SCIENTIFIC REVIEW

CORPORATE MANAGEMENT AND INTERESTS OF THE MAJORITY OWNER

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ABSTRACT

In this paper, the authors analyze the position of the majority investor of a legal entity, taking into account the rules of corporate governance and the interests of other interest groups. Although corporate governance is present in practice in all countries of the world, including the Republic of Serbia, since the companies got their current form, this phenomenon is recognized as one of the key limiting factors of the interests of various stakeholders, i.e. persons interested in the company's operations. The problem of corporate governance boils down to the system of establishing relations between different interest groups in the company, company owners, management and the company itself, regulated by law and business practice. Adherence to good rules of corporate governance should contribute to the realization of the generally known interests of all stakeholders, which is a successful and long-term business and thus the realization of the goals of all persons interested in the company's operations: majority capital owners, minority owners, company management, the company itself, creditors, farmers, local communities and the state. The authors believe that among the multitude of stated interests, the primary interest is the owners of the majority of the shares, who invest the most resources in the company and therefore bear the greatest business risk. The majority shareholders provide funds for the business of the company, leave the management to the manager, with the expectation of a return of the invested funds and additional earnings. Given that the biggest risk of the company's business is on his side, it is considered that their interest in the company is the greatest. The authors believe that because of this, the interest of majority capital owners should be primary in relation to other interest groups.

Keywords*: corporate governance, the interest of the majority owner of the capital, the interest of the manager, other stakeholders, the goal of the company's operations.*

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INTRODUCTION

In the countries of the Romano-Germanic-Slavic legal system, to which the legal system of the Republic of Serbia belongs, a company (business company, enterprise) is defined as a set of several persons (legal and/ or physical) united on the basis of a contract, with the aim of carrying out some commercial activity , based on the investment of a certain property, achieve a certain profit that they will share based on the criteria stipulated in the contract on the establishment of the company [1].

According to this system, the company is a legal entity that is legally independent on the subjectivity of the founder and has a lucrative goal and a presumption of commerciality [2]. This means that the goal of establishing trading companies is to operate for the purpose of gaining profit and distributing profits between the company's owners, with prior payment of obligations to all creditors and other persons interested in the company's operations (constituents). In the economic literature, it is considered that the company represents the basic economic cell of every state and every community. Therefore, economic theory and practice highlight the two bases on which every company functions: the organizational aspect of the company and the objective aspect. [3].

The company, as the bearer of subjectivity, is characterized by several characteristics [4]:

- The company represents a way of organizing founders/investors and jointly performing certain economic activities, with the aim of earning income,
- The company is a technique of organization as a corporate form, which enables the separation of dedicated assets for the company and the easy transmission of ownership through the disposal of membership rights over the capital,
- A company is a technique of organization of dedicated property [5].

ORGANIZATION OF THE COMPANY - CORPORATE MANAGEMENT

In order for a company to realize its path to success, it needs to be well organized. This implies the establishment of good relations between different interest groups in the company, the company owner, the management of the company and the capital company itself, constituted on the basis of a contract, regulated by law and business practice, with the aim of improving operations and achieving the company's long-term business success [6], and thus the satisfaction of the interests, above all of the shareholders whose interest is primary and undoubted, but also of all other constituents interested in the business of the company, creditors, employees, management and thus the whole society in a sociological sense [7].

This means that the company should have such a system of relations between the mentioned persons, which can be applied to each specific case. For example, applying good corporate governance rules should regulate relations between investors and management bodies, those bodies that represent the owners and management of the company. The owners, owners of the capital, provide capital to the management bodies for the achievement of the company's goals - profit and thus the return on their ownership investment.

Capital owners, through representation in the company's assembly, elect members of the board who determine the company's plans for carry out activities and the body made up of capital owners determines the supervision of the board's work. The body of the capital owner is a hierarchically superior body that is responsible for strategic decisions related to the company's operations. That is the reason why the question arises whose interests are the most important and in whose interest the management of the company should function [8]. Based on comprehensive research, the authors concluded that the company's management should prioritize the interests of majority investors.

