphasized in venture companies[6].

The economic component refers to the funds to be received by the investors in the final outcome (in liquidation cases, such as sale of the company, liquidation, initial public offering (IPO)) and the conditions affecting it, while the control

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[1] See **Paolo Giudici, Peter Agstner,** Startups and Company Law: The Competitive Pressure of Delaware on Italy (and Europe?), Law Working Paper N° 471/2019, Bozen-Bolzano, August 2019, p. 4, 6, **James Smith,** Getting to yes on our terms: venture capital financial contracts in action during periods of limited liquidity, University of Toronto Law School, August, 2006, p. 5-6.

[2] See **B. Feld, J. Mendelson,** Venture Deals, BE SMARTER THAN YOUR LAWYER AND VENTURE CAPITALIST, Third Edition, John Wiley & Sons, Inc., Hoboken, New Jersey, 2016, p. 270.

[3] See **Paolo Giudici, Peter Agstner,** mentioned work, p. 10-12, https://www.wolterskluwer.com/en/expert-insights/s-corp-vs-c-corp-differences-benefits#:~:text=C%20corporations%3A%20C%20corps%20are,are%20considered%20personal%20taxable%20income, https://www.businessnewsdaily.com/3771-c-corporation.html, https://www.delawareinc.com/what-is-a-c-corporation/, https://www.upcounsel.com/c-corporation (access: 04. 01. 2023)

[4] See **Thomas Andersson, Glenda Napier,** mentioned work, p. 28, **James Smith,** mentioned work, p. 5-6:

[5] In the further discussion about venture companies, companies with the participation of both venture funds and angel investors are taken into account.

[6] See **Orrick, Herrington & Sutcliffe LLP,** Orrick's Guide to Venture Capital Deals in Germany, 2018 Edition, p.36 (https://s3.amazonaws.com/cdn.orrick.com/files/Insights/Germany-VC-FINAL-web.pdf).

component is related to the structures that give investors the opportunity to carry out positive (affirmative) or negative (veto) control[1].

The elements of the economic component are the price, liquidation preference, continuous investment (pay-to-play), time investment (vesting), the employee pool, antidilution, special preference right (super prorata right) etc.

The elements of the control component include the board of directors, protective provisions, drag-along and tag-along rights, conversion, etc[2].

Considering the above characteristics, American C Corps are defined as a separate type of corporation, which, according to its characteristics, is subject to special legal regulation. In general, it can be stated that, in the substantive sense, C Corp is a special joint-stock company with a combination of the above-mentioned peculiarities.

It should also be noted that a company similar to the American C Corp has been proposed and introduced in a number of countries (e.g. Spain, Germany, Belgium, Italy, Denmark, etc.), as a simplified version or subtype of the standard limited liability company[3].

We believe that in order to increase the investment attractiveness in RA and attract venture funds and angel investors, it is necessary to provide and introduce a new, special type of joint-stock companies: venture joint-stock company (hereinafter also “VJSC”), similar to the American C Corp, according to RA legislation, considering the following:

1. VJSCs are mainly newly created or early-stage companies in which venture funds invest for the growth and development of these companies or for the purpose of allowing their issued securities on the regulated market,

2. As a rule, venture funds and/or angel investors invest and acquire participation in VJSCs, in addition to the original (main) founders of the company,

3. Unlike ordinary JSCs, the charter of VJSCs, provides for the special rights of venture funds and/or angel investors participating in VJSCs (in addition to the rights certified by ordinary and preferred shares, there are also other special rights, privileges and advantages),

4. VJSC shares are special in terms of content, different from ordinary (common) and preferred shares, as they certify such rights, privileges and advantages that are specific only to VJSC and are absent in other types of companies.

5. Venture funds and/or angel investors participating in the general meeting of VJSCs can participate with the right to vote (owner of voting shares), without the right to vote (the right to participate in the meeting) and with the right to special vote (with positive or negative (veto) control powers),

6. Venture funds and/or angel investors can appoint or elect their own member, including an observer member, in the board of VJSCs, and the latter has the right to participate in all meetings of the board and exercise control over its activities.

7. A special executive body can be provided in VJSCs, in which the executive body has several managers and certain transactions or operations can be performed only with their simultaneous agreement (signature) or with the approval

[1] See **B. Feld, J. Mendelson**, mentioned work p. 38.

