



LEGAL STATUS OF STATE-OWNED COMPANIES IN THE REPUBLIC OF UZBEKISTAN

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***Annotation:** This article addresses the issue of the legal status of state-owned companies. The author considers the very concept of a state-owned company and the requirements of the legislation in terms of the rights of a state-owned company to conduct business. In addition, attention was paid to the issue of reforming state-owned companies.*

***Keywords:** state-owned company, state enterprise, state business corporation, joint-stock company.*

***Аннотация:** мазкур мақола давлат компаниялари ҳуқуқий мақомига бағишланган. Муаллиф давлат компаниясининг сонцепцияси ва қонунчилик талабларини давлат компаниясининг бизнесни юритиши ҳуқуқи нуқтаи назаридан кўриб чиққан. Шу билан бирга, давлат корхоналарини ислоҳ қилиши масаласига алоҳида эътибор қаратилган.*

***Калит сўзлар:** давлат компанияси, давлат корхонаси, хўжалик бошқаруви органи.*

***Аннотация:** в настоящей статье рассмотрен вопрос о правовом статусе государственных компаний. Автор рассматривает саму концепцию государственной компании и требования законодательства в части прав государственной компании на осуществление хозяйственной деятельности. Кроме того, уделено внимание вопросу реформирования государственных компаний.*

***Ключевые слова:** государственная компания, государственное предприятие, орган хозяйственного управления.*

In the Republic of Uzbekistan, measures to reduce state participation in the economy are being consistently implemented. Special attention is paid to the issue of transition from administrative management to market-based methods of economic regulation. It is expected to eventually increase the volume of the private sector and reduce the level of state influence on the economy.

Meanwhile, the share of state-owned companies in the Republic of Uzbekistan remains significant, for example, at the end of 2018, 603 joint-stock companies were operating in the country, 486 of which were with state shares with a total amount of 52 trillion soums [1]. Undoubtedly, such a high proportion of state-owned business casts doubt on the issue of ensuring competition in the market for goods and services.

High role of the state in the economy negatively reflected on the development of the competitive environment, the attractiveness of the business climate, the draw of foreign direct investment, etc. It must be admitted that most investment flows still go through government-related structures. Meanwhile, it cannot be said that state-owned companies are profitable, their shares remain unclaimed by individuals and business. A number of large, state-owned companies are essentially unprofitable, therefore, regardless of the quality of products the state is forced to provide them with tax exemptions, preferences and subsidies.

In recent times, the government is paying due attention to ensure efficient management and proper accounting of state property in the enterprises with its shares in the charter capital. In this regard, the President and the Government are adopting a number of decisions aiming to introduce modern principles of corporate governance, increasing the responsibility of officials in terms of management and increasing the profitability of manufacture. However, in this direction, there is still a lack of vivid achievements, and proper level of management in the state-owned companies and enterprises remains unachieved. Consequently, the labor efficiency ratio of members of the supervisory board and executive directors is also not high. Perhaps the problem of this situation lies in the legal aspects activities organization of state-owned companies and state-owned enterprises.

In order to answer the question, the article shall consider some aspects of the legal nature of state-owned companies and state-owned enterprises.

State-owned company

Legislation of the Republic of Uzbekistan specifies that State participates in social relationship regulated by Civil Code and is equal in attitude to other parties [2]. Governmental and other specially authorized bodies can act on behalf of the state in the relations regulated by civil law.

The legislator determines that the state is responsible for its civil obligations by means of its own property.

At the same time, the legislation separately establishes that the legal entity created by a state is not responsible for the obligations of the state. Simultaneously, the state is not liable for the obligations of the legal entities created by it, except those set by the law [3]. The Civil Code of the Republic of Uzbekistan establishes that state authorities are not entitled to act as participants in economic societies and as investors in limited partnerships, unless otherwise provided by law.

Thus, as a rule, the state does not have the right to be involved in economic activities due to the presence of regulatory functions, which contradicts the rules and principles of competition – the basic element of competitive business. However, the norm of law contains a clause that allows, if necessary, the state to adopt a regulatory legal act and authorize a state body the right to establish an economic company.

In accordance with Decree of the Cabinet of Ministers of the Republic of Uzbekistan “On organizational measures to transform state enterprises into open Joint - Stock Companies,” No. 221 dated June 15, 1995, several state enterprises on balance of ministries, associations and corporations from manufacturing, agro-industrial and constructional spheres were transformed into joint stock companies.

This Decree approved the model charter of an open joint-stock company created because of the transformation of the state-owned enterprise, as well as a typical privatization plan. As a result, this fact led to detention of a legal framework for the creation of state-owned companies based on individual government decisions.