Therefore, the primary concept of corporate governance is the establishment of such relations between the owners and management of the company that will lead to the realization of the interests of majority investors. This idea stems from the arguments that investors have the strongest interest in the good operation of the company and that the success of the company's work and the realization of the interests of all other constituents depend on it [9]. In some countries, this concept has been elevated to absolutes, such as in the USA, where it is considered that the only interest that should be protected is the interest of the investor. In countries where the interests of other constituents are respected, the interest of shareholders is inviolable and stands out in the foreground. The paper discusses the status of the majority investor in the company, his motive for investing capital, his expectations and risk of exposure, in relation to other persons interested in the company's operations.

MATERIALS AND METHODS

Extensive literate review is conducted.

Interviews with the relevant stakeholders in Serbia: 50 capital owners; 50 managers and 50 creditors (banks and suppliers), was performed, in the period from 2019 to 2022.

The respondents were asked the following questions: whether there are majority investors in the capital structure; do they think that investors bear the biggest business risk; whether the assembly chose the management to manage the company; whether the administration should act in the interest of majority investors in relation to other constituents.

The respondents gave the following answers: all investors, all creditors of the company and 90% of managers stated that the company should function in order to protect the interests of the majority investors and then all others, and 10% of managers believe that the most important interest of the company.

In order to conduct an investigation and reach a conclusion on the subject of research, the authors applied the method of comparative analysis.

This paper investigates and analyzes two hypotheses:

Hypothesis 1: The main business concept of the company is to make a profit, in order to realize the interest of the majority shareholder, which is the return of invested funds and an additional return on invested funds.

Hypothesis 2: A company should adhere to the generally known rules of good management practice in order to make a profit.

Bearing in mind the investor's motive, which is to invest capital in the business of the company in order to increase its assets, the fact that the majority investors thus bear the greatest business risk compared to other interest groups, the authors concluded that the management of the company should be arranged in a way that protects the interests of the majority investors. Based on the results of the research, the authors concluded that the application of good rules of corporate governance can establish such relations between capital owners and management that lead to the achievement of the company's goals, the acquisition of profits and thus the interests of investors and other interest groups.

RESEARCH RESULTS

Property of the company

The company operates with its own assets, material substrate. The company's assets consist of money, things (movable and immovable) and rights: share/shares in other companies; industrial property rights, claims and other property rights. Every business entity, regardless of the ownership regime of the business entity, has its own property that serves it to perform its activities and with which it is responsible for obligations in legal transactions with third parties.

The personal part of the substratum of the company consists of natural persons: investors and employees. Some theoreticians believe that the personal substrate also includes management. The relationship between the material and personal substrate can only be observed in dialectical unity and mutual conditioning, since the material substrate is fertilized by the activity of the personal substrate..

The company represents the institutional unity of the personal and material substrate. On this basis, a new legal entity is created, which is not lost in its substrate, but to a certain extent distances itself from it and has an independent legal life. The largest number of countries in the world recognize the property of legal personality to companies, which become independent over their substrate, it is understood as a social reality, so that the legal relations it enters into are also real relations [10]. Na taj način možemo zaključiti A company is an independent entity, completely separated from its personal substrate, both workers and founders with the possibility of institutionalizing its own interests (the interest of the company), which may even be different in relation to the interests of the majority investors.

Property of the investor and his rights

By investing funds in a company, the investor transfers the invested funds to the property of the company, which become the property of the company, but in the value of the invested funds he acquires ownership of the company, i.e. shares or shares depending on the form of the company.This distinction is very important because of the responsibility for the obligations of the company, which is liable with its assets and the owner only up to the amount of the stake in the company (when it comes to capital companies), but also the owner's risk on the invested capital. The separation of the property of the capital owner from the property of the company also leads to the separate responsibility of the company for the obligations it undertakes in legal transactions [10].

Exceptionally, the owner of the capital company is liable for the company's obligations with assets in his personal ownership, jointly and severally with the company and without limitation. Such responsibility exists in all cases of illegal disposal of company assets, when certain legal prerequisites are met. Conversely, since the assets of the company and the owner are separate, there is no liability of the company for the personal liabilities of the equity owner.

The owner of the company has the option of choosing the form of the company: the capital owner chooses the form of the company. Each form has its own universally accepted features. By combining all the relevant moments, the owner chooses the form of business company that best suits him at the given moment, with the possibility to later, relatively easily, transform the chosen model into another form.