[2] Details are given in **B. Feld, J. Mendelson,** mentioned work, p. 39-81, **Orrick, Herrington & Sutcliffe LLP,** mentioned work, p. 15, **Dr. McKaskill Tom,** An Introduction to Angel Investing - A guide to investing in early stage entrepreneurial ventures, Australia, June 2009, p. 36-37.

[3] See **Paolo Giudici, Peter Agstner,** mentioned work p. 21-22.

of the head of the executive body elected/appointed by venture funds and/or angel investors.

8. As a result of the activities of VJSCs, venture funds and/or angel investors seek to obtain exclusive, long-term financial resources, as well as to eventually carry out an IPO or trade sale of their shares[1].

9. The elements of the economic and control components mentioned above (price, liquidation preference, pay-to-play, vesting, the employee pool, antidilution, board of directors, protective provisions, drag-along and tag-along rights, conversion, super prorata right, etc.) are typical to the VJSCs and cannot be applied (among other things, due to legal prohibition or not being directly provided for by law) to other companies.

In addition, it should be emphasized that in parallel with venture funds, angel investors (also known as angels), who, as a rule, invest in start-up or early-stage businesses, also participate in venture companies[2].

Angel investors are high-income, non-institutional, private equity investors with the desire and sufficient ability to invest a portion of their assets in high-risk, high-return entrepreneurial ventures in exchange for voting rights and profits[3].

It should be noted that the regulations and proposals related to venture funds are mutatis mutandis applicable to angel investors as well.

By the way, it should be noted that as a result of additions and amendments[4] 26.05.21 HO-236-N made to the Law on JSCs dated 26.05.2021 it is provided that JSC can issue one or more classes of ordinary (common) and preferred shares in non-documentary form, and the number of votes provided to their owner with each share of a certain class of ordinary (common) shares of the company cannot exceed 10 votes (these restrictions apply equally to all owners of the same type or class of shares and cannot be applied to an individual shareholder or a group of shareholders) (parts 1 and 7 of article 32 of the Law on JSCs).

On the other hand, they established that the owner of ordinary (common) shares of the corresponding class cannot be granted additional voting rights not derived from the number of ordinary (common) shares of the given class owned by him (part 2 of article 37 of the Law on JSCs).

The above-mentioned legal norms are problematic in the sense that the VJSC goes through stages (pre-seed, seed, early-stage, mid-stage, late-stage, expansion rounds, turnaround, late, buy out, etc.[5]) and in those stages it can acquire participation from various venture funds and/or angel investors, which may be assigned a number of rights, including more than 10 voting rights, which do not apply to all holders and give additional voting rights not based on the number of shares.

We believe that the aforementioned additions and changes to the Law on JSCs are partial and non-comprehensive in nature, do not express all the features

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[1] See **Dr. McKaskill Tom,** mentioned work, p. 56, 118-129.

[2] See **Lucinda Linde and Alok Prasad,** Venture Support Systems Project: Angel Investors, MIT Entrepreneurship Center, February 2000, p. 2, 10, **Dr. McKaskill Tom,** mentioned work, p. 145, 161.

[3] See **Dr. McKaskill Tom,** mentioned work, p. 9.

[4] Adopted on 26.05.2021, unified website 2021.05.31-2021.06.13, official publishing date 10.06.2021.

[5] See **B. Feld, J. Mendelson,** mentioned work, p. 10-11, **Thomas Andersson, Glenda Napier,** mentioned work, p. 26, **Dr. McKaskill Tom,** mentioned work, p. 23-24, **Lucinda Linde and Alok Prasad,** mentioned work, p. 9:

of VJSCs, moreover, they create confusion in the context of the regulation of general and venture joint-stock companies.

In such conditions, it is necessary to clearly distinguish between joint stock companies and VJSCs, to refrain from regulating the latter by the Law on JSCs, and for this purpose, in our opinion, it is necessary to adopt a separate law on VJSCs, which will regulate all the issues and features related to them.

In light of the above, it is no coincidence that venture capital is more art than science, more journey than destination, and clearly much more than merely a financing or capital raising transaction[1].

Therefore, the necessity of providing the concept of VJSC as a special type of joint-stock companies and legal regulation by a separate law, is justified.