State Enterprise

In 2006, the Government of the Republic of Uzbekistan adopted Decree No. 215, which approved the Regulation on State Enterprises. Thus, additionally to the provisions of the Civil Code, this Regulation established that a **state enterprise** is a commercial organization in the form of a state unitary enterprise with a state-owned property, which is transferred to it for operational management. The enterprise in relation to its assigned property may own, use and dispose it within the limits established by law, in accordance with the objectives of its activities and the tasks of the owner (or, under his instructions, the public authority - founder). Separately, it was established that the founder of a state enterprise should be the Cabinet of Ministers or state bodies authorized by it.

Decree has also determined that the head of a state enterprise is its sole executive body who performs the tasks and act on behalf of the enterprise without power of attorney.

The net profit of the state enterprise, after paying all taxes and other obligatory payments as well as deductions from the net profit of the state enterprise to the State budget of the Republic of Uzbekistan and to the state trust funds, remains at the disposal of the enterprise and is used by decision of the founder.

As for liability, the Regulation did not provide any terms for limited liability of a state enterprise, having determined that the founder bears subsidiary responsibility for the obligations of a state enterprise if its property is insufficient.

Note!

In addition to the state enterprise created for the implementation of commercial tasks, the state for performing non-commercial tasks has a so-called state institution - an organization created by the owner of state property to carry out managerial, socio-cultural or other non-commercial functions and funded in whole or in part from the state budget.

State Business Corporation

Presidential Decree, adopted on 22 December 2003 # UP-3366 “On improving the system of economic management bodies”, aims at unifying and improving the efficiency of organization of state business corporations. The Decree mentions following legal forms of state business corporations:

- **joint-stock companies**, including state-owned joint-stock companies, carrying out the economic management of their constituent enterprises through share holdings of these enterprises belonging to the state business corporations;
- **associations** that are created on a voluntary basis by the founding enterprises to assist in their activities by delegating certain general functions to them without the right to manage the shares of the founding enterprises.

The main task of state business corporations was to create a perspective strategy for the sustainable development of the industry and economic sector. In addition, it was established that the powers of the state business corporations do not include the functions of state administration, including distributional, as well as administrative intervention in the activities of enterprises within their composition.

Note!

A state company is characterized as a commercial organization based on state-owned property and established by a decision of the Government, as a rule, in the form of a joint-stock company or a unitary enterprise. The head of a state company is also appointed by a government decision. To improve management efficiency in a particular sector of the economy, state-owned companies are united into business associations, which are also referred to as a state-owned company.

Conflicting functions of state-owned companies

Over the last 7-8 years, the Organization for Economic Cooperation and Development (OECD) pays great attention to the problems of privatization of state enterprises, development of corporate governance and its specificity in companies with full or partial state ownership in different countries [5].

The state in the field of corporate governance is usually viewed from two perspectives: **first**, as a regulator that forms the rules of the game (regulatory legislation) and is responsible for their implementation (enforcement), and **second**, as an owner of assets, a direct participant in corporate relations. These two roles often conflict within the public sector [6].

It should be noted that in the Republic of Uzbekistan, the state as a regulator of corporate relations has achieved some success, but as a co-owner of business, it often does not succeed in applying the principles of corporate governance and thus is unable to provide a full-fledged business environment based on competitive conditions.

Naturally, representatives of the private sector in most cases are not able to withstand the strong prevailing position of the state. After all, the state in order to maintain its prevailing status in a certain sector of the economy has the opportunity to subsidize unprofitable enterprises, to provide tax preferences, to impose restrictions on competitors - representatives of the private sector. As a result, the mentioned creates inequality and ceases the operation of market relations. Eventually, consumers of goods and services are limited in the choice of products, the budget is deprived of a sufficient amount of revenues, the state export potential is reduced and a passive business climate in the country dominates.

Reforming state-owned companies

The President of the Republic of Uzbekistan in his message to the parliament (Oliy Majlis) of December 28, 2018, emphasized the need for a sharp reduction of state intervention in the management of the economy. According to the speech of the President, a high level of the state presence is observed in the fuel and energy, oil and gas, chemical, transport, bank, building spheres. Existing situation represents a serious obstacle to the development of these areas based on market mechanisms, and slows down the process of attracting investments.

At the same time, some ministries are founders of the enterprises operating in the sphere supervised by them. This circumstance hinders free and healthy competition. However, one can witness the practice of two incomprehensible situations. The first is a combination of state regulatory and economic functions by state business corporations and the second, an outdated management system that does not have sufficient flexibility and market orientation.