Management: the investor organizes the management of the company. He can manage personally, but most often he chooses professional management, and if it is about large companies, he always chooses professional management, which organizes and manages the company's business. At the same time, the owner can always change the management, which, together with the possibility of losing the professional rating on the manager's market, represents the most effective incentive mechanism for conscientiousness, expertise and professionalism in the management of the company.

Supervision - by entrusting the management of affairs to professional management, the capital owner can choose professional controllers of the company's operations, with the aim of obtaining independent information about the state and movement of the company's operations and taking certain steps in a timely manner (reorganization of the company, replacement of the management, etc.).

Profit - the owner of the capital participates in all the results of the company - receives the realized profit or, unlike all other constituents, bears losses. The fact that the economic results of the company's operations are reflected directly in the owner's assets (mostly in the assets of the majority owner of capital) is one of the key levers of entrepreneurship and motivation for capital investment in companies: there is no socialization of losses and participation in profits [10]. Both success and failure affect only the capital owner and not other constituents. Therefore, this function derives from the ownership of the company, and implies the possibility of gaining profit but also exposure to risk. Gaining profit from the company's business is the main goal of its engagement, but also that it will bear a loss if the business results are negative. Namely, the capital owner is the last to settle from the achieved results, i.e. after all his business partners, i.e. all other constituents, are settled and, as such, is always under the threat of loss.

Termination of the company: bearing the economic risk of the company's operations, the owner is the one who decides on its fate. If the company does not produce the expected results, the capital owner can decide, to shut down the company.

Capital of the company as a means of guarantee: the owner, with his capital, serves as a guarantor for meeting the needs of creditors, i.e. creditors who have claims against the owner, i.e. his company. The company's capital serves as a guarantee mass for the settlement of those obligations [9].

Distribution of corporate power

The organizational structure of the management and business management bodies for all forms of proprietary companies is based on ownership. This means that the supreme sovereign, which incorporates the owners of the company, is the assembly [10]. Since it is a body made up of company owners, the assembly has the highest hierarchical position in private companies. This position does not make her the highest professional authority in the company. Therefore, keeping only some of the most important segments in the company's bodies for themselves, the capital owners represented in the assembly form the other company's bodies, whose task is to manage the company and supervise the company's work.

This means that the function of managing the company is separate from the ownership of the company's capital.

In this way, the highest ownership body of the company chooses a professional management body, which is responsible for its work. If the management in the company is bicameral, the elected management body, for the purposes of performing executive functions in the sphere of management, elects one or more directors. In this way, a functional circle of expert bodies of capital companies is formed, carried out on an ownership basis, of course with maximum respect for the need to respect the capital factor. Each formed body of the company is the sovereign and hierarchically highest body within its domain of work [10], defined by law, without the possibility of another body (even one that is above that body in terms of status) to interfere in the scope of its work. Based on that, it follows that one can only conditionally talk about the hierarchy of management bodies in capital companies that have their status source only, not functional. This affirms the theory of non-existence of hierarchy among the bodies of the company, since each body is the only and highest in its legally and statutorily determined scope of work [11].

Interests of the majority owner of capital and other interest groups

In this part of the paper, a presentation and analysis of the position and interests of interest groups that have an interest in achieving good company results is given. All of them, owners, creditors, the state, have a greater or lesser interest in achieving the company's profit, with the fact that their risk varies from group to group [12]. As the main problem of corporate management, the problem arises of how to regulate the relations between capital owners - principals and agents - managers. The question arises why, the problem of company management arises. It should be clear from the above - because ownership and management are separate. The question arises, what are the implications of solving the agency problem? Should the state be interested in it and why? It turns out that this, essentially a micro problem, nevertheless has significant macro implications. Success in solving the agency problem depends on whether the owners of money (capital) will invest it in companies, and on those decisions depends not only the success and progress of one company, but also the success and progress of the entire economy and, consequently, the entire society. Precisely, from the degree of success in solving the agency problem, it is possible to appreciate how much money owners are ready to invest in companies [9]. In other words, the investment climate shows the success of solving the agency problem.