ПОНЯТИЕ, ОСОБЕННОСТИ И ХАРАКТЕРИСТИКА ОРГАНОВ УПРАВЛЕНИЯ ЮРИДИЧЕСКИХ ЛИЦ КОРПОРАТИВНОГО ТИПА (КОРПОРАЦИЙ)

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Настоящая научная работа посвящена исследованию сущности и особенностей юридических лиц корпоративного типа (корпораций), выявлению отличительных черт юридических лиц корпоративного типа и не являющихся таковыми, выявлению характеристик и содержания органов управления корпораций. В работе были изучены законодательные регулирования ряда отечественных и зарубежных стран, касающиеся корпораций и их особенностей, практика, а также труды ученых-теоретиков.

В результате вышесказанного было сформулировано понятие корпораций и особенности последних. В работе была выявлена и проанализирована система органов управления корпораций и ее отдельные компоненты с присущими им особенностями и классификациями.

В исследовании иностранного и, в первую очередь, американского законодательства в отношении венчурных фондов (в том числе ангел инвесторов) и венчурного капитала было предложено по аналогии с действующими в США корпорациями C Corp ввести концепцию венчурных акционерных обществ как особого рода акционерных обществ с учетом ряда характерных особенностей.

[1] See **Daniel H. Aronson,** mentioned work, p. 9.

ԿՈՐՊՈՐԱՏԻՎ ՏԻՊԻ ԻՐԱՎԱԲԱՆԱԿԱՆ ԱՆՁԱՆՑ (ԿՈՐՊՈՐԱՑԻԱՆԵՐԻ) ՀԱՍԿԱՑՈՒԹՅՈՒՆԸ, ՀԱՏԿԱՆԻՇՆԵՐԸ ԵՎ ԿԱՌԱՎԱՐՄԱՆ ՄԱՐՄԻՆՆԵՐԻ ԲՆՈՒԹԱԳԻՐԸ

Կարեն Մելիքսեթյան
ԵՊՀ քաղաքացիական իրավունքի ամբիոնի ասպիրանտ

Սույն գիտական աշխատանքը նվիրված է կորպորատիվ տիպի իրավաբանական անձանց (կորպորացիաների) էության և հատկանիշների ուսումնասիրությանը, կորպորատիվ տիպի և այդպիսին չհանդիսացող իրավաբանական անձանց տարբերակիչ հատկանիշների վերհանմանը, կորպորացիաների կառավարման մարմինների հատկանիշների և բովանդակության բացահայտմանը: Աշխատանքի մեջ հետազոտվել են կորպորացիաներին և դրանց առանձնահատկությունների վերաբերող ներպետական և արտասահմանյան երկրների օրենսդրական կարգավորումները, պրակտիկան, ինչպես նաև տեսաբան-գիտնականների աշխատությունները:

Վերոգրյալի արդյունքում սահմանվել են կորպորացիաների հասակցությունը և վերջինների առանձնահատկությունները: Աշխատության մեջ բացահայտվել և վերլուծվել են կորպորացիաների կառավարման մարմինների համակարգը և դրա առանձին բաղադրիչները՝ իրենց ներհատուկ առտանձահատկություններով և դասակարգումներով:

Վենչուրային ֆոնդերի (այդ թվում՝ հրեշտակ ներդրողների) և վենչուրային կապիտալի վերաբերյալ արտասահմանյան և առաջին հերթին ամերիկյան օրենսդրության հետազոտության արդյունքում առաջարկվել է ԱՄՆ-ում գործող C Corp կորպորացիաների համանմանությամբ ներդնել վենչուրային բաժնետիրական ընկերությունների հայեցակարգը՝ որպես բաժանետիրական ընկերության հատուկ տեսակ՝ մի շարք բնութագրիչ առանձնահատկությունների հաշվառմամբ:

Բանալի բառեր – *կորպորատիվ տիպի իրավաբանական անձ, կորպորացիա, կառավարման մարմիններ, վենչուրային ֆոնդ, հրեշտակ ներդրող, վենչուրային բաժնետիրական ընկերություն*

Ключевые слова: *юридическое лицо корпоративного типа, корпорация, органы управления, венчурный фонд, ангел инвестор, венчурное акционерное общество*

Key words: *corporate-type legal entity, corporation, governance bodies, venture fund, angel investor, venture joint stock company*