Such a system of management does not motivate manager to take the initiative and proper responsibility. In other words, the state-owned companies having opportunity to regulate a policy in a certain area, create more acceptable for their industry enterprises within a single group (holding) the procedure for business activities, including pricing policies for a number of items of goods and services, based on their own interests. However, this procedure does not always correspond to the laws in the sphere of competition and in fact, destroys competition, further creating inequality of business entities.

Consequently, activity of the state companies besides private-legal regulation, mainly acts as a subject of regulation of decisions of the President and Government of the Republic of Uzbekistan. The given circumstance evidences about state-like companies under the state ownership.

A state-like entity is a state-owned company in the form of a joint stock company (including holding companies), as well as subsidiaries, dependent and other legal entities which are affiliated with them, where the state acts as a participant or a shareholder.

The example of a state-like entity is Joint Stock Company "Uztelecom" in the sphere of telecommunications with its large number of subsidiaries. In addition to providing mobile, international, long-distance and fixed communication services, JSC "Uztelecom" also provides rental communication channels, access to the internet with pricing policy.

In accordance with the Decree of the President of the Republic of Uzbekistan dated September 8, 2017 UP- 5185 "On approval of the concept of administrative reform in the Republic of Uzbekistan", special attention is given to reforming state-owned companies. In particular, it is recognized that in the economy there is a duplication of functions and redundancy of state regulation. This, in turn, as stated in the Concept itself, adversely impacts on the effectiveness of the reforms implemented in the country. Thereby, for the first time it has been publicly determined that there is a significant quasi-state sector in the Republic of Uzbekistan (economic management bodies, state unitary enterprises), which strengthens the level of state regulation of the economy. In particular, it is recognized that there is a duplication of functions and redundancy of state regulation in the economy. This circumstance is more evident in the combination of state regulatory and economic functions by economic management bodies, in an outdated system of management, which does not have sufficient flexibility and market orientation, as well as the unjustified provision of individual benefits, preferences and privileges.

In this regard, the goal has been set to further reduce the administrative impact on the economy and expand market-based management mechanisms aimed at developing a healthy competitive environment, increasing the attractiveness of the country and business activity of the population.

What exactly is planned to be done?

In Section 3 of the Concept of Administrative Reform in the Republic of Uzbekistan on further reduction of administrative impact on the economy mechanisms, the following are to be undertaken:

First, to improve the management system in prevailing spheres of economy and social sphere (industry, transport, energy, etc.) in order to develop a healthy competitive environment, eliminating the conflict between government and commercial interests.

Second, to impose restrictive measures on the establishment of commercial organizations with a state participation and reorganization of existing enterprises in the areas where a private sector functions effectively, as well as the rejection of the practice of granting individual economic entities exclusive rights, individual benefits and preferences that limit the development of a healthy competitive environment.

Third, to develop a clear market mechanisms for the state's participation in economic activities, primarily in the creation and management of state unitary enterprises, improving the competence of Trustees and state attorneys, their economic and managerial efficiency, the development of corporate governance mechanisms of economic entities with the participation of the state, aimed primarily at improving the financial transparency and efficiency of the system of management of state assets.

Fourth, to abandon the practice of financing the Executive authorities with control powers ("Uzgosneftegazinspektsiya", "Uzgosenergonadzor" and others), at the expense of the funds of the economic management bodies controlled by them (JSC "Uzbekneftegaz", JSC "Uzbekenergo" and others).

Fifth, to improve the legal and institutional framework of social and public-private partnership aimed at ensuring the broad participation of non-governmental non-profit organizations and business entities in tackling the problems of socio-economic development (education, health, tourism, utilities, road transport infrastructure) and, as a result, reducing budget expenditures.

Sixth, to transfer the certain public functions to the private sector introducing the mechanism of licensing, certification, accreditation and other procedures as a means of state control over the proper performance of the transferred functions. At the same time, reduction of excessive administrative measures of state control (licensing and other procedures), by their replacement with alternative types of regulation (compulsory liability insurance, Declaration of conformity, and others).

In turn, in the international practice large enterprises, as a rule, are created in the form of public companies (joint-stock companies), whose shares are placed on stock exchanges. This promotes attraction of the fund of individuals and businesses. They usually serve as a core of the economic development of the state. Therefore, if the state has a sufficient number of large enterprises, they determine the economic future of the state. Its, the state is interested in supporting of the activities of large enterprises, creating favorable conditions for them in terms of ensuring their financial stability and development of their export potential.

References:

1. Message from the President of the Republic of Uzbekistan to the Oliy Majlis dated December 28, 2018.
2. Civil Code of the Republic of Uzbekistan, Art. 79.
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