When talking about the owner-manager relationship, some other questions arise. First of all, is it good for a manager to work on maximizing the value of the company, that is, on maximizing profits? There is no single opinion on this issue among experts. However, the most widespread view is that managers should give priority to the material side of the view, i.e. they are obliged to implement the concept of profit maximization. Why? If the investor does not maximize profits, he will lose the competitive game with other companies on the market, his performance will decrease and, in the end, he will be squeezed out by the competition, if of course he does not fail before that, creating losses. The question arises, does the same logic apply to the corporation? With the appearance of the so-called managerial revolution, around 1930 and later, theories often appeared that claimed that the company was no longer pursuing the goal of profit maximization, but some other goals. However, it always turned out in the end, after each of the discussions among economists, that the process of the so-called economic natural selection forces managers to abandon all other goals and return to the goal - profit maximization [9].

Depending on the arrangement of that relationship, the principal will invest funds in the company or not, the company will operate successfully or unsuccessfully, and the interest or risk for the constituents will be positive or negative.

The topic of good company management is always current and present in the global and domestic business and professional public, as an economic and business phenomenon. The reason for this is the expanding shareholding in the world, the struggle for the best possible market position, so that all managerial activities in the company strive for the best possible business result and market position, in the market of a country, environment, region or on an international scale [14].

Let's go back to the question itself: should companies be managed in the interest of the investors? The answer to that question is clear: investors are the only ones who, compared to all other stakeholders, have invested their own funds in the company's operations, and therefore the company should be managed in their interest. This is not about some kind of ethical (moralistic) thesis. It is about the fact that the capital owners are not guaranteed any fixed payments from the company's operations, while other constituents are: eg. employees (they have fixed salaries), suppliers are paid agreed prices for goods or services; they pay fixed and even variable interest rates to banks-creditors, i.e. they are also protected by the possibility to change the terms of lending after the loans have been granted and to all others who are in any way involved in the work of a legal entity. The goal of the investor is to earn profit from the work of the legal entity, which is the biggest motivation of investors to do everything necessary for the company to does well. If the company goes bankrupt, the shareholders lose everything, while all other constituents are settled, at least partially. Therefore, it is obvious that the capital owners bear the risk that others do not, and this encourages them to organize the company's operations as much as possible. When it is managed for the benefit of the shareholders, then the profit of the legal entity is increased to the greatest extent. In this way, the company makes the highest social contribution to all stakeholders [9].

Constituted relationships of internal stakeholders, owners, employees, management have an impact on corporate governance, and from the external aspect, corporate governance is influenced by the relationships between the legal entity and external stakeholders, namely suppliers, buyers of products and services, governments of countries, state authorities and the local community in which the company operates.

The role of all the aforementioned constituents and their interaction varies a lot among OECD member and non member countries, but there is a prevailing attitude that modern companies, if they want to do business successfully, cannot ignore the interests of interest groups. These relationships are regulated partly by laws and other regulations, and partly by voluntary regulation and, most importantly, by market laws and good business practice [13], so the degree of participation of interest groups in corporate governance and company operations can be different from country to country.

There is no doubt that the main interest of a legal entity is business with the aim of making a profit. However, this goal has limitations in terms of the company's moral obligation. This means that the company must take care of the interests of all persons interested in the company's operations, i.e. that its interest is actually the sum of the interests of all interest groups. In the sum of all interests, the primary interest is the interest of the shareholder, that is, the owner of the capital and the majority owner because he invested the largest capital and bears the greatest risk. In addition to the above, the management of the company has its own interest [15], because it appears as the bearer of its own values, but in case of conflicting interests of the company's management and the interests of the company, the management is obliged to show loyalty to the legal entity in which it performs the management function.

At first glance, the company is an idyllic legal entity, with the priority interest of investors. But the company is internally full of conflicts and contradictions [16], and therefore also towards the outside world. The company is characterized by the multi-layered nature of different interests (risks) that exist in every business entity, namely the interests of internal and external stakeholders [17].

Therefore, a business is characterized by a multitude of interests of internal and external stakeholders, which can be very different and conflicting, namely:

- interest of majority and minority investors,
- the interest of the company's business partners,
- the interest of the company's employees,
- the interest of the company's management
- the interest of the company itself
- the interest of the state and the local community in a sociological sense [18].

The interests of the mentioned persons are often contradictory to each other and often changeable, which causes conflicting interests and complicated mutual relations [16]. Due to the difference in interests, the legislator has a special, not at all easy, role to maximally harmonize and harmonize these interests with appropriate regulations. the legislator has a special, not at all easy, role to maximally harmonize and harmonize these interests with the appropriate regulations [19], and the owners of the capital in the management of the company to follow the developments in this area on the market. It is important that judicial practice be stable and predictable when resolving possible disputed situations that may arise from different interests of the constituents.

From an internal aspect, corporate governance is influenced by the relationship between participants in the management system, shareholders, creditors and employees, while the external aspect of corporate governance is focused on the relationship between the company and external stakeholders, namely suppliers, buyers of products and services, governments of countries, state authorities and the local community where the company operates.

Internal interest groups

Constituents interested in the successful operation of the company, considering their interests, can be divided into:

- internal and
- external…

Majority owners of capital, can significantly influence the behavior of the company. Institutional investors, as capital owners, also increasingly demand active participation in corporate governance.

In practice, the representative point of view is that good corporate governance should be based on respecting the interests of capital owners and on their influence on the company's operations and to persons who manage the company. There are several reasons for this attitude, it is believed that the decisive reason for this is the connection between the economic position of the company and the fact that investors have the greatest risk for the achieved business results of the company compared to all other stakeholders. [20].

The persons authorized to manage the company have a significant interest in achieving good company results, since they, thanks to their professional knowledge, are the bearers of management risk and at the same time of interest in the good economic position of the company [21], for several reasons:

- first of all, if certain circumstances arise, the management of the company can be subject to liability, material and criminal;
- can be the bearer of the risk of endangering its own reputation if the company does not operate successfully; Too,
- the management's property claims against the company based on work, including the "diamond or golden parachute" clauses, may be denied or threatened due to the company's unsuccessful operations.

Therefore, the management of the company has its own interest - the interest of the management.

Corporate governance researchers have invested a great deal of effort to find the possibility of regulating the principal-owner relationship. This is the main problem of corporate governance. The problem of regulating the aforementioned relations arises in a situation where there is a need to separate the ownership of capital from the function of management.

In all countries of the world and intercontinentally, companies of various sizes operate, starting from micro firms, of which there are many in the territory of Serbia, to huge multinational companies, connected in all possible ways, through capital, persons, contracts, mutual capital participation, etc. One group consists of companies that are managed by the owner and where there is no real need to transfer management rights to another person. In those cases, it is primarily about small companies, with a smaller volume of business, with a smaller number of employees.

The second group consists mostly of large corporations that are not managed by the owners, but leave it to professional management - managers. In those cases, the question of regulating the principal-agent relationship arises. Therefore, investors, owners of money, entrust their property to the management of the company in the hope that, first of all, they will preserve their property and increase it by achieving a return on invested capital. Managers are expected to conduct the entrusted business of managing the company in a manner that will ensure efficient and successful operations and the realization of profits for the owners and the company. However, the target functions of capital owners and managers are not always and completely identical, on the contrary, they are often in conflict [22]. The above-mentioned conflict occurs most often in companies that have a successful and long-standing business, when they already have considerable amounts of so-called free net cash flow. The question is often raised whether the realized profit should be distributed to the capital owners as a dividend, or whether it should be invested in existing and/or new projects. In such cases, the question arises, which is the objective function of the manager and which of the capital owner, does the management really want to achieve the objective function which is reduced to the maximization of the profit of the capital owner or some other function which it considers to be the objective function at that moment?

Owners of equity invest their money in a company when such investments allow them to increase their wealth. In a situation where the company has free financial resources, the majority owner of the capital will most likely agree to invest the available funds in all cases when the current value of the investment is positive or equal to zero, regardless of whether it is planned acquisitions or a classic investment project, but, yes in order to reduce the risk, the issue of paying a dividend or part of the profit can also be raised [23]. The interest of minority shareholders is usually the payment of dividends.

Management invests its work and knowledge in the company, so maximizing its compensation for work could be its target function, but also investing in new acquisitions, before paying dividends to shareholders, in order to achieve its own good reputation [14]. There are certain theories in the world that try to explain the motives, first of all, of the majority owner of the capital and management, for certain behavior, but the fact is that the principal-agent relationship can be successfully resolved, as evidenced by the huge funds invested in this area.

External interest groups

In addition to internal interest groups, external interest groups are also interested for a good economic position of the company: consumers, the state in a sociological sense and the local community and others. Every state and local community is undoubtedly interested in the successful operation of companies due to the general interests for which they are responsible, the interests of a healthy environment, increasing the number of employees, financial income, development interests, satisfying the needs of consumers, users of the company's goods and services, system maintenance and social reputation of the company becomes its significant characteristic and goal [24]. The interest of the state, as a constituent, is manifested through the so-called corporate social responsibility, which has been given increasing importance throughout the world for several decades, so it can be said that corporate social responsibility is a very important condition of life and work in every community.

Interest of society: Contrary to the American concept, which considers that the only interest to be protected is the interest of the investors of the company as well as the maximization of profits in theire favor, in the modern world, other concepts prevail. For example, The German Law on Joint Stock Companies from 1937, for the first time in world practice, created the interest of the state in joint stock companies, promoting the concept of special interest of the company. Then the principle of supervision over the company's work was introduced, the purpose of which is precisely to protect the special interest of the company, that differs from the interests of other constituents [7]. Today, this attitude is dominantly accepted in European theory and practice.

Therefore, socially responsible business is actually a derivative of sustainable development. It should be emphasized that sustainable development presupposes the successful integration of economic growth, environmental protection and the quality of relations and development of society (social cohesion) [25]. This connection of socially responsible business and sustainable development is clearly shown in the image below.

Figure 1. Functions of socially responsible government management.
Source: Author's work.

Therefore, the problem of corporate governance, from an internal aspect, is finding a balance between participants in the management system, shareholders, company management, the interests of creditors and employees, and from an external aspect, the relationship between the company and external interest holders, namely the governments of countries, state authorities, the local community where the company operates, consumers, suppliers, etc.

A number of international regulations, including the OECD Principles, consider the role of stakeholders in the governance process, which has been much debated in the past, with some theorists considering that stakeholders have no other rights in relation to society, other than those specifically stated in law or contract. Others believe that economic companies fulfill an important role in society, have an influence on society, which is why they have an obligation to act in the general social interest [26].

It is interesting that there is general agreement that modern economic societies cannot operate effectively while simultaneously ignoring the interests of interest groups. However, there is agreement that companies that continuously put the interests of other stakeholders before the interests of investors cannot remain competitive for a long period of time and must gradually lose in the continuous market competition [27], so it is undeniable that the interest of the majority owner is subject to the greatest risk, from it depends on him whether the investor will invest his assets in the performance of trading activities and in that way realistically enable other constituents to create and realize their interests.

CONCLUSION

A modern corporation is a term that refers to a form of business in which the owners are not responsible for the obligations that the business creates, and which separates the function of ownership from the function of managing the company's resources. The basic requirement of a modern corporation is to create wealth for owners in a responsible manner. In order to fulfill its economic purpose, a corporation must balance diverse interests. Being ethical, being responsible and profitable is imperative for a modern corporation.

Nevertheless, regardless of the differences, there is a general agreement between theory and practice, that modern economic societies cannot effectively carry out their activities while at the same time ignoring the interests of their constituents. These relationships are subject not only to laws and regulations, but also to voluntary adaptation and most importantly to market laws and good business practices, and therefore the level of participation of interest groups in corporate governance can and does differ from country to country.

Corporate governance is also concerned with finding ways to encourage stakeholders to invest in the company's human and physical capital, at a socially efficient level. The result of the success of any economy is the contribution of the actions of numerous business entities, investors, working individuals, creditors and suppliers, along with a well-regulated market in which business entities operate. Therefore, for the formation of a good market position of economic entities, all stakeholders have an indispensable merit. Therefore, there is an inevitable interest of companies to encourage beneficial cooperation with stakeholders, and to establish a governance framework that recognizes these interests and recognizes their contribution to the long-term success of the company.

The extent to which stakeholders participate in the corporate governance of a company depends largely on national laws and practices and may therefore vary from country to country. In any case, the management bodies in the company have an interest to pay due attention to this complex issue and the role of stakeholders in the management of the company, and to act in order to maximize the company's profits in order to satisfy the primary interest, the interest of the capital owners, and then the interests of other constituents.